



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NEW SOUTH WALES

ANNUAL REPORT 2008-2009

THE OFFICE

The Office of the Director of Public Prosecutions (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 Court
- 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 proceedings 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 counsel or a solicitor in any proceedings which are carried on by the Director or in which the Director is a part.

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.

ODPP NEW SOUTH WALES

OUR ROLE

To provide for the people 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 and the community.

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 Ethics

Manifest integrity, fairness and objectivity.

■ Management Excellence

Continual improvement.

Encouraging individual initiative and innovation.

Providing an ethical and supportive workplace.

OUR REFERENCE

DIRECTOR'S CHAMBERS



YOUR REFERENCE

DATE

21 December 2009

Hon J Hatzistergos MLC
Attorney General
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney

2008-2009 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 2009.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N R Cowdery'. The signature is fluid and cursive, with a long horizontal stroke at the end.

N R Cowdery AM QC
Director of Public Prosecutions

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DIRECTOR'S OVERVIEW

DIRECTOR'S OVERVIEW

This is the Office's 22nd Annual Report (and my 15th).

Budgetary and reporting issues have continued to occupy a great deal of time and effort for all of us in this financial year. The sorry financial tale is disclosed in detail in this Report and I have commented on such matters in the past. I have nothing to add in that respect in this Report, other than once again to thank all staff, from senior managers down, for their diligence and application (often at unwarranted personal cost) in enabling us to survive another year.

As noted last year, the Auditor-General reported on the Performance Audit of the Office on 26 March 2008. Essentially he found that the Office could not demonstrate that it is efficient and that some management practices, particularly those relating to the counting, measuring, recording and reporting of its activities, were deficient. Importantly, as I said last year, the Auditor-General did not find that the Office is inefficient. The report was not directed to our professionalism, diligence or competence in prosecuting or in managing that function. In March the Public Accounts Committee of Parliament and the Auditor-General reviewed our responses to the report and on 14 May the Auditor-General stated that he was pleased that the ODPP was making good progress in implementing all of his 16 recommendations.

Among those recommendations was one for the appointment of an Executive Director, who took up office on 28 October. Additional funding of \$304,000 pa for two years had been approved for such a position at SES Level 6. Mr Nigel Hadgkiss has provided good and faithful service in that role and is making excellent progress in satisfying the administrative demands now placed on the Office.

On 2 March Deputy Director David Frearson SC was sworn in as a Judge of the District Court. On 4 June Deputy Senior Crown Prosecutor Donna Woodburne SC was appointed Deputy Director in his stead. I have thanked and congratulated both elsewhere; but I note here that Ms Woodburne's is the first appointment of a female to the position of Deputy Director or Director. In an Office increasingly populated by highly competent and professional women, that is a most welcome development.

My official travel has been noted elsewhere in this Report. That summary shows that the Office contributed \$221.40 towards six separate undertakings.

Independence and Accountability

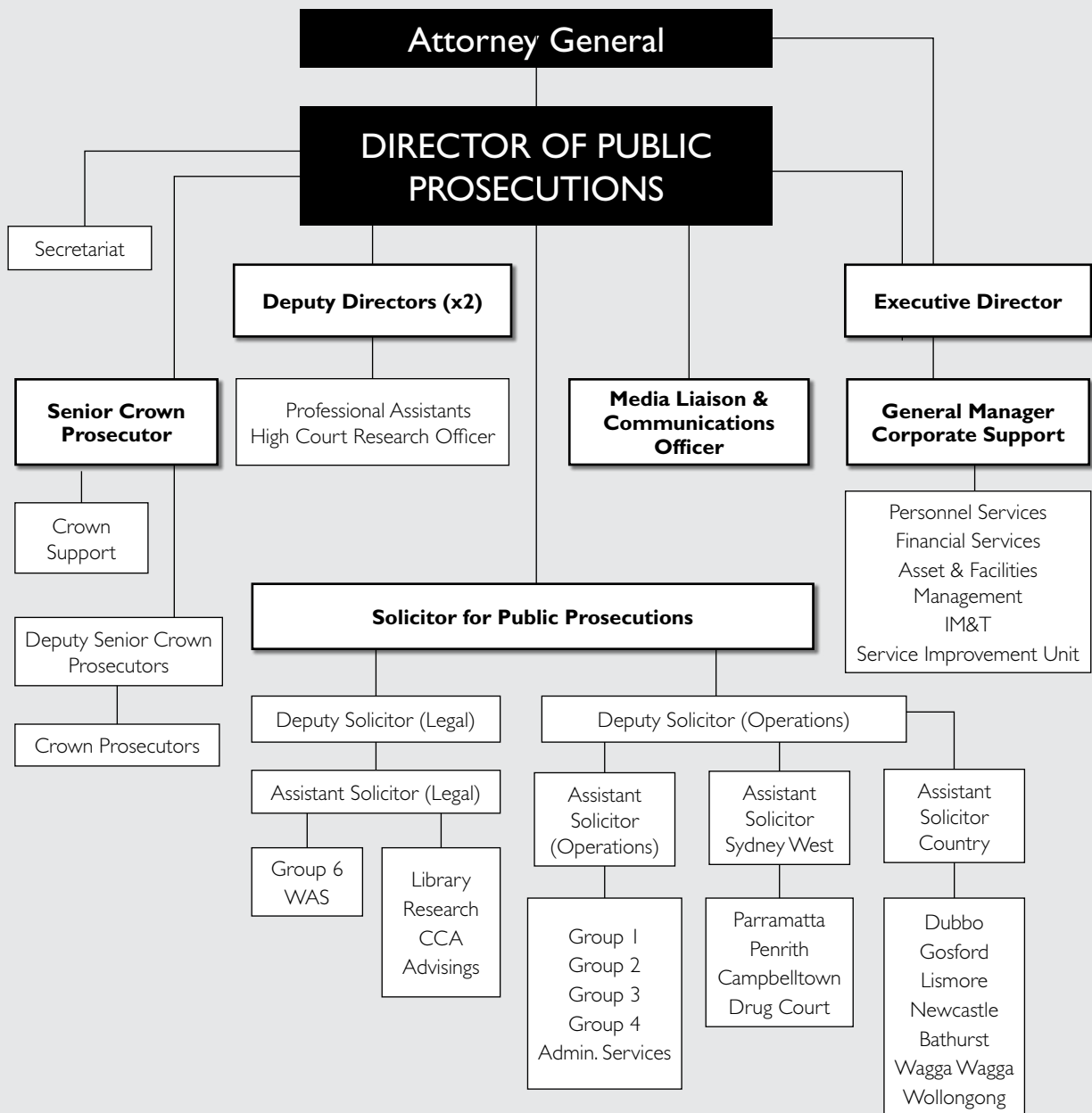
No guideline under section 26 of the *Director of Public Prosecutions Act 1986* has been received from the Attorney General, nor has notice been received from him of the exercise by him of any of the functions described in section 27. No request has been made to the Attorney General pursuant to section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



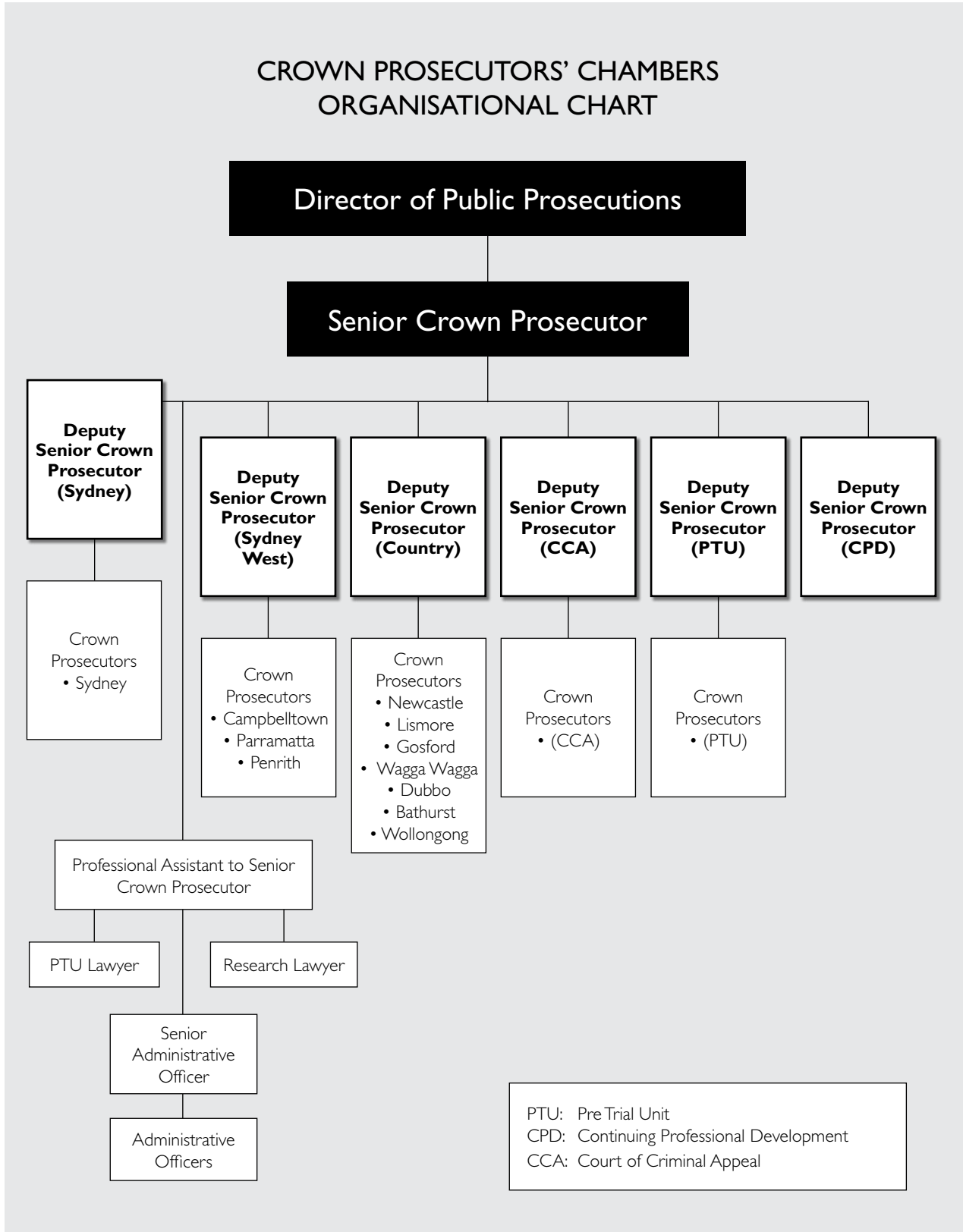
MANAGEMENT AND ORGANISATION

ORGANISATIONAL STRUCTURE

ORGANISATIONAL STRUCTURE OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS & CROWN PROSECUTORS CHAMBERS



Organisational Structure (continued)



MANAGEMENT STRUCTURE

Nicholas Cowdery AM QC BA LLB

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. His term as President of the International Association of Prosecutors ended in September 2005.

Luigi Lamprati SC LLM

Deputy Director of Public Prosecutions

Admitted as a solicitor 1969. In private practice as a barrister from 1977 until 1988. Appointed Crown Prosecutor August 1988. In November 2000, appointed Acting Deputy Senior Crown Prosecutor and Deputy Senior Crown Prosecutor in April 2002. Appointed Senior Counsel in October 2003 and Deputy Director of Public Prosecutions in December 2003.

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

Donna Woodburne SC BA LLB

Associate to Judge J K Ford QC in 1985; admitted as a solicitor in 1987; Turner Freeman Solicitors 1986-87, Solicitor; ODPP in 1988; Trial Advocate 1996. Called to the Bar 1997; Acting Crown Prosecutor in 1997; Crown Prosecutor 1998; Deputy Senior Crown Prosecutor 2008. She took silk in 2008.

Appointed Deputy Director of Public Prosecutions in 2009.

Stephen Kavanagh LLB

Solicitor for Public Prosecutions

Practised as a Solicitor following admission in 1973 in a city firm and later at the State Crown Solicitor's Office from 1976 to 1988, primarily in the areas of civil, criminal and constitutional litigation.

Following the establishment of the ODPP in 1987, appointed as Managing Lawyer (Advisings Unit) in 1989 undertaking responsibility for a wide range of appellate litigation conducted by that Unit in the Supreme Court and High Court. Appointed Solicitor for Public Prosecutions in June 2004.

The Solicitor for Public Prosecutions, in accordance with s23 of the DPP Act, acts as Solicitor for the Director in the exercise of the Director's statutory functions and instructs the Crown Prosecutors and other counsel on behalf of the Director in the conduct of trial and appellate litigation. The Solicitor also assists in the general management of the Office.

Nigel Hadgkiss APM LLB MComm

Executive Director

Joined Royal Hong Kong Police 1969 then AFP 1977. Awarded Australian Police Medal (APM) in 1995 Queen's Birthday Honours List as Director Operations, Royal Commission into NSW Police. Winston Churchill Fellowship (1988) and Visiting Fellow, Osgoode Hall Law School, York University, Toronto (1999). Resigned from AFP in 2000 as Assistant Commissioner to become a National Director, National Crime Authority (now Australian Crime Commission). 2002-2008 was Director, Building Industry Taskforce and Deputy Commissioner, Australian Building & Construction Commission.

Appointed Executive Director in October 2008.

Management Structure (continued)

Crown Prosecutors' Chambers

Crown Prosecutors are appointed under the Crown Prosecutors Act 1986. Their functions are set out in s5 of that Act and are:

- (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; and
- (d) to carry out such other functions of counsel as the Director approves.

The Crown Prosecutors of New South Wales comprise one of the largest "floors" of barristers in the State. They are counsel who, as statutory office holders under the Crown Prosecutors Act 1986, specialise in the conduct of criminal trials by jury or judge alone in the Supreme and District Courts, as well as in criminal appeals. The vast bulk of criminal jury trials in this State are prosecuted by Crown Prosecutors. They also regularly provide advice to the Director of Public Prosecutions on the continuation or termination of criminal proceedings. Occasionally they appear at coronial inquests, inquiries under Part 7 of the *Crimes (Appeal and Review) Act 2001* and in unusually complex committal proceedings.

A number of Crown Prosecutors are seconded from time to time as counsel to other organisations such as the ICAC, the Police Integrity Commission, the Legal Representation Office, the Public Defenders Office and the Criminal Law Review Division of the Attorney General's Department. There are also a significant number of former Crown Prosecutors who are Judges of the Supreme Court and District Court. The Crown Prosecutors are almost all members of the NSW Bar Association and participate in its Council, its Committees (including Professional Conduct Committees) and its collegiate life.

There are Crown Prosecutors located in Chambers in the City of Sydney, in Sydney West at Parramatta, Campbelltown and Penrith, and also at regional locations in Newcastle, Wollongong, Lismore, Dubbo, Bathurst, Wagga Wagga and Gosford.

The Crown Prosecutors come under the administrative responsibility of the Senior Crown Prosecutor, who is responsible in turn to the Director of Public Prosecutions, also an independent statutory officer.

While the Director can furnish guidelines to the Crown Prosecutors with respect to the prosecution of offences, he may not issue guidelines in relation to particular cases. The independence of the Crown Prosecutors as Counsel is guaranteed by the Crown Prosecutors Act. The Crown Prosecutor is therefore in most respects an independent counsel with only one client, namely the Director of Public Prosecutions.

Administrative support to the Crown Prosecutors is provided by the Office of the Director of Public Prosecutions.

Mark Tedeschi QC MA, LLB

Senior Crown Prosecutor

Mark Tedeschi has been a Crown Prosecutor since 1983. He was previously a private barrister. He has been a Queen's Counsel since 1988, and Senior Crown Prosecutor since 1997. He is the author of a book on international trade law and of numerous articles on environmental law, social welfare law, business law, mental health law and criminal law.

He is the President of the Australian Association of Crown Prosecutors and a visiting Professor in the Centre for Transnational Crime Prevention at the University of Wollongong. He is a member of the Board of Directors of the National Art School in Sydney.

*Prosecutes major trials in the Supreme and District Courts.
Responsible for the leadership of the Crown Prosecutors Chambers and the briefing of private Barristers.*

SIGNIFICANT COMMITTEES

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

Executive Board

The ODPP Executive Board consists of the Director (Chair), two Deputy Directors, Senior Crown Prosecutor, Solicitor for Public Prosecutions, General Manager, Corporate Services and two independent members. Current independent members are Associate Professor Sandra Egger of the Faculty of Law, University of NSW and Mr John Hunter, Principal, John Hunter Management Services.

The Board meets bi-monthly 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.

Minutes of its proceedings are provided to the Attorney General and the Treasurer.

Management Committee

This Committee comprises the Director, two Deputy Directors, Senior Crown Prosecutor, Solicitor for Public Prosecutions, General Manager, Corporate Services, Deputy Solicitors (Legal and Operations) and Assistant Solicitors (Sydney, Sydney West and Country).

The Committee meets monthly. Its primary functions are as follows.

1. To report, discuss and resolve upon action on operational and management issues affecting the ODPP and Crown Prosecutors, including (but not limited to) workload and resource allocation.
2. To consider monthly financial reports and to initiate action where funding and expenditure issues are identified.

3. To discuss issues affecting major policy decisions and other matters requiring referral to the ODPP Executive Board.
4. To serve as a forum for discussion by senior management of any matter affecting the operations of the ODPP, including the activities, challenges and initiatives of the various areas within the Office.

The Committee publishes an agenda to its members prior to each meeting and minutes are kept of its proceedings.

Audit and Risk Management Committee

This Committee is chaired by a Deputy Director of Public Prosecutions with the Solicitor for Public Prosecutions, Senior Crown Prosecutor, General Manager, Corporate Services and Manager Service Improvement Unit as members.

Representative of the Audit Office of NSW and of the internal audit provider attend meetings by invitation.

The Audit and Risk Management Committee monitors the internal audit, risk management and anti-corruption functions 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, General Manager, Corporate Services, Deputy Solicitor (Legal), Assistant Solicitor (Country), a Deputy Senior Crown Prosecutor, Manager, Information Management & Technology Services, Managing Lawyer (Sydney) and the Assistant Manager (Information Management) as Executive Officer.

The Committee meets monthly and minutes of meetings are published on the Office's Intranet.

ODPP INTERNAL COMMITTEES / STEERING GROUPS

Committee/Steering Group	ODPP Representative	
Executive Board	Nicholas Cowdery AM QC (Chair) Luigi Lamprati SC Donna Woodburne SC Mark Tedeschi QC Stephen Kavanagh	Gary Corkill Nigel Hadgkiss John Hunter (External representative) Sandra Egger (External representative)
Management Committee	Nicholas Cowdery AM QC (Chair) Luigi Lamprati SC Donna Woodburne SC Mark Tedeschi QC Stephen Kavanagh Claire Giroto Graham Bailey	Jim Hughes Johanna Pheils Janis Watson-Wood Gary Corkill Nigel Hadgkiss Sashi Govind
Audit and Risk Management Committee	Patricia Azarias Jon Isaacs	Chris Maxwell QC Nigel Hadgkiss
Information Management & Technology Steering Committee	Claire Giroto (Chair) Stephen Kavanagh David Arnott SC Graham Bailey Hop Nguyen Jeff Shaw	Janis Watson-Wood Keith Wright Gary Corkill Nigel Hadgkiss Sashi Govind
Crown Prosecutors Management Committee	Mark Tedeschi QC (Chair) John Kiely SC Chris Maxwell QC David Arnott SC Peter Barnett SC Mark Hobart SC	Terry Thorpe Peter Miller Phil Ingram Mark Hobart SC Margaret Cunneen SC Deborah Carney
	Representatives Level 9: Level 8, Castlereagh St: Pitt St: Sydney West: Country: Treasurer:	Giles Tabuteau (alt. John Pickering) Frank Veltro (alt. Ken McKay) Pat Barrett (alt. Nicole Noman) Keith Alder (alt. Siobhan Herbert) Michael Fox (alt. Paul Cattini) Craig Everson

ODPP INTERNAL COMMITTEES / STEERING GROUPS (continued)

Committee/Steering Group	ODPP Representative	
Occupational Health & Safety Committee	Sydney Office Kate Thompson Linda Barrs Jenny Wells (Proxy)	Sydney West Michael Frost Proxy (to be elected)
	Employer Representatives Peter Burns Peter Bridge Gary Corkill Jim Hughes (Proxy) Nigel Richardson (Proxy) Chris Clarke (Proxy)	Country Bree Chisholm Vicki Taylor Tamara Shields (Proxy)
PSA/Management Joint Consultative Committee	Gary Corkill (Chair) Nigel Hadgkiss Claire Giroto Stephen Kavanagh Graham Bailey Aaron Kernaghan	Wendy Carr Amanda Brady (PSA) Fiona Horder (PSA) Stephen Spencer (PSA) Jenny Wells (PSA) Andrew Horowitz (PSA)
Accommodation Committee	Gary Corkill (Chair) Nigel Hadgkiss Stephen Kavanagh Jeff Shaw * The PSA member may change at any meeting	Luigi Lamprati Mark Tedeschi QC Peter Bridge Jenny Wells (PSA)
Disability Action Plan Implementation Committee	Gary Corkill (Chair) Peter Bridge Deborah Carney Anna Cooper	Diana Weston Katarina Golik Jim Hughes Lee Purches

REPORT AGAINST CORPORATE PLAN

Key Result Area I: Just, Independent and Timely Conduct of Prosecutions

Goal	I.1 To provide a just and independent prosecution service
Strategy	I.1.1 Continually review, evaluate and improve standards for criminal prosecutions I.1.2 Improve the timelines and quality of briefs through liaison with investigative agencies
Outcome	Achievement of justice
Performance Indicator	I.1(a) Proportion of matters returning a finding of guilt I.1(b) Percentage of cases where costs are awarded due to the conduct of the prosecution I.1(c) Number and value of confiscation orders made:

Measures

I.1(a) Proportion of matters returning a finding of guilt:

85% of all matters concluded in the Supreme and District Courts resulted in findings of guilt, either by way of verdict following trial or by way of plea.

See Appendix 2, Item 1 for details.

I.1(b) Percentage of cases where costs are awarded due to the conduct of the prosecution:

In this reporting period, costs were awarded in 0.07% of the 17,023 cases dealt with due to the conduct of the prosecution.

See Appendix 3, Item 4 and Appendix 6 for details

I.1(c) Number and value of confiscation orders made:

In this reporting period there were 47 confiscation applications with 42 confiscation orders made. The total estimated value of property confiscated was \$469,070. The proportion of successful applications was 89%.

See Appendix 5 for details.

Key Result Area 1: Just, Independent and Timely Conduct of Prosecutions (continued)

Goal	1.2	To uphold ethical standards
Strategy	1.2.1	Develop and implement processes and programs to enhance understanding of, and adherence to, ethical standards
Outcome		Staff and Crown Prosecutors are aware that ethical behaviour is required in all aspects of ODPP operations
Performance Indicator	1.2(a)	Number of corporate activities or processes implemented or reviewed each year

Measures

1.2(a) The ODPP Code of Conduct continued to be given prominence at staff meetings throughout the year.

In alignment with the NSW Treasury Internal Audit and Risk Management Policy for the NSW Public Sector; the Audit and Risk Committee was reconstituted to include an independent chair and an independent member. This committee has reviewed the ODPP internal audit function and has approved the outsourcing of the function with a view to broadening the scope and providing greater assurance to the committee and ODPP.

A procedure for panel members to declare a conflict of interest in the recruitment process is in place.

Key Result Area 1: Just, Independent and Timely Conduct of Prosecutions (continued)

Goal	I.3 To provide timely prosecution services
Strategy	I.3.1 Comply with relevant time standards
Outcome	Speedy resolution of matters
Performance Indicator	I.3(a) Percentage of advisings completed in agreed time I.3(b) Proportion of trials listed which were adjourned on the application of the Crown I.3(c) Number of days between arrest and committal for trial

Measures

I.3(a) Percentage of advisings completed in agreed time:

The Office provides various advising services in different categories.

Advisings as to election: 75% completed within 14 days

Advisings as to criminal proceedings: 26% completed within 30 days
50% completed within 90 days

See *Appendix 3 Item 1 for details*

I.3(b) Proportion of trials listed that were adjourned on the application of the Crown. In this reporting period, 96, or 4.4% of trial listings (totalling 2169 listings) were adjourned on the application of the Crown.

See *Appendix 2, Item 4 for details*.

I.3(c) Number of days between arrest and committal for trial in the Local Court was 77 days on average, and 78 days between arrest and committal for sentence.

See *appendix 3, Timeliness, for further details*.

Key Result Area 2: Victim and Witness Services

Goal	2.1	To provide assistance and information to victims and witnesses
Strategy	2.1.1	Deliver services to victims and witnesses in accordance with ODPP Prosecution Guidelines.
Outcome		Greater sense of inclusion in the prosecution by victims and witnesses
Performance Indicator	2.1(a)	Level of victim and witness satisfaction (by survey)
	2.1(b)	No. of victims and witnesses assisted by the Witness Assistance Service (WAS)

Measures

2.1(a) Level of victim and witness satisfaction

The ODPP biennial survey of victims and witnesses was conducted in 2009 and revealed overall consistency in the levels of customer satisfaction. Of those surveyed, 72.4% of witnesses and victims rated the service provided by the Office of the Director of Public Prosecutions as "good" or "very good".

See Appendix 4 for details of the victim and witness survey.

2.1(b) No. of victims and witnesses assisted by the Witness Assistance Service (WAS)

During 2008-2009 a total of 4550 victim and witness files were created where services were provided by the Office.

See Appendix 4 for details of the service provided by WAS.

Key Result Area 3: Accountability and Efficiency

Goal	3.1 To satisfy the accountability requirements of courts, Parliament and ODPP policies
Strategy	3.1.1 Promote a stakeholder focus 3.1.2 Maintain appropriate records concerning all decisions made 3.1.3 Provide timely and accurate reports
Outcome	Recognition of the Office's achievements
Performance Indicator	3.1(a) Level of compliance with statutory reporting requirements 3.1(b) Level of compliance with ODPP policies

Measures

- 3.1(a) All Statutory Reports have been provided within the prescribed timeframes.
- Annual Financial Statements 2007-08: Completed and submitted to the Auditor General within the set deadline of 11 August 2008.
 - Fringe Benefit Tax (FBT): Annual return for 2008/09 submitted by due date of 21 May 2009 and quarterly payments made up to June 2009.
 - Business Activity Statement (BAS): Monthly returns submitted up to June 2009 by due dates.
 - Waste Reduction and Purchasing Plan (WRAPP): The biennial report of August 2007 was completed. The next report is due August 2009.
 - The Office continues to comply with the Government's directive to decrease energy consumption and increase greenhouse rating levels with ongoing practices including automatic lighting, good housekeeping practices of lights-out at close of business and co-mingling recycling programs.
- 3.1(b) The Audit and Risk Management Committee monitors compliance with ODPP policies. The level of such compliance has been found to be extremely high. The Committee reviews all audit reports and, where a breach of Office policy is identified, corrective action is taken.

Key Result Area 3: Accountability and Efficiency (continued)

Goal	3.2	To be efficient in the use of resources
Strategy	3.2.1	Measure costs and time associated with prosecution functions undertaken
	3.2.2	Continually review, evaluate and improve systems, policies and procedures
	3.2.3	Distribute resources according to priorities
	3.2.4	Increase efficiency through improved technology
	3.2.5	Improve access to management information systems
	3.2.6	Manage finances responsibly
Outcome		Value for money
Performance Indicator	3.2(a)	Cost per matter disposed of
	3.2(b)	Expenditure within budget

3.2 Personnel Services reviewed the Policy and Procedures for Grievance, Workplace Concerns and Dispute Resolution, Salary Packaging, Approved Benefits, Salary Sacrifice for Superannuation, and Salary Sacrifice (Motor Vehicles State Fleet). The Recruitment and Employment, Overtime, Part-Time Work, Leave Without Pay and Career Break Policy and Procedures were also updated.

Personnel Services and IM&T developed an electronic leave audit tool in response to a leave audit, undertaken by an external organisation. The tool compares time keeping records with information stored in the human resource system.

Measures

3.2(a) Cost per matter disposed of:

The Activity Based Costing System is still under review and accurate data in relation to the cost of particular types of matters is not yet available.

Pending that data the average cost of a matter for the current reporting period was \$7410.

This figure represents the net cost of services divided by the total number of Advising, Committals and Summary hearings, Trials and Sentences, Appeals to the High Court and the Supreme Court (including Bail appeals) and

Conviction Appeals (All Grounds Appeals) to the District Court.

It should be noted that this figure does not include the cost of considering Elections (3269), Severity Appeals to the District Court (6056) and call-ups for breaches of bonds (454).

If these matters are included, the average cost of a matter for this reporting period was \$4298.

Last year, the average cost was erroneously reported as \$6180.

A recalculation has been conducted of the net cost of services for the 07/08 financial year, divided by the total number of matters completed, with the same exclusions as above.

The average cost of a matter in the 07/08 financial year should have read \$7069.

If Elections, Severity Appeals and call-ups were included, the average cost of a matter in the 07/08 financial year was \$4134.

3.2(b) Monthly and bi-monthly finance reports submitted to the Executive Board and Management Committee. The Office operated within the allowable Controlled Net Cost of Service Limits for the financial year.

- Corporate services functions and processes continue to be further

reviewed and efficiencies identified. Our emphasis is on retaining the Internal Shared Services Unit model (in accordance with the Government strategy for corporate services reform), however the expected introduction of 'Super Departments' next year will have an impact on this process.

- Development work for the portal is continuing, with work on the Research system being the primary focus.
- The Attorney General's Department implemented the Justicelink System in the Supreme Court on 2 Aug 2004 and the District Court in February 2008 and has developed an interim viewing platform containing some information currently required by the ODPP. The AGD has submitted the Joined Up Justice Business Case which includes an allocation of funds for the ODPP and Legal Aid NSW (LANSW) to develop an interface between CASES and Justicelink.
- Asset & Facilities Management Branch is assisting ODPP Operation's Groups and Regional management in efficient ordering techniques and e-ordering systems to minimise storage requirements and introduce 'just in time' ordering. The new GTA has been signed for telephone services. It is hoped that this will maximise the savings available to the ODPP for this service.

Key Result Area 4: Staff Resourcing and Development

Goal	4.1 To recruit and retain quality staff
Strategy	4.1.1 Market career opportunities 4.1.2 Review, evaluate and improve recruitment practices 4.1.3 Recognise good performance 4.1.4 Integrate equity strategies into all management plans
Outcome	High quality, committed staff
Performance Indicator	4.1(a) Percentage of staff turnover 4.1(b) Percentage of compliance with Recruitment and Selection Policy 4.1(c) Percentage of salary increments deferred

Measures

- 4.1(a) Staff Turnover for 2008/2009 was 13.9%. This compares with a 14.1% turnover in 2007/2008.
- 4.1(b) The Recruitment and Employment Policy requires retraining every 3 years. 100% compliance this year. Plans for refresher training to be run in-house as a short workshop with e-learning support.
- 4.1(c) No salary increments were deferred during 2008-2009.

Key Result Area 4: Staff Resourcing and Development (continued)

Goal	4.2	To provide workplace support
Strategy	4.2.1	Provide accommodation, equipment and facilities in accordance with Office and OH&S standards
	4.2.2	Develop and implement OH&S and workplace relations policies
Outcome		A safe, supportive, equitable and ethical work environment
Performance Indicator	4.2(a)	Average sick leave absences per capita
	4.2(b)	Percentage reduction in workplace injuries
	4.2(c)	Percentage reduction in the proportion of employees still off work at 8, 12 and 26 weeks from date of injury
	4.2(d)	Percentage reduction in the average cost of works compensation claims
	4.2(e)	Percentage improvement in the number of injured workers who are placed in suitable duties within one week of the date that they become fit for suitable duties as specified on the medical certificate
	4.2(f)	Managers provided with appropriate information, instruction and training in OH&S and injury management

Measures

- 4.2(a) Average Sick Leave for the Office for 2008-2009 was 6.39 days. This compares with an average of 6.78 days in 2007-2008.
- 4.2(b) 40% reduction in workplace injuries by June 2012, with 20% achieved by June 2009 – Achieved (40%) by June 2009.
- 4.2(c) 10% reduction by June 2009 in the proportion of injured employees still off work at 8, 12 and 26 weeks from the date of injury – achieved.
- 4.2(d) 15% reduction in the average cost of claims.
- 4.2(e) 10% improvement in the percentage of injured workers who are placed in suitable duties within one week of the date that they become fit for suitable duties as specified on the medical certificate, by June 2009 – Achieved.
- 4.2(f) 90% of managers within each agency will be provided with appropriate information, instruction and training in their roles and responsibilities under their agency's OH&S and injury management system – Achieved.

Key Result Area 4: Staff Resourcing and Development (continued)

Goal	4.3 To enhance the skills and knowledge of our people
Strategy	4.3.1 Implement training and development activities to address priority organisational and individual learning needs 4.3.2 Increase participation in learning and development activities 4.3.3 Increase use of the ODPP Performance Management system
Outcome	Staff and Crown Prosecutors who are able to perform effectively in a changing and challenging environment
Performance Indicator	4.3.(a) Learning needs identified and implemented. 4.3.(b) Learning and development participation rate. 4.3.(c) Percentage of Personal Development Plans received

Measures

The 2008/2009 L&D plan was developed in line with organisational priorities. Branch activities have been reduced due to reductions in Branch staff.

The following training has occurred between July 2008 – June 2009:

- Solicitors Conference 2008
- 5 x Pre-Conference Sessions 2008
- 12 x Technology Inductions (2 days)
- 9 x OH&S sessions: Parramatta, Dubbo, Bathurst, Campbelltown & Gosford. 2 x Penrith, Newcastle, Head Office
- 5 x Digital ERISP
- 1 x Managing Workplace Health (2 day course)
- 1 x Managing Workplace Health (1 day course)
- 1 x Professional Development for Admin Staff
- 16 x MCLE's
- 1 x Committals Workshop (Joint LAC)
- 1 x Intermediate Advocacy Pre-workshop session (Joint LAC)
- 1 x Intermediate Advocacy Pre- workshop session (Joint LAC)
- 1 x Introductory Advocacy

- 1 x Introductory Advocacy Pre-workshop session
- 1 x Short Matters
- 1 x Preparation of Crown Brief
- 1 x Legal Clerks Workshop (1 day Parramatta)
- 1 x Sentencing Advocacy
- 3 x Induction for Legal Development Program (1 day, Head Office)
- 1 x Induction for Legal Development Program (1 day Parramatta)

New and Updated Manuals:

- Digital ERISP Step-by-Step – New
- Digital ERISP Cheat-Sheet – New
- Understanding Criminal Law for Administrative Staff – Updated

Cumulative statistics – 1 Jul 2008 - 30 June 2009

Number of learning programs (internal & external):	118
Number of studies assistance participants:	17
Total days study leave accessed:	81.5 days
Total study reimbursements:	\$18,551.24

Key Result Area 5: Improvements in the Criminal Justice System

Goal	5.1	To improve the Criminal Justice system
Strategy	5.1.1	Participate in inter-agency and external fora
	5.1.2	Develop solutions, in partnership with stakeholders, to streamline and improve court listing systems
	5.1.3	Initiate and contribute to law reform to improve the criminal justice process
Outcome		A more effective and efficient criminal justice system
Performance Indicator	5.1(a)	Average number of days from arrest to matter disposal
	5.1(b)	Number of submissions made on proposed and existing legislation

Measures

5.1(a) Average number of days from arrest to matter disposal:

The average number of days from registration to disposal of matters across jurisdictions is 367, the median for this measure is 241.

See appendix 3, *Timeliness, for details of length of time for matters to progress through the criminal justice system.*

5.1(b) Number of submissions made on proposed and existing legislation:

The Office was represented on a large number of inter agency committees, court user groups and working parties with the main aim of considering the reform of the criminal law and to implement new legislation. During the past year a principal reform has been the implementation of the pro bono scheme to provide legal representation for victims of sexual assault to enforce the sexual assault communications privilege in criminal trials. The ODPP has worked on this project with the Women's Legal Services, the NSW Bar Association and three private legal firms, Clayton Utz, Blakes and Freehills.

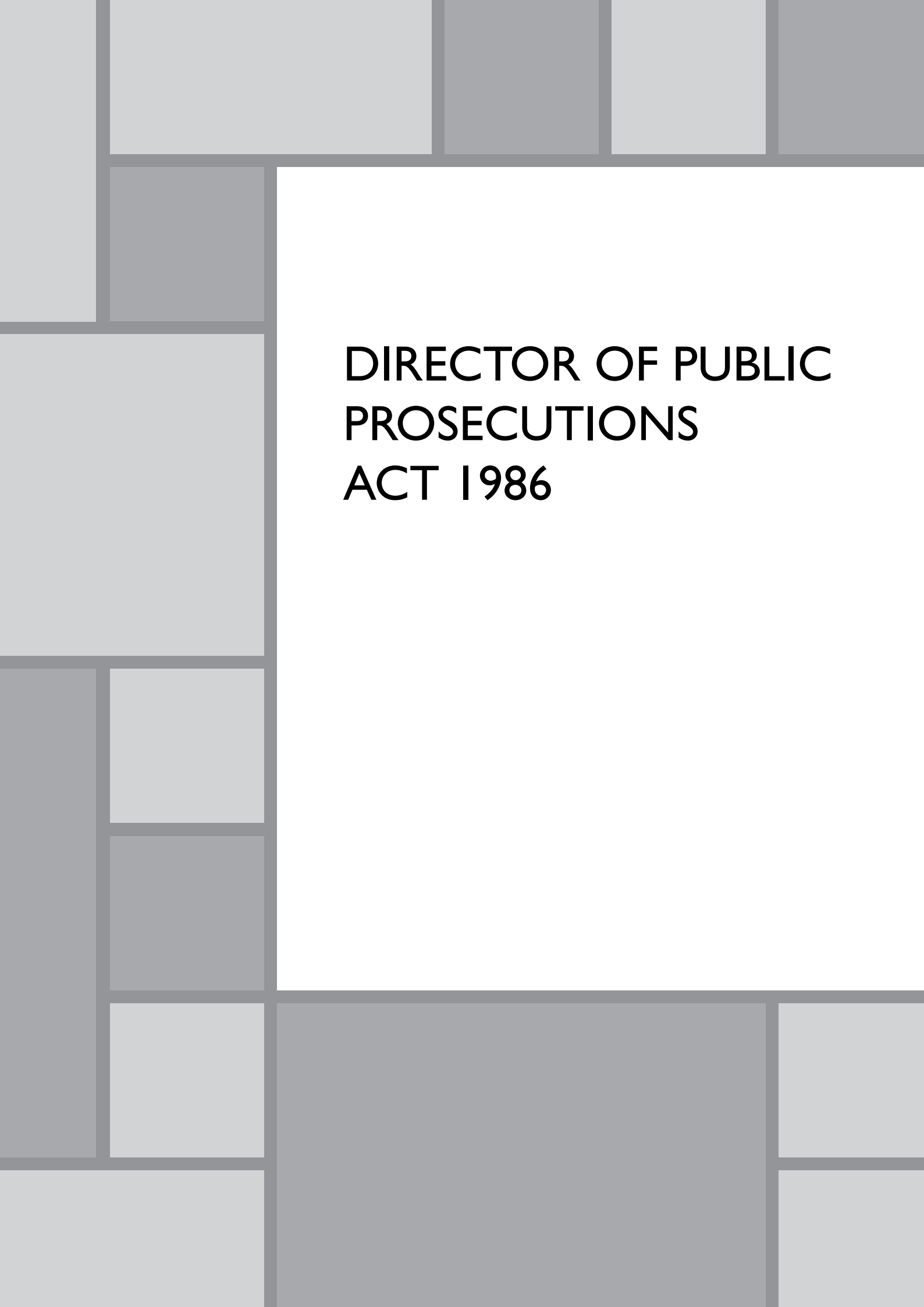
The Director has made numerous submissions on proposals for law reform identified by the Attorney General, the NSW Law Reform Commission and the Sentencing Council. Examples include submissions on knife penalties and knife laws in NSW; Intensive Correction Orders; arson offences; peremptory challenges under the *Jury Act 1977*; sentence appeals under the *Crimes (Appeal and Review) Act 2001* and amendments to the *Children (Criminal Proceedings) Act 1987*. Submissions have also been made on the issue of Jury Directions and on the NSW Domestic and Family Violence Strategic Framework and possible amendments to the Standard Non-Parole Period sentencing regime.

Comments were sent to the Criminal Law Review Division in relation to numerous issues including:

- suggested amendments to the *Criminal Appeal Act 1912*
- clarification of accessorial liability to serious and minor indictable offences
- suggested amendments to the standard non parole period scheme
- suggested amendment of the schedule to the *Drug Misuse and Trafficking Act 1985*
- suggested amendment to the offence of persistent sexual abuse of child under s66EA of the *Crimes Act 1900* and
- suggested amendments to permit early application that matters be dealt with according to law in the Children's Court and to permit electronic recording of complainants' evidence in the Children's Court.

During the year the Office participated extensively in the Trial Efficiency Working Group chaired by Justice Peter McClellan, Chief Judge at Common Law.

The Office has also assisted Victims Services in reviewing material to be included on the Sexual Assault website, a sexual assault Information Sheet and Charter of Victims Rights No. 10 Factsheet and a standardised Domestic Violence Package for victims and offenders. The Office has also released a new booklet Information for Witnesses which is a consolidation of all pamphlets previously given to victims and witnesses plus additional information. This booklet is sent to all victims of crime in matters prosecuted by the Office.



**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 functions 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 (and see section 17).

Section 11

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

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 with respect to the prosecution of offences.

Section 15

Guidelines furnished each year must be published in the Annual Report.

Section 15A

Police must disclose to the Director all relevant material obtained during an investigation that might reasonably be expected to assist the prosecution or defence case.

Section 18

The Director may request police assistance in investigating a matter that may be taken over by the Director.

Section 19

The Director may request the Attorney General to grant indemnities and give undertakings from time to time, but may not do so himself/herself.

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;
- determining that no bill be found;
- directing no further proceedings;
- finding ex officio indictments;
- appealing under s5D of the *Criminal Appeal Act 1912* to the Court of Criminal Appeal against a sentence.

The Director shall include in the Annual Report 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.

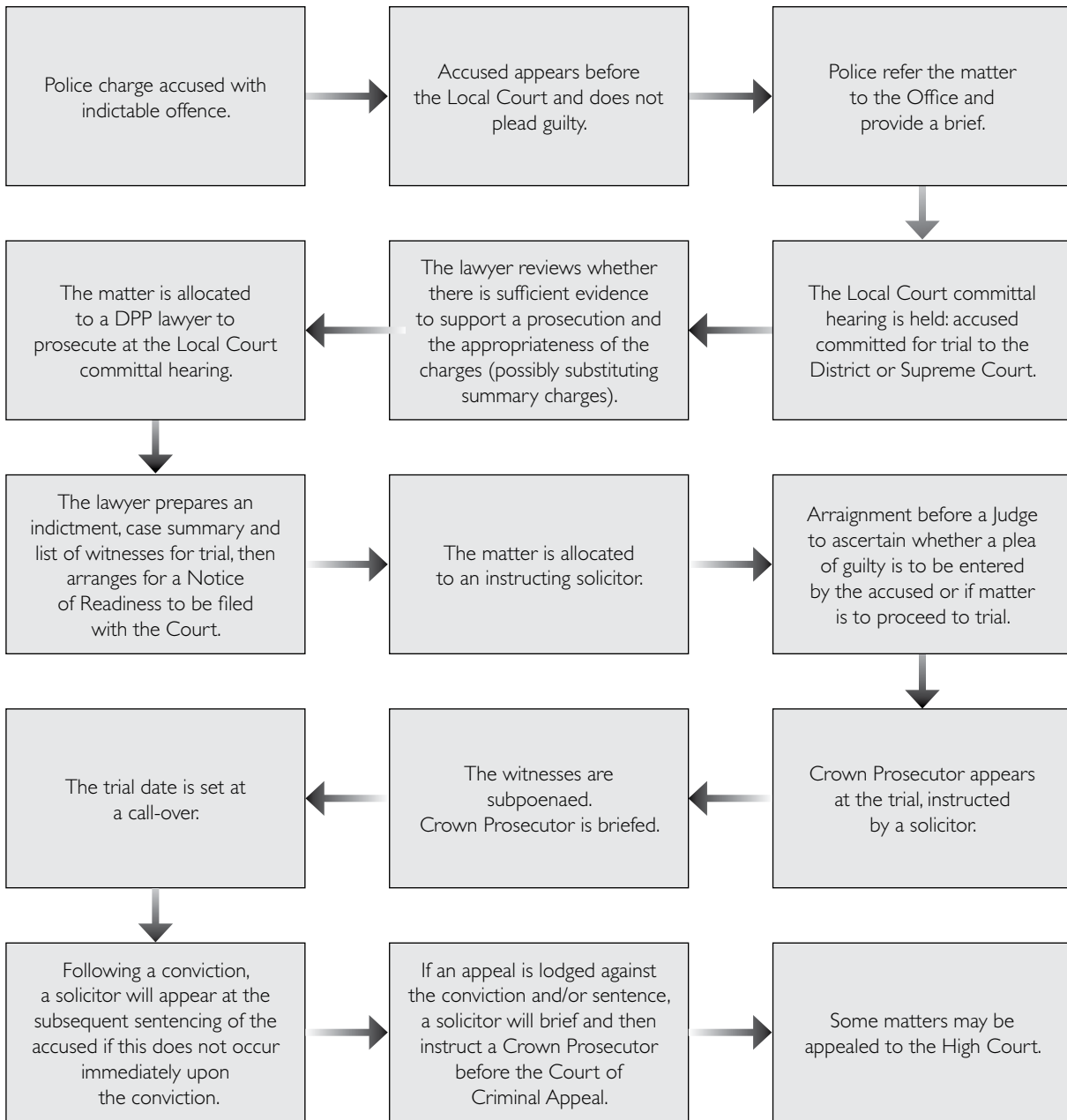
Section 33

The Director may delegate certain of his/her functions.



FROM CHARGE TO TRIAL

An Outline of a Typical Defended Matter



From Charge To Trial

Not all matters proceed all the way to trial:

- the accused may be discharged in the Local Court;
- the accused may, depending on the seriousness of the charge/s, be dealt with summarily in the Local Court;
- the accused 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.

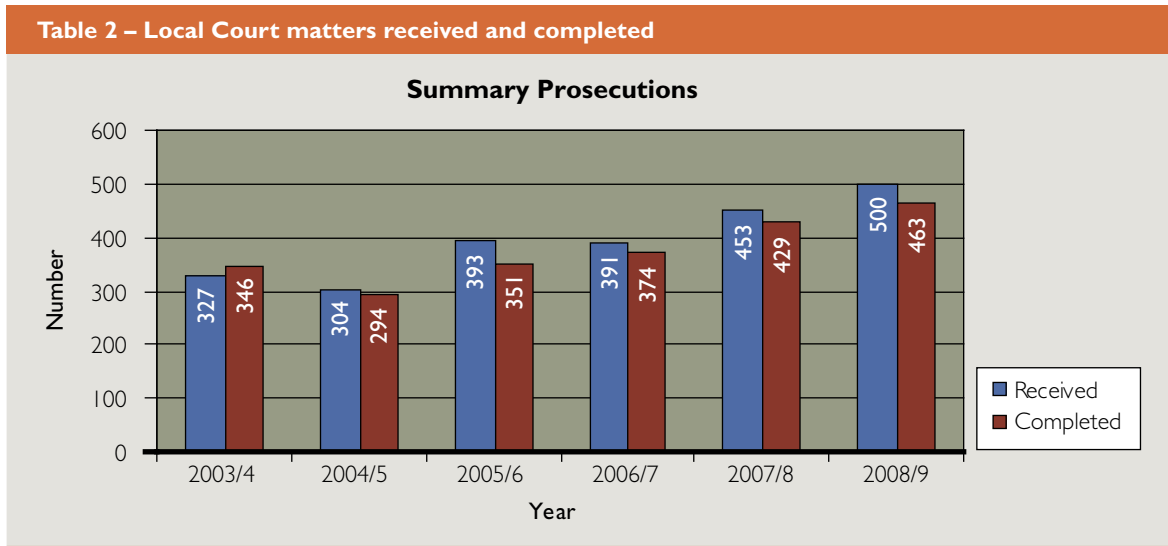
APPENDICES

APPENDIX I – QUANTITY/PRODUCTIVITY

I. Number of matters finalised, disaggregated by matter type.

This is represented by the number of matters received and completed.

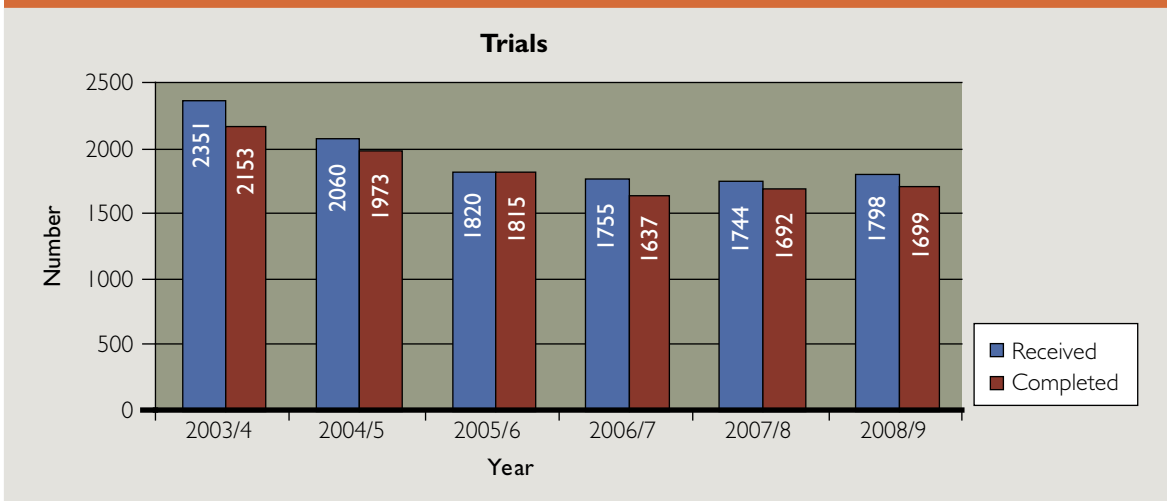
APPENDIX I – STATE SUMMARY – LOCAL COURT



Appendix 1 – Quantity/Productivity (continued)

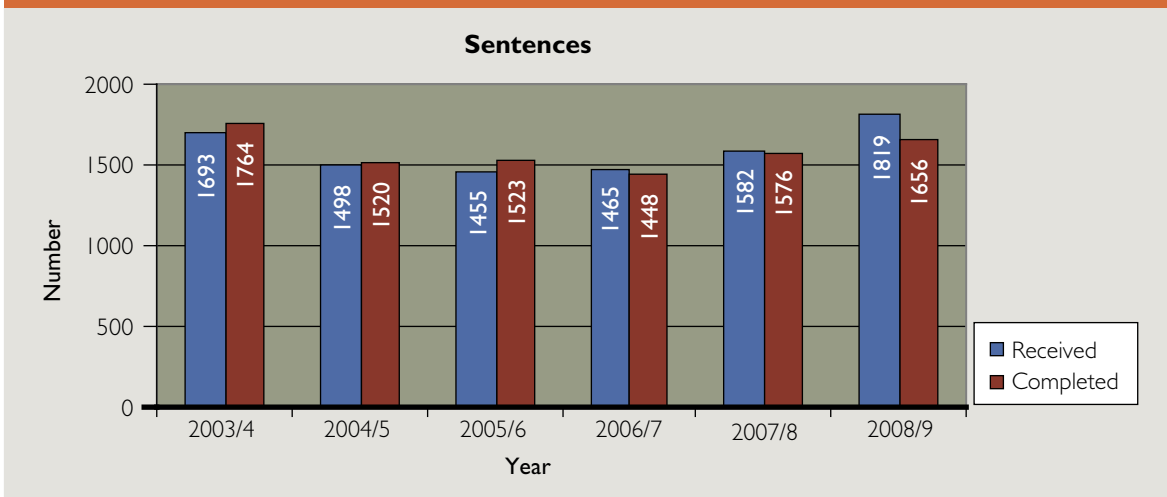
APPENDIX 1 – STATE SUMMARY – DISTRICT COURT

Table 3 – Matters committed for trial to the District Court and finalised*.



* For manner of finalisation see appendix 2 Item 3

Table 4 – Matters committed for sentence to the District Court and finalised



Appendix 1 – Quantity/Productivity (continued)

Table 5 – District Court Conviction Appeals received and completed.

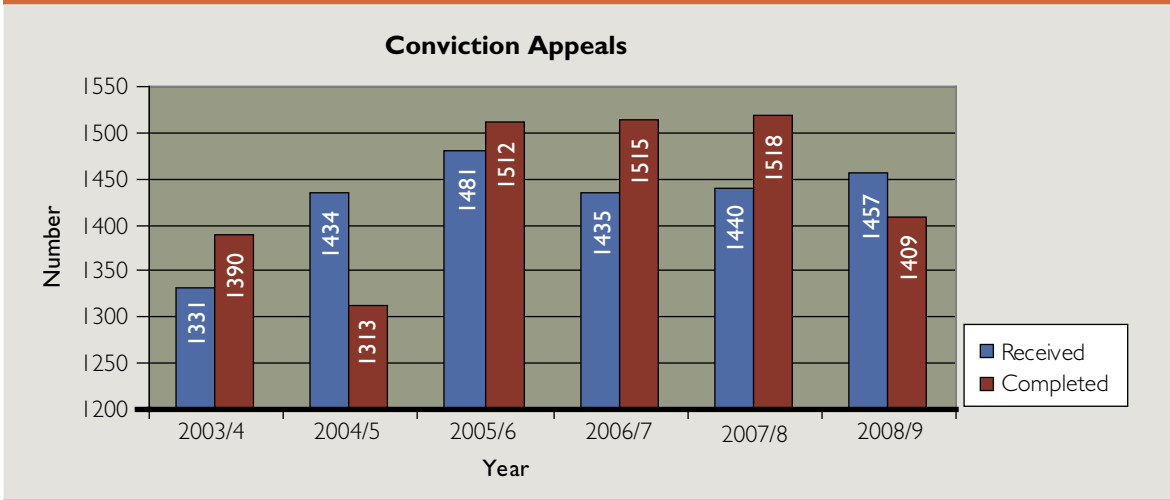
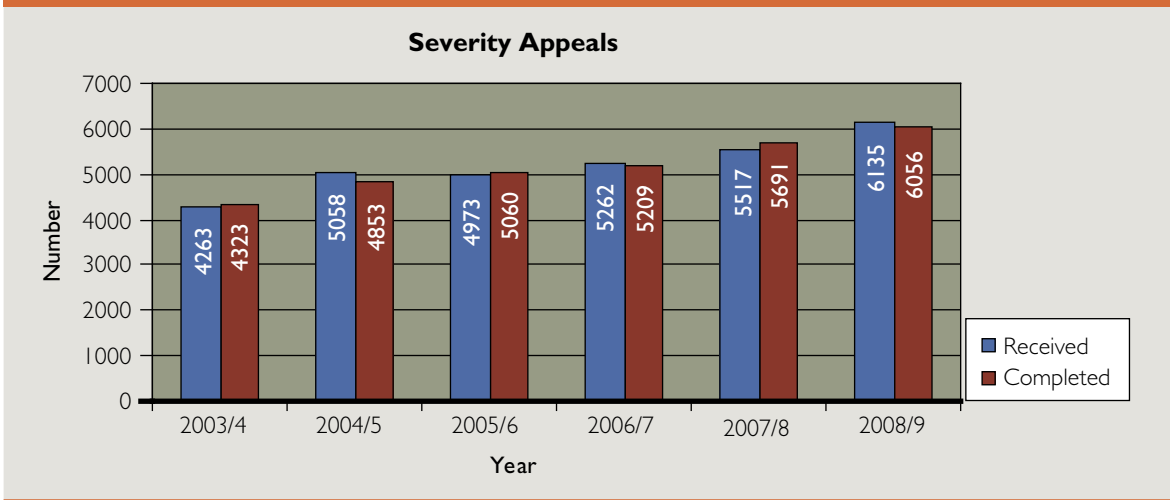


Table 6 – District Court Severity Appeals received and completed



Appendix I – Quantity/Productivity (continued)

APPENDIX I – STATE SUMMARY – SUPREME COURT

Table 7 – Supreme Court Trials received and completed

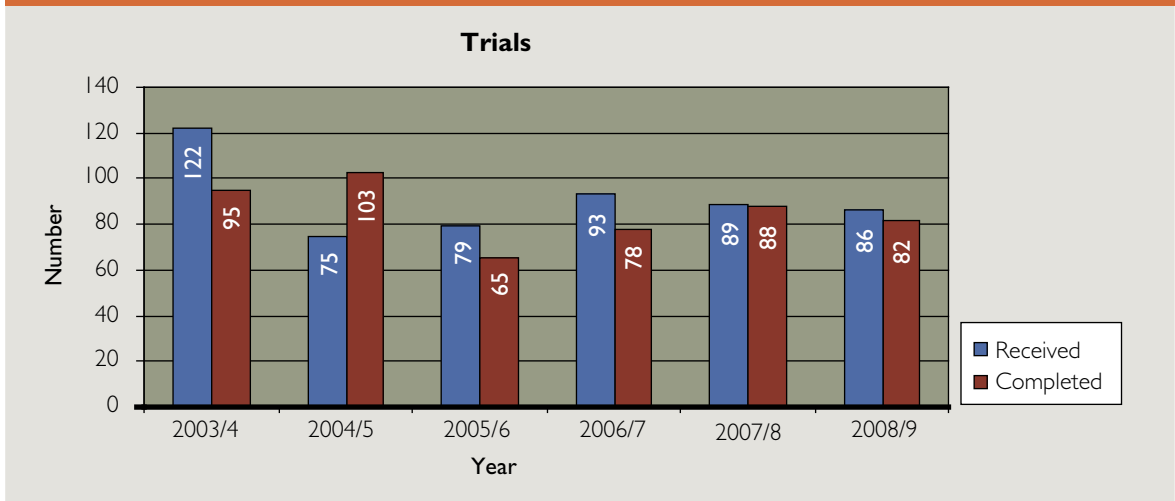
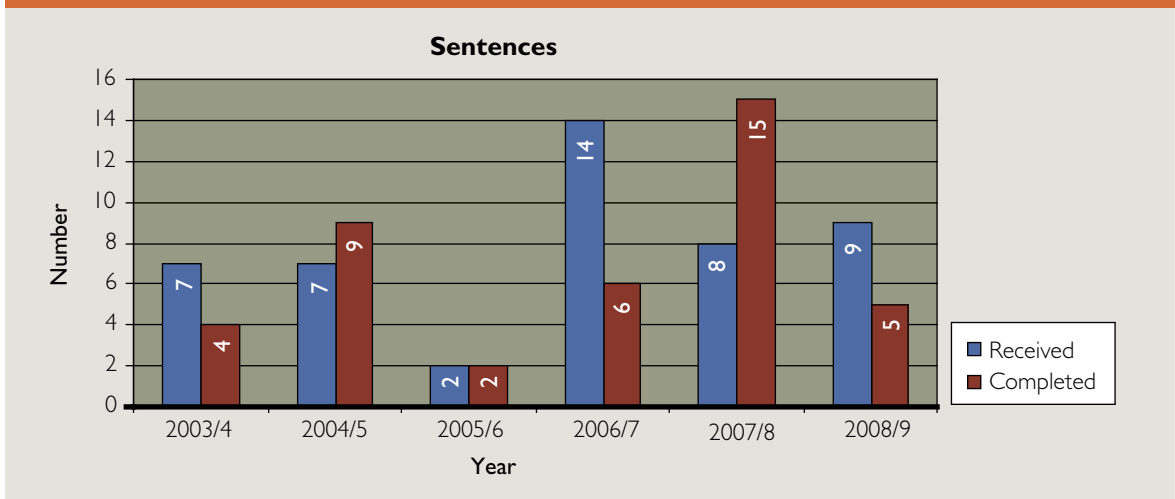


Table 8 – Supreme Court sentences received and completed



Appendix I – Quantity/Productivity (continued)

APPENDIX I – COURT OF CRIMINAL APPEAL

Table 9 – Appeals by Offenders finalised

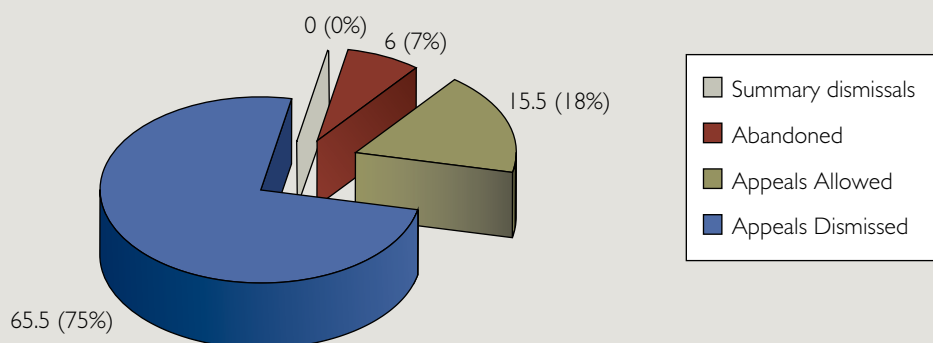
	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Conviction and sentence appeals	105	119	107	99	74	81
Sentence appeals	217	259	211	199	154	193
Summary dismissals	11	0	2	2	1	0
Appeals abandoned *	7	6	6	8	7	6
TOTAL	340	384	326	308	236	281

* This figure includes both conviction and sentence appeals and sentence appeals

Table 10 – Other appeals finalised

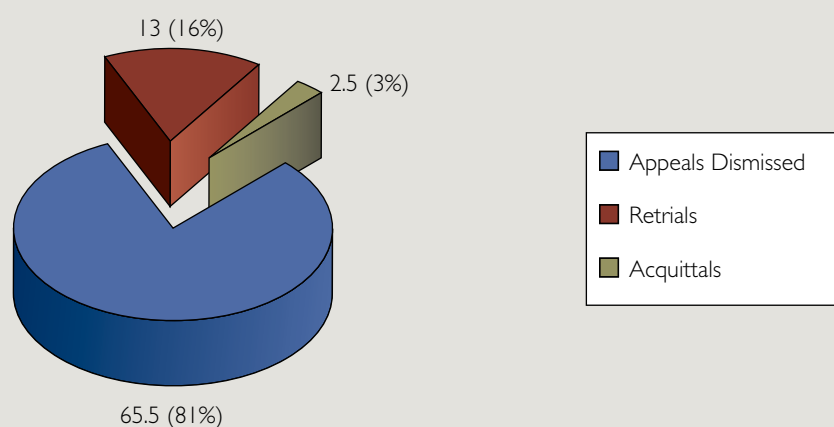
	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Crown Inadequacy Appeals *	98	87	80	73	72	78
Appeals against interlocutory judgments or orders (s.5F appeals)	25	20	25	20	16	15
Stated cases from the District Court	4	1	3	3	1	2
TOTAL ALL APPEALS FINALISED IN CCA	467	494	432	404	325	375

* See Appendix 2 for number and proportion of Crown Inadequacy Appeals finalised and results

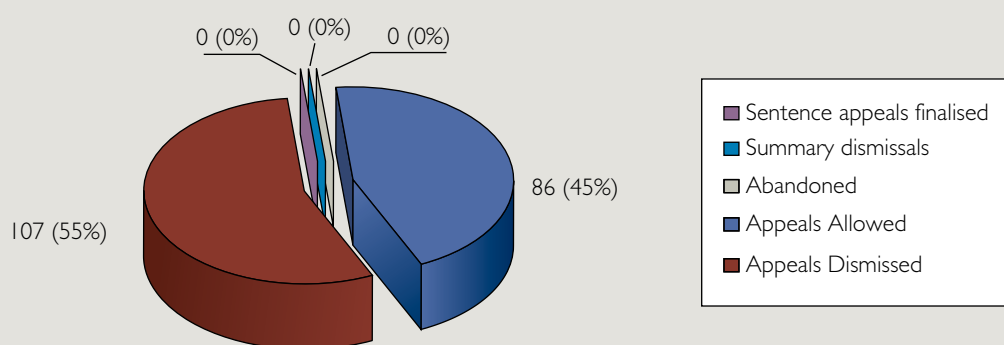
Conviction and sentence appeals finalised in 2008-09
Breakdown by number and percentage

Appendix 1 – Quantity/Productivity (continued)

**Results of finalised conviction and sentence appeals in 2008-9
Breakdown by number and percentage**



**Sentence appeals finalised in 2008-9
Breakdown by number and percentage**



APPENDIX 1 – HIGH COURT

Table 12 – High Court matters finalised

	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09
Completed applications for special leave to appeal						
Applications by the offender	25	22	15	9	18	18
Applications by the Crown	1	1	0	1	0	0
Hearings conducted after grant of special leave to appeal						
Appeal by offenders	3	3	2	2	4	1
Appeal by the Crown	0	1	0	1	0	0

APPENDIX 2 – QUALITY/EFFECTIVENESS

1. Number and proportion of matters resulting in a finding of guilt, either as a plea of guilty or conviction after trial.

This is represented by the number of sentence matters completed, the number of pleas entered in trial matters and the number of verdicts of guilty entered as a proportion of all sentence and trial matters completed.

A total of 1661 matters committed for sentence and 1781 matters committed for trial were finalised in the reporting period in the District and Supreme Courts.

292 (85%) of these matters concluded resulted in findings of guilt

Supreme Court

A total of 82 matters committed for trial and 5 matters committed for sentence to the Supreme Court were finalised in the reporting period.

66 (76%) of these matters returned a finding of guilt

District Court:

A total of 1699 matters committed for trial and 1656 matters committed for sentence to the District Court were finalised in the reporting period.

2850 (85%) returned a finding of guilt

2. Number and proportion of matters returning a finding of guilt after defended trial, overall:

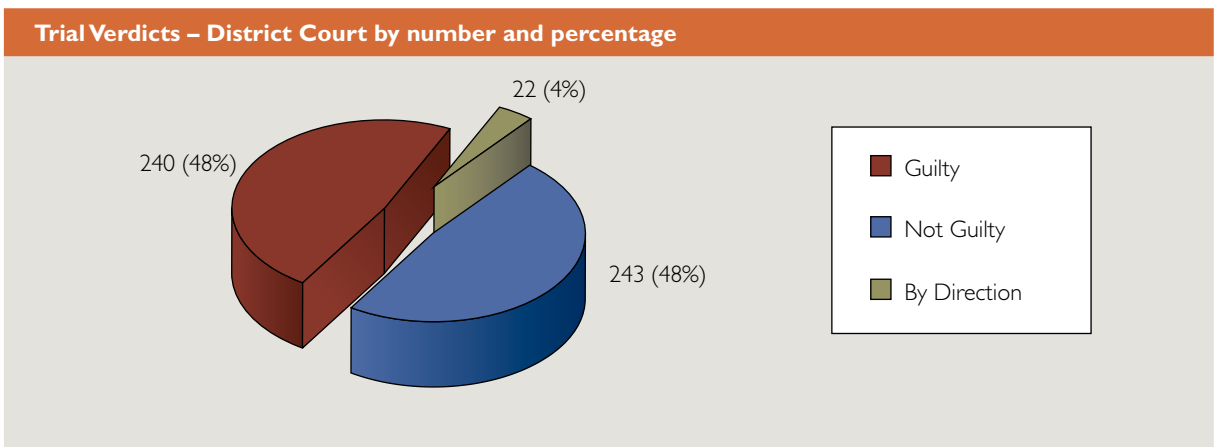
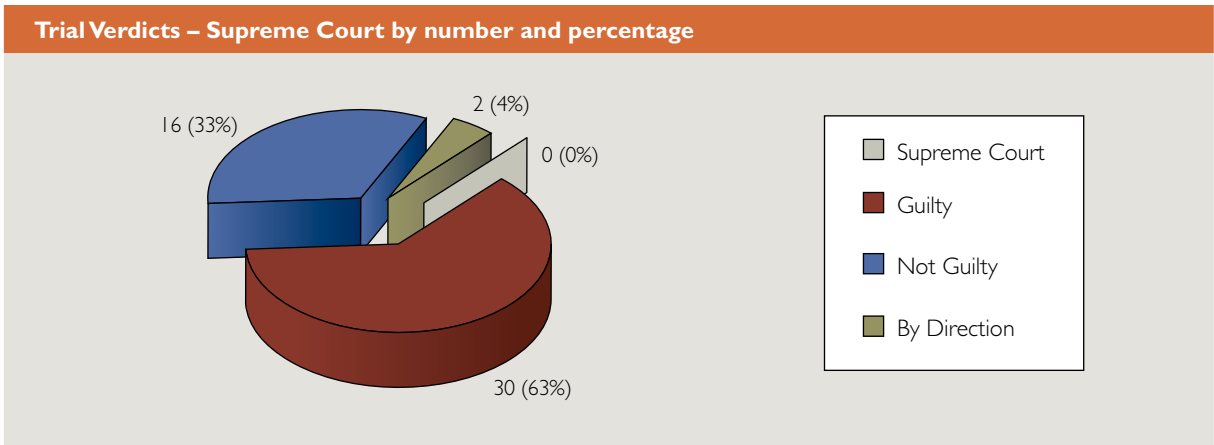
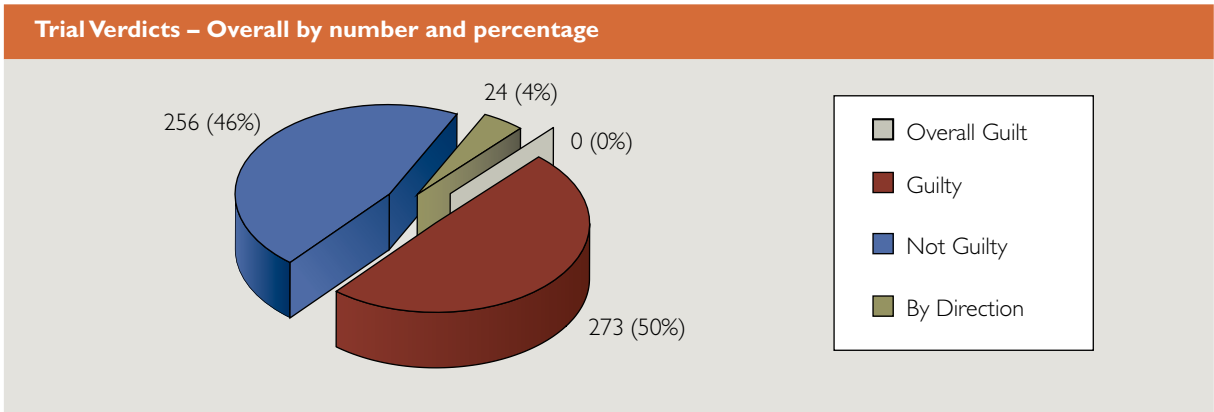
A total of 553 trials were completed in the Supreme and District Courts.

273 (49.4%) returned verdicts of guilty

24 (4.3%) returned verdicts of not guilty by direction

256 (46.3%) returned verdicts of not guilty

Appendix 2 – Quality/Effectiveness (continued)



Appendix 2 – Quality/Effectiveness (continued)

3. Trial disposals

District Court

505 (40.3%) were disposed of by way of defended trial

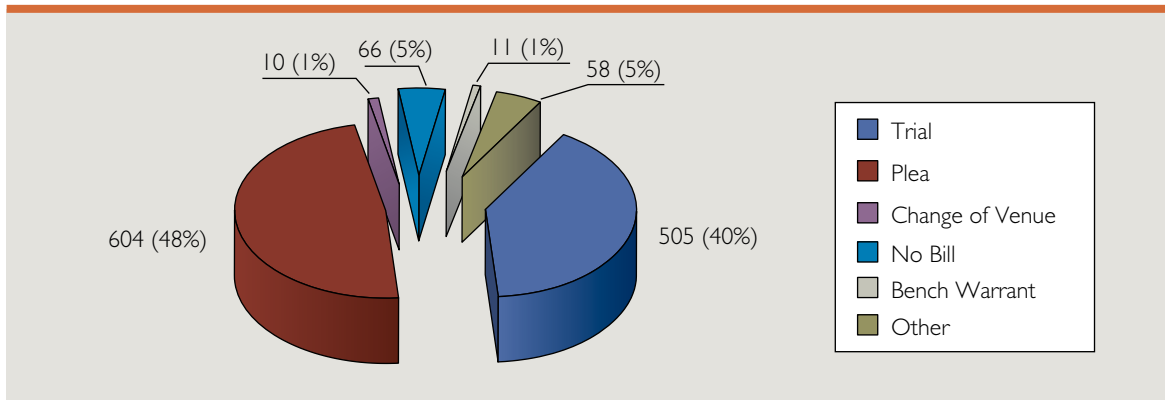
604 (48.2%) were disposed of by way of late plea

10 (0.8%) changed venue

66 (5.2%) were discontinued on the eve or day of trial

11 (0.9%) had bench warrants issued

58 (4.6%) disposed by other means (eg deceased, remitted to Local Court, discontinued before eve of trial or placed on Form 1)



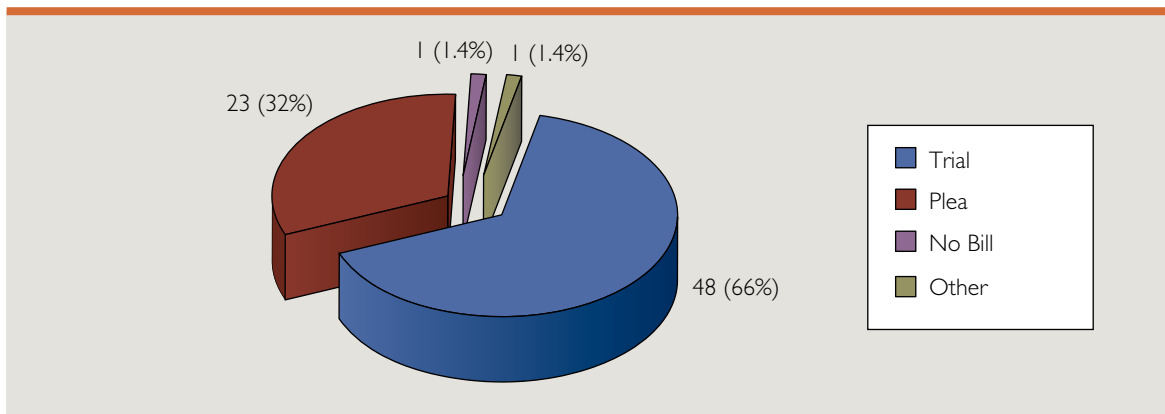
Supreme Court

48 (65.7%) were disposed of by way of defended trial

23 (31.5%) were disposed of by way of late plea

1 (1.4%) was discontinued on the eve or day of trial

1 (1.4%) was disposed by other means (eg deceased)



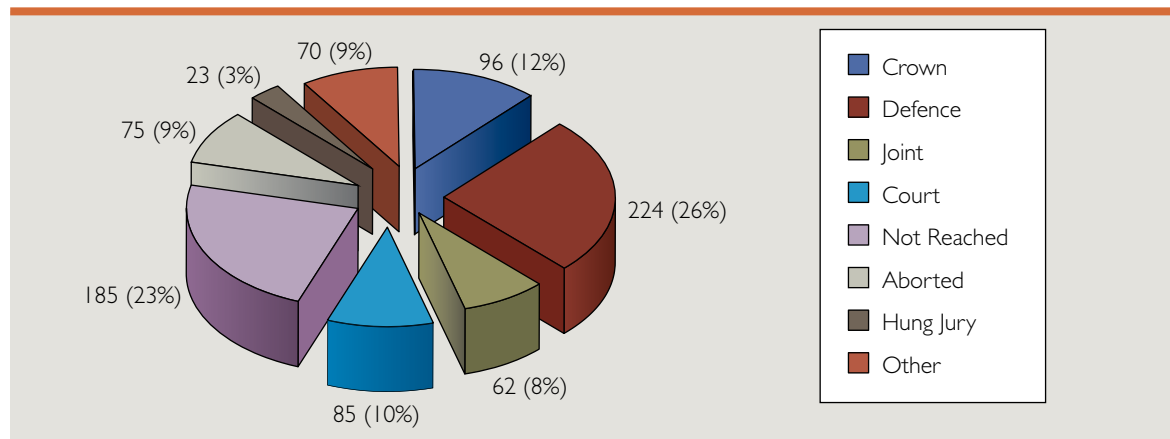
Appendix 2 – Quality/Effectiveness (continued)

4. Matters listed for trial in the district court that were adjourned or not completed

- 96 (11.7%) were adjourned on Crown application
- 224 (27.3%) were adjourned on Defence application
- 62 (7.6%) were adjourned on joint application
- 85 (10.4%) were adjourned by the Court
- 185 (22.6%) were not reached
- 75 (9.1%) were aborted and were adjourned
- 23 (2.8%) resulted in hung juries and were adjourned
- 70 (8.5%) were adjourned for other reasons *

Total number of trial listings that were adjourned: 820

* Figures are collected monthly and these figures include trials that were not completed at the end of month, as well as reserved judgments.



Appendix 2 – Quality/Effectiveness (continued)

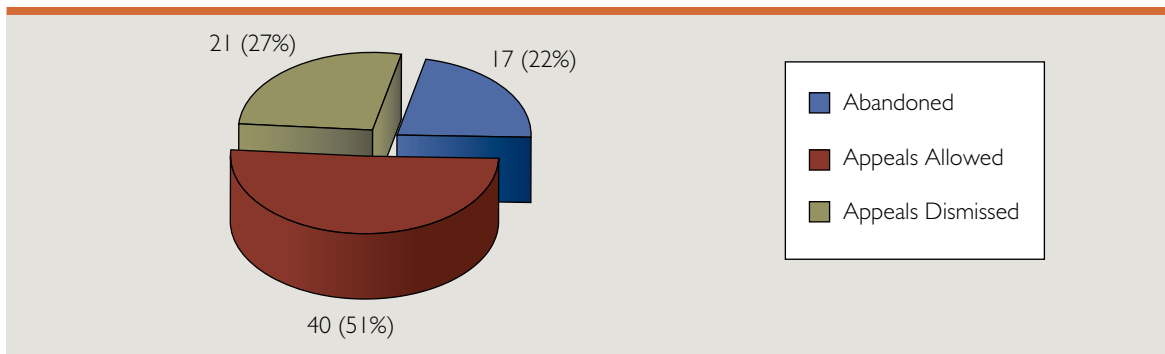
5. Number and proportion of successful sentence appeals by Crown

78 appeals on the inadequacy of sentence were lodged by the Crown in this reporting period

17 (22 %) were abandoned

21 (27 %) were dismissed

40 (51%) were allowed



6. Local court committal disposals

State-wide

A total of 6375 committals were completed in the reporting period

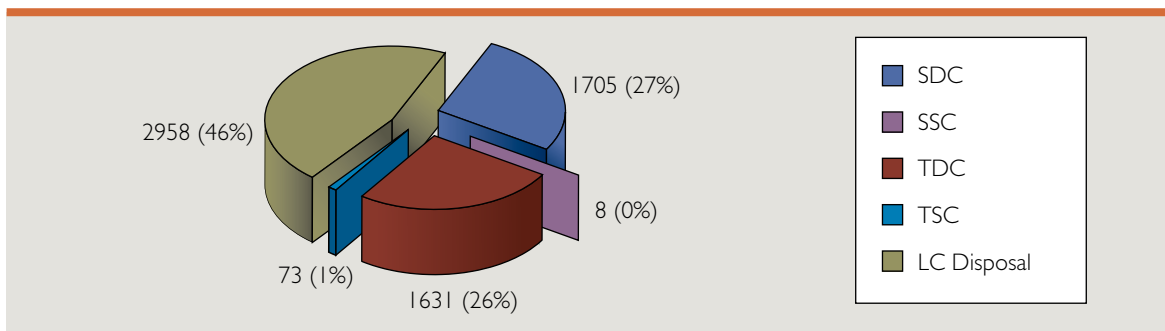
1705 (26.7%) early pleas were committed for sentence to District Court (SDC)

8 (0.12%) early pleas were committed for sentence to Supreme Court (SSC)

1631 (25.6%) were committed for trial to the District Court(TDC)

73 (1.14%) were committed for trial to the Supreme Court (TSC)

2958 (46.4%) were disposed of in the Local Court (LC Disposal)



Appendix 2 – Quality/Effectiveness (continued)

7. Criminal Case Conferencing

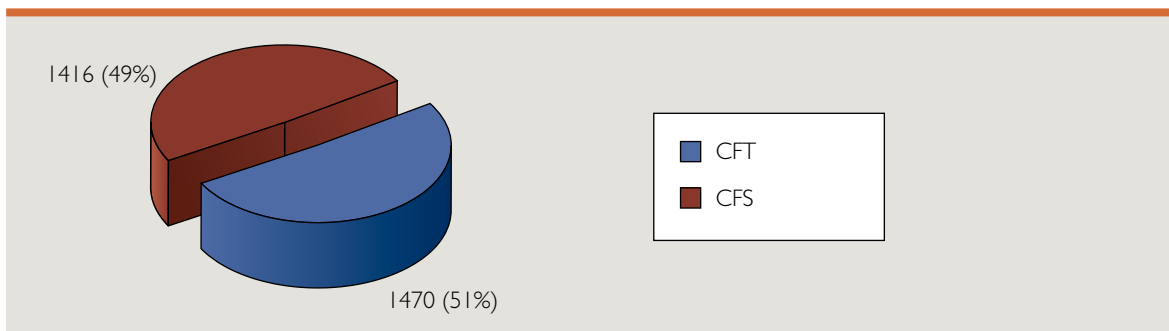
A legislative trial has been underway for committal matters conducted in the Central and Downing Centre Local Courts. The aim of this trial is to encourage early pleas of guilty through compulsory case conferences between the prosecution and the defence where pleas of guilty have not been negotiated prior to full disclosure of the evidence. Legislated discounts are available on the utilitarian value of an early plea of guilty. That trial has been underway since 1 May 2008.

State Wide excluding Criminal Case Conferencing trial

A total of 2886 matters were committed for trial or for sentence across the State including Sydney matters but excluding those matters subject to the Criminal Case Conferencing Trial:

1470 (51%) were committed for trial (CFT)

1416 (49%) early pleas were committed for sentence (CFS)

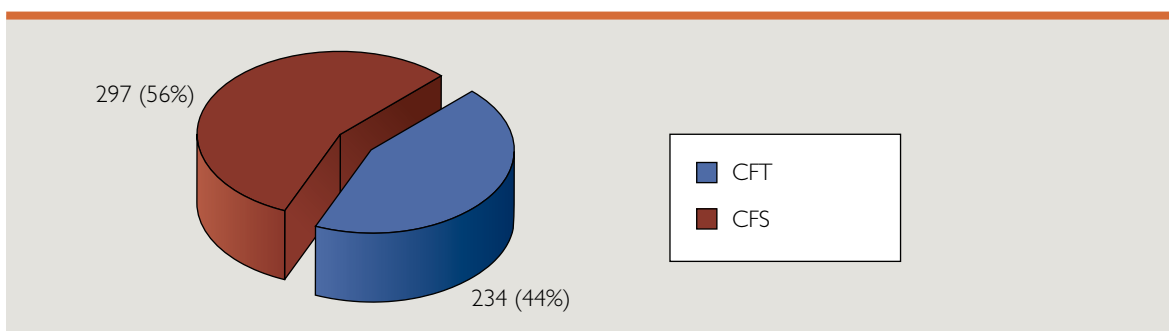


Criminal Case Conferencing Trial

A total of 531 matters subject to the trial were committed for trial or for sentence:

234 (44%) were committed for trial

297 (56%) early pleas were committed for sentence

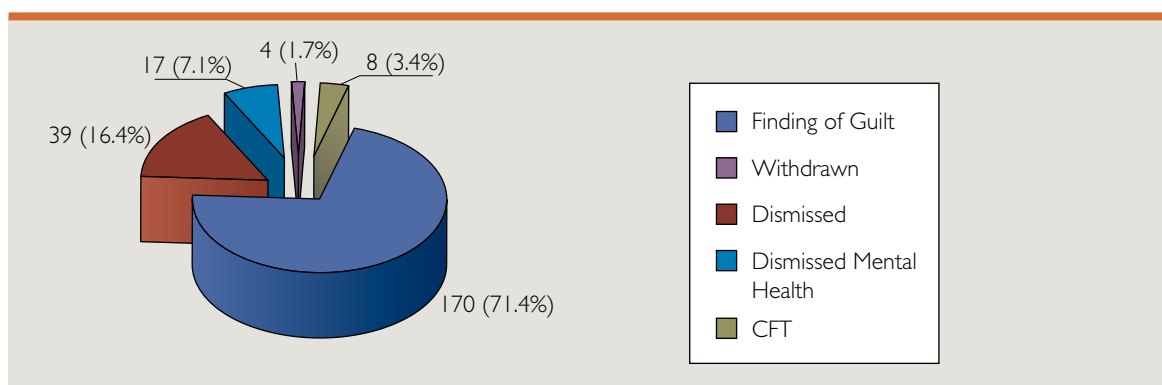


Appendix 2 – Quality/Effectiveness (continued)

8. Child Sexual Assault Summary Prosecutions

A total of 238 Child Sexual Assault prosecutions were conducted in the Local and Children's Court.

- 170 (71.4%) returned a finding of guilt
- 39 (16.4%) were withdrawn before hearing
- 17 (7.1%) were dismissed after hearing
- 4 (1.7%) were dismissed under mental health provisions
- 8 (3.4%) were committed for trial



9. Matters discontinued after committal order

After an accused has been committed for trial or for sentence, the question sometimes arises whether the prosecution should continue. This can happen either as a result of an application by the accused, or on the initiative of the DPP.

In the reporting period, 673 submissions were received to discontinue a matter:

158 or 23.5% were discontinued.

Of the 158 that were discontinued, 52 or 33% were discontinued because the complainant did not wish the matter to proceed.

The rest were discontinued because there was no real prospect of conviction in those matters, having regard to the evidence at the time the submission was made. 158 matters discontinued represents 4.6% of all cases finalised after committal and 8.9% of trial matters completed.

APPENDIX 3 – TIMELINESS

1. Number and proportion of advisings completed in agreed time:

A total of 3269 referrals for election were processed in the reporting period.

2437 (75%) were completed within 14 days¹

A total of 208 referrals for advice as to sufficiency of evidence or appropriateness of charges were completed in the reporting period:

55 (26%) were completed within 28 days

104 (50%) were completed within 90 days²

2. Summary matters

Average and median number of days between:

Arrest and service of brief	124 (average) 76 (median)
Service of brief and disposal	159 (average) 100 (median)
Date of arrest and disposal	294 (average) 234 (median)

3. Local Court Committals

Average and median number of days between:

Arrest and brief service

<i>Committals for trial</i>	77 (average) 58 (median)
<i>Committals for sentence</i>	78 (average) 58 (median)

Brief service and committal

<i>Committals for trial</i>	136 (average) 109 (median)
<i>Committals for sentence</i>	94 (average) 71 (median)
<i>Summary disposal</i>	151 (average) 104 (median)

4. Disposal in Higher Courts

Average and median number of days between:

Committal and completion

<i>Matters committed for trial</i>	356 (average) 276 (median)
<i>Matters committed for sentence</i>	168 (average) 28 (median)

Court of Criminal Appeal

Notice of Appeal to finalisation	202 (average) 153 (median)
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High Court

Application for special leave to finalisation	147 (average) 138 (median)
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¹ Sometimes the decision to elect is delayed because a proper consideration of the appropriate jurisdiction cannot be made purely on the facts prepared by the police. Where a brief of evidence is required to properly inform this decision, delays in the provision of advice may be occasioned until that brief is received.

² Advisings as to criminal proceedings often relate to difficult and complex cases requiring further investigation by police. In addition, agreement may be reached for a longer period for completion of the advice to ensure quality advice is provided.

Appendix 3 – Timeliness (continued)

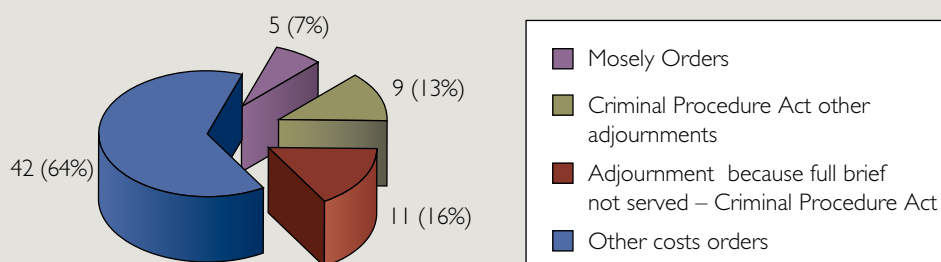
Costs awarded against the ODP: Applications for adjournment

The *Criminal Procedure Act* 1986 provides for costs to be awarded against the prosecutor in the Local Court where an adjournment of proceedings is sought. There is no power in the District Court to make an order for costs against the Crown as a condition of granting an adjournment: *R v Mosely* (1992) 28 NSWLR 735. However the Court in an appropriate case can ask the Crown to agree voluntarily to pay the costs.

The following table sets out a comparison between 2007/8 and 2008/9 where costs were awarded on prosecution applications for adjournment. In 11 matters (16%) costs were awarded because the NSW Police had failed to serve a full brief within the timetable specified by the court.

Matters where costs awarded on adjournment		
	2007/8	2008/9
“Mosely Orders”	2	5
Criminal Procedure Act other adjournments	6	9
Adjournment because full brief not served – Criminal Procedure Act	11	11
Other costs orders	36	42
Total	55	67

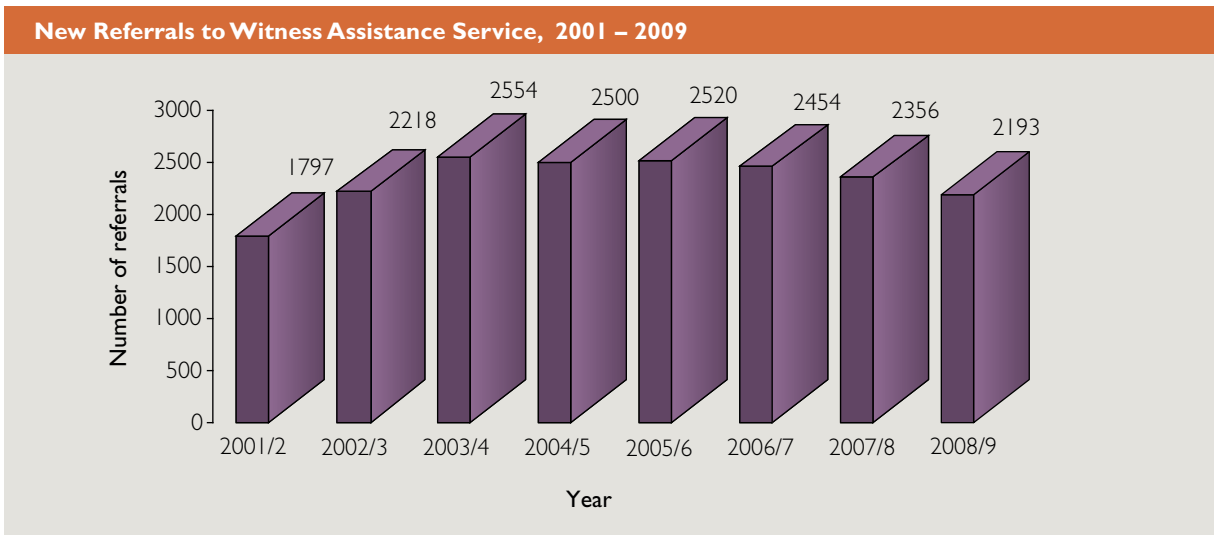
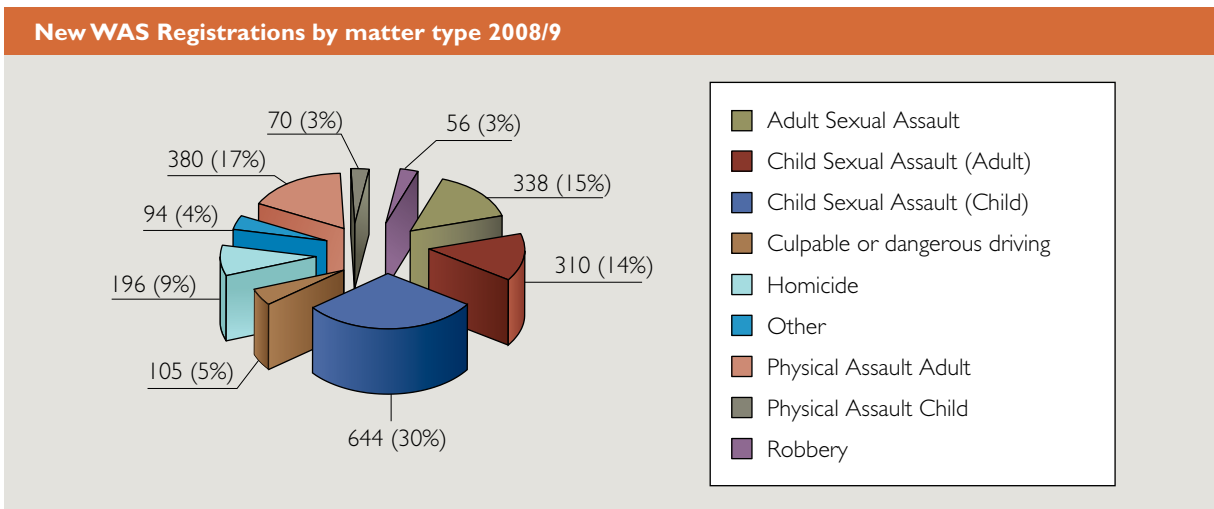
Costs awarded on adjournment percentage by type 2008/9



APPENDIX 4 – SERVICE TO VICTIMS AND WITNESSES

Witness Assistance Service 2008-2009

In 2008-2009 there were 2193 new WAS registrations. The number of new WAS referrals in 2008-2009 is 163 less than last year and 307 less than in 2004-2005 when the service had been enhanced and has a staffing establishment of 34.6. In particular, this reflects the ongoing necessity to strengthen priorities as staffing numbers have been declining and more recently the implementation of the *Interim WAS Strategy*.



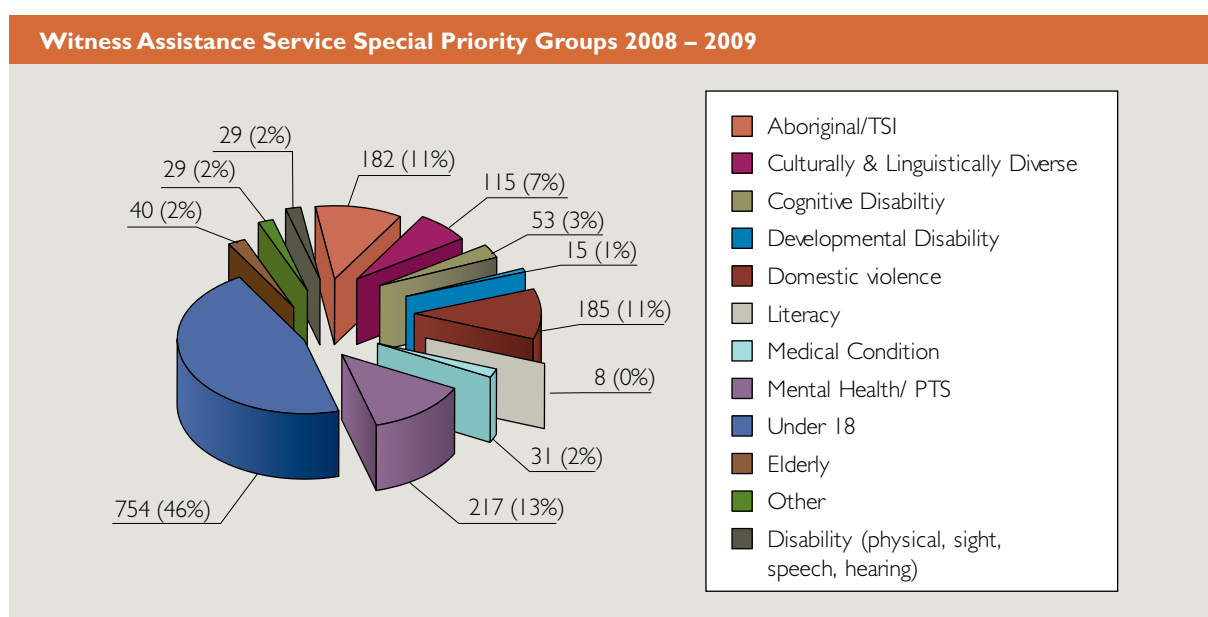
Appendix 4 – Service to victims and witnesses (continued)

During 2008-2009 there were a total of 4550 active victims and witnesses files where some level of service was provided. Table 1 provides a breakdown of victims and witnesses assistance by location.

Table 1 – Total number of active victim and witness files by location	
LOCATION	NUMBER of ACTIVE FILES
CAMPBELLTOWN	350
DUBBO	278
GOSFORD	183
LISMORE	359
NEWCASTLE	623
PARRAMATTA	387
PENRITH	307
SYDNEY	1317
WAGGA WAGGA	285
WOLLONGONG	461
TOTAL	4550

Special priority groups and vulnerable witnesses

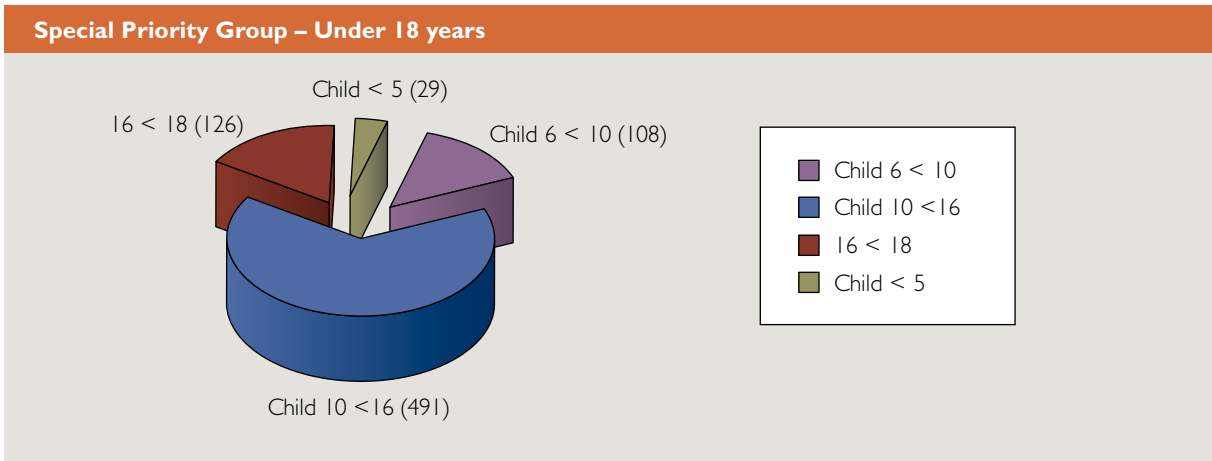
WAS prioritises services for those victims and vulnerable witnesses with special needs.



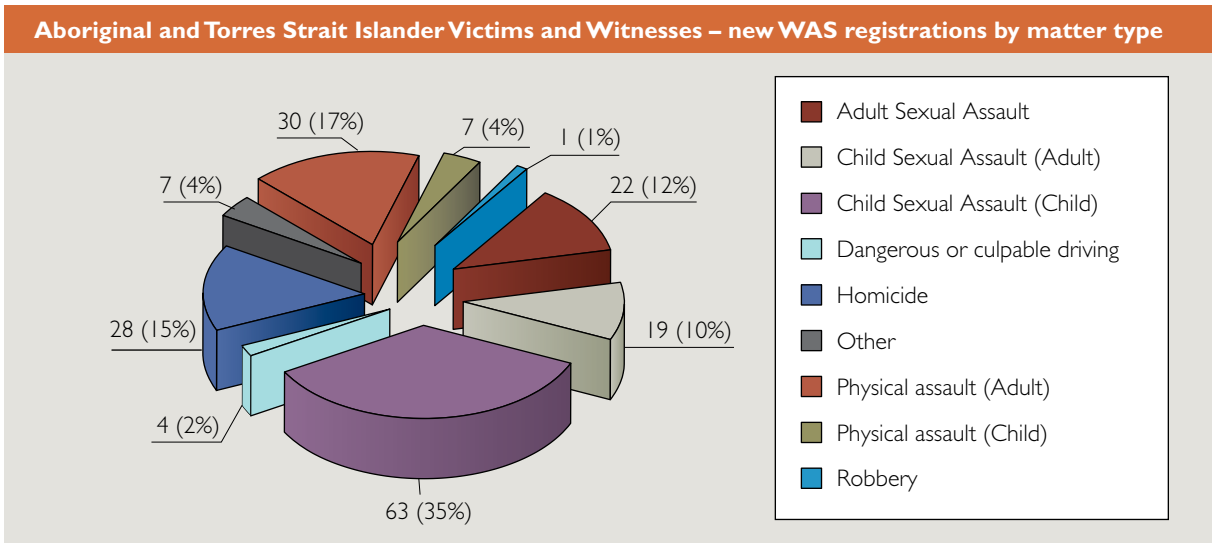
Appendix 4 – Service to victims and witnesses (continued)

Victims or witnesses registered during 2008-2009 and identified as having special needs included:

- 754 children and young people under 18 years of age with the majority being in the 10-16 years category



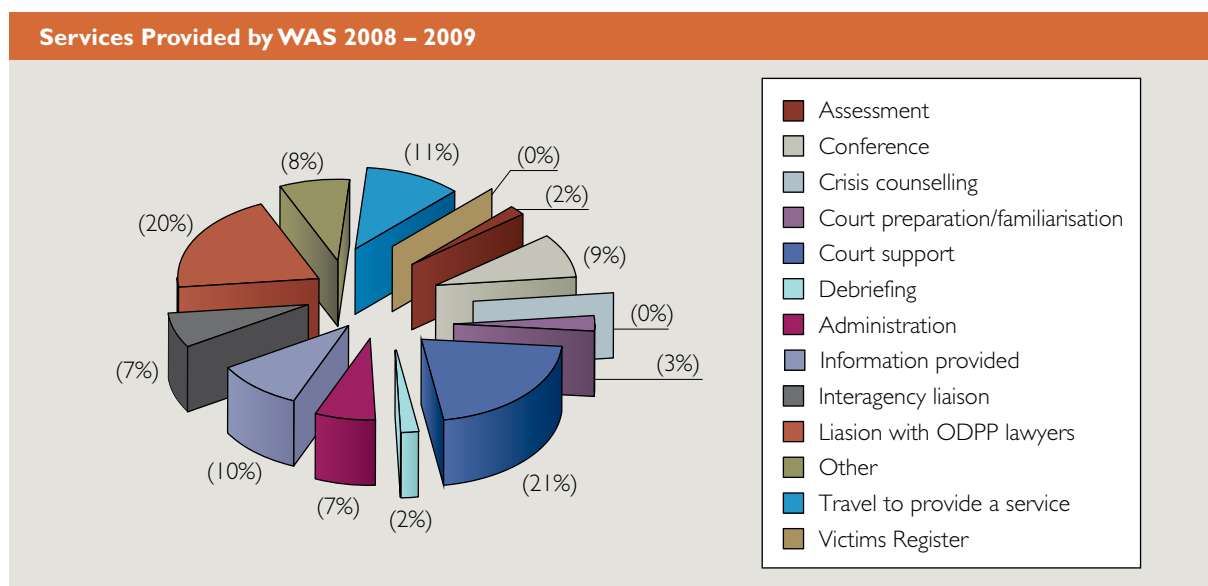
- 142 people with a disability including acquired brain injury, intellectual or cognitive disability, physical disability, sight or hearing impairment or mental health issues
- 115 people from culturally and linguistically diverse backgrounds
- 40 older or frail aged people or people with serious health problems
- 154 victims were identified as experiencing severe post traumatic stress symptoms
- 182 victims and witnesses were identified as Aboriginal or Torres Strait Islanders



Appendix 4 – Service to victims and witnesses (continued)

Services Provided by WAS

WAS recorded 18,949.82 hours of services provided in 2008/9. Activities taking up the greater amount of time are court support, liaison with solicitors and Crowns, support in conferences, information provision, interagency liaison, and travel to provide a service. Specific services such as court preparation, court familiarisation, assistance with victim impact statements and information about victim registers are more one off type services which require less time.



Victim and Witness Survey

The Office undertakes a comprehensive victim and witness satisfaction survey biennially as the main qualitative measure of our service. The following table shows the percentage of respondents who rated the overall level of service provided by the ODPP as “good” or “very good” in surveys conducted since 1994. A survey was undertaken for 2009 and results are shown hereunder.

Region	1994	1996	1998	2000	2002	2004	2006	2009
Sydney	42%	53%	39%	50%	60%	51%	62%	68.5%
Sydney West	50%	40%	47%	57.5%	88.8%	62%	68%	82%
Country	32%	52%	45%	56.9%	58.9%	65%	69%	66.6%
State Average:	41%	48%	44%	55.2%	60.8%	59.1%	66%	72.4%

As in previous surveys, it is clear that the main issue in relation to satisfaction with the service provided by the Office is the level of communication received. The service provided by ODPP staff was described as being professional, supportive, courteous and helpful. Less positive comments included lack of continuity, lack of communication, time taken off work, outcome and lack of remuneration.

APPENDIX 5 – RECOVERY OF PROCEEDS OF CRIME

Confiscation of Proceeds of Crime Act 1989 (CoPoCA)

The Director of Public Prosecutions may commence proceedings for the forfeiture of assets and pecuniary penalty orders pursuant to CoPoCA after a conviction has been recorded. In NSW the Crime Commission also has responsibility for taking confiscation proceedings under the *Criminal Assets Recovery Act 1990*; such proceedings are not conviction based. The Crime Commission usually commences proceedings in matters where there are significant amounts that may be forfeited to the State.

On 1 January 2008 amendments to CoPoCA commenced, providing greater power to the NSW Police Force and ODPP in relation to freezing tainted property and the confiscation of the proceeds of drug trafficking. From 1 January 2008 to accommodate the amendments, the ODPP has made a number of administrative changes to the way proceedings pursuant to CoPoCA are handled. Prosecution Guideline 30 was also amended to highlight the obligations of all ODPP lawyers and Crown Prosecutors to identify and pursue confiscation action where appropriate.

Resources

The ODPP receives recurrent funding of \$310,000 per annum to fulfil its obligations under the CoPoCA. This funding is partly applied to the position of a full time confiscation lawyer in Sydney the remainder is applied to other related resources required in the area, including information technology development and extensive training. The Assistant Solicitor (Legal) and Manger Advising Unit manage and provide legal advice in this area of practice.

Additional funds were provided by Treasury to the ODPP to enhance CASES to manage and record information about proceedings pursuant to CoPoCA. The enhancements to CASES commenced on 12 November 2008.

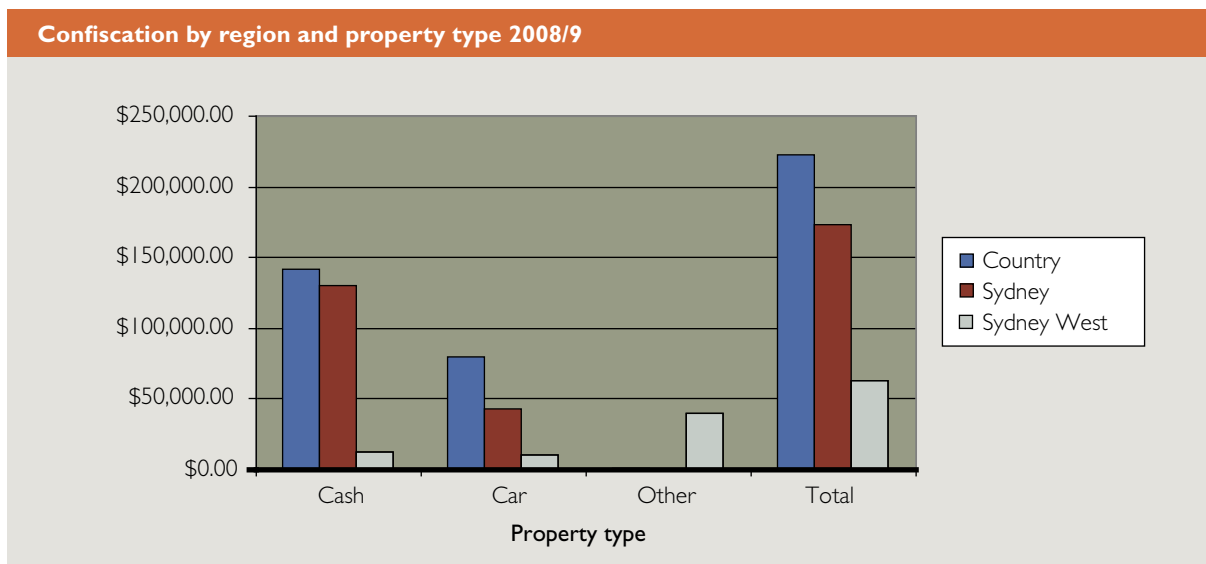
Performance and Statistics

Following the enhancements to CASES the Assistant Solicitor (Legal) has reported quarterly to the Management Committee on the performance of the Office pursuant to CoPoCA. The following information is gathered from data collected prior to 12 November 2008 and from CASES.

2008/2009	
Number of Orders Applied for (FO, PPO & DPO)	47
Number of Orders Granted	42
Number of Forfeiture Orders (FO)	36
Number of Pecuniary Penalty Orders (PPO)	1
Number of Drug Proceeds Orders (DPO)	5
Percentage of matters where application was successful	89.4%
Total Estimated Value of property confiscated	\$469,079.10

Cash was the most common property confiscated, followed by motor vehicles and in one instance gemstones. Computers used in child pornography, mobiles phones, and hydroponics equipment were also forfeited.

Appendix 5 – Recovery of proceeds of crime (continued)



As at 30 June 2009, 2441 matters have been identified on CASES where confiscation action warrants consideration. Since 1 January 2008 the NSWPF Assets Confiscation Unit has referred 84 suspects financial profile questionnaires (SFPQ's) to the ODPP, 73 of which relate to freezing notices in respect of motor vehicles. As at 30 June 2009 forfeiture applications have been granted in 26 of these matters.

APPENDIX 6 – COST EFFICIENCY

Costs were awarded against the ODPP in 2008/9 in 67 matters, being an increase from 57 matters in 2007/8. However the total value of costs orders made in 2008/9 of \$535,252.36 is less than the value for 2007/8.

Matters where costs awarded against ODPP		
	2007/8	2008/9
Criminal Procedure Act	39	59
Costs in Criminal Cases Act	11	5
“Mosely” Orders	2	5
Crimes (Appeal & Review) Act	5	0
Total number of orders	57	67
Total value of orders made	\$600,261.79	\$535,252.36
Number of matters dealt with by ODPP in period	15123	17023
Number of costs awarded where fault of prosecution	9	12
Percentage of matters where costs orders were made due to the conduct of the prosecution	0.05%	0.07%

APPENDIX 7 – CCA STATISTICS

A. Appeals by offenders finalised		
Conviction and sentence appeals	81	
Sentence appeals	193	
Summary dismissals <i>(defence 5F counted at c below)</i>	1	
Appeals abandoned	6	
TOTAL	281	
B. Crown inadequacy appeals finalised		
Abandoned	17	
Allowed	40	
Dismissed	21	
TOTAL	78	
C. Appeals against interlocutory judgments or orders (5F appeals)	15	
D. Stated cases from the District Court	2	
E. Total of all appeals finalised	375	

Conviction and sentence appeals finalised in 2008-2009 in Court of Criminal Appeal	Break down by number
SUMMARY DISMISSAL	0
ABANDONED	6
APPEALS ALLOWED	15.5
APPEALS DISMISSED	65.5

Conviction and sentence appeals finalised in 2008-2009 in Court of Criminal Appeal	Break down by percentage
SUMMARY DISMISSAL	0%
ABANDONED	7%
APPEALS ALLOWED	18%
APPEALS DISMISSED	75%

Results of finalised conviction and sentence appeals in Court of Criminal Appeal in 2008-2009	Break down by percentage
APPEALS DISMISSED	81%
RETRIALS	16%
ACQUITTALS	3%

Sentence appeals finalised in Court of Criminal Appeal in 2008-2009	Break down by number
SUMMARY DISMISSALS	0
ABANDONED	0
APPEALS ALLOWED	86
APPEALS DISMISSED	107

Sentence appeals finalised in Court of Criminal Appeal in 2008-2009	Break down by percentage
SUMMARY DISMISSALS	0
ABANDONED	0
APPEALS ALLOWED	45%
APPEALS DISMISSED	55%

APPENDIX 8 – SIGNIFICANT LEGISLATION

Criminal Organisations Legislation Amendment Act 2009 (No 23)

Assent and commencement of Schs 1 and 3, 19/05/2009.
Sch 2 commences 7/8/2009, Gaz 111, 7/8/2009 p 4729. LV 31/7/2009.

In summary the *Criminal Organisations Legislation Amendment Act 2009* modifies four principal Acts as follows:

- (a) The *Crimes (Criminal Organisations Control) Act 2009* is amended in respect of interim control orders, recruiting persons to become members of "declared organisations" and providing information relating to criminal organisations.
- (b) The *Law Enforcement (Powers and Responsibilities) Act 2002* is amended to create a "criminal organisation search warrant" which applies to an organised crime offence arising from organised criminal activity, and to provide procedures and safeguards for the issue of such warrants.
- (c) The *Criminal Procedure Act 1986* is amended to provide that the offence of recruiting persons to become a member of a declared organisation under s 26A of the *Crimes (Criminal Organisations Control) Act 2009*, is a Table 1 offence. A Table 1 offence is contained in Sch 1, Table 1 of the **Criminal Procedure Act**. It is an indictable offence that is to be dealt with summarily unless prosecutor or person charged elects otherwise.
- (d) The *Surveillance Devices Act 2007* is amended by adding s 4(1)(p). This new sub-section defines "relevant proceeding" as any proceeding regarding a declaration under Part 2, or a control order under Div 1 or Div 2 of Part 3 of the *Crimes (Criminal Organisations Control) Act 2009*.

Amendments to the first two principal Acts listed above are dealt with in more detail immediately below.

Amendments to the *Crimes (Criminal Organisations Control) Act 2009*

A new s 16A is inserted to provide for the service of a notice of an interim control order. The new provision empowers the Supreme Court, where notice of an interim control order cannot practicably be served on the person to whom it relates pursuant to s 16(1), and on being satisfied that the Commissioner of Police has taken all reasonable steps to effect personal service, to postpone service of the order for a maximum of 28 days. The Supreme Court may specify alternate means to effect service other than by personal service, and direct such service to be taken to have occurred when a specified event occurs or a specified time expires: s 16A(3). Where the steps under s 16A(1) (b) have been ineffective, notice of the interim control order

may be published in the NSW Government Gazette, a daily newspaper with State wide circulation, or some other form. Service under s 16A constitutes personal service for the purposes of ss 15 and 16(1).

Section 26A creates an offence, which carries a maximum penalty of five years imprisonment, for a controlled member of a declared organisation to recruit another member to that organisation. In this context, "recruit" is defined to include to "counsel, procure, solicit or induce".

Under new s 30(3A), information published on the criminal organisations register, maintained by the Commissioner of Police, in respect of declarations and orders made under the Act, is to be removed from that register where leave is sought after the expiration of 28 days after the control order is made. The information can only be restored to the register where leave is refused, or where the appeal is determined or withdrawn. Section 24 provides for the grant of leave outside the 28 day period.

Section 30A(1) is added to list the circumstances in which a regulatory authority and the Commissioner of Police may enter into arrangements for that authority to be supplied with information contained in NSW Police Force records concerning a declared organisation and controlled members of that organisation.

Amendments to the *Law Enforcement (Powers and Responsibilities) Act 2002 (as amended by Act No 8 of 2009)*

The term "criminal organisation search warrant" is defined in s 3 (and referred to in ss 46D, 47(3A), 62, 73, 73A, 242) as "a search warrant issued under Div 2 of Part 5 in relation to an 'organised crime offence'."

Authority to apply for a criminal organisation search warrant is dealt with in the new s 46D. Section 46D(1)-(2) provides that an officer of or above the rank of Superintendent, who suspects on reasonable grounds that a thing of a kind connected with a searchable offence is present, or will in seven days be present, in or on the premises, may authorise a police officer to apply for a criminal organisation search warrant.

Under new s 47(3A), an eligible applicant may apply to an eligible issuing officer for a criminal organisation search warrant for premises, if the eligible applicant has reasonable grounds to suspect that there is, or within seven days will be, in or on the premises, a thing connected with a searchable offence in relation to the warrant.

Section 62, which deals with information in, and consideration of a warrant application, is amended by the addition of s 62(2A). Under this new provision, an eligible

Appendix 8 – Significant Legislation (continued)

issuing officer cannot issue a criminal organisation search warrant unless the warrant application includes the following: first, the occupier's name, if known; secondly, the person believed to have committed or to be intending to commit the relevant searchable offence, and thirdly, whether the occupier is believed to be knowingly concerned in the commission of the relevant searchable offence.

Under s 73(2B) a criminal organisation search warrant ceases to have effect, unless withdrawn or extended, seven days after the date of issue. Where no expiry time is specified in a criminal organisation search warrant, s 73(7) provides that the warrant expires seven days after issue. Under s 73A(1) a criminal organisation search warrant that expires 72 hours after issue, may be extended by the authorised officer who issued the warrant.

The operation of the new legislative scheme is subject to monitoring by the NSW Ombudsman and is to be reported on by the NSW Commissioner of Police. Under s 242(3A), the Ombudsman is required to inspect the NSW Police Force records of criminal organisation search warrants every two years to ensure compliance with the *Crimes (Criminal Organisations Control) Act 2009*. As soon as practicable after the expiry of this two year period, the Ombudsman is obliged to prepare a report and provide a copy to the Attorney General and the Commissioner of Police.

Other reporting responsibilities under the amending legislation include a requirement for the Commissioner of Police to report annually to the Attorney General and the Minister of Police, in respect of the matters listed in s 242A(3A), and on the exercise of the search and seizure powers by police officers executing criminal organisation search warrants: see s 242A(1A).

Section 46 (Interpretation) is amended by adding a definition of "eligible applicant" in s 46(1)(c). This definition includes a police officer authorised to apply for a criminal organisation search warrant under s 46D. An eligible judge is now an eligible issuing officer for a criminal organisation search warrant.

Section s 46AA is added to the Act to define "organised criminal activity". Section 46AA(1) provides that "organised criminal activity" is an activity conducted on an organised basis where either a material benefit is obtained from conduct constituting a serious indictable offence, either in New South Wales or elsewhere; or the conduct itself constitutes a serious violence offence, either in New South Wales or elsewhere.

A "serious violence offence" is an offence punishable by imprisonment for ten years or more which involves conduct causing the loss, or serious risk of loss, of a person's life;

or serious injury, or risk of serious injury, to a person; or serious damage to property which endangers a person's safety; or perverting the course of justice in relation to any conduct proved to be a serious violence offence.

For the purposes of s 46AA(2), activity is carried out on an "organised basis" if it is planned, organised, structured or otherwise carried out on more than one occasion and involves more than one participant.

Section 46A(1) is inserted to provide that a "searchable offence" for the purposes of a criminal organisation search warrant is an organised crime offence, defined in s 46A(2) as "any serious indictable offence arising from, or occurring as a result of, organised criminal activity."

Telecommunications (Interception and Access) (NSW) Amendment Act 2009 (No 16)

Assent and commencement 13/5/2009, Gaz 73, 15/5/2009 p 2234

The objectives of the *Telecommunications (Interception and Access) (New South Wales) Amendment Act 2009* are to first, align provisions of the *Telecommunications (Interception and Access) (New South Wales) Act 1987* (the principal Act) with those of the *Telecommunications (Interception and Access) Act 1979 (Cth)* (the Commonwealth Act); and secondly to make various amendments by statute law revision.

Amendments to the Telecommunications (Interception and Access) (New South Wales) Act 1987

Definitions are contained in s 3 of the principal Act. Amendments made to various definitions in s 3 include but are not limited to following:

The definition of "certifying officer" is replaced in relation to the NSW Crime Commission, to extend it to a member of that Commission or a staff member authorised as a certifying officer under s 5AC(5) of the Commonwealth Act. Section 5AC (5) of the Commonwealth Act enables the Commissioner of the NSW Crime Commission to authorise in writing, a staff member of the Commission at the equivalent level of Senior Executive Service under the *Public Sector Employment and Management Act 2002* to act as a certifying officer of the Commission.

The definition of "eligible authority" is amended by the insertion of s 3(1)(e)-(f) to include the Inspectors of the ICAC and the Police Integrity Commission respectively.

The definition of the term "Part 2-5 Warrant" is replaced. The phrase now refers to "a warrant issued or to be issued under Part 2-5 of the Commonwealth Act." Warrants previously issued under Part VI of the Commonwealth Act

Appendix 8 – Significant Legislation (continued)

are now issued under Part 2-5 of that Act.

The definition of “permitted purpose” is replaced with one that “mirrors the definition of permitted purpose in the Commonwealth Act in its application to New South Wales agencies.” In any case “permitted purpose” means under s 3(1) —

- “(i) an investigation by the authority of a prescribed offence within the meaning of the Commonwealth Act, or
- (ii) the making by an authority, body or person of a decision whether or not to begin a relevant proceeding in relation to the authority, or
- (iii) a relevant proceeding in relation to the authority, or
- (iv) the exercise by the chief officer of the authority of the powers conferred by section 68 of the Commonwealth Act, or
- (v) an inspection of the authority’s records that is made under section 10, or
- (vi) a report on such an inspection, or
- (vii) the keeping of records by the authority under sections 4 and 5.”

The new definition also includes new kinds of activities concerning the appointment, re-appointment, term of appointment, retirement and termination of officers or staff of the Police Force, the ICAC, the Inspector of the Police Integrity Commission and the Police Integrity Commission. It also extends to record keeping by an eligible authority under ss 4 and 5 of the principal Act.

A new s 3A is inserted. Section 3A clarifies, in a non-comprehensive way, the types of information or questions that can be treated as relevant to an inspection of an eligible authority’s records, in connection with the Ombudsman’s exercise of powers to inspect and report on such records. Section s 3A mirrors s 5C of the Commonwealth Act in relation to the Commonwealth Ombudsman’s inspection powers.

Section 4(a) is substituted to enable an eligible authority to keep the original warrant issued to it or a certified copy. Previously, s 4 allowed an eligible authority to keep only a certified copy of a warrant.

A new s 5(1)(b1) is inserted to require a record of additional particulars to be kept by an eligible authority in relation to the power exercised under a Part 2-5 warrant. The additional particulars are consistent with those that Commonwealth agencies are required to retain under s 81 of the Commonwealth Act. They are particulars of —

- “(i) the warrant, and
- (ii) the day on which, and the time at which, each interception under the warrant began, and
- (iii) the duration of each such interception, and
- (iv) the name of the person who carried out each such interception, and
- (v) in relation to a named person warrant—each service to or from which communications have been intercepted under the warrant.”

Section 5(1A) is added to provide that where a Part 2-5 warrant is a “named person warrant”, the particulars listed in s 5(1)(b1) must state the service in relation to which each interception occurred.

Section 5(1) is amended to allow records kept under s 5 to be retained using computerised means. The amendment makes the obligation on eligible authorities consistent with that to which Commonwealth agencies are subject under s 81 of the Commonwealth Act.

Section 6(a) is repealed to remove the requirement on an eligible authority to provide the Minister with a copy of any warrant issued to the authority, and each instrument revoking the warrant. Section 59A of the Commonwealth Act requires copies of these warrants to be given to the Secretary of the Commonwealth Attorney-General’s Department.

A new s 19A is added to allow the NSW Ombudsman to exchange information with the Commonwealth Ombudsman about matters concerning the administration of the *Telecommunications (Interception and Access) (New South Wales) Act 1987* and the Commonwealth Act. Note that s 92A of the Commonwealth Act authorises the Commonwealth Ombudsman to exchange information with a State Ombudsman about State agencies that the Commonwealth Ombudsman has obtained under the Commonwealth Act. For these purposes, “Commonwealth Ombudsman” means the Commonwealth Ombudsman appointed under the *Ombudsman Act 1976* (Cth).

Schedule 1 is added to the *Telecommunications (Interception and Access) (New South Wales) Act 1987* to govern the operation of savings and transitional provisions. Part 1, cl 3 of this schedule spells out the application of amendments to s 3A and s 7. Section 3A (as inserted by the amending Act) extends to the inspection of the records of an eligible authority even if they were made (or required to be made) before the commencement of the section. Section 7 (as in force immediately before being substituted by the amending Act) continues to apply to documents given to the Minister before the section was substituted.

Appendix 8 – Significant Legislation (continued)

Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008 (No 74)

Assent 28/10/2008, Gaz 138, 31/10/2008, p 10468.
Commencement 1/12/2008 Gaz 150, 21/11/2008 p 11250.

The principal aims of the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* are to amend the *Crimes Act 1900* and the *Criminal Procedure Act 1986*. The **Crimes Act** is modified to provide additional protection to persons who have a cognitive impairment by clarifying and extending the type of sexual offences committed against such persons. The *Criminal Procedure Act 1986* is amended in relation to the giving of evidence by cognitively impaired persons in criminal proceedings.

Amendments to the Crimes Act 1900

Section 61H (Definition of sexual intercourse and other terms) is amended by the addition of new sub-section (1A). The new s 61H(1A) defines the term “cognitive impairment” as —

- “(a) an intellectual disability, or
(b) a developmental disorder (including an autistic spectrum disorder), or
(c) a neurological disorder, or
(d) dementia, or
(e) a severe mental illness, or
(f) a brain injury, that results in the person requiring supervision or social habilitation in connection with daily life activities.”

This definition replaces the previous definition of “serious intellectual disability” in ss 61J(2)(g), 61M(3)(e), 61O(3)(d), 66C(5)(f), 80A(1)(g), and 80C(b).

Section s 61Q, which deals with alternative verdicts, is amended by the addition of new sub-section (5). This new sub-section provides that where a person is charged with sexual intercourse with a cognitively impaired person without consent (under ss 61I, 61J or 61JA of the **Crimes Act**), a jury may return an alternate verdict for an offence under s 66F (Sexual offences – cognitive impairment) if they are not satisfied as to the issue of the complainant’s lack of consent.

Section 66F has been wholly replaced with a new, expanded provision. The section previously dealt with offences of sexual intercourse with a person with an intellectual disability. It now applies to persons with a “cognitive impairment” and includes the offences of indecent assault (ss 61L and 61M) and act of indecency (ss 61N and 61O).

The following definition of a “person responsible for care” has been added to s 66F(1) –

- “For the purposes of this section, a person is responsible for the care of a person who has a cognitive impairment if the person provides care to that person:
- at a facility at which persons with a cognitive impairment are detained, reside or attend, or
 - at the home of that person in the course of a program under which any such facility or other government or community organisation provides care to persons with a cognitive impairment.”

Under s 66F the “care of a person with a cognitive impairment includes voluntary care, health professional care, education, home care and supervision.”

The current position in NSW is that consent is no defence to a charge of sexual intercourse with a person who has a cognitive impairment. Under s 66F(6) of the **Crimes Act**, consent is also no longer a defence to a charge of indecent assault or an act of indecency (under ss 61L, 61M(1), 61N(2), 61O(1A), or 61P) if

- “(a) the accused was responsible for the care of that person (whether generally or at the time of the conduct constituting the offence, or
(b) the accused engaged in the conduct constituting the offence with the intention of taking advantage of that person’s cognitive impairment.”

Under s 66F (7) a defence is available if the accused person did not know the complainant had a cognitive impairment; or the accused was married to or in an established de facto relationship with the complainant; or the conduct constituting the offence was carried out for a legitimate medical or hygienic purpose. Under s 66F(8), the Attorney General’s approval is required to commence a prosecution for s 66F offences.

The amendments made by the *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* apply to offences committed on or after the commencement of the amendments; that is, 1 December 2008.

The *Crimes Amendment (Cognitive Impairment – Sexual Offences) Act 2008* also amends the *Criminal Procedure Act 1986*. The changes include the following —

The term “intellectually impaired person” is replaced with a definition of “cognitively impaired person”. The term “intellectually impaired person” in ss 76, 91, 185, 306M(1), 306P, 306R, 306ZK and 306T is replaced with the definition of “cognitively impaired person” in relation to evidence given by vulnerable persons.

Appendix 8 – Significant Legislation (continued)

A definition of “cognitive impairment” is added to s 306M(2) of the Act. For the purposes of Part 6 of the Act, it includes (a) intellectual disability; (b) developmental disorder (including autistic spectrum disorder); (c) neurological disorder; (d) dementia; (e) severe mental illness; and/or (f) a brain injury.

Crimes (Domestic and Personal Violence) Amendment Act 2008 (No 119)

Assent and commencement 10/12/2008, Gaz 158, 19/12/2008 p 12297.

The principal aim of the *Crimes (Domestic and Personal Violence) Amendment Act 2008* is to amend the *Crimes (Domestic and Personal Violence) Act 2007* to —

- (a) add stalking or intimidating a person as a “personal violence offence” under the principal Act
- (b) require a provisional order to be served, where practical, on the person for whose protection it was issued
- (c) clarify who is eligible to apply for an ancillary property recovery order
- (d) enable an authorised officer to make an interim apprehended domestic violence order that protects the person for whom the order was sought (the protected person) as well as other persons with whom the protected person has a domestic relationship
- (e) require an authorised officer when making an interim apprehended domestic violence order to include as “protected persons” under the order; any children with whom the protected person has a domestic relationship, unless good reasons exist for not doing so and
- (f) clarify that an applicant for an apprehended domestic violence order in relation to himself or herself may also apply for the order to be made in respect of another person with whom the applicant had a domestic relationship.

The *Crimes (Domestic and Personal Violence) Amendment Act 2008* also amends the *Firearms Act 1996* and the *Weapons Prohibition Act 1998*. The changes provide that a licence or permit issued under these Acts is suspended automatically when a provisional order against the licence or permit holder is made by an authorised officer under the relevant principal Act. Such an order was previously called a telephone interim order.

Amendments to the Crimes (Domestic and Personal Violence) Act 2007

The definition of “personal violence offence” in s 4(b) is amended to include an offence under s 13 of the Act, which concerns stalking or intimidating with intent to cause fear of physical or mental harm.

Section 31 is amended to require, if practical, the personal service of a provisional order on the protected person. Previously the requirement was that only the defendant had to be served with the order. A “provisional order” is defined in s 3 as “an interim apprehended domestic violence order or an interim apprehended personal violence order made by an authorised officer under Part 7”.

Section 35(2)(d) is amended to give a court power to prohibit or restrict the possession of prohibited weapons (within the meaning of the *Weapons Prohibition Act 1998*) in relation to a defendant the subject of an AVO. Previously this power only existed in relation to firearms. Section 35(4) is repealed. This section previously provided for a court or authorised officer to require the disposal of firearms and the surrender of licences and permits where a defendant was subject to an AVO, and an order prohibiting or restricting the possession of firearms was made. Section 35(4) is no longer needed as a result of amendments made to the *Firearms Act 1996* and the *Weapons Prohibition Act 1998* which now provide for the automatic suspension of licences and permits when a provisional order is made. Once suspended, the firearms or weapons the subject of the licences or permits must be surrendered to police.

Section 37 deals with making ancillary property recovery orders. Section 37(1)(A) is inserted to clarify who can make a property recovery order and how the order is to be made. Applications for ancillary property recovery orders can be made by the court or an authorised officer making the relevant apprehended violence order or interim apprehended domestic violence order, or on application by a police officer, the protected person or the defendant.

Section 38 is substituted. The previous s 38 allowed a court to extend an AVO to include persons with whom the protected person has a domestic relationship. It also required a court to include a child with whom the protected person has a domestic relationship unless there are good reasons for not doing so. The new s 38 extends these powers to authorised officers making interim AVO's.

Appendix 8 – Significant Legislation (continued)

Section 48(4) is substituted to provide that an applicant for an AVO can also apply for an AVO in respect of another person with whom the applicant has a domestic relationship. This amendment was made to overcome the decision in **Peach v Wymer & Ors** [2007] NSWSC 690 where it was held that only a police officer could make an application on behalf of another person.

Modifications have also been made to s 72 which deals with applications for the revocation or variation of final apprehended violence orders. Section 72 is amended by the addition of new sub-sections (5) – (8) to clarify that an application to revoke a final AVO may be made even where the order has expired. Previously, a revocation order could only be made during the life of the order. This change was made to address a consequence of a final AVO, namely, under s 11 of the *Firearms Act* 1996 a person subject to such an order, or who has within ten years of making the licence application, been subject to such an order (other than a revoked order) cannot be issued with a licence.

Where a defendant makes such an application, the Commissioner of Police is to be notified; the court is to take into account “the effect that revocation of the expired order may now have on the protected person”; and “the court may order that a further application for revocation of the expired order may not be made by the defendant except with the leave of the court”. See s 72(8).

Amendment of other Acts

The *Commission for Children and Young People Act* 1998, the *Crimes (Sentencing Procedure) Act* 1999, the *Firearms Act* 1996, and the *Weapons Prohibition Act* 1998 are also amended to provide that a reference to an AVO under the *Crimes (Domestic and Personal Violence) Act* 2007 includes a reference to an AVO under the repealed Part 15A of the **Crimes Act**.

The definition of “interim apprehended violence order” in s 4(1) of the *Firearms Act* 1996 and the *Weapons Prohibition Act* 1998 is also modified to include an interim AVO as defined in the *Crimes (Domestic and Personal Violence) Act* 2007. It includes a provisional order made by an authorised officer. The effect of the amendment is that a licence or permit is automatically suspended when a provisional order is made. Previously automatic suspension only occurred when a court made an interim AVO.

APPENDIX 9 – SIGNIFICANT JUDICIAL DECISIONS

High Court of Australia

Carroll v The Queen [2009] HCA 13

21 April 2009

The appellant had been drinking in a hotel for 8 to 9 hours before leaving with several others. Outside the hotel the appellant's group became involved in an argument with the victim who had also just left the hotel. One of the men with the appellant pushed the victim, and the victim in response threatened to "get a gun and shoot youse all". He also said "I'm going to kill your whole family". The appellant said to the victim "You want to talk about guns?", and then head-butted the victim in the face, causing him to fall backwards and strike his head on the roadway. The victim later died from the injuries sustained.

In the District Court the appellant pleaded guilty to manslaughter on the basis of an unlawful and dangerous act. He was sentenced to imprisonment for 3 years with a non-parole period of 18 months to be served by way of periodic detention.

The DPP appealed to the CCA against the sentence on the sole ground that it was manifestly inadequate. The CCA allowed the appeal, and re-sentenced the appellant to 3 years full time imprisonment with a non-parole period of 18 months.

By special leave the appellant appealed to the High Court of Australia. In allowing the appeal the High Court held that:

- The CCA erred in proceeding on the basis that the appellant should not have been provoked by what the victim said. Such a finding focused on the objective characterisation of the events, erroneously excluding the primary judge's findings that the appellant had reacted (wrongly and violently but spontaneously) to the victim's words.
- The CCA also erred in finding that "severe injury was clearly foreseeable and death at least a possibility" as a result of the head-butting.
- While by his plea of guilty the appellant admitted that his head-butting of the victim was an unlawful and dangerous act that carried with it an appreciable risk of serious injury, he did not admit, and the trial judge did not find, that "severe injury was clearly foreseeable and death at least a possibility".
- In deciding whether the sentence passed by the primary judge was manifestly inadequate it was open to the CCA to form a different view from the primary

judge as to where the appellant's conduct stood on an objective scale of offending. But in the absence of a challenge to the primary judge's findings of fact, it was not open to the CCA to disregard reference to why the appellant acted as he did, nor to attribute to him the ability to foresee that his conduct could cause not just serious injury, but severe injury and the possibility of death.

- The appeal was allowed, and the DPP's appeal remitted to the CCA for re-hearing.

Cesan v The Queen; Mas Rivadavia v The Queen [2008] HCA 52

6 November 2008

After a trial lasting 17 days the appellants were convicted of conspiracy to import ecstasy, and sentenced to terms of imprisonment.

On appeal to the CCA against their convictions the appellants contended that a miscarriage of justice had occurred because the trial judge was asleep during significant parts of the trial. The CCA dismissed the appeals, holding that there was no demonstrated error or prejudice to the appellants flowing from the trial judge's conduct.

By special leave the appellants further appealed to the High Court of Australia. The High Court allowed the appeal and remitted the matters for retrial. The High Court held (per Hayne, Crennan and Kiefel JJ):

- There was in this case a miscarriage of justice within the meaning of s 6(1) of the *Criminal Appeal Act* 1912 because the trial judge did not exercise that degree of supervision of the proceedings which would ensure, so far as reasonably practical, that the jury paid attention to all of the evidence as it was given.
- In considering whether there was a miscarriage of justice at the trial, attention must focus upon the respect in which it is said that there was some departure from the proper conduct of the trial, rather than upon the cause of that departure.
- What is important in this case is that the evidence led in the CCA showed that the jury was distracted from paying attention to all of the evidence in the trial by the fact that the judge fell asleep. The repeated distraction of the jury from attending to the evidence at various stages of the trial, including when one of the appellants was giving his evidence, constituted a miscarriage of justice.
- Because the jury were distracted from their task it is not possible to conclude on the written record of the trial

Appendix 9 – Significant Judicial Decisions (continued)

that the evidence proved the appellants guilty beyond reasonable doubt. Accordingly it could not be said that there was no substantial miscarriage of justice within the meaning of the proviso to s 6(1) of the *Criminal Appeal Act 1912*.

Court of Appeal

DPP v Yigit and Anor [2008] NSWCA 226

25 September 2008

The respondent was charged with driving on 23 December 2006 while his license was suspended.

When the matter came on for hearing the Local Court Magistrate found that the notice issued by the RTA advising the respondent of the suspension contained inconsistencies. In particular, the notice specified, inter alia, that the respondent's license was suspended on and from 26 September 2006 for a period of 6 months (if a bond was entered into). As was conceded, this meant that, a bond having been entered, the suspension ended on 25 March 2007 and the respondent was able to drive on or after 26 March 2007. However the notice also stated that the respondent was unable to drive until on or after 27 March 2007. The Magistrate held that because of this inconsistency the notice was invalid, the respondent's license had not been validly suspended, and he had committed no offence by driving on the day in question.

An appeal to the Supreme Court against this decision was dismissed.

The DPP then further appealed to the Court of Appeal. The court upheld the appeal, holding (per Beazley and Basten JJA; Handley AJA dissenting):

- Clause 39 of the *Driver Licensing Regulation* requires that a notice of suspension specify the date from which a suspension operates and the period of that suspension. There is no other relevant statutory requirement
- The notice issued to the respondent complied with these obligations, but failed to state accurately the date upon which the suspension ended. As a matter of construction the specified period ended on 26 March 2007. The appropriate principle of construction is that the notice be construed favourably to the respondent. The implication in the notice that the respondent was only entitled to drive on and from 26 March 2007 was incorrect. Construing the notice in favour of the license holder, that implication must be disregarded.
- The contrary view requires that any degree of

uncertainty as to the day on which the period terminates is sufficient to invalidate the notice as a whole. That approach should not be taken because:

- the notice is capable of construction in a manner which resolves the uncertainty
 - The alternative construction, invalidating the notice, may place the respondent at risk of fresh periods of suspension
 - Contravention of a suspension is not a serious criminal offence requiring that any level of uncertainty as to the time of termination of the suspension must result in invalidity of the whole exercise
- As the error contained in this notice had been routinely replicated in many hundreds of notices, the matter has general public significance and it is appropriate that there be a grant of leave to appeal.
 - The appeal is allowed, the Magistrate's order dismissing the charge is set aside, and the matter remitted to the Local Court to be dealt with according to law.

Supreme Court of NSW

DPP v Majok [2009] NSWSC 192

24 March 2009

A police officer observed a vehicle being driven not wholly within its lane and through a red arrow, contrary to the road transport legislation.

The officer ascertained that the respondent was the person responsible for the vehicle within the meaning of s 173 of the *Road Transport (General) Act 2005* (the Act).

The officer subsequently exercised her power under s 173(1) of the Act to require the respondent to provide the name and home address of the driver of the vehicle at the time of the alleged traffic offences. The respondent admitted that he had been the driver at the time.

The officer subsequently issued Court Attendance Notices to the respondent in relation to the traffic offences.

On the hearing of the charges before the Local Court the Magistrate exercised his discretion under s 90 of the *Evidence Act 1995* to exclude the officer's evidence of the respondent's admission that he was the driver of the vehicle at the relevant time. The magistrate held that to admit that evidence would be unfair to the respondent, because he was compelled by law to make the admission. There being no other evidence to establish that the respondent was the driver, the CANs were dismissed.

Appendix 9 – Significant Judicial Decisions (continued)

An appeal to the Supreme Court by the DPP against the dismissal was upheld, and the Magistrate's order dismissing the CANs was set aside. The Supreme Court held:

- The requirement in s 173 of the Act can have no purpose other than the obtaining of information as to the driver of a vehicle at the time of an alleged offence for the purpose of prosecuting that driver
- S 90 of the *Evidence Act* does not permit a court to hold that the admission of evidence in criminal proceedings would be unfair solely because of the manner in which and the purposes for which it was obtained, if that manner and purpose was sanctioned by parliament (applying *DPP v Attallah* [2001] NSWCA 171)
- Accordingly the Magistrate erred in law in finding that the existence of a compulsion upon the respondent to disclose that he was the driver of the vehicle could be the sole basis for the exercise of the discretion under s 90 of the *Evidence Act*.

McEwen v Simmons and Anor [2008] NSWSC 1292

8 December 2008

The appellant was convicted in the Local Court of "Using a Carriage Service to Access Child Pornography" under the Commonwealth *Criminal Code*, and of "Possessing Child Pornography" under the NSW *Crimes Act*.

Separate definitions of "child pornography" applied to each of those provisions. The Commonwealth definition referred to "material that depicts a person or a representation of a person apparently under 18 years of age" in certain sexual circumstances. The explanatory note to this definition indicated that it was intended to cover all visual images including representations of children such as cartoons and animation.

The NSW definition referred to "material that depicts or describes ..a person... apparently under the age of 16 years" in certain sexual circumstances. The alleged pornography consisted of a collection of cartoons depicting child characters from the animated television series "The Simpsons" performing sexual acts.

On appeal to the Supreme Court against the convictions, the appellant contended that the Magistrate had erred in law in holding that the cartoons in question depicted either "a representation of a person" or "a person" within the meaning of those terms in the offences alleged. The Supreme Court dismissed the appeal, holding:

1) In relation to the Commonwealth offence:

- It is notorious that drawings and other pictorial representations may be and often are of fictional or imaginary characters. Although the primary purpose of the legislation is to combat the direct sexual exploitation and abuse of children that occurs where offensive images of real children are made, it is also calculated to deter production of other material, including cartoons, which can fuel demand for material that does involve the abuse of children
- There is no reason to limit the meaning of "a person" to mean an actual person. The depictions and representations of persons to which the definition refers include a drawing, and hence a cartoon, of a fictional character
- The drawing or cartoon however must have some semblance of human form, and not be a mere symbol. Whether the cartoon in the present case did depict "a representation of a person" was a question of fact for the magistrate.

2) In relation to the State offence:

- The term "person" is capable, in its ordinary meaning, of denoting a real as well as a fictional person, and there is no cause to limit it in the present context
- Once it is accepted that the "person" may be fictional or imaginary and may be depicted by a drawing, it follows that a cartoon character might well constitute the depiction of such a "person"
- The drawing must be that of a human being and recognisable as such, but no particular human being needs to be depicted, and even a substantial departure from realism will not necessarily mean that the depiction is not that of a person in this sense.

Appendix 9 – Significant Judicial Decisions (continued)

Significant Judicial Decisions

EK v R [2009] NSWCCA 4

5 February 2009

The appellant EK (the alleged offender) was charged with nine sexual offences under the *Crimes Act* 1900. He stood trial in the District Court. The alleged victim gave oral evidence which was recorded. The jury was discharged because of concerns about the appellant's fitness to be tried. The appellant was found unfit to be tried and the matter was ultimately dealt with by special hearing under s 19(1) of the *Mental Health (Criminal Procedure) Act* 1990. (now called the *Mental Health (Forensic Provisions) Act* 1990).

The Crown gave notice of its intention to tender the alleged victim's record of evidence in the discontinued trial under s 306I *Criminal Procedure Act* 1986. The appellant's counsel objected to the admissibility of the recording, arguing that s 306I does not apply to a special hearing. The judge ordered that, subject to compliance with other requirements in s 306I **Criminal Procedure Act**, the alleged victim's original record of evidence could be tendered in the special hearing. The judge also issued a certificate under s 5F(3)(b) that the "purported judgment or order was a proper one for determination on appeal" by the NSWCCA.

The appellant appealed under s 5F(3) of the *Criminal Appeal Act* 1912 against what was said to be an interlocutory judgment of the District Court. On appeal to the NSWCCA, the issues to be determined were:

- Was the appeal competent?
- Was the ruling being appealed against a judgment or order? and
- Does s 306I of the **Criminal Procedure Act**, which deals with the admission of an alleged victim's evidence in new trial proceedings, apply to a special hearing?

The NSWCCA dismissed the appeal as incompetent. That court held that the alleged victim's original record of evidence from a trial is prima facie admissible in a subsequent special hearing under s 306I **Criminal Procedure Act**. Further, the District Court ruling did not constitute an interlocutory judgment or order.

The Court of Criminal Appeal took the view that trial judge's decision constituted a ruling on the admissibility of evidence. It said that "[t]he decision under challenge involves a step along the way of a path concerning the admissibility of evidence." at [15]. Whether the evidence is ultimately admitted depends on matters under ss 306I(3) and 306I(5)

regarding admissibility. **R v Steffan** (1993) 30 NSWLR 633 applies; **R v Milakovic** [2004] NSWCCA 199 and **R v RAG** at [12]-[14] distinguished.

Section 306I of the **Criminal Procedure Act** is contained in Chapter 6 of the Act titled "Evidentiary matters". Chapter 6, Part 5 is titled "Evidence in Sexual Offence Proceedings". Section 306I is in Div 4 of Chapter 6, Part 5 and is called 'Special Provisions relating to Subsequent Trials of Sexual Offence Proceedings.' Section 306I is called "Admission of evidence of complainant in new trial proceedings." at [14]. This statutory scheme "supports the conclusion that the ruling under s 306I applied to the tender of evidence at a special hearing was a ruling on the admissibility of evidence." at [17]

Johnson J concluded the matter by saying —

"21 The scheme set up by the *Criminal Appeal Act* 1912 confines appeals during the currency of proceedings on indictment to circumstances permitted by s.5F:

R v Daher and Tochel [2004] NSWCCA 458 at [11]-[12]. If verdicts are returned adverse to the Appellant at the special hearing under s. 22(1)(c) *Mental Health (Criminal Procedure) Act* 1990, an appeal will lie to the Court of Criminal Appeal as if by way of appeal against conviction: s.22(3)(c) *Mental Health (Criminal Procedure) Act* 1990; ss.2(1), 5(1) *Criminal Appeal Act* 1912; *Subramaniam v R* [2004] HCA 51 at [45]. The present ruling may be challenged on such an appeal. However, an appeal to this Court under s.5F against the relevant ruling is incompetent."

Ourdi v R [2009] NSWCCA 46

3 March 2009

Mr Ourdi (the applicant) gained access to five apartments in the same building by scaling a multi-story residential tower in bare feet. Once inside the apartments, he stole cash, jewellery, replica gold bars, a mobile phone, credit cards and other items. At times the stealing was committed whilst the occupants of the apartments were asleep.

The applicant was convicted, by a jury, of two counts of entering a dwelling house with intent to commit a serious indictable offence (namely stealing) in circumstances of aggravation (knowing persons present) contrary to s 111(2) *Crimes Act* 1900; and three counts of break and enter and commit a serious indictable offence (stealing) in circumstances of aggravation (knowing persons present) contrary to s 112(2) **Crimes Act**.

At the District Court sentence, the court heard that the applicant was born in the Western Sahara, and lived "...

Appendix 9 – Significant Judicial Decisions (continued)

a nomadic life with his kinsmen, which involved extreme hardship, poverty, hunger and mistreatment. He had no formal education and was illiterate in his native language, Arabic.” at [60] The s 112(2) **Crimes Act** offences were found to be above the mid-range of objective seriousness and aggravated by planning and the fact the offences involved multiple victims: ss 21A(2)(n), (m) of the **Crimes (Sentencing Procedure) Act**. A total sentence of imprisonment with a non-parole period of four years, and a balance of term of four years was imposed.

The applicant appealed against the severity of the sentence to the NSWCCA and the following issues arose to be determined: (1) Whether the sentencing judge made an error in imposing the same sentence for each individual offence? (2) Whether it was open to the sentencing judge to find the s 112(2) **Crimes Act** offences were above the mid-range of objective seriousness? (3) Whether the sentences imposed were manifestly excessive?

The NSWCCA dismissed the appeal and held as follows:

- (1) The applicant’s counsel argued that the sentencing judge erred in imposing the same sentence for each count when the maximum penalty for the two offences was different. Section 111(2) offences carry a maximum penalty of imprisonment for 14 years, whereas the maximum penalty for s 112(2) offences is 20 years. The applicant’s argument was also based on the two offences having different elements and the application of a standard non-parole period of five years applying only to the s 112(2) offences. The NSWCCA declined to accept these submissions. Kirby, J, with whom Grove and Blanch JJ agreed, found that imposing the same sentence for the s 111(2) offences and s 112(2) offences did not increase the overall sentence, given that the orders for both offences contained a measure of concurrency. For this reason, the court did not consider it necessary to interfere with the way in which the sentences had been structured.
- (2) The applicant’s counsel argued that the sentencing judge incorrectly assessed the s 112(2) offences as being above the mid range of objective seriousness. This was said to be based on a number of factors including an alleged failure to consider that the “serious indictable offence” was larceny; a failure to consider the applicant’s motive for committing the offences (asserted pathological gambling) and incorrectly taking into account aggravating factors as well as taking into account certain irrelevant considerations.

The appeal court explained that a s 112(2) **Crimes Act** offence is committed where a person breaks and enters a

dwelling-house or building and commits a “serious indictable offence.” A “serious indictable offence” is an indictable offence punishable by imprisonment for life or for a term of five years or more. Consequently, a broad range of offences fall within this definition and larceny (stealing) is one of them. In support of this, Kirby J at [31] referred to **Marshall v Regina** [2007] NSWCCA 24 at [37]. In **Marshall** the court found that in determining whether an offence falls within the mid-range of objective seriousness, relevant factors include the nature of the offence and its seriousness relative to offences of its type generally. For the offence of larceny, the guideline judgment in **R v Ponfield** (1999) 48 NSWLR 327 may assist in identifying factors relevant to assessing the objective seriousness of the offence. The type of premises entered, the nature and value of property taken, and the commission (if any) of substantial damage to, or ransacking of, the premises will be relevant.

The submission that the sentencing judge erred in assessing the objective seriousness of the offence, by failing to consider the applicant’s gambling problem as a motive for committing the offences was also dismissed. At law, and as a matter of social policy, the relevance of gambling to an assessment of objective criminality is limited: **Police v John** (1995) 79 A Crim R 510. This principle was explained in **Anna Le v Regina** [2006] NSWCCA 136 and its exceptions, and the principles which govern those exceptions, were stated in **R v Henry** (1999) 46 NSWLR 346 at [273]. Kirby J found the applicant’s gambling did not come within one of the stated exceptions and therefore could not be considered as a mitigating factor on sentence. His Honour found that the offences involved “careful observation and planning”, and were “executed skilfully, with a clear head...” at [45].

- (3) Kirby J dismissed the applicant’s submission that the sentences imposed were manifestly excessive. His Honour concluded that the applicant’s “extraordinary circumstances” had been properly considered by the sentencing judge. It was open to the sentencing judge at first instance to assess the objective seriousness of the s 112(2) offences as above mid range. In addition, after making this assessment, the sentencing judge had made a significant adjustment following a consideration of the applicant’s strong subjective case and special circumstances. This exercise led to a reduction in the non-parole period from five years to three years.

Although on appeal it was found that the sentencing judge erred in determining that the offences were aggravated under s 21A(2)(m) of the **Crimes (Sentencing Procedure) Act**, it was ultimately held that, based the serious nature of the offences and despite the applicant’s strong subjective case, no other sentence was warranted.

Appendix 9 – Significant Judicial Decisions (continued)

Pease v R [2009] NSWCCA 136

1 May 2009

Mr Pease (the appellant) was convicted, by a jury, of one count of sexual intercourse with a child under ten years contrary to s 66A of the *Crimes Act* 1900. A standard non-parole period of 15 years applies to this offence: see Item 10 in the Table following s 54D of the *Crimes (Sentencing Procedure) Act* 1999.

At the trial, and before the complainant gave evidence, the judge had to make a determination about whether the complainant was competent to give sworn evidence under the *Evidence Act* 1995. His Honour listened to the complainant's recorded interview with police, which included questions about "telling lies", "fibbing" and "telling the truth". His Honour also asked the complainant a number of questions. The judge determined that the complainant was not capable of understanding the duty to give truthful evidence under s 13(1) of the **Evidence Act**, but could give unsworn evidence under s 13(2) of that Act.

Following a trial, the appellant was convicted. A sentence of imprisonment comprising a non-parole period of three years, with a balance of term of three years was imposed.

The appellant appealed against conviction to the NSWCCA. On appeal a principal issue for determination was whether the trial judge erred in allowing the complainant to give unsworn evidence, when there was no material upon which to conclude that the complainant was incompetent to give sworn evidence?

The court dismissed the appeal on the basis that it found no error in the trial judge's (a) approach to determining the complainant's competency to give evidence; or (b) the ruling that the complainant was incompetent to give sworn evidence but competent to give unsworn evidence.

Grove J summarised the principles relevant to determining competency to give evidence at [7] —

"All persons, including children, are presumed competent to give evidence: s 12. There is no fixed rule, either at common law or by statute, as to an age below which a child will be presumed to be incompetent to give sworn evidence: **R v Brooks** (1998) 44 NSWLR 121. It would be erroneous to presume incapacity merely because of the tender years of an intended witness: **R v JTB** [2003] NSWCCA 295. ..."

The Court of Criminal Appeal held that a judge's determination about competency to give evidence under s 13(1) of the **Evidence Act** is a discretionary exercise which includes "assessment and impression". The court said that although it would be wrong to assume that a witness is not

competent to give evidence solely on the basis of age, age is a potentially relevant factor in assessing a person's maturity.

The trial judge did not conclude that the complainant was incapable of understanding the obligation to give truthful evidence solely on the basis of age, and a presumption that his Honour did cannot be inferred. The approach adopted by the trial judge accorded with that taken in **R v RAG** [2006] NSWCCA 343.

In determining the appeal, Grove J said at [10] that —

"The material showed that the complainant understood the difference between telling the truth and telling a lie, but it is apparent from the terms of s 13(1) and 13(2) that there is a difference between being able to discriminate between telling the truth and telling a lie, and understanding the obligation to give truthful evidence."

Ibrahim v Commissioner of Police & Anor [2008] NSWCCA 197

21 August 2008

The applicant was awaiting trial on charges connected to the shooting of persons in 2004. The shootings were allegedly related to a motor cycle gang called The Nomads. At the committal, a police officer gave evidence that he said to a Mr C, a victim of the shootings, whilst Mr C was in hospital, things which suggested that police had some knowledge of who carried out the shootings. The applicant's solicitor, who attended the committal, believed that soon after the shootings, police obtained information about who was responsible for them. The applicant's solicitor believed that this information must have arisen from electronic surveillance of a person who either saw the events or was told about them.

That solicitor sought access to certain documents listed in a schedule to a subpoena, on the basis that they would assist the applicant's case. Counsel for the Commissioner of Police, relying on a confidential affidavit, argued that the application demonstrated no legitimate forensic purpose. Ultimately, the application was refused in the District Court on the grounds of public interest immunity.

Appendix 9 – Significant Judicial Decisions (continued)

The applicant's solicitor appealed to the NSWCCA against the interlocutory order upholding the claim of public interest immunity relying on nine separate grounds. They included the following: (1) The trial judge erred in not according the applicant procedural fairness in respect of the right to be heard on the issue of public interest immunity. (2) The trial judge failed to consider matters in s 130(5) of the *Evidence Act 1995* in determining whether production of the documents was required. (3) Documents referred to in the amended schedule to the subpoena were relevant to identification, the charges were serious, the actions of the police officer were improper and there was a legitimate forensic purpose in seeking production of the nominated documents.

On appeal no objection was made to the NSWCCA inspecting the confidential affidavit and certain confidential exhibits.

The NSWCCA were called on to determine two main issues. First, whether the applicant should have been allowed to address the District Court on the issue of public interest immunity? Secondly, whether the confidential material could be inspected by the appeal court and if so whether access to the documents should be granted?

The court granted the applicant leave to appeal but ultimately dismissed the appeal. It held that the District Court judge wrongly refused to hear the applicant's solicitor on the issue of public interest immunity. The applicant's legal representative should have been given "an opportunity to address the issues in light of the open evidence" at [17].

In relation to a separate ground of appeal, the applicant's solicitor argued, unsuccessfully, that the trial judge failed to consider factors in s 130(5) of the **Evidence Act** in deciding whether production of the documents should be ordered. The court concluded that the application was governed by the common law, and not the *Evidence Act 1995*: **Esso Australian Resources Ltd v Commissioner of Taxation of the Commonwealth of Australia** (1999) 201 CLR 49.

On the issue of whether the confidential material could be inspected by the court, and if so whether it constituted a basis for granting access to the documents requested, Allsop P determined that no basis existed to order a stay if access to the documents sought was to be refused. His Honour said —

"No legal principle requires this Court to conclude that the material (being the affidavit material and the documents themselves) cannot be looked at to assess the issue..." at [19]

...

"The whole of the confidential material can be examined to assess the public interest in the material in question remaining confidential and immune from access." at [21]

Allsop P's reading of the confidential material led him to conclude that the documents sought by the applicant's solicitor would not assist the applicant's case "in any way".

APPENDIX 10 – PUBLICATIONS OF THE ODPP (NSW)

Many ODPP (NSW) publications can be obtained from our web site at www.odpp.nsw.gov.au

Corporate Information

ODPP (NSW) Annual Reports

The Annual Report provides comprehensive information on the Office's major achievements and policy developments, in addition to statistical, financial and management information. The first Annual Report of the Office was prepared for the year ended 30 June 1988.

Access: Copies are available from the ODPP (NSW) Library by telephoning 9285 8912 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Library Services, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. The most recent Annual Report is on the ODPP (NSW) website.

Cost: No charge.

ODPP (NSW) Corporate Plan 2005–2008

The Corporate Plan 2005–2008 contains information on the Office's goals, objectives and implementation strategies which will guide the operation of the ODPP until 2008.

Access: Copies are available from the ODPP (NSW) Library by telephoning 9285 8912 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Library Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

DPP (NSW) Prosecution Guidelines

The DPP (NSW) Prosecution Guidelines were revised and republished with significant amendments (to the original 2003 publication) on 1 June 2007. The Guidelines are applied by persons acting in or representing the interests of the Crown or the Director under the **Director of Public Prosecutions Act 1986 (NSW)**.

Access: Copies are available from the ODPP (NSW) Library by telephoning 9285 8912 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Library Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Statement of Affairs and Summary of Affairs under the Freedom of Information Act 1989

The Statement of Affairs and the Summary of Affairs of the ODPP (NSW) under the *Freedom of Information Act 1989* provide information about the Office's compliance with the Act as at the reporting dates specified in the legislation.

Access: Copies of these documents can be obtained by telephoning the Executive Assistant to the Solicitors' Executive on (02) 9285 8733 between 9.00 am – 5.00 pm weekdays or by writing to the Executive Assistant, Solicitors' Executive, ODPP (NSW), Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Equal Employment Opportunity Annual Report

The ODPP (NSW) **Equal Employment Opportunity Annual Report** provides details of progress in the implementation of the previous financial years EEO Management Plan and details objectives and strategies that are being implemented in the current financial year.

Access: Copies are available by contacting the Manager, Personnel Services on (02) 9285 2584 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Personnel Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232.

Cost: No charge.

Ethnic Affairs Priority Statement

The **Ethnic Affairs Priority Statement** describes the four principles of cultural diversity and the initiatives implemented by ODPP (NSW) to give effect to these principles.

Access: Copies available by contacting the Executive Assistant to the Solicitors' Executive on (02) 9285 8733 or by writing to the Executive Assistant Solicitors' Executive, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232.

Cost: No charge.

Appendix 10 – Publications of the ODPP (NSW) (continued)

Disability Action Plan

The **Disability Action Plan** was developed in accordance with s 9 of the Disability Services Act 1993 (NSW) to ensure the needs of people with disabilities are met.

Access: Available from the ODPP (NSW) Service and Improvement Unit on telephone (02) 9285 8874 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Service and Improvement Unit, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Legal Research Publications

Advance Notes

Published 11 times per year by the Research Unit of ODPP (NSW), **Advance Notes** comprise summaries of judgments of the NSW Court of Criminal Appeal and NSW Court of Appeal and selected High Court decisions.

Access: Advance Notes are available through the Legal Information Access Centre at the State Library of NSW or on an annual subscription basis in paper copy or electronic (Microsoft word) form. For subscription enquiries please contact the Publishing Officer, Research Unit, ODPP (NSW), Locked Bag A8, Sydney South NSW 1232 or telephone (02) 9285 8764.

Cost: \$300 incl GST per annual subscription.

Evidence Act Cases 2000

Please note this publication is no longer available as from 30 June 2007.

Information to Assist Witnesses and Victims of Crime

This brochure combines all previous brochures for witnesses and victims of crimes. It was first published in October 2008. It includes information about:

- the ODPP
- how to contact the Office
- a checklist for the steps of a criminal prosecution
- other ways cases may proceed
- words commonly used in Court
- the processes of the Local Court, District and Supreme Court
- being a witness
- information for Court support people
- the Witness Assistance Service

The brochure also includes descriptions of and information about these services:

- victim impact statements
- the Charter of Victim Rights
- Victims Registers
- witness expenses.

Access: This brochure is issued to witnesses and victims of crime by the ODPP. Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9am and 5pm Monday – Friday. It can also be obtained by writing to the Manager, Witness Assistance Service, ODPP NSW, Locked Bag 8, Sydney South NSW 1232. Also available on the ODPP website.

Appendix 10 – Publications of the ODPP (NSW) (continued)

Information for Court Support Persons

This pamphlet was jointly prepared by NSW Health and the ODPP (NSW) to advise persons providing court support for victims of crime. It offers information on the role of support persons and appropriate behaviour in court.

Access: This pamphlet is issued to court support persons by the ODPP (NSW). Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Victim Impact Statement Information Package

This package was prepared jointly by the ODPP (NSW) and the Victims of Crime Bureau. It contains information to assist in preparing 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: For copies of the package contact the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Supporting Your Child Through a Criminal Prosecution

This pamphlet provides some helpful hints for parents and carers who are supporting a child witness during a criminal prosecution. It also offers guidance for parents and carers in coping with their own concerns about the process.

Access: Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Witness Assistance Service Information Sheet

This information sheet provides information for victims of crime and prosecution witnesses about the services available through the Witness Assistance Service.

Access: Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

APPENDIX II – 2008-2009 EEO ACHIEVEMENTS

The percentage of women employed by the Office was maintained at 62% for the 2008/09 financial year.

The number of women increased in positions of Chief Executive Service and Senior Executive Service (as defined in Appendix 15) increased by 33% in the 2008/09 financial year.

During the 2008/09 financial year 76% of all new starters or staff returning from secondments were women, 4% were aboriginal and 13% were people whose first language spoken as a child was not English.

International Women's Day was celebrated in March 2009. This years topic was Women in Education and Justice Elizabeth Fullerton SC presented a talk on 25 March 2009 to women from the Sydney and Sydney Metropolitan Offices.

APPENDIX 12 – EEO STATISTICS

A. Trends in the Representation of EEO Groups

EEO Group	Benchmark or Target	% of Total Staff			
		2006	2007	2008	2009
Women	50%	61%	60%	62%	62%
Aboriginal people and Torres Strait Islanders	2%	1.4%	1.1%	0.7%	0.75%
People whose first language was not English	20%	14%	16%	17%	15%
People with a disability	12%	6%	5%	7%	5%
People with a disability requiring work-related adjustment	7%	1.9%	1.7%	3.2%	2%

B. Trends in the Distribution of EEO Groups

EEO Group	Benchmark or Target	Distribution Index			
		2006	2007	2008	2009
Women	100	79	80	82	85%
Aboriginal people and Torres Strait Islanders	100	n/a	n/a	n/a	n/a
People whose first language was not English	100	90	92	88	81%
People with a disability	100	94	93	93	96%
People with a disability requiring work-related adjustment	100	n/a	n/a	96	n/a

Notes:

- Staff numbers are as at 30 June.
- Excludes casual staff
- A Distribution Index of 100 indicates that the centre of the distribution of the EEO group across salary levels is equivalent to that of other staff. Values less than 100 mean that the EEO group tends to be more concentrated at lower salary levels than is the case for other staff. The more pronounced this tendency is, the lower the index will be. In some cases the index may be more than 100, indicating that the EEO group is less concentrated at lower salary levels. The Distribution Index is automatically calculated by the software provided by ODEOPE.
- The Distribution Index is not calculated where EEO group or non-EEO group numbers are less than 20.

APPENDIX 13 – GOVERNMENT ENERGY MANAGEMENT PLAN (GEMP)

The Office of the Director of Public Prosecution's (ODPP) GEMP Report 2008 was submitted in October 2008. The next Report is due in October 2009.

The ODPP continues to pursue methods of reducing power usage and subsequent greenhouse emissions by:

- Installing energy efficient lighting whenever new fitouts are undertaken
- Purchasing in-contract electricity including Green Power
- Purchasing energy efficient in-contract equipment
- Promote the use of power-save facilities on equipment
- Leasing fleet motor vehicles that are fuel efficient and contribute to the overall 'green'.

The ODPP also will assist the overall state power usage by re-using timber and steel furniture in its forthcoming relocation fitout. The ODPP will be reusing modular furniture (timber workstations, overhead shelving, bookcases and robe lockers), steel furniture (mobile cabinets) and library shelving. This has been reported in the Office's WRAPP Report.

The General Manager, Corporate Services remains responsible for the energy management within the ODPP. The Manager, Asset and Facilities Management Branch has responsibility for the day-to-day GEMP-related tasks.

The **future direction** and goals of the ODPP under the GEMP include:

1. Achieving a reduction of the statewide total energy consumption by a concerted reuse/recycling plan.
2. Continue the procurement of energy efficient facilities, particularly lighting systems, within Head Office and Regional Offices as relocations and refurbishments occur and planning is undertaken for future offices to be refurbished.
3. Purchasing electricity within Government contracts to ensure the minimum Green Power content is obtained.
4. Continuing to purchase equipment that complies with SEDA's energy star rating requirements.
5. Acquiring fuel-efficient vehicles where opportunities exist and the operational needs of the Office are met.
6. Increasing staff awareness of energy management best practices and implement measures to assist staff to assist the Office.

The achievement of these goals directly relates to the Office's Corporate Plan Key Result Area 3, Goal 3.2, Accountability and Efficiency.

7. The ODPP Sydney offices will complete its consolidation into one building by early November 2009. The building at 175 Liverpool Street has a 4.5 star energy rating for the base building and the Office is hopeful to achieve a 4.5 star tenancy rating as well. The success of our endeavours will be certified and reported in the next Annual Report in 2010.

APPENDIX 14 – WASTE REDUCTION AND PURCHASING PLAN AND RECYCLING

The Office of the Director of Public Prosecutions (ODPP) has a proven commitment to reduce waste and introduce wherever possible recycled products subject to that introduction not having an affect on the operation of the Office's core functions. The key reporting areas in the Office's biennial WRAPP Report to be submitted in August 2009, will describe the ODPP's progress towards waste reduction, purchasing and recycling during the 12 month period 1 July 2008 to 30 June 2009.

Inclusion of WRAPP principles in the Corporate Plan and operational policies and practices

The Office's Corporate Plan 2005–2008, Key Result Area (KRA) 3, 3.2, states that we aim 'to be efficient in the use of resources'. The strategies to achieve this KRA are 3.2.4 'Increase efficiency through improved technology' and 3.2.6 'Manage finances responsibly'. The Office continues to achieve this KRA by upgrading equipment facilities in the form of Multi Functional Devices that will provide efficiencies in high-speed double-sided printing. Efficiencies have been realised in printing time. Paper and consumables consumption and subsequent costs are areas which are under continual scrutiny and methods of realising savings are continually being investigated. While the copying of emails and other information sent electronically use significant amounts of paper, the ODPP is required to make copies of exhibits for the use of the Judge and Jury in trials, using large quantities of copy paper in the process. Because of this requirement on the ODPP, it is difficult to make any savings or lower consumption in this area.

Ensuring contract specifications requiring the purchase of recycled content products where appropriate

The ODPP's purchasing policy complies with government direction and requires purchases to be made under Government contract wherever possible. This ensures the ODPP complies with this key reporting area.

Due to the improvement in the quality of the product, the Office has commenced the use of recycled paper in copiers and printers. Previous use of 100% recycled paper caused major problems, in respect to jamming in the operation of the Office's multi-functional copiers, printers and scanners.

The ODPP does use other recycled products in the course of its operations. i.e. envelopes, post-it notes and writing pads and modular furniture is recycled where appropriate and suitable.

Improving waste avoidance and recycling systems across the agency

The ODPP has implemented recycling measures and provided the facilities to make recycling easy, throughout the Office. A co-mingled recycling system was introduced in Head Office in July 2008. Receptacles are currently provided for paper, cardboard, plastic bottles, tetra packs, cans and glass bottles. Toner cartridges are also collected for recycling. Action has been taken in some regional offices to also implement paper, cardboard, glass and plastic bottles, aluminium can and toner cartridges recycling. It is the ODPP aim to introduce co-mingled recycling programs in each regional office during 2008-09.

The office will also be replacing its current fleet of PCs and monitors. 705 of each items is to be recycled in 2009-2010.

The Office's Sydney Office relocation, to be completed in November 2009, will utilise a substantial amount of existing modular furniture, steel mobile cabinets, chairs, library shelving in its reuse program. The obvious effect on the Project is a bottom line saving, but equally as important is the environmental effect of reduced dumping and additional energy consumption in the manufacture of the equivalent amount of new furniture to replace the old.

Establishing data collection systems to report agency progress

Purchasing records, statistics recorded by equipment (number of copies), surveys, physical checks and data provided by the collection companies, provides the data required by the ODPP to prepare its WRAPP.

Increasing the range and quantity of recycled content materials being purchased

The ODPP has introduced the use of 100% recycled copy paper for use within copying and printing equipment. The ODPP continues to purchase and use other recycled products such as envelopes, post-it-notes, writing pads etc.

Raising staff awareness about the WRAPP and best-practice management of waste and purchasing of recycled content materials

The Office's WRAPP is published on the ODPP's Internet. Recycling programs are 'advertised' by email, in lifts, kitchenettes and notice boards on every floor of the Office. The Office has issued instructions to staff as to best practice methods for the operation of Office equipment to ensure copying and printing is double-sided with the additional option of multiple copies per page printing. The contract cleaners engaged by the Office provide the transfer of recycled waste to the collection points.

APPENDIX 15 – CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE

Number of CES/SES Positions

	Total CES/SES	Total CES/SES	Total CES/SES	Total CES/SES	Total CES/SES
Level:	30 June 2005	30 June 2006	30 June 2007	30 June 2008	30 June 2009
SES Level 1 – \$144,800 – \$169,550	3	3	2	3	3
SES Level 2 – \$169,551 – \$181,900	3	3	2	3	3
SES Level 3	-	-	-	-	-
SES Level 4	-	-	-	-	-
SES Level 5	-	-	-	-	-
SES Level 6 – \$259,851 – \$292,050	-	-	-	-	1
Statutory Appointments					
Under the DPP Act	4	4	3	4	4
Number of positions filled by women	2	2	1	3	4

* The Director of Public Prosecutions, Deputy Director of Public Prosecutions and Solicitor for the Public Prosecutions are statutory appointees, appointed under the Director of Public Prosecutions Act 1996

Staff Numbers

	30 June 2004	30 June 2005	30 June 2006	30 June 2007	30 June 2008	30 June 2009
Statutory Appointed & SES	100	105	105	100	97	94
Lawyers	303	315	324	311	299	301
Administration & Clerical Staff	221	233	225	219	216	211
Total	624	653	654	630	612	606

Appendix 15 – Chief Executive Services and Senior Executive Service (continued)

Recruitment Statistics

	2004/05	2005/06	2006/07	2006/07	2007/2008	2008/2009
Senior Executive Service	0	0	0	0	0	1
Statutory Appointed	0	0	0	0	0	0
Crown Prosecutors	5	2	2	2	1	0
Prosecution Officer (Lawyers)	44	17	25	25	19	28
Prosecution Officer (Admin)	70	73	41	41	45	48
Total	119	92	68	68	65	77

As per Workforce Profile, all new starters within the financial year

CEO Statement of Performance

Name:	Nicholas Cowdery AM QC
Position and level:	Director of Public Prosecutions The Director of Public Prosecutions is a statutory appointment under Section 4 of the <i>Director of Public Prosecutions Act 1986</i>
Period in position:	Full Year
Comment:	The Director is not appointed under <i>Public Sector Employment and Management Act 2002</i> The Director is responsible to Parliament and there is no annual performance review under the Public Sector <i>Employment and Management Act 2002.</i>

APPENDIX 16 – REPORT OF THE CHIEF INFORMATION OFFICER ON MAJOR IM & T PROJECTS DURING 2008-2009

Statistical Performance Management System (SPMS) Activity Based Costing (ABC) and Operational Performance Management System (OPMS)

The OPMS has been discontinued in its current form. It was designed to provide improved reporting capacity from the Office's case tracking system (CASES). As a result of the Auditor General's Report into the efficiency of the Office and the implementation of the recommendations within that report, a new Results and Services Plan has been developed. The SPMS Project has replaced OPMS and will define calculations for the key performance indicators in the Results and Services Plan. It will also define and develop Activity Based Costing reports.

Changes to the Case Management System to capture additional information required for performance indicator reporting have been implemented. A significant number of reports have been developed and are under review. In addition, development work on Activities to be costed and reporting requirements for ABC has been underway during this reporting period.

ICT Infrastructure Upgrades

The Portal Project was underway in the last reporting period and all development work for the Portal has been completed. The present focus of the project is the testing of the improved search facility, including the ability to search using metadata, for the Research System.

JusticeLink

Justicelink is a project of the Attorney General's Department, designed to implement a common case management system across the Local, District and Supreme Courts. It has commenced operation in the Supreme and District Courts and commenced in the Local Court in August 2009. Read only access has been granted to specified users within the Office.

A Joined Up Justice Business Case has been submitted to and approved by Treasury. The purpose of this project is to build interfaces between JusticeLink and related criminal justice agencies. The ODPP and the Legal Aid Commission, who also use CASES, are partners in the development of interfaces between Justicelink, the ODPP and the Legal Aid Commission. Funds have been provided for this joint project. It is anticipated that the interface will be completed in the second and third quarter of 2010. The interface will allow the interchange of information and the electronic filing of documents replacing "read only" access currently available.

Security Certification

The Office's IM&T Information Security management System has maintained its security certification under the ISO/IES 27001 standard.

Office Laptops

Personal computers for all legal staff have now been replaced with laptops. These laptops may be used for the presentation of evidence in court where necessary and allows for work from home.

CASES Documentation Project

This Project was approved by the joint working party between the Office of the Director of Public Prosecutions and the Legal Aid Commission, who recently acquired the system. The project has now been completed, enabling the IM&T Branch to use the detailed technical documentation developed by the project for future development and/or support services of CASES in the Office by iTec (the CASES developer and part owner) or other resources.

APPENDIX 17 – FREEDOM OF INFORMATION ACT 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP)

Period

1 July 2008 to 30 June 2009

Contact

Freedom of Information Coordinator
Deputy Solicitor (Legal)
Telephone (02) 9285 8733

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 functions. A copy of the ODPP Summary of Affairs as at 30 June 2009 under the FOI Act is included at the end of this Appendix.

In the period 1 July 2008 to 30 June 2009 the ODPP received 5 applications under the FOI Act for access to documents. None was granted. Four were refused as the applications sought material relating to ODPP prosecution functions and no documents could be located in relation to the fifth application. The ODPP was consulted on three occasions by Agencies pursuant to s30 of the Act.

During the reporting period:

- No Ministerial Certificates were issued
- All applications for access to documents were processed within the time prescribed.
- No request for the 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.
- No matters concerning the administration of the FOI Act by the ODPP have been referred to the ADT.

	Personal		Other		Total	
	2007-8	2008-9	2007-8	2008-9	2007-8	2008-9
Number received	4	0	55		9	5
Number completed	4	0	5	5	95	5
Total Processed	4	0	5	5	9	5
Results*						
Granted in full	0	0	1	0	1	0
Granted in part	1	0	0	0	1	0
Refused	2	0	3	4	5	4
No documents held	1	0	1	1	2	1
Completed	4	0	5	5	9	5

* See "Summary" section for explanation of results.

Appendix 17 (continued)

Summary of Affairs as at 30 June 2009 Freedom of Information Act 1989 section 14

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 Director of Public Prosecutions (DPP) is set out in the "Prosecution Guidelines of the Director of Public Prosecutions", which were last furnished in their entirety on 1 June 2007. A copy of the Guidelines (which shows the current guidelines and the changes made since they were initially published on 20 October 2003) can be obtained from the ODPP web site, <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 Office of the Director of Public Prosecutions (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 2009.

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 the Executive Assistant, or, in her absence, by arrangement with a member of the Library staff, at the ODPP Head Office at 265 Castlereagh Street, Sydney.

APPENDIX 18 – RISK MANAGEMENT AND INSURANCE – MOTOR VEHICLE CLAIMS REPORT

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

In the 2008-2009 reporting period the Office's motor vehicle claims as at 30 June 2009 numbered twenty-eight (28), representing an average cost per vehicle of \$2,143.00 in claim payments for the four quarters. This compares

with twenty-one (21) claims processed in the four quarters during 2007-2008 (as at 30 June 2008), at an average cost per vehicle of \$1,048.00. The 2008-2009 year represents a significant increase in the overall cost of claims of \$38,000.00 from 2007-2008 despite the increase in claim numbers only increasing by seven (7) claims. This reflects the fact that the claims lodged for 2008-2009 were more than minor damage.

APPENDIX 19 – OCCUPATIONAL HEALTH AND SAFETY PERFORMANCE

The primary OHS focus for 2008-09 was to begin the process of review, planning and implementation of a comprehensive ODPP OHS Management System. Following the OHS Audit completed at the end of the last financial year, a thorough assessment was conducted of the Audit results and a report proposing a direction for the future completed. An OHS Implementation Plan was established and work on this commenced in 2009. While targets have been set for the completion of this Plan, time lines have been adjusted to accommodate the Head Office relocation that is being staged over the course of 2009.

A number of small projects have been undertaken to ensure the overall Implementation Plan maintains momentum during this significant interruption to the workplace. For example, work commenced on establishing new risk assessment and action documents to enable identification and rectification of potential risk to staff in individual offices. Risk assessment tools have been designed to allow for more accurate identification of potential hazards and provide greater accountability for rectification.

Work also began on reviewing current computerised recording systems to ensure information gathering is clear, concise and relevant. It is envisaged that establishing a new reporting system will provide relevant information so that OHS staff, Managers and Executives can analyse and respond.

While the Office has a sound record of injury management, it was evident that work was required in raising staff and management understanding of the process. The Office has targeted risk prevention, accident/incident & workplace injury management documentation to ensure they are relevant, easy to access and easily understood.

The projects that have commenced in 2008/09 have either been implemented or will operate in tandem with current procedures so that processes can be assessed and modifications considered. As the Office returns to some stability following the relocation of Head Office in 2009/10, the focus will return to the OHS Management System project as a whole.

OHS Committee processes have also come under review as a way of raising the profile of OHS and to strengthen the consultative process.

Of course, prevention of injuries remains a high priority for the Office. In an effort to keep workplace injuries to a minimum the level of individual workplace inspections remains high, particularly in the Sydney Metropolitan Offices. Where this is less practical, electronic means of workplace inspections have been established and will continue to be developed over the course of 2009/10.

APPENDIX 20 – OVERVIEW OF THE WITNESS ASSISTANCE SERVICE

The Witness Assistance Service (WAS) provides a specialist frontline service for victims of crime and vulnerable witnesses in ODPP prosecutions. The WAS is based on an integrated proactive model of service delivery for victims and witnesses. WAS Officers work as part of a multidisciplinary prosecution team within the ODPP, and liaise closely with ODPP solicitors and Crown prosecutors in assisting victims of crime and vulnerable witnesses throughout the prosecution process.

The WAS aims to assist the ODPP to meet its obligations under the Charter of Victims Rights (*Victims Rights Act 1996*); to minimise potential stress and re-traumatisation for victims of crime and vulnerable witnesses during the court process; and to enable victims and vulnerable witness to give evidence to the best of their ability. Interagency liaison and collaboration are a vital element of the integrated model of service delivery for the WAS.

From 1 March 2009 the administration of the WAS employee related funding was transferred to the NSW Attorney General's Department (now Department of Justice and Attorney General NSW). Since that time monthly accountability reports on program outcomes have been provided to the department in line with the Funding and Performance Accountability Framework for the Witness Assistance Service.

2008-2009 has been a challenging year for the WAS. Due to the budget constraints faced by the ODPP, WAS faced the threat of severe cuts to staff numbers and possible redundancies. During this period there were also a number of vacant WAS Officer positions for varying durations. These included permanent WAS Officer positions at Bathurst and Penrith, temporary WAS Officer positions (one in Parramatta and three in Sydney) two maternity leave positions including the Aboriginal WAS Officer position at Sydney and one at Campbelltown toward the end of the financial year. Budget considerations and later staff freezes have resulted in these positions remaining vacant which has placed additional pressure on the service.

The *WAS Interim Strategy* was implemented across NSW in early 2008 to assist in managing the impact of the vacant positions at that time. This was extended during 2008-2009 in locations where vacancies still exist. WAS Officers have continued to strengthen priorities for service delivery and where necessary lists of matters awaiting allocation or registration have been created. While these strategies have enabled the service to cope with limited resources, this impacts on the availability of the service to some groups of victims and witnesses and compromises the quality of services, early contact and the pro-active nature of service delivery.

During 2009 the WAS based at Sydney Head Office was involved in planning for relocation to new premises in August 2009 and co-location with legal groups within the ODPP. Co-location will greatly assist in consolidating an integrated and multidisciplinary approach to supporting victims and vulnerable witnesses through ODPP prosecutions. Improved victim and witness facilities are also being incorporated into the plans for stage two of the relocation of the ODPP head office which will be completed in October 2009.

Regional Witness Assistance Services

The WAS position at Bathurst ODPP has been vacant since June 2008. With the expected closure of the Bathurst office this position has been transferred to the Dubbo Office but as yet remains vacant.

Travel is a constant for WAS officers in country areas. The increase in the number of country circuits during 2008-2009 has especially impacted on the amount of time spent travelling for country WAS Officers, including travelling on some weekends. This impacts both on availability and work life balance. At the Dubbo ODPP WAS Officers have estimated that approximately a third of their time is now spent travelling in order to provide a service.

WAS Officers in the regions have been working closely with the local NSW Health Sexual Assault Services (SAS) and other services like the Salvation Army who can assist with providing court support and domestic violence services. In some country areas other agencies have difficulty recruiting and retaining staff; this can greatly impact on the workload of WAS Officers by requiring them to be more available to provide court preparation and court support for vulnerable witnesses.

State-wide Standards and Information Available for Victims and Witnesses

During 2008-2009 the ODPP reviewed its publications, information and victims contact procedures for Victims and Witnesses. A consolidated procedures document for ODPP officers "*Victims Rights and Obligations: Consolidated ODPP Procedures*" was published to coincide with publication of the new amalgamated "*Information for Witnesses*" booklet. As part of this process, the content, style and format of letters that WAS sends to victims was reviewed.

Appendix 20 – Overview of the Witness Assistance Service (continued)

As part of the development of the "Victims Rights and Obligations: Consolidated ODPP Procedures" document, the Witness Assistance Service (WAS) reviewed the "WAS Best Practice Early Referral Protocol" to ensure continued proactive service delivery in WAS priority matters.

WAS Officers across NSW have also participated in a number of project working groups to assist in the development of statewide standards procedures. Project outcomes included standardised service contacts and miscellaneous contacts, weighting of WAS files and standardised templates for WAS e-mail communication.

Service Delivery 2008-2009

(see also – Victims and Witnesses Services Key Results Area 2 and Appendix 4)

In 2008-2009 there were 2193 new WAS registrations. The number of new WAS referrals in 2008-2009 is 163 less than last year and 307 less than in 2004-2005 when the service had been enhanced and had a staffing establishment of 34.6. This, in keeping with the implementation of the *Interim WAS Strategy*, reflects the ongoing need to strengthen priorities as staffing numbers continue to decline.

The majority of the 2193 new referrals to WAS were obtained via early referrals (1411) or received from ODPP solicitors (551); indicating the effectiveness of the *WAS Best Practice Early Referral Protocol*. Non-priority matters are referred to WAS by ODPP solicitors and Crown Prosecutors where there are vulnerable victims or witnesses. Crown Prosecutors referred 18 victims or witnesses to WAS in this period.

Sexual Assault and Domestic Violence Victims and Witnesses

Fifty nine percent (59%) or 1310 out of 2193 new WAS referrals in 2008-2009 were victims / witnesses in child and adult sexual assault matters. Where relevant, WAS Officers have assisted the ODPP in referral of relevant victims of sexual assault to the Sexual Assault Communications Privilege Pro Bono Pilot Project.

During 2008-2009 there were 185 new registrations for victims in domestic violence related matters. Charges laid by police are now required to be identified as domestic violence related and this has greatly assisted WAS in identifying victims of serious domestic violence in ODPP prosecutions, thus enabling victims better access to services.

Children and young people as victims and witnesses

WAS prioritises all children and young people as victims and witnesses. The WAS aims to ensure that child witnesses receive specialist court preparation and court familiarisation suited to their individual developmental needs. WAS Officers also coordinate appropriate court support for children or young people giving evidence. Court support is often provided by WAS Officers in the remote witness facilities where children can give their evidence via closed circuit television. The WAS is committed to ensuring that children and young people who are victims or witnesses of crime are referred to appropriate counselling and support services and that the referrals are made in the best interest of the child.

Child sexual assault (CSA) matters are a priority for WAS. Child witnesses and victims and their parents and carers in these matters constituted 29.4% of all new registrations. During 2008-2009, 592 of the children and young people under 18 registered with WAS were victims or witness in CSA matters with 18 under the age of 6; 87 between the age of 6 and under 10 years; and 418 children and young people aged between 10 and 16 years. In the 16 and under 18 year group 69 were victims in child sexual assault matters.

18 of the children and young people registered with WAS during 2008-2009 were victims or witnesses in adult physical assault matters (the majority being domestic violence related); 18 children and young people registered were victims or witnesses in matters involving death such as homicide and dangerous driving and 68 were victims or witnesses in child physical assault related matters.

Aboriginal Victims and Witnesses

WAS continues to prioritise services for Aboriginal and Torres Strait Islander victims and witnesses. The three Aboriginal identified WAS Officers each cover approximately a third of the state. As such they have heavy caseloads with a high travel component.

The Aboriginal WAS Officer position at Dubbo was filled during this period. However the Sydney based Aboriginal WAS Officer went on maternity leave in January 2009. Unfortunately her position has remained vacant since that time and specialist services to Aboriginal victims and witnesses in the Sydney, Sydney West and South West areas have been limited. The two remaining Aboriginal WAS Officers and the generalist WAS Officers have assisted as best they can. The return of this officer in January 2010 will be very welcome.

Appendix 20 – Overview of the Witness Assistance Service (continued)

In 2008-09 the number of Aboriginal and Torres Strait Islander victims and witnesses registered was 182, approximately 8.2% of the overall new WAS registrations. The graph on page 48, shows the break down of new WAS registrations of Aboriginal victims and witnesses by matter type. Of those Aboriginal victims and witnesses receiving a service by WAS, 45.3% were victims / witnesses in child sexual assault matters which is a considerably higher proportion than the 29.4 % for general WAS registrations.

The ODPP continues to respond to the *NSW Interagency Plan: To Tackle Child Sexual Assault in Aboriginal Communities 2006-2011*. WAS has assisted the Department of Corrective Services in the script development (both legal and victim issues) of the Aboriginal Child Sexual Assault Community Awareness Raising DVD Package. An MCLE session is scheduled for September 2009 titled **Communicating with Aboriginal People**, presented by Dr Diana Eades. Dr Eades is an Honorary Research Fellow at the University of New England and her work is of particular interest to the legal profession.

Professional development

WAS staff are committed to ongoing professional development and ensuring that they are abreast of developments in the areas of criminal justice system, victimology, best practice in witness preparation, disabilities, child development, cultural awareness, professional boundaries, ethics and relevant professional fields in the areas of social work and psychology.

Due to budget constraints during 2008-2009, professional development opportunities for WAS Officers have been more limited. The WAS has been unable to hold a WAS state-wide conference for the past 18 months and regional WAS meetings have been infrequent. The WAS Managers conducted three presentations for the WAS regional groups on maintaining professional boundaries – an area which is challenging for all professionals working with victims and witnesses affected by trauma, grief and loss.

Where possible WAS Officers have taken advantage of local seminars and attending relevant ODPP MCLE sessions. E-POP has enabled some regional WAS Officers to also participate in MCLE sessions held in Sydney. Several WAS Officers have self funded their own professional development.

Examples of training and conferences attended:

- The WAS Manager was the sole NSW attendee at the *National ODPP WAS Conference* in Perth Western Australia in April 2009
- The Senior WAS Officer based at Newcastle attended the *National Victims of Crime Conference* held in Adelaide in October 2008
- WAS Officers at Wagga attended an *ECAV Family Violence in the Aboriginal Community* workshop
- The Senior WAS Officer at Sydney West and a Sydney WAS Officer attended a 3 day *Clinical Supervision* workshop run by the Institute of Family Practice
- The Senior WAS Officer based at Wollongong attended the *Happiness and Its Causes Conference* at her own expense
- A Sydney WAS Officer attended a *Grief and Bereavement in Contemporary Society* 3 day workshop at her own expense
- *People with Cognitive Disability and Mental Health Impairment and the Criminal Justice System* free Law Week Seminar by NSW Law Reform Commission
- *Crime Against and the Policing of Emerging Communities* Free Seminar presented by Institute of Criminology Sydney University.

Education, Training, Presentations and Consultation

The WAS Manager, WAS Officers and the SALO conduct a number of training and community education presentations throughout the year. These have included:

- ODPP Legal Development Program
- NSW Sexual Assault Services Specialist New Worker Training programme run by the Education Centre Against Violence
- Mission Australia Court Support Service volunteers
- Presentation for NSW Rape Crisis Centre
- Domestic Violence Court Intervention Model conference
- Wagga WAS Officers assisted with training for local SANE nurses with NSW Health.

Appendix 20 – Overview of the Witness Assistance Service (continued)

Interagency Committees, Liaison and Consultations

WAS Officers liaise regularly with both government and non-government agencies. In particular WAS is appreciative of the liaison with police, court staff, sexual assault services, victims services, victim support groups and the range of court support services with whom they work closely.

During 2008-2009 the WAS represented the ODPP on a number of interagency committees, forums, reference and working groups related to victims and witness issues and consultations:

- Victims of Crime Interagency Forum
- Sexual Assault Review Committee
- Justice Sector Disability Action Plan Senior Officers Group
- Senior Officers Group review of court preparation materials
- Working group to review court support standards
- Reference group for review of victims services in NSW
- NSW scoping study on one stop shop service delivery model for adult victims of sexual assault conducted by NSW Health
- Launch of the Aboriginal and Torres Strait Islander Contact Line at Victims Services
- Aboriginal WAS Officer at Dubbo attends the Dubbo Aboriginal Community Justice Group.

The ODPP and WAS assisted the Attorney General's Department with:

- development of the Sexual Assault website
- development the Sexual Assault Fact Sheet
- development of the fact sheet "Charter of Victims Rights No. 10 Return of property held by the State" and
- development of the NSW Standardised Domestic Violence Package.

The WAS Manager and Sexual Assault Liaison Officer (SALO) participated in the consultations on the *Barriers to Human and Legal Rights for Persons with Cognitive Impairment*. This was conducted by the Disability Studies and Research Institute and People with Disability Australia and funded by the Law and Justice Foundation. Its purpose was to conduct

a small participatory research project into the barriers experienced by persons with cognitive disability to the realisation of their rights to freedom from abuse, neglect and exploitation. As a follow-up the WAS Manager was invited to attend the 'Rights Denied' – *Toward a National Policy* agenda on abuse, neglect and exploitation of people with cognitive disability in May 2009.

The WAS Manager and SALO were consulted by Intellectual Disability Rights Service as part of a project to develop a resource for police interviewing victims of sexual assault with intellectual disabilities.

In April 2009 Sydney and Sydney West WAS hosted an interagency liaison meeting with Homicide Victims Support Group. This included a shared professional development session on the *Mental Health (Forensic Provisions) Act 1990: Legislative changes and the implications of such changes and MHRT Forensic Patient Register*, which was presented by Sarah Hanson from the Mental Health Review Tribunal.

Regional WAS Officers have liaised with many local services such as sexual assault services. In Newcastle the local Sexual Assault Service and Welfare Coordinators for Department of Education and Training were invited to attend the MCLE on Sexual Assault Communication Privilege. During the past year WAS Officers in some areas have missed being able to attend local JJRT co-ordination meetings after these meetings were restructured as local JJRT management meetings. It is hoped that this liaison can be enhanced in the future.

National and International Liaison, Research and Networking

A number of prosecution authorities in other state and international jurisdictions have again consulted with the NSW ODPP and WAS in regard to development of similar services within their own jurisdictions.

The WAS Manager presented two papers at the National ODPP WAS Conference in Perth in April 2009 and was also invited to participate in a panel presentation for Western Australia DPP.

During 2008-2009 the ODPP and WAS provided support for research conducted by the University of NSW on "Prosecutorial decision making in child sexual assault cases in NSW" conducted by Dr Rita Shakel.

APPENDIX 2I – OVERSEAS TRAVEL INFORMATION

I JULY 2008 – 30 JUNE 2009

Cowdery AM QC	ISRCL (International Society for the Reform of Criminal Law) Conference – Dublin, 11-15 July 2008	Request date: 15 April 2008 Approval date: 21 April 2008 Director attended conference during recreation leave.
Cowdery AM QC	IAP (International Association of Prosecutors) Annual Conference – Singapore, 26-31 August 2008	Request date: 29 February 2008; 8 August 2008 Approval date: 26 September 2008 Director attended conference during recreation leave.
Cowdery AM QC	Attorney General's International Forum: Providing Justice in Big Cities Around the World – Mexico City, 30 September – 3 October 2008	Request date: 23 September 2008 Approval date: <ul style="list-style-type: none"> ■ oral approval 22 September 2008 ■ written approval 15 October 2008 Paid for by Mexico City. Level of sponsorship: <ul style="list-style-type: none"> ■ absent on duty 30 September-3 October 2008 (3 days: 40mins) ■ incidentals only; total travel allowance: \$105.70
Cowdery AM QC	Fiji Prosecutors' Annual Conference – Fiji, 8-10 December 2008	Request date: 13 November 2008 Approval date: 26 February 2009 Director attended conference during recreation leave
Cowdery AM QC	3 rd World Summit of Prosecutors General, Attorneys General and Chief Prosecutors – Bucharest, 24-25 March 2009	Request date: 24 February 2009 Approval date: 9 March 2009 Paid for by Romania. Level of sponsorship: <ul style="list-style-type: none"> ■ absent on duty 23 March-27 March 2009 (3 days: 1 hour) ■ incidentals only; total travel allowance: \$115.70
Cowdery AM QC	Solomon Islands ODP's workshop and launch of Prosecution Policy – Honiara, 13-14 May 2009	Request date: 24 April 2009 Approval (oral) date: 11 May 2009 Paid for by RAMSI (Regional Assistance Mission to the Solomon Islands) Level of sponsorship: absent on duty 12-15 May 2009 (3 days: 1 hour)
P.M. Miller	Tonga 9-16 August 2008	Review of Criminal Trial in Rex vs Amone and ORS Daily allowance: \$ 506.88

APPENDIX 22 – INTERNAL AUDIT AND RISK MANAGEMENT

System Reviews and Program Evaluations.

- A new Audit and Risk Committee was established with two external members (one of whom chairs the meetings). A new charter was developed and the Committee meets on a quarterly basis.
- The Fraud and Corruption Risk Action Plan was reviewed in April 2009 for relevance and currency. The Audit and Risk Committee commissioned an independent review of the Internal Audit process within the Office, which is currently under consideration.
- The Audit and Risk Committee commissioned the review of the critical issues in the prosecution process at Newcastle Region Office. Minor deficiencies were identified and a management plan was prepared and implemented to address these deficiencies. A follow-up review was conducted after 6 months to determine the effectiveness of the management plan. The progress of this plan was reported to the Committee at each meeting.

APPENDIX 23 – CONSULTANTS

Consultants 2008-2009

(a) Consultancies equal to or more than \$30,000

Consultant	Category	Name of project and purpose	Cost excluding GST
The Australian Centre for Value Management Pty Limited	Management Services	Financial and Economic Evaluation of Office accommodation	\$69,350
Internal Audit Bureau of NSW	Management Services	Advice regarding assessment of risk management strategies	\$71,250
Total consultancies equal to or more than \$30,000			\$140,600

(b) Consultancies less than \$30,000

During the financial year 2008/09 other consultancies were engaged in the following areas:

Category	Cost excluding GST
Information technology	\$17,092
Accommodation review	\$1,650
Total consultancies less than \$30,000	\$18,742
Total Consultancies	\$159,342

APPENDIX 24 – ETHNIC AFFAIRS

PRIORITY STATEMENT

During the 2008 – 2009 reporting period the Office of the Director of Public Prosecutions (ODPP) has sought to maintain its commitment to the Community and Ethnic Affairs Priority Statement. Our determination to serve our stakeholders and to ensure access to the criminal justice system to all people continues.

Last year we were able to report on our progress with the implementation of a Memorandum of Understanding with the Community Relations Commission and the NSW Attorney General's Department. The Memorandum's objectives are to ensure no person involved in proceedings in the Local, District or Supreme Court will be disadvantaged at any stage.

The Office has maintained the practices that result from that memo to the benefit of the community.

Witnesses and accused are entitled to access interpreter services free of charge.

Witness Assistance Service

The ODPP Witness Assistance Service (the WAS) prioritises service delivery to certain vulnerable witnesses and special needs groups, including people who experience cultural or language barriers. WAS Officers liaise and consult directly and regularly with ODPP solicitors and Crown Prosecutors in relation to the special needs and support issues for victims and witnesses when attending conferences with a lawyer and when required to give evidence at court.

WAS Officers utilise interpreter services for both face-to-face and telephone contacts with victims and witnesses who are more comfortable communicating in the primary language spoken. WAS Officers also assist victims with writing their victims impact statements utilising both interpreters and translation services as required. The interpreter service number is prominently displayed on WAS brochures published by the ODPP. The WAS also has a number of brochures relevant to the legal process which are printed in a range of languages and these are provided to victims of crime where appropriate.

Interagency Groups

The ODPP is involved in a number of interagency boards and committees which address issues for victims of crime and vulnerable witnesses. The ODPP participates in a number of committees and consultation processes where cultural and linguistic diversity are considerations and where representatives of ethnic communities are involved.

Training

All training programs conducted by the ODPP for its staff have 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 sensitively with victims and witnesses continue to be run regularly.

In April 2009 the Manager, Witness Assistance Service and an ODPP solicitor attended the "Crime Against and the Policing of Emerging Communities" seminar presented by the Institute of Criminology University of Sydney, together with NSW Department of Justice and Attorney General and CHD Partners.

International Delegations

The Global Economic Crisis has been responsible for a marked decrease in the number of visits from international delegations over the last financial year.

The ODPP has hosted only seven delegations over that twelve month period.

Three of the delegations who visited in 2008 – 09 were organised through Australian Government human rights organisations. In August 2008 and February 2009 the Director and a Deputy Senior Crown Prosecutor addressed a group of middle-level managers and decision-makers from various Iraqi ministries on the structure of the NSW legal system and the process of criminal prosecutions. Both visits were organised by the Human Rights Training Program (HRTP). The aim of these visits was to introduce Iraqi officials to Australia's human rights institutions, policies, protections and organisations and to create an understanding of how these bodies function and interact with government.

A delegation from the Supreme People's Prosecution Office of Vietnam met with the Director and Senior Crown Prosecutor when they undertook their Criminal Justice Study Visit in November 2008. This was organised by the Australian Human Rights Commission and proved beneficial to hosts and guests.

Usually the ODPP will host, on average, two Chinese delegations a month but over the last year there have been only two Chinese delegations: in August the Lawyers' Association from Guangdong Province were addressed by a Crown Prosecutor and the Director and in November the Chief Judge and Vice Chairman of the Guangdong Judges Association met with the Director.

In May 2009 the ODPP hosted its first visit from Maldives and Sri Lankan prosecutors and a delegation from Taiwan met with the Director and Deputy Director in June.

APPENDIX 25 – STAFF AWARDS

23 Staff celebrated 10 years with the ODPP.

27 Staff celebrated 20 years with the ODPP.

2008 Director's Service Excellence Awards

The Director's Service Excellence Awards were approved on 1 February 2000 and are presented annually. The awards were implemented to allow the Director to formally endorse the efforts and commitment of individuals and teams in striving for excellence in professional service. These awards are designed to recognise excellence in both individual and team performance by all staff and Crown Prosecutors.

Individual awards were presented to:

George Galanis, Level 2 Lawyer.

George was nominated because of his outstanding work ethic. He always produces work of the highest standard and is an exceptionally hard working lawyer considering the demands of some of the matters he has worked on. George is innovative in his work and is always looking to improve both his standard of work as well as the work practices of the Court of Criminal Appeal Unit.

Keith Alder, Crown Prosecutor.

He was nominated because of his excellent knowledge of the criminal law; his mentoring and staff development skills; his outstanding communication and problem solving skills; and his standing with both internal and external stakeholders.

A team award was presented to the Penrith Region Office.

The Penrith Region Office was nominated for the outstanding teamwork and dedication to excellence whilst dealing with significant challenges. During a time of increasing workload and diminishing resources, there has been a collegiate approach and concerted effort by all members of staff; to ensure the standard of work did not suffer regardless of the challenges faced. This "all encompassing" Region Office structure is what allowed the fostering of an effective team, a team that can bond and rise to meet any challenge.

I. Code of Conduct

The Code was not amended during the 2008/09 financial year.

APPENDIX 26 – SOME CASES DEALT WITH DURING THE YEAR

R v GORDON WOOD – murder

In June 1995, Caroline Therese Byrne was a 24 year old model and deportment instructor at June Dally-Watkins. She was living in a de-facto relationship with the accused, Gordon Eric Wood, who was then a 32 year old driver and assistant to well-known Sydney Stock Broker Rene Rivkin.

In the early hours of the morning of 8 June 1995, the body of Caroline Byrne was found at the base of The Gap at Watson's Bay by Police Rescue Unit officers. She was wedged headfirst into a crevice up to her waist and only her legs and shoes were visible.

Although there were suspicions among the police officers attending that morning, the matter was originally deemed to be a suicide and no crime scene photographs were taken.

Following a thorough investigation by Inspector Paul Jacob and his team including Sergeant Paul Quigg, Sergeant Matt Moss and Bianca Comina, the case was referred to the state coroner of NSW who returned an open finding and referred the matter to the DPP for advice. It was directed that there was sufficient evidence to commence proceedings against Gordon Wood for the murder of Caroline Byrne.

The trial commenced on 21 July 2008 in NSW Supreme Court. Senior Crown Prosecutor Mark Tedeschi QC prosecuted. He was Junioered by Ken McKay Crown Prosecutor and instructed by Meaghan Fleeton. On 6 August 2008 the trial was aborted due to suspected jury misconduct in that it was alleged some of the members of the jury had attempted to go out and visit The Gap alone.

The second trial commenced on 20 August 2008 with a jury of fifteen members being empanelled and lasting four months. During that time the Crown called over 140 witnesses and tendered over 200 exhibits. The jury were taken on three views of The Gap during the course of the trial – once at the commencement of proceedings, the second time at night and lastly to view the scene shortly before they retired to consider their verdict.

The trial attracted an overwhelming level of national and international media interest. Among witnesses called for the Crown was former Senator Graham Richardson, June Dally Watkins, actress Tania Zaetta, John Singleton and the voice of Rene Rivkin in an interview he made with police pre-dating his death.

The Crown case was that in killing Caroline Byrne, Gordon Wood was motivated by anger, possessiveness, resentment and a sense of powerlessness arising from Ms Byrne's wish to terminate their relationship. He was also motivated by the fear of losing his position with Mr Rivkin, who was under

some strain because they had both been called to give evidence at ASIC in relation to the fire at the Offset Alpine Printing Company. The Crown case alleged that Gordon Wood had disclosed confidential information to Ms Byrne, the disclosure of which could be extremely damaging to himself and Rene Rivkin if she was no longer bound by ties of loyalty to him.

The vastly intricate circumstantial case recreated the last days of the life of Caroline Byrne. Evidence was adduced that revealed the manner in which Gordon Wood isolated Ms Byrne: calling her employer and feigning an illness on her behalf and making an unsuccessful attempt to obtain a Doctor's certificate from his General Practitioner for her. To friends and family Ms Byrne's demeanour was normal, happy and confident although she was suffering some effects of the flu. Caroline was enjoying her work but admitted to friends that she having some relationship troubles.

On the day Caroline Byrne died she did not attend work, nor did she make any calls. She did not return any messages left on her answering machine. Witnesses saw both Gordon Wood and Ms Byrne in Watson's Bay Park in the afternoon and at various times throughout that day, Ms Byrne's white coloured Suzuki Vitara was seen parked just near The Gap. Gordon Wood denied being at The Gap at all that afternoon.

During that evening a witness heard a girl's voice in distress and intense arguing between Caroline Byrne, Gordon Wood and another man standing nearby. About 11.30pm, that witness and two fishermen sitting at the southern end of The Gap heard a female scream in terror. The Crown case alleged that at this time the argument between Gordon Wood and Caroline Byrne culminated in Gordon Wood violently attacking Caroline Byrne and throwing her from the cliff top to her death.

The Crown relied on Professor Rodney Cross, a Physics expert from the University of Sydney who gave compelling evidence about the placement and disposition of Ms Byrne's body, and likely velocity with which she met her death. The only conclusion from the evidence of Professor Cross was that Ms Byrne was thrown head first from a particular ledge at the northern end of The Gap, (referred to as the north ledge) by a strong person using a spear throw.

A significant issue at trial was the identification of the precise location in which Caroline Byrne's body was found as no photographs were taken at the time. The officer Sergeant Mark Powderley who found and retrieved Caroline Byrne's body was able to precisely identify the location due to the unique features of the rock platform at that location. That evidence was backed up by comprehensive examination, surveying and filming of the area and other locations at the base of The Gap. The implication of the exact location

Appendix 26 – Some Cases dealt with during the year (continued)

of the body demanded the commission of a scale model made of The Gap which became an exhibit and was used by witnesses to demonstrate their evidence and remained in front of the jury for the entire trial.

Gordon Wood engaged in a concerted course of obfuscation to hide his involvement in Caroline's death. This included feigning an initial brief search for her; ringing her father and brother and bringing them to The Gap, feigning a further search with them, and then reporting her missing to the Rose Bay police station. It included the manufacturing of a detailed false story accounting for his and Ms Byrne's movements during the afternoon and evening of 7 June 1995. Gordon Wood pretended to "find" Caroline's body, although it was pitch black and until police rescue officers arrived with a high powered Mitrolux torch, visibility was impossible. Gordon Wood not only knew exactly where Caroline Byrne's body was, he knew that it was wedged into the rocks head first, and when questioned about how he knew to come to The Gap, he claimed that her spirit had drawn him there.

Over 10 years, Gordon Wood engaged in a lengthy and protracted process of convincing everyone that Caroline Byrne had committed suicide. This included providing false and misleading information during many interviews with Police and during television interviews. Gordon Wood did not, however, choose to give evidence at his trial.

At the completion of Justice Barr QC's summing up the jury was reduced to 12 by balloting 12 names and those 12 selected then retired to consider verdict. This is the first trial in NSW to utilise these provisions.

The jury returned a verdict of guilty on 21 November 2008.

Gordon Wood was sentenced on 4 December 2008 to an effective sentence of a non-parole period of 13 years. The overall sentence is 17 years and 4 months. He will be eligible for release on 20 October 2021. His overall sentence will expire on 20 February 2026.

He has lodged a notice of intention to appeal but has not lodged an appeal to date.

R v JEFFREY GILHAM – murder

Jeffrey Gilham was a university student living in a converted boat-shed at the bottom of his parent's yard in Woronora, Sydney. In the early hours of the morning of 28 August 1993 his parents and brother were stabbed to death and the house was set on fire. At about 4.30am Mr Gilham came to a neighbour's home raising an alarm. He stated that his brother had killed his parents and set them on fire. He then admitted to having stabbed his brother to death. Emergency services were called.

The firemen arrived and entered the premises to find charred remains of Mr Gilham's father, Stephen, facedown in the bedroom. The body of his mother, Helen, also heavily burnt, was in the lounge room lying on her back. Downstairs the body of his brother, Christopher, was unaffected by fire. He was lying on his back clothed in a shave coat with a knife propped against his body near his left hand. All three deceased had multiple grouped stab wounds. Stephen had 16 grouped in the front of his chest, Helen had 13 grouped in her back and Christopher had 14 grouped to the front chest.

Mr Gilham was taken to the police station and interviewed by investigators. He told police that he had been sleeping in the boatshed that morning when he heard his mother's screams over the intercom. He stated that he had got up and ran to the main house. Inside he said he saw his brother standing over the body of his mother. He said that Christopher told him that he had killed his parents and then he watched as Christopher lit his mother's body. Gilham then stated that he walked to where his mother lay and stood there for some seconds watching the fire spread. He then walked over to where his brother had dropped a knife. He stated that he picked it up and then chased his brother down the narrow spiral staircase that led to the lower storey of the house where he then stabbed his brother to death. He then came up the spiral staircase and left the house, closing the sliding glass door behind him and went to the neighbour's house.

Gilham was originally charged with the murder of his brother, after which he returned to the premises with the police and participated in a walk-through video, showing them what had (on his version) occurred. As part of this walk-through police pointed out to Gilham a piece of garden hose that had been cut. The cut portion was located near an open jerry can that held a small amount of petrol. Gilham explained that he and his father had used the hose the night before to siphon petrol for a boat but stopped when they realised it was the wrong type of petrol.

Appendix 26 – Some Cases dealt with during the year (continued)

The original police investigating the incident never charged Gilham with the murder of his parents. He spent one month in custody in respect of the murder of his brother before released to bail.

On 05 April 1995 Gilham appeared before Mr Justice Abadee for the murder of his brother. The Crown accepted a plea of guilty to manslaughter in full discharge of the indictment. Gilham was placed on a good behaviour bond for a period of 5 years.

A coronial hearing later that year concluded Christopher had killed his parents. That remained the position until members of the family on the father's side had cause to withdraw their support for Gilham. Gilham's paternal uncles came to the belief that he, and not Christopher, had killed his parents.

As a result a further investigation took place and the Coroner once more reviewed the matter. In April 2000 the Coroner referred the papers to the Director of Public Prosecutions so that he could consider proceeding against Gilham for the murder of his parents. The Director decided to take no further action.

In 2004 there was an inquiry into the earlier investigations and in October that year a re-investigation of the death of the parents commenced. As a result a brief of evidence was sent to the Director and on 21 February 2006 an ex-officio indictment was filed in the Supreme Court, charging Gilham with the murder of his parents.

Gilham sought a stay of the indictment on the grounds that the trial would be oppressive, unfair or in breach of the rule against double jeopardy. On 21 March 2007 that application was refused. An appeal against that decision was dismissed on 26 November 2007 and special leave to appear was refused by the High Court on 08 February 2008.

On 11 February 2008 a jury was empanelled to hear the trial but they were discharged on 10 April when they were unable to agree upon a verdict.

The second trial of Gilham commenced on 13 October 2008.

It was a circumstantial case and the jury were asked to consider a number of different aspects in the trial.

The Crown's case was that Gilham had been intending for some weeks prior to the killings to murder his parents. Meanwhile the defence argued that the killings were frenzied attacks by a person deranged as a result of some spur of the moment emotional or psychiatric disturbance. It was put to the jury by the defence that it was more likely to be the work of Christopher than Jeffrey Gilham.

Mr Gilham had told the Police that his father and brother were arguing in the week's leading up the offence, and had even engaged in some "pushing and shoving". However, the only suggestion that Christopher was aggressive towards anyone came from Gilham himself. Christopher's friends described him as a gentle person without the slightest suggestion of hostility in his character to anyone or about anything. The Crown submitted that any concerns expressed by Gilham about Christopher's behaviour were part of the planning of the murders, in order to ultimately shift the blame to Christopher.

The Crown case that at some time in the morning of the murders he attempted to siphon petrol from one of the motor vehicles in order to accelerate the fire. Being unable to do so successfully, he looked for some other means and found mineral turpentine, an accelerant later detected on the carpet in the house. Shortly before the killings Mr Gilham took off his clothing and shoes and left them in the lounge room, where they were recovered after the emergency services attended the scene. He first killed his father, then his mother and then Christopher. He lit the fire and waited for it to take hold. He closed the sliding door as he left the house in the belief that it would either help the fire spread or hide it from the neighbours. He washed himself before he went to the neighbour's to raise the alarm.

The plausibility of the account given by the accused was scrutinised at the trial. The jury were invited to consider, amongst other matters,

- The similarity in stab wounds between all three deceased
- The absence of blood spatter on the accused (bearing in mind he had already admitted to stabbing his brother a number of times)
- The contrast in the timing of the sequence of events as described by Gilham in his version to the objective evidence of time given by neighbours and emergency services
- The explanation for the cut hose and jerry can of petrol (bearing in mind his father was an experienced sailor who had no plans to go sailing early the next day).
- His description of the spread of the fire.

The jury found Gilham guilty of both counts of murder on 28 November 2008 after deliberating for 8 days.

On 11 March 2009 Justice Howie sentenced the offender to life imprisonment on each of the charges.

A Notice of Intention to Appeal the conviction and sentence has been lodged.

Appendix 26 – Some Cases dealt with during the year (continued)

R v ROBERT HOLLAND – child sexual assault

In September and October 2007 Robert Holland was charged with numerous allegations of sexual offences involving 19 different complainants. In November 2008 he was committed in Newcastle Local Court on 99 counts of sexual offences against 19 teenage boys and girls (now men and women) covering a period from 1969 to 2006.

Robert Holland ("Holland") was born in 1946 and grew up with four siblings. During the late 1960s and 1970s he and his extended family lived in various suburbs in the Newcastle area.

The complainants were members of his family, children he met while working at an amusement centre and children with difficult family backgrounds who were placed in his care. From the late 1970's Holland volunteered as a support person at a Police station, at a home for troubled boys and in the Courts, wherein a number of the children were placed in his temporary foster care or bailed to his address.

In 2007 the first complaint was made to Charlestown Police. As a result of Police investigations and later media attention a number of other men and women came forward with similar complaints.

Typically the complainants alleged that the sexual assaults had occurred at night whilst they were sleeping at Holland's home or at remote locations that Holland had taken them to in his car. Holland would tell the children not to tell anyone as no one would believe them and on occasion threatened the children to keep quiet.

Four complainants were members of his family. Holland was found guilty on 25 counts of sexual offences against two of them.

Holland first sexually interfered with those two complainants when they were between 5 and 8 years old. Once the boys were around 11 and 12 years old the abuse took place regularly and continued until the complainants were about 16. Holland exploited his position as the victims' uncle and trusted family member to gain regular access to them for purposes of sexual gratification. He used his family connection with the victims to create situations where he was alone with them – calling them into various rooms in the different homes where he lived or taking them on outings and trips. Holland fostered common interests with them particularly in mechanical things such as cars, motorcycles, boats, speedway racing and slot-car racing. Holland exploited those common interests and was consequently able to organise a whole range of activities where he was alone with them.

The first victim to complain to Police was boy who was 12 years old when he first met Holland at the amusement centre. At that time the boys' parents were separated but his mother had re-partnered. That relationship met with increasing conflict, involving physical violence, directed by her partner to the boy. As a result the boy avoided spending time at home and regularly went to the amusement centre. It was at this centre that Holland fostered a relationship with the boy. Holland deliberately arranged situations where he was alone with the boy and exploited the boy for sexual purposes. This ongoing sexual misconduct began with the offender offering to drive the victim home from the amusement centre as a pretext for taking him to remote locations in the Newcastle district and then committing various sexual acts with him. Holland took the boy on these drives on numerous occasions over a 12 month period.

By late 1977 the boy's family situation had worsened and following a discussion with the boy's mother, the boy was placed in Holland's care as a boarder at his house. When the boy moved into Holland's home Holland frequently entered the victim's sleeping quarters and engaged in further sexual activity with him. This abuse continued until the boy left Holland's home in 1980.

Other complainants alleged instances of sexual offending on them by Holland when they were bailed to his address or when they were placed in his temporary foster care (Holland volunteering himself for that arrangement through DoCS or the Courts). The complainants alleged that Holland would enter their sleeping quarters at night while they were sleeping to sexually abuse them.

The trial was set down for three months and the matters were transferred to Sydney District Court. Four consecutive trials took place from May 2009 to August 2009 involving eight different complainants and a total of 45 selected counts (Holland was originally committed on 79 counts of sexual offending involving these eight complainants). The indictments presented against Holland covered the most serious of the offending and were representative of the overall conduct on which Holland was committed. In total the Court heard six weeks of evidence with additional days for legal arguments. The balance of the charges involving the remaining complainants was to be reviewed after the first four trials.

There were a number of legal and logistical issues to be considered in the preparation of each of the trials against Holland.

Most of the complainants and witnesses resided in the Newcastle area. Four weeks before the first trial was to commence the Crown Prosecutor, instructing solicitor and an officer from the Witness Assistance Service (WAS)

Appendix 26 – Some Cases dealt with during the year (continued)

travelled from Sydney to Newcastle and arranged a conference with each complainant.

In the immediate days prior to a complainant being required to give evidence, a WAS officer would meet with each complainant to prepare him/her for Court and to offer emotional support. The Crown Prosecutor and instructing solicitor also met with each complainant before they were required to give evidence to discuss legal matters.

Aside from witness preparation, significant legal decisions were made in preparation for each trial. These included:

- Which complainants were to be run in what order of seriousness
- Which complainants were to be joined in one trial and which were to be severed
- What charges ought to be the selected counts in the trial indictment representative of the overall conduct
- Which complainants were to be tendency witnesses and what evidence should be tendency and/or contextual evidence.

Given the extensive number of counts and evidence for each complainant the tendency notices were lengthy, detailed and complex. For three of the four trials there were pre-trial applications as to the admissibility of the tendency and contextual evidence and applications to sever the complainants. The Crown was successful in each of the pre-trial applications.

At trial the witnesses included the complainants, tendency witnesses, family members and other corroborative witnesses such as DoCS officers and the man who ran the amusement centre where Holland worked in the 1970s. The case had its own evidentiary difficulties given that the charges were historical matters that occurred as far back as 1969.

Holland and his wife each gave evidence in the four trials. Holland categorically denied all of the allegations. In relation to the allegations involving family members he stated that the offending never occurred. He denied that any of the complainants were placed in his care or that any of them lived with him.

Of the 45 charges contained in the four trial indictments presented against Holland, he was found guilty by each jury on 40 of the counts. The offending included buggery (as it was then known), attempted buggery, sexual intercourse without consent on a child under the age of 16 years, aggravated indecent assault and acts of indecency. The charges covered acts committed between 1969 and 1998 and the allegations involved 7 different complainants.

A sentence hearing date was allocated for 16 September 2009. The balance of the charges involving the remaining complainants was to be reviewed after the sentence.

However, on 25 August 2009 Holland died of natural causes in custody while pending sentence. Consequently the sentence hearing and any remaining charges alleged against him were terminated.

R v W – murder

At about 1pm on 3 November 2007 Mr W telephoned the ambulance emergency service and reported that his five year old daughter Ebony had been found dead by his wife Mrs W at 7am that morning. He said that his wife had tried unsuccessfully to revive the child.

Ambulance arrived at the Newcastle property and found the body of a deceased female child on a mattress and under the cover of a doona in a bedroom.

Ambulance officers spoke with Mrs W who said that she could not handle what had happened so took a quantity of tablets and went to bed. She said that Ebony had not coped with the family's recent move from Sydney, had not been eating well and had vomiting and diarrhoea in the week before her death.

A second ambulance then took Mrs W to the Mater Hospital.

Police arrived at the home about 1.30pm. Mr W told police that the deceased child was autistic with a growth disorder and that his wife cared for her.

A crime scene warrant was obtained and executed on the premises about 5.30pm on 3 November 2007. Forensic pathologist Dr Nadesan arrived later.

Crime scene officers observed the house to be well maintained except for the room in which Ebony was found. There was a strong smell of urine and faeces present in that room. The only furniture in that room was a single bunk bed with a single mattress on the floor where the deceased child was located.

An autopsy of the deceased child was carried out on 4 November 2007. The totality of the findings was, in Dr Nadesan's opinion, that the cause of death was chronic starvation and neglect.

On 13 March 2008 Senior Specialist in Gastroenterology Dr Edward O'Loughlin was provided with a video of the child's body taken at the time of the post mortem, forensic photographs and medical reports. His opinion was that the deceased child died of malnutrition secondary to starvation

Appendix 26 – Some Cases dealt with during the year (continued)

and parental neglect. He concluded that it would have taken the deceased child some time to reach that state of emaciation.

Mr and Mrs W had been married for eighteen years and had four children. The eldest two children resided with them at the time Ebony died. The youngest child had been taken from their care when she was about three months old as she had 'failed to thrive'.

The family had lived in Sydney for some time before moving to the Newcastle property at the end of August 2007. At that time the child was seen by a removalist. He thought she looked about three years old and unusually thin. She was observed by neighbours at the Sydney property to be left for long periods of time on her own in the bedroom and that bedroom was found to be in squalid condition.

The family had been subject to monitoring from the Department of Community Services. The last time the deceased child was seen by a medical practitioner was in March 2006.

Mr W participated in an interview with police on 5 November 2007. Mrs W did not participate in an interview but she spoke at some length to the police when a further crime scene warrant was executed on the Newcastle premises on 9 November 2007.

On 11 November 2007 the police attended the Newcastle premises for the purpose of arresting the parents but they had left for Sydney. A media campaign was commenced to locate them. On 17 November 2007 they were sighted and arrested at the Albion Railway Station. Mrs W had attempted to change her appearance.

Both Mr and Mrs W were charged with one count of murder in relation to Ebony and the matter was listed for trial at East Maitland Supreme Court on 18 May 2009.

The trial commenced on 18 May 2009 and continued for several weeks until the jury retired to consider their verdict. On 23 June 2009 the jury returned their verdict after six days of deliberation: they found Mrs W guilty of murder and Mr W guilty of manslaughter.

Sentence proceedings commenced on 5th August 2009 and concluded on 7th August 2009. Both of the offenders gave evidence at these proceedings.

The offenders were sentenced on 2 October 2009 at Sydney Supreme Court. Mrs W received a sentence of life to commence from the date of arrest. Mr W was sentenced to a non-parole period of twelve years with a balance of four years on parole. He will be eligible for release on 16 November 2019.

R v HUNTER – use offensive weapon with intent to commit indictable offence; assault occasioning actual bodily harm; common assault

In the early hours of the morning of 27 March 2008, a small crowd outside the Terrigal Bakery observed a vicious assault upon a man outside the Terrigal Surf Lifesaving Club.

Max Zaporoshenko – an engineer from South Australia – was lying on the ground. An unknown assailant stomped on his head repeatedly. A third man – Simon Hunter – stood by. Hunter and Zaporoshenko were colleagues who had travelled from South Australia to the Central Coast to undertake a project at Kincumber.

Two members of the crowd outside the Bakery went to Zaporoshenko's aid and the assailant ran away. Those two people then crossed the road and rejoined the group outside the Bakery.

Zaporoshenko and Hunter staggered towards the crowd at the Bakery. Both appeared to be intoxicated. Witnesses heard Hunter threaten them by saying – "Your mates are going to...cop it, you're all going to cop it". He further intimated that he was part of the Russian mafia and would get them "the Russian way." Hunter and Zaporoshenko then staggered off to the car park.

A short time later, witnesses saw a red Holden Commodore driving down The Esplanade towards the Bakery. The car crossed the raised pedestrian crossing close to the Bakery. Witnesses then heard the car rev and the tyres screech, and saw the driver turning his wheel to the right, in the direction of the Bakery. The car crashed through the fence at the front of the Bakery and drove into the crowd, striking several people.

The impact of the car threw one victim to the ground, while another victim became trapped underneath it. The car came to a stop although the engine continued to turn over. One of the victims removed the keys from the car's ignition; other crowd members lifted the car off the victim trapped underneath. Hunter was observed behind the wheel of the car, smirking and smoking a cigarette.

On 11 May 2009, the trial commenced at Gosford District Court. Hunter pleaded not guilty to all charges on the indictment. The Crown contended that Hunter had deliberately driven into the crowd outside the Bakery in a misguided act of revenge. A key issue in the trial was whether or not Hunter could have formed the intent to commit the assault with a blood alcohol reading of 0.197. Defence adduced expert evidence to the effect that a

Appendix 26 – Some Cases dealt with during the year (continued)

person with a blood alcohol reading of 0.2 was nearly 82 times more likely to crash than a person with no alcohol in their blood. Defence also adduced evidence that an intoxicated person behind the wheel could confuse the accelerator for the brake pedal.

Defence further adduced evidence from a consulting engineer. The engineer put forward an alternate hypothesis – that the crash was not deliberate, but accidental. His hypothesis was that the car crossed the pedestrian crossing, and then struck the left hand side of the road before correcting – or over-correcting – to the right and steering into the Bakery. The engineer based his hypothesis on, among other things, his analysis of gouge marks he found on the left-hand side of the road just after the pedestrian crossing. The engineer had observed those gouge marks some nine months after the incident. The Scene of Crime Officer had not observed any gouge marks on the left-hand kerb, and there was no evidence before the Court to show whether the gouge marks were present on the night of the incident, or if they were made afterwards.

On 21 May 2009, the jury found Hunter guilty of all counts on the indictment. On 28 September 2009, he was sentenced to a total effective sentence of 2 years and 9 months imprisonment, with a non-parole period of 2 years.

The DPP has since lodged an appeal against sentence.

R v Daniel RILEY

Daniel RILEY was indicted before Blackmore DCJ on 1 June 2009 on two counts of manslaughter (section 18(1)(b) of the *Crimes Act* 1900) and three counts of maliciously cause to be taken a poison or other destructive or noxious thing so as to endanger life (section 39 of the *Crimes Act* 1900). Two further section 39 charges were alternative counts to each manslaughter charge. Manslaughter was left with the jury on the basis of unlawful and dangerous act and gross criminal negligence.

The counts on the indictment represented a period from May 2004 to January 2007. A further count of maliciously cause to be taken a poison or other destructive or noxious thing so as to endanger life relating to an incident in 2001 had been excised from the indictment following a decision of Blackmore DCJ ruling on a separate trial application.

On 31 July 2009, a District Court jury found the accused guilty of one count of manslaughter and two counts of the section 39 charge.

The accused had a long history of receiving treatment in hospital for ingesting combinations of prescription medication. The Crown alleged that prior to July 2001 he had come to learn that two different anti-depressants, when used in combination, produced a potentially fatal condition called serotonin syndrome. This syndrome describes an excess of serotonin in the brain which causes a variety of symptoms including hypomania, myoclonus, sweating, shivering and fever. In severe cases, serotonin syndrome causes rhabdomyolysis and multi-organ failure leading to death.

The victims were persons who the accused had resided with or met during previous admissions to mental health facilities. While the cases concerning each of the victims were to some extent unique, the pattern that emerged on the evidence was that the accused obtained the two medications shortly before each offence from different doctors and different pharmacies, provided them to each victim in combination, encouraged them to take the combination in order to obtain a high, told each victim he had taken the combination omitting reference to any negative side effects and failed to warn each victim of the danger of the combination.

The marked similarities between the cases formed the basis of a successful application by the Crown that evidence which established each count was admitted for tendency and coincidence purposes in respect of each subsequent count. The same evidence was also directly relevant to the accused's accumulation of knowledge of the danger of ingesting the combination of the drugs in light of his opportunity to observe its effects on each of the victims (each of whom died or became very seriously ill).

The accused's knowledge of the danger of the combination also came from a number of other sources including internet research into anti-depressant medication, research of a hardcopy of MIMS belonging to his then girlfriend and self administering of the drugs which had resulted in various hospital admissions. The same research and use of the drugs taught the accused that the combination of the drugs produced a high. Hospital records showed that the search for a high motivated the accused to take the combination of drugs and provide it to others.

PBS records obtained and tendered in the trial showed that in the period of 2001-2007, the accused regularly obtained both. The same records showed that he obtained each medication from different doctors and had the prescriptions filled in different pharmacies. The accused's doctor-shopping in this manner provided further evidence that the accused knew the two drugs were contra-indicated. The records

Appendix 26 – Some Cases dealt with during the year (continued)

showed that shortly before the date of each offence, the accused had filled a prescription for each medication. The filling of prescriptions for each of the two medications on other occasions coincided with the accused's admissions to hospital for serotonin syndrome.

A number of relatively complex legal issues arose during the trial. The issues varied according to the counts on the indictment. In one instance, the defence challenged causation in relation to the second count of manslaughter: No cause of death was recorded in the post mortem examination although witnesses who observed the deceased shortly before his death described symptoms consistent with serotonin syndrome. Blood tests of the deceased detected the drugs in levels far in excess of the therapeutic range.

The question for the jury was: could they be satisfied beyond reasonable doubt that the cause of death was serotonin syndrome resulting from the combined ingestion of the drugs when the forensic pathologists had recorded an undetermined cause of death? It was the Crown case that they could be so satisfied bearing in mind other circumstantial evidence, particularly the descriptions of the symptoms suffered by the deceased immediately prior to his death and the toxicological results. The verdict demonstrates that the jury did entertain a reasonable doubt about the cause of death but were satisfied that the accused had caused the deceased to take the combination of drugs (amounting to a poison) and in doing so he had endangered the deceased's life and had been at least reckless as to whether injury was caused to the victims.

The sentence proceedings of the accused are pending.

APPENDIX 27 – CODE OF CONDUCT

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

Appendix 27 – Code of Conduct (continued)

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
- General Manager; Corporate Services
- The appropriate Line Manager

Failure to comply with the Code’s requirements, ODPP policies 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 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.

Appendix 27 – Code of Conduct (continued)

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 1'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;
- notify to the Director, as soon as practicable, the fact and substance of any complaint made against the officer to the Legal Services Commissioner, NSW Bar Association or NSW Law Society, pursuant to part 10 of the *Legal Profession Act 2004*;
- 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 Information Security Policies and Guidelines;
- 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/smutty), 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;
- 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

Appendix 27 – Code of Conduct (continued)

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.

If the gift is clearly of nominal value (cheap pens etc), there is no need to report it. Where the value of the gift is unknown, but is likely to exceed \$50, or where the value clearly exceeds \$50, it should be reported, in writing (email is acceptable) to:

- The Solicitor for Public Prosecutions (for Solicitors Office staff)
- The General Manager Corporate Services (for Corporate Services staff)
- The Senior Crown Prosecutor (for Crown Prosecutors and Crown Chambers staff)
- The Director (for the Director's Chambers, Secretariat and Service Improvement staff)

In seeking an approval to retain the item, the report should include:

- date, time and place of the offer
- a description of the gift
- to whom the gift or benefit was offered
- who offered the gift or benefit and contact details (if known)
- the response to the offer
- any other relevant details of the offer
- the name of the reporting officer and date (signed if a memorandum).

A written response will be provided, via email or memorandum, whether an approval to retain or otherwise has been given. A copy of the response should be retained by the member of the executive referred to above and the officer concerned.

Any such gifts should only be accepted 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 gifts or benefits. No gifts or benefits exceeding \$50 may be accepted without the prior approval of the appropriate senior executive officer.

Appendix 27 – Code of Conduct (continued)

As a general rule, no gifts regarded as tokens of 'gratitude' should be accepted by prosecutors from victims or witnesses until the matter in which they are involved is concluded, when the procedures outlined above are to be followed.

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 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 that 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.

Additional information is available in a fact sheet titled Public Sector Agencies Fact Sheet No 3 Conflict of Interests dated June 2003. The direct link follows:

http://www.ombo.nsw.gov.au/publications/Publist_pdfs/fact%20sheets/PSA_FS3_Conflict.pdf

22. REFERENCES

The conditions governing the provision of 'General' and 'Court Character' references are set out in the 'ODPP Policy on the Provision of References' published on DPPNet under 'Policies and Guidelines'.

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.

Appendix 27 – Code of Conduct (continued)

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.

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.

24. CRIMINAL CONDUCT

In this section of the Code "criminal conduct" means conduct which is suspected of constituting, in whole or in part, the commission of a criminal offence of more than a trivial or merely technical nature.

Suspected or alleged criminal conduct by an officer in the workplace is to be reported as soon as possible to the officer's manager or supervisor and, if appropriate grounds are considered to exist, by him or her to the Director (or, in his or her absence, a Deputy Director). If the Director or Deputy Director reasonably suspects that criminal conduct has or may have occurred, then he or she is to report it to police without notification to the officer concerned and is to consult with police on the future conduct of the matter. The Director or Deputy Director may take managerial action, in accordance with any laws, guidelines and procedures in force, provided there is no risk of prejudice to the police investigation or the criminal process.

Any officer directly witnessing criminal conduct by another officer must report it immediately to police if outside the workplace and, if inside the workplace, to his or her manager or supervisor to be dealt with as above.

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 Employment and Management Act 2002 No 43*
- *Crown Prosecutors Act 1986*
- *Legal Profession Act 2004*
- *Victims Rights Act 1996*
- *Independent Commission Against Corruption Act 1988*
- *Protected Disclosures Act 1994*
- *Anti Discrimination Act 1977*
- *Occupational Health and Safety Act 2000*
- *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
- Solicitors Manual
- Sentencing Manual
- Child Sexual Assault Manual
- Witness Assistance Service Manual
- NSW Solicitors Manual (Riley)
- Personnel Handbook
- ODPP Policies (refer to DPPNet)
- Protected Disclosures Procedures
- Guarantee of Service
- Corporate Plan
- Charter of Principles for a Culturally Diverse Society
- Conflicts of Interest Guidelines

APPENDIX 28 – 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 our services are identified and eliminated wherever possible. In 2008-2009, the internal Disability Action Plan Implementation Committee continued to develop the Disability Action Plan for the Office. Consultation with key stakeholders was undertaken during the year and a draft of the Disability Action Plan was finalised. Implementation of the plan will commence in 2009-2010.

The key objectives of the plan are to ensure that:

- All members of the community have equal access to our services
- There is no discrimination against people with disabilities in our services or workplaces and
- Disability principles are incorporated into the Office's policies and practices.

The main goals of the plan are to:

- Establish accessible and non-discriminatory services throughout the NSW criminal justice system for people with disabilities
- Provide employment and career opportunities or the opportunity to be a service provider to the Office for people with disabilities
- Ensure that our disability-specific services are of a high quality and are accessible to all persons with disabilities irrespective of age, family or carer's circumstances
- Establish and participate in interagency networks and decision making programs and processes to provide equitable service and criminal justice system delivery for people with disabilities.

APPENDIX 29 – ODPP REPRESENTATIVES ON EXTERNAL COMMITTEES/STEERING GROUPS

Committee/Steering Group	ODPP Representative
Aboriginal Child Sexual Assault Awareness Raising Resources Working Group	Amy Watts
Advisory Committee to the DNA Laboratory	Nicholas Cowdery AM QC
Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders)	Johanna Pheils
Bar Association: Criminal Law Committee	Elizabeth Wilkins SC Sally Dowling Laura Wells Nicole Noman
Bar Association: Human Rights Committee	Nicholas Cowdery AM QC
Bar Association: Professional Conduct Committees	Mark Hobart SC Natalie Adams Brad Hughes
Bar Association: Various other Committees	Peter Miller (Indigenous Barristers Strategy Working Party)
Child Pornography Working Party	Johanna Pheils
Conference of Australian Directors of Public Prosecutions	Nicholas Cowdery AM QC
Court of Criminal Appeal/Supreme Court Crime Users Group	David Arnott SC Dominique Kelly Michael Day
Court Security Committee	John Kiely SC
Criminal Case Processing Committee	Claire Giroto
Criminal Justice Research Network Committee	Helen Cunningham
Criminal Justice System Chief Executive Officers' Standing Committee	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers – Senior Officers' Group	Johanna Pheils
Criminal Law Committee of the Law Society of NSW	Janis Watson-Wood
Criminal Listing Review Committee (reviewing listings in the District Court)	Claire Giroto
DNA Review Panel	Nicholas Cowdery AM QC
Government Chief Executive Officers Network	Nicholas Cowdery AM QC
Heads of Prosecuting Agencies Conference	Nicholas Cowdery AM QC
Homicide Squad Advisory Council	Patrick Barrett
Inter-agency Exhibit Management Committee	Claire Giroto Johanna Pheils
International Association of Prosecutors	Nicholas Cowdery AM QC

Appendix 29 – ODPP Representatives on External Committees/ Steering Groups (continued)

Committee/Steering Group	ODPP Representative
Joint Investigation Response Teams State Management Group	Amy Watts
Justicelink Inter-agency Group	Colette Dash Sashi Govind
Justice Sector Disability Action Plan Senior Officers Group	Lee Purches Katarina Golik
Law Council of Australia Criminal Law Committee	Stephen Kavanagh
Law Council of Australia Human Rights Observer Panel	Nicholas Cowdery AM QC
Local Court Rules Committee	Janis Watson-Wood
Magistrates Early Referral Into Treatment (MERIT) – Regional Planning Group for South Western Sydney	Jim Hughes
Magistrates Early Referral Into Treatment (MERIT) – Statewide Steering Group	Jim Hughes
National Advisory Committee for the Centre for Transnational Crime Prevention (University of Wollongong)	Nicholas Cowdery AM QC
National DPP Executives Conference	Claire Giroto Nigel Hadgkiss
National Child Sexual Assault Law Reform Committee	Nicholas Cowdery AM QC
NSW Domestic Violence Standardised Information Package Steering Committee	Amy Watts
NSW Public Sector Legal Managers' Forum	Stephen Kavanagh Claire Giroto
NSW Sentencing Council	Nicholas Cowdery AM QC
Police Cold Case Justice Project	Patrick Barrett
Police Integrity Commission Liaison Group	Marianne Carey
Police–ODPP Prosecution Liaison Standing Committee	Graham Bailey Claire Giroto Jim Hughes Stephen Kavanagh Johanna Pheils Janis Watson-Wood Sashi Govind
Professional Standards Liaison Group	Marianne Carey
Senior Officers Court Preparation Resources	Lee Purches
Sex Crimes and Joint Investigation Response Squad Advisory Council Meeting	Amy Watts Lee Purches

Appendix 29 – ODPP Representatives on External Committees/ Steering Groups (continued)

Committee/Steering Group	ODPP Representative
Sexual Assault Communication Strategy Working Group	Lee Purches Amy Watts
Sexual Assault Communications Privilege Pro Bono Representation Pilot Scheme	Johanna Pheils Amy Watts
Sexual Assault Review Committee	Madeline Khan Julie Lannen Johanna Pheils Lee Purches Amy Watts Kara Shead
Sexual Offences Working Party	Johanna Pheils
Standing Inter-agency Advisory Committee on Court Security	Stephen Kavanagh Claire Girotto
Supreme Court, Darlinghurst Court Complex Renovation Users Committee	Patrick Barrett
Trial Efficiencies Working Group	Stephen Kavanagh Mark Tedeschi QC
University of Sydney Institute of Criminology Advisory Committee	Nicholas Cowdery AM QC
Victims Advisory Board under the Victims Rights Act	Johanna Pheils
Victims of Crime Inter-agency Committee	Lee Purches Amy Watts
Victims of Crime Inter-agency Sub-committee for reviewing the Standards for Providing Court Support Services for Victims of Crime	Lee Purches
Victims Services Review Reference Group	Lee Purches
Video Conferencing Steering Committee	Johanna Pheils
Working Group examining Part 9 of LEPR	Johanna Pheils

APPENDIX 29 – STATE-WIDE PROSECUTION LIAISON GROUPS

Prosecution Liaison Group	ODPP Representative
Northern	Graham Bailey Brendan Queenan Colin Cupitt
Hunter/Central Coast	Graham Bailey Julie Lannen Janet Little Arnis Tillers Malcolm Young
Southern	Graham Bailey Peter Burns Alison Dunn
South-West	Tonia Adamson Graham Bailey Kylie Knight
Sydney East	Michael Day
Sydney North	Sashi Govind
Sydney South West	Judith Nelson Philippa Smith
Sydney West	Wendy Carr Claire Girotto Sashi Govind Jim Hughes Clare Partington
Western	Graham Bailey Ron England Roger Hyman Susan Ayre

APPENDIX 30 – CONSUMER RESPONSE

The Office undertakes a comprehensive victim and witness satisfaction survey biennially as the main qualitative measure of our service. That survey was completed this year. Respondents were asked to rate the service provided on a scale 1 to 5 (1 = very good and 5 = very poor).

The table below represents the results of the past eight surveys conducted by the Office. It has been clear from comments made in all surveys that the defining issues in relation to satisfaction with the service provided by the Office are the level of professionalism, emotional support and communication received from the Office. Results of surveys conducted indicate that case outcomes have no significant impact on service satisfaction levels.

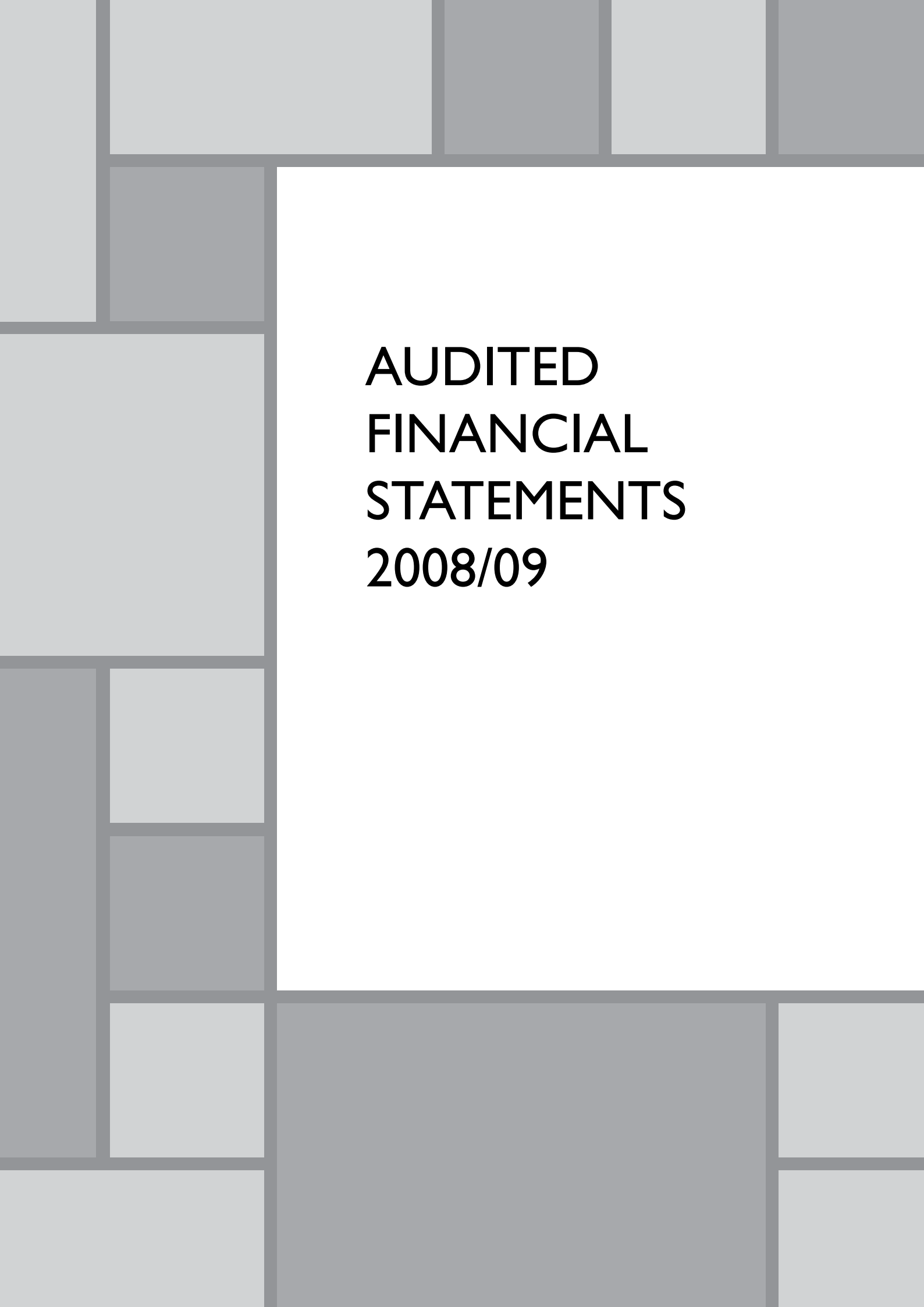
The following table shows the percentage of respondents who rated the overall level of service provided by the ODPP as "good" or "very good" in surveys conducted since 1994.

Region	1994	1996	1998	2000	2002	2004	2006	2009
Sydney	42%	53%	39%	50%	60%	51%	62%	68.5%
Sydney West	50%	40%	47%	57.5%	88.8%	62%	68%	82%
Country	32%	52%	45%	56.9%	58.9%	65%	69%	66.6%
State Average	41%	48%	44%	55.2%	60.8%	59.1%	66%	72.4%

It has been clear from comments made by respondents in the most recent survey that a large majority of them appreciated the service provided by ODPP staff members for their professionalism, understanding, emotional support and provision of information on court procedure.

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
DADHC	Department of Aging, Disability and Home Care
DAP	Disability Action Plan
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
JIRT	Joint Police/Department of Community Services Child Abuse Investigation and Response Teams
MCLE	Mandatory Continuing Legal Education
MIDAS	Mid Size Agency
ODPP	Office of the Director of Public Prosecutions (NSW)
SALO	Sexual Assault Liaison Officer
WAS	Witness Assistance Service



**AUDITED
FINANCIAL
STATEMENTS
2008/09**

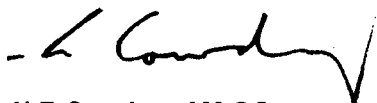
Office of the Director of Public Prosecutions

Financial Statements for the Year Ended 30 June 2009

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 2005* and the Treasurer's Directions;
- (b) the financial 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.



N R Cowdery AM QC
Director of Public Prosecutions

19 October 2009



GPO BOX 12
Sydney NSW 2001

INDEPENDENT AUDITOR'S REPORT

Office of the Director of Public Prosecutions

To Members of the New South Wales Parliament

I have audited the accompanying financial report of the Office of the Director of Public Prosecutions (the Office), which comprises the balance sheet as at 30 June 2009, the operating statement, statement of recognised income and expense, cash flow statement, service group statements and a summary of compliance with financial directives for the year then ended, a summary of significant accounting policies and other explanatory notes.

Auditor's Opinion

In my opinion, the financial report:

- presents fairly, in all material respects, the financial position of the Office as at 30 June 2009, and its financial performance for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- is in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2005.

My opinion should be read in conjunction with the rest of this report.

The Director's Responsibility for the Financial Report

The Director is responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the PF&A Act. This responsibility includes establishing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial report based on my audit. I conducted my audit in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the Office's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office's internal controls. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Director, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does *not* provide assurance:

- about the future viability of the Office,
- that it has carried out its activities effectively, efficiently and economically,
- about the effectiveness of its internal controls, or
- on the assumptions used in formulating the budget figures disclosed in the financial report.

Independence

In conducting this audit, the Audit Office of New South Wales has complied with the independence requirements of the Australian Auditing Standards and other relevant ethical requirements. The PF&A Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office of New South Wales are not compromised in their role by the possibility of losing clients or income.

S Bond

Sally Bond
Director, Financial Audit Services

20 October 2009
SYDNEY

OPERATING STATEMENT

FOR THE YEAR ENDED 30 JUNE 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
Expenses excluding losses				
Operating expenses				
Employee related	2(a)	78,880	76,581	76,391
Other operating expenses	2(b)	13,065	13,750	13,481
Depreciation and amortisation	2(c)	7,104	2,836	3,872
Other expenses	2(d)	2,974	3,493	2,965
Total expenses excluding losses		102,023	96,660	96,709
Revenue				
Sale of goods and services	3(a)	77	69	168
Investment revenue	3(b)	229	212	349
Grants and contributions	3(c)	1,494	1,148	2,629
Other revenue	3(d)	355	259	336
Total revenue		2,155	1,688	3,482
Gain / (loss) on disposal	4	15	5	19
Net Cost of Services	18	99,853	94,967	93,208
Government contributions				
Recurrent appropriation	5	84,422	84,432	82,733
Capital appropriation	5	6,360	1,760	1,302
Acceptance by the Crown Entity of employee benefits and other liabilities	6	7,809	7,145	6,386
Total Government contributions		98,591	93,337	90,421
SURPLUS / (DEFICIT) FOR THE YEAR		(1,262)	(1,630)	(2,787)

The accompanying notes form part of these financial statements.

STATEMENT OF RECOGNISED INCOME AND EXPENSE

FOR THE YEAR ENDED 30 JUNE 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
TOTAL INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY		–	–	–
Surplus / (Deficit) for the Year		(1,262)	(1,630)	(2,787)
TOTAL INCOME AND EXPENSE RECOGNISED FOR THE YEAR		(1,262)	(1,630)	(2,787)

The accompanying notes form part of these financial statements.

BALANCE SHEET

AS AT 30 JUNE 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
ASSETS				
Current assets				
Cash and cash equivalents	8	3,713	3,784	3,593
Receivables	9	1,826	2,381	2,430
Total current assets		5,539	6,165	6,023
Non-current assets				
Plant and equipment	10	11,207	9,170	9,760
Intangible assets	11	484	516	1,002
Total non-current assets		11,691	9,686	10,762
Total assets		17,230	15,851	16,785
LIABILITIES				
Current liabilities				
Payables	12	2,709	2,929	2,359
Provisions	13	9,089	7,725	7,393
Other	14	91	258	393
Total current liabilities		11,889	10,912	10,145
Non-current liabilities				
Provisions	13	481	432	428
Other	14	–	15	90
Total non-current liabilities		481	447	518
Total liabilities		12,370	11,359	10,663
Net assets		4,860	4,492	6,122
EQUITY				
Reserves	15	356	356	356
Accumulated funds		4,504	4,136	5,766
Total Equity		4,860	4,492	6,122

The accompanying notes form part of these financial statements.

CASH FLOW STATEMENT

FOR THE YEAR ENDED 30 JUNE 2009

	Notes	Actual 2009 \$'000	Budget 2009 \$'000	Actual 2008 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(70,436)	(68,846)	(68,679)
Other		(17,427)	(18,381)	(17,928)
Total payments		(87,863)	(87,227)	(86,607)
Receipts				
Sale of goods and services		77	69	168
Interest received		347	216	300
Other		3,310	2,696	4,238
Total receipts		3,734	2,981	4,706
Cash flows from government				
Recurrent appropriation		84,423	84,432	82,901
Capital appropriation		6,360	1,760	1,302
Cash transfers to the consolidated fund		(168)	–	(257)
Net cash flows from government		90,615	86,192	83,946
NET CASH FLOWS FROM OPERATING ACTIVITIES	17,18	6,486	1,946	2,045
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of plant and equipment		15	5	19
Purchases of plant and equipment		(6,381)	(1,760)	(1,420)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(6,366)	(1,755)	(1,401)
NET INCREASE / (DECREASE) IN CASH		120	191	644
Opening cash and cash equivalents		3,593	3,593	2,949
CLOSING CASH AND CASH EQUIVALENTS	8	3,713	3,784	3,593

The accompanying notes form part of these financial statements.

SUPPLEMENTARY FINANCIAL STATEMENTS
SUMMARY OF COMPLIANCE WITH FINANCIAL DIRECTIVES

FOR THE YEAR ENDED 30 JUNE 2009

	2009				2008			
	RECURRENT APPROPRIATION	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND	CAPITAL APPROPRIATION	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND	RECURRENT APPROPRIATION	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND	CAPITAL APPROPRIATION	EXPENDITURE/ NET CLAIM ON CONSOLIDATED FUND
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
ORIGINAL BUDGET APPROPRIATION / EXPENDITURE								
* Appropriation Act	84,432	83,215	1,760	1,760	82,866	82,278	1,302	1,302
	84,432	83,215	1,760	1,760	82,866	82,278	1,302	1,302
OTHER APPROPRIATIONS / EXPENDITURE								
* Treasurer's Advance	1,207	1,207	4,600	4,600	455	455	–	–
	1,207	1,207	4,600	4,600	455	455	–	–
Total Appropriations / Expenditure / Net claim on Consolidated Fund (includes transfer payments)	85,639	84,422	6,360	6,360	83,321	82,733	1,302	1,302
Amount drawn down against Appropriation		84,423		6,360		82,901		1,302
Liability to Consolidated Fund *		1		–		168		–

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed).

* The "Liability to Consolidated Fund" represents the difference between the "Amount drawn down against Appropriation" and the "Total expenditure / Net claim on Consolidated Fund".

SUPPLEMENTARY FINANCIAL STATEMENTS
SERVICE GROUP STATEMENTS*

FOR THE YEAR ENDED 30 JUNE 2009

	Service group 18.1**		Service group 18.2** Victim and Witness Assistance		Not attributable		Total	
	2009 \$'000	2008*** \$'000	2009 \$'000	2008*** \$'000	2009 \$'000	2008*** \$'000	2009 \$'000	2008 \$'000
OFFICE'S EXPENSES & INCOME								
Expenses excluding losses								
Operating expenses								
Employee related	76,423	73,959	2,457	2,432	-	-	78,880	76,391
Other operating expenses	12,580	12,961	485	520	-	-	13,065	13,481
Depreciation and amortisation	6,744	3,679	360	193	-	-	7,104	3,872
Other expenses	-	-	2,974	2,965	-	-	2,974	2,965
Total expenses excluding losses	95,747	90,599	6,276	6,110	-	-	102,023	96,709
Revenue								
Sale of goods and services	77	168	-	-	-	-	77	168
Investment revenue	222	338	7	11	-	-	229	349
Grants and contributions	741	2,629	753	-	-	-	1,494	2,629
Other revenue	344	325	11	11	-	-	355	336
Total revenue	1,384	3,460	771	22	-	-	2,155	3,482
Gain / (loss) on disposal	14	18	1	1	-	-	15	19
Net Cost of Services	94,349	87,121	5,504	6,087	-	-	99,853	93,208
Government Contributions ****	-	-	-	-	98,591	90,421	98,591	90,421
NET EXPENDITURE / (REVENUE) FOR THE YEAR	94,349	87,121	5,504	6,087	(98,591)	(90,421)	1,262	2,787

SUPPLEMENTARY FINANCIAL STATEMENTS
SERVICE GROUP STATEMENTS*

AS AT 30 JUNE 2009

	Service group 18.1**		Service group 18.2**		Not attributable		Total	
	2009 \$'000	2008*** \$'000	2009 \$'000	2008*** \$'000	2009 \$'000	2008*** \$'000	2009 \$'000	2008 \$'000
OFFICE'S ASSETS & LIABILITIES								
Cash and cash equivalents	3,420	3,301	293	292	-	-	3,713	3,593
Receivables	1,748	2,328	78	102	-	-	1,826	2,430
Total current assets	5,168	5,629	371	394	-	-	5,539	6,023
Non-current assets								
Plant and equipment	10,624	9,252	583	508	-	-	11,207	9,760
Intangible assets	458	950	26	52	-	-	484	1,002
Total non-current assets	11,082	10,202	609	560	-	-	11,691	10,762
TOTAL ASSETS	16,250	15,831	980	954	-	-	17,230	16,785
Current liabilities								
Payables	2,484	2,025	225	334	-	-	2,709	2,359
Provisions	8,805	6,988	284	405	-	-	9,089	7,393
Other	86	371	5	22	-	-	91	393
Total current liabilities	11,375	9,384	514	761	-	-	11,889	10,145
Non-current liabilities								
Provisions	466	405	15	23	-	-	481	428
Other	-	85	-	5	-	-	-	90
Total non-current liabilities	466	490	15	28	-	-	481	518
TOTAL LIABILITIES	11,841	9,874	529	789	-	-	12,370	10,663
NET ASSETS	4,409	5,957	451	165	-	-	4,860	6,122

* NSW Budget paper No 3 has replaced program statements with service group statements. Service group statements focus on the key measures of service delivery performance. Former program structure of Criminal Prosecutions is divided into two new service groups Prosecutions and Victim and Witness Assistance.

** The names and purposes of each service group are summarised in Note 7.

*** Comparative amounts have been reclassified to align with the change in focus from programs to service groups.

**** Appropriations are made on an agency basis and not to individual service groups. Consequently, government contributions must be included in the "Not attributable" column.

NOTES TO THE FINANCIAL STATEMENTS

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NOTES TO THE FINANCIAL STATEMENTS *continued*

I. Summary of significant accounting policies

(a) Reporting entity

The Office of the Director of Public Prosecutions (the Office) is a reporting entity.

The Office is a NSW government department. The Office is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial report for the year ended 30 June 2009 has been authorised for issue by the Director on 19 October 2009.

(b) Basis of preparation

The Office's financial report is a general-purpose financial report, which has been prepared in accordance with:

- applicable Australian Accounting Standards (which include Australian Accounting Interpretations)
- the requirements of the *Public Finance and Audit Act (1983) and Regulation (2005)* and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer.

Plant and equipment are measured at fair value. Other financial report items are prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations that management has made are disclosed in the relevant notes to the financial report.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

(c) Statement of compliance

The financial statements and notes comply with Australian Accounting Standards, which include Australian Accounting Interpretations.

(d) 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 claim experience.

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

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

- 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 and
- receivables and payables are stated with the amount of GST included.

Cash flows are included in the cash flow statement on a gross basis. However, the GST components of cash flows arising from investing and financing activities which is recoverable from, or payable to, the Australian Taxation Office are classified as operating cash flows.

(f) Income recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

(i) Parliamentary appropriations and contributions

Except as specified below, parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as income when the Office obtains control over the assets comprising the appropriations / contributions. Control over appropriations and contribution is normally obtained upon the receipt of cash. Appropriations are not recognised as income in the following circumstance:

NOTES TO THE FINANCIAL STATEMENTS *continued*

- Unspent appropriations are recognised as liabilities rather than income, as the authority to spend the money lapses and the unspent amount must be repaid to the Consolidated Fund.

The Liability is disclosed in Note 14 as part of 'Current liabilities – Other'. The amount will be repaid and the liability will be extinguished next financial year.

(ii) Rendering of services

Revenue is recognised when the service is provided or by reference to the stage of completion (based on labour hours incurred to date).

(iii) Investment revenue

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

(g) Assets

(i) Acquisition of assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

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

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

(ii) Capitalisation thresholds

Plant and equipment and intangible assets costing \$5,000 and above are individually (or forming part of a network costing more than \$5,000) are capitalised.

(iii) Revaluation of plant and equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 07-01). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment*.

Plant and equipment is measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative users, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market-buying price, the best indicator of which is depreciated replacement cost.

The Office revalues each class of plant and equipment at least every five years or with sufficient regularity to ensure that the carrying amount of each asset in the class does not differ materially from its fair value at reporting date. The last revaluation of the Office's library books was completed on 30 June 2006 and was based on an independent assessment.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for 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 are separately restated.

NOTES TO THE FINANCIAL STATEMENTS *continued*

For other assets, any balances of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

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.

As a not-for-profit entity, revaluation increments and decrements are offset against one another within a class of non-current assets, but not otherwise.

Where an asset that has previously been revalued is disposed of, any balance remaining in the assets revaluation reserve in respect of that asset is transferred to accumulated funds.

(iv) Impairment of plant and equipment

As a not-for-profit entity with no cash generating units, the Office is effectively exempted from AASB 136 *Impairment of Assets and impairment testing*. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

(v) Depreciation of plant and equipment

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 Office.

All material separately identifiable components of assets are depreciated over their shorter useful lives.

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

Office equipments	5 years
Computer equipments	4 years
Library books	15 years
Furniture and fittings	10 years
Photocopiers	5 years
PABX equipments	5 years
Laptop computers	3 years
Servers	3 years

(vi) Restoration costs

The estimated cost of dismantling and removing an assets and restoring the site is included in the cost of an asset, to the extent it is recognised as a liability.

(vii) Maintenance

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement of a part or component of an asset, in which case the costs are capitalised and depreciated.

(viii) Leased assets

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

Operating lease payments are charged to the operating statement in the periods in which they are incurred. Property lease fixed escalations are spread equally over the period of the lease term.

NOTES TO THE FINANCIAL STATEMENTS *continued*

(ix) Intangible assets

The Office recognises intangible assets only if it is probable that future economic benefits will flow to the Office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Software is classified as intangible assets.

Development costs are only capitalised when certain criteria are met.

The useful lives of intangible assets are assessed to be finite.

Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for the Office's intangible assets, the assets are carried at cost less any accumulated amortisation.

The Office's intangible assets are amortised using the straight-line method over a period of 4 years.

Intangible assets are tested for impairment where an indicator of impairment exists. If the recoverable amount is less than its carrying amount the carrying amount is reduced to recoverable amount and the reduction is recognised as an impairment loss.

(x) Receivables

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(xi) Impairment of financial assets

All financial assets, except those measured at fair value through profit and loss, are subject to an annual review for impairment. An allowance for impairment is established when there is objective evidence that the Office will not be able to collect all amounts due.

For financial assets carried at amortised cost, the amount of the allowance is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the effective interest rate. The amount of the impairment loss is recognised in the operating statement.

When an available for sale financial asset is impaired, the amount of the cumulative loss is removed from equity and recognised in the operating statement, based on the difference between the acquisition cost (net of any principal repayment and amortisation) and current fair value, less any impairment loss previously recognised in the operating statement.

Any reversals of impairment losses are reversed through the operating statement, where there is objective evidence, except reversals of impairment losses on an investment in an equity instrument classified as "available for sale" must be made through the reserve. Reversals of impairment losses of financial assets carried at amortised cost cannot result in a carrying amount that exceeds what the carrying amount would have been had there not been an impairment loss.

(xii) De-recognition of financial assets and financial liabilities

A financial asset is derecognised when the contractual rights to the cash flows from the financial assets expire; or if the Office transfers the financial asset:

- Where substantially all the risks and rewards have been transferred or
- Where the Office has not transferred substantially all the risks and rewards, if the entity has not retained control.

Where the Office has neither transferred nor retained substantially all the risks and rewards or transferred control, the asset is recognised to the extent of the Office's continuing involvement in the asset.

A financial liability is derecognised when the obligation specified in the contract is discharged or cancelled or expires.

(xiii) Other assets

Other assets are recognised on a cost basis.

NOTES TO THE FINANCIAL STATEMENTS *continued***(h) Liabilities****(i) Payables**

These amounts represent liabilities for goods and services provided to the Office and other amounts. Payables are recognised initially at fair value, usually based on the transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payable with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(ii) Financial guarantees

The Office has reviewed its financial guarantees and determined that there is no material liability to be recognised for financial guarantee contracts at 30 June 2009 and at 30 June 2008. However, refer Note 20 regarding disclosures on contingent liabilities.

(iii) Employee benefits and other provisions**a. Salaries and wages, recreation leave, sick leave and on-costs**

Liabilities for salaries and wages (including non-monetary benefits), recreation leave and paid sick leave that fall due wholly within 12 months of the reporting date are recognised and measured in respect of employees' services up to the reporting date at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.

Long-term recreation leave that is not expected to be taken within twelve months is measured at present value in accordance with AASB 119 *Employee Benefits*. Market yields on government bonds of 5.28% are used to discount long-term recreation leave.

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 benefits accrued in the future.

Crown Prosecutors are entitled to compensatory leave when they perform duties during their vacation. Unused compensatory leave gives rise to a liability and is disclosed as part of recreation leave.

The outstanding amount 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 benefits to which they relate have been recognised.

b. Long service leave and superannuation

The Office's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity.

Long service leave is measured at present value in accordance with AASB 119 *Employee Benefits*. This is based on the application of certain factors (specified in NSWTC 09/04) to employees with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

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 (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

NOTES TO THE FINANCIAL STATEMENTS *continued***(iv) Other provisions**

Other provisions exist when: the Office has a present legal or constructive obligation as a result of a past event; it is probable that an outflow of resources will be required to settle the obligation; and a reliable estimate can be made of the amount of the obligation.

Any provisions for restructuring are recognised only when the Office has a detailed formal plan and the Office has raised a valid expectation in those affected by the restructuring that it will carry out the restructuring by starting to implement the plan or announcing its main features to those affected.

If the effect of the time value of money is material, provisions are discounted at 5.28%, which is a pre-tax rate that reflects the current market assessments of the time value of money and the risks specific to the liability.

(i) 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, s 24 and / or s 26 of the *Public Finance and Audit Act 1983*.

The budgeted amounts in the operating statement and the cash flow statement are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the balance sheet, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; i.e. per the audited financial report (rather than carried forward estimates).

(j) Comparative Information

Except when an Australian Accounting Standard permits or requires otherwise, comparative information is disclosed in respect of the previous period for all amounts reported in the financial statements.

(k) 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 to other revenue. 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.

(l) Witness expenses

Witness expenses are paid to witnesses who attend conferences with office staff and court to give evidence for the prosecution. Witness expenses are designed to minimise financial hardship and are paid towards lost income and direct out of pocket expenses such as travel expenses incurred in attending court.

(m) New Australian Accounting Standards issued but not effective

The following new Accounting Standards have not been applied and are not yet effective.

AASB 8 and AASB 2007-3 regarding operating segments

AASB101 (Sept 2007), AASB 2007-8 and AASB 2007-10 regarding presentation of financial statements

AASB 123 (June 2007) and AASB 2007-6 regarding borrowing costs

AASB 1039 regarding concise financial reports

AASB 2008-2 regarding puttable financial instruments.

The Office has assessed the impact of these standards and interpretations and considers the impact to be insignificant.

NOTES TO THE FINANCIAL STATEMENTS *continued***2. Expenses excluding losses**

	2009 \$'000	2008 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)	62,381	61,724
Superannuation – defined benefit plans	3,788	3,726
Superannuation – defined contribution plans	3,473	3,316
Long service leave	3,798	2,436
Workers' compensation insurance	387	628
Payroll tax and fringe benefit tax	4,410	4,464
On-cost on long service leave	525	44
Temporary staff	118	53
	<u>78,880</u>	<u>76,391</u>
	2009 \$'000	2008 \$'000
(b) Other operating expenses including the following:		
Auditor's remuneration – audit of financial statements	35	40
Operating lease rental expense – minimum lease payments	5,579	5,787
Outgoing	341	313
Insurance	240	206
Books	34	40
Cleaning	268	258
Consultants	159	67
Fees – Private Barristers	666	493
Fees – Practising Certificates	258	246
Fees – Security	150	150
Gas and Electricity	256	243
Motor Vehicles	291	335
Postal	113	105
Courier	15	24
Printing	102	114
Maintenance *	1,072	1,484
Stores and equipment	399	509
Telephone	936	1,029
Training	61	149
Travel **	1,062	1,000
Other	1,028	889
	<u>13,065</u>	<u>13,481</u>
<i>* Reconciliation – Total maintenance</i>		
Maintenance expenses – contracted labour and other (non-employee related), as above	1,028	1,484
Employee related maintenance expense included in Note 2 (a)	14	14
Total maintenance expenses included in Note 2 (a) + 2 (b)	<u>1,042</u>	<u>1,498</u>

** Travel expenses represent expenditure incurred by all staff of the Office for 2008/2009.

NOTES TO THE FINANCIAL STATEMENTS *continued*

	2009 \$'000	2008 \$'000
(c) Depreciation and amortisation expense		
Depreciation		
Computer equipment	858	885
Plant and equipment *	5,478	1,557
Library collection	189	158
	<u>6,525</u>	<u>2,600</u>
Amortisation		
Software	579	1,272
	<u>7,104</u>	<u>3,872</u>

* Depreciation on Plant and equipment increased by \$3.921M. The majority of this increase relates to accelerated depreciation and restoration cost provision for the Sydney Head Office which will be relocated by 30 November 2009. The decision to relocate accommodation was made subsequent to 30 June 2008. The expectation at 30 June 2008 was that the Office would not be relocating for another five years. Accelerated depreciation of \$2.576M is provided for in 2008/09. These tenancies also require the Office to make good and restore the premises on evacuation. Restoration provision of \$1.510M is provided for in 2008/09.

	2009 \$'000	2008 \$'000
(d) Other expenses		
Allowances to witness	2,953	2,891
Ex-gratia payments	-	16
Maintenance costs of non Australian citizens	21	58
	<u>2,974</u>	<u>2,965</u>

3. Revenue

	2009 \$'000	2008 \$'000
(a) Sale of goods and services		
Rendering of services	3	3
Commissions – miscellaneous deductions	3	4
Cost awarded	24	66
Appearance fees	47	95
	<u>77</u>	<u>168</u>
	<u>2009 \$'000</u>	<u>2008 \$'000</u>
(b) Investment revenue		
Interest revenue	229	349
	<u>229</u>	<u>349</u>

NOTES TO THE FINANCIAL STATEMENTS *continued*

	2009 \$'000	2008 \$'000
(c) Grants and contributions		
Grants	1,494	2,629
	<u>1,494</u>	<u>2,629</u>
	2009 \$'000	2008 \$'000
(d) Other revenue		
Lease incentive	225	227
Other revenue	130	109
	<u>355</u>	<u>336</u>

4. Gain / (Loss) on disposal

	2009 \$'000	2008 \$'000
Gain / (loss) on disposal of computer equipments		
Proceeds from disposal	15	19
Written down value of assets disposed	-	-
Net gain / (loss) on disposal	<u>15</u>	<u>19</u>
	<u>15</u>	<u>19</u>
Gain / (loss) on disposal	15	19

5. Appropriations

	2009 \$'000	2008 \$'000
Recurrent appropriations		
Total recurrent draw-down from NSW Treasury (per Summary of compliance)	84,423	82,901
Less: Liability to Consolidated Fund (per Summary of compliance)	1	168
	<u>84,422</u>	<u>82,733</u>
Comprising:		
Recurrent appropriations (per Operating statement)	84,422	82,733
	<u>84,422</u>	<u>82,733</u>

NOTES TO THE FINANCIAL STATEMENTS *continued*

	2009 \$'000	2008 \$'000
Capital appropriations		
Total capital draw-down from NSW Treasury (per Summary of compliance)	6,360	1,302
Less: Liability to Consolidated Fund (per Summary of compliance)	-	-
	<u>6,360</u>	<u>1,302</u>
Comprising:		
Capital appropriations (per Operating statement)	6,360	1,302
	<u>6,360</u>	<u>1,302</u>

6. Acceptance by the crown entity of employee benefits and other liabilities

The following liabilities and / or expenses have been assumed by the Crown Entity or other government agencies:

	2009 \$'000	2008 \$'000
Superannuation – defined benefit	3,788	3,726
Long service leave	3,798	2,436
Payroll tax	223	224
	<u>7,809</u>	<u>6,386</u>

7. Service groups of the Office**(a) Service Group 18.1 Prosecutions**

Objectives: To provide the people of New South Wales with an efficient, fair and just prosecution service.

Description: This service group covers instituting and conducting prosecutions and related proceedings for indictable offences under NSW laws in the Supreme Court, District Court and Local Court on behalf of the Crown. This includes providing advice to police and investigative agencies on evidentiary matters, participating in the law reform process and capturing the proceeds of crime.

(b) Service Group 18.2 Victim and witness assistance

Objectives: To provide victims and witness with relevant information and support in the prosecution process.

Description: This service group covers providing information, referral and support services to victims of violent crimes and to vulnerable witnesses who are giving evidence in matters prosecuted by the Director of Public Prosecutions. This includes assisting victims and witnesses to minimize the traumatic impact of the Court process, providing access to services in remote areas and assisting indigenous victims and witnesses.

Service Group "Statement of assets and liabilities" and "Statement of expenses and income" are provided in the supplementary financial statements.

NOTES TO THE FINANCIAL STATEMENTS *continued***8. Current assets – Cash and cash equivalents**

	2009 \$'000	2008 \$'000
Cash at bank and on hand	3,530	3,410
Permanent witness advance	183	183
	3,713	3,593

For the purposes of the cash flow statement, cash and cash equivalents include cash at bank, cash on hand and witness advances float given to courthouses.

The Office has the following banking facilities as at 30 June 2009:

- Cheque cashing authority of \$45,000, which is the total encashment facility provided to enable recoupment of petty cash and witness expenditure floats.
- Tape negotiation authority of \$2,500,000. This facility authorised the bank to debit the Office's operating bank up to the above limit when processing the electronic payroll and vendor files.
- Master card facility of \$158,600, which is the total credit limit for all credit cards issued.

Cash and cash equivalent assets recognised in the balance sheet are reconciled at the end of the financial year to the cash flow statement as follows:

	2009 \$'000	2008 \$'000
Cash at bank and on hand (per balance sheet)	3,713	3,593
Closing cash and cash equivalents (per cash flow statement)	3,713	3,593

Refer Note 19 for details regarding credit risk, liquidity risk and market risk arising from financial instruments.

9. Current assets – receivables

	2009 \$'000	2008 \$'000
Rendering of services	20	1
Prepayments	955	1,859
Interest	75	193
Advances	36	34
GST recoverable from ATO	740	343
	1,826	2,430

Details regarding credit risk, liquidity risk and market risk, including financial assets that are past due or impaired, are disclosed in Note 19.

NOTES TO THE FINANCIAL STATEMENTS *continued***10. Non current assets – plant and equipment**

	Plant and Equipment \$'000
At 1 July 2008 – fair value	
Gross carrying amount	31,775
Accumulated depreciation	(22,015)
Net carrying amount	<u>9,760</u>
At 30 June 2009 – fair value	
Gross carrying amount	37,666
Accumulated depreciation	(26,459)
Net carrying amount	<u>11,207</u>
Reconciliation	
A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the current reporting period is set out below:	
Year ended 30 June 2009	
Net carrying amount at start of year	9,760
Additions	7,972
Depreciation expense	(6,525)
Net carrying amount at the end of year	<u>11,207</u>
At 1 July 2007 – fair value	
Gross carrying amount	31,004
Accumulated depreciation	(20,193)
Net carrying amount	<u>10,811</u>
At 30 June 2008 – fair value	
Gross carrying amount	31,775
Accumulated depreciation	(22,015)
Net carrying amount	<u>9,760</u>
Reconciliation	
A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the previous reporting period is set out below:	
Year ended 30 June 2008	
Net carrying amount at start of year	10,811
Additions	1,549
Depreciation expense	(2,600)
Net carrying amount at the end of year	<u>9,760</u>

NOTES TO THE FINANCIAL STATEMENTS *continued***11. Intangible assets**

	Software and Others \$'000
At 1 July 2008	
Cost (gross carrying amount)	9,539
Accumulated amortisation	(8,537)
Net carrying amount	<u>1,002</u>
At 30 June 2009	
Cost (gross carrying amount)	9,591
Accumulated amortisation	(9,107)
Net carrying amount	<u>484</u>
Reconciliation	
A reconciliation of the carrying amount of intangible assets at the beginning and end of the current reporting period is set out below:	
Year ended 30 June 2009	
Net carrying amount at start of the year	1,002
Additions	61
Amortisation (recognised in "depreciation and amortisation")	(579)
Net carrying amount at the end of year	<u>484</u>
At 1 July 2007	
Cost (gross carrying amount)	9,380
Accumulated amortisation	(7,266)
Net carrying amount	<u>2,114</u>
At 30 June 2008	
Cost (gross carrying amount)	9,539
Accumulated amortisation	(8,537)
Net carrying amount at the end of year	<u>1,002</u>
Reconciliation	
A reconciliation of the carrying amount of intangible assets at the beginning and end of the previous reporting period is set out below:	
Year ended 30 June 2008	
Net carrying amount at start of the year	2,114
Additions	160
Amortisation (recognised in "depreciation and amortisation")	(1,272)
Net carrying amount at the end of year	<u>1,002</u>

NOTES TO THE FINANCIAL STATEMENTS *continued***12. Current liabilities – payables**

	2009 \$'000	2008 \$'000
Accrued salaries, wages and on-costs	1,337	902
Creditors	1,046	903
Accruals	326	554
	<u>2,709</u>	<u>2,359</u>

Details regarding credit risk, liquidity risk and market risk, including a maturity analysis of above payable are disclosed in Note -19.

13. Current / Non-current liabilities – provisions

	2009 \$'000	2008 \$'000
Current		
Employee benefits and related on-costs		
Recreation leave	5,321	5,650
On-cost on long service leave	1,097	620
Payroll tax on-cost for recreation leave and long service leave	1,145	1,123
	<u>7,563</u>	<u>7,393</u>
Other provisions		
Restoration costs	1,523	-
Rent adjustment reserve	3	-
	<u>1,526</u>	<u>-</u>
Total Provision – Current	<u>9,089</u>	<u>7,393</u>
Non-current		
Employee benefits and related on-costs		
On-cost on long service leave	58	33
Deferred retention allowance	-	61
Payroll tax on-cost for long service leave	60	59
	<u>118</u>	<u>153</u>
Other provisions		
Restoration costs	363	258
Rent adjustment reserve	-	17
	<u>363</u>	<u>275</u>
Total provisions non – current	<u>481</u>	<u>428</u>

NOTES TO THE FINANCIAL STATEMENTS *continued***Aggregate employee benefits and related on-costs**

Provisions – current	7,563	7,393
Provisions – non current	118	153
Accrued salaries, wages and on-costs (Note 12)	1,337	902
	<u>9,018</u>	<u>8,448</u>

Movements in provisions (other than employee benefits)

Movements in each class of provision during the financial year, other than employee benefits, are set out below:

2009	Restoration Costs \$'000	Rent Adjustment Reserve \$'000	Total \$'000
Carrying amount at the beginning of financial year	258	17	275
Additional provisions recognised	1,634	-	1,634
Amount used	(6)	(14)	(20)
Carrying amount at end of financial year	<u>1,886</u>	<u>3</u>	<u>1,889</u>

14. Current / Non-current liabilities – other

	2009 \$'000	2008 \$'000
Current		
Deferred income	90	225
Liability to Consolidated Fund	1	168
	<u>91</u>	<u>393</u>
Non-current		
Deferred income	-	90
	<u>-</u>	<u>90</u>

Details regarding credit risk, liquidity risk and market risk, including a maturity analysis of the above payable are disclosed in Note 19.

15. Changes in equity

	Accumulated Funds		Asset Revaluation Reserve		Total Equity	
	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000	2009 \$'000	2008 \$'000
Balance at the beginning of the financial year	5,766	8,553	356	356	6,122	8,909
Surplus / (deficit) for the year	(1,262)	(2,787)	-	-	(1,262)	(2,787)
Balance at the end of the financial year	<u>4,504</u>	<u>5,766</u>	<u>356</u>	<u>356</u>	<u>4,860</u>	<u>6,122</u>

Asset revaluation reserve

The asset revaluation reserve is used to record increments and decrements on the revaluation of non-current assets. This accords with the Office's policy on the 'Revaluation of Plant and Equipment', as discussed in Note 1 (g) (iii).

NOTES TO THE FINANCIAL STATEMENTS *continued***16. Commitments for expenditure****(a) Capital commitments**

	2009 \$'000	2008 \$'000
Aggregate capital expenditure for the acquisition of computer equipments and library reference materials contracted for at balance date and not provided for:		
Not later than one year	2,239	98
Total (including GST)	<u>2,239</u>	<u>98</u>

The total "capital commitments" above includes input tax credit of \$0.204 M (30 June 2008: \$0.009 M) recoverable from Australian Taxation Office.

(b) Other expenditure commitments

	2009 \$'000	2008 \$'000
Aggregate other expenditure for the acquisition of insurance and software maintenance contracted for at balance date and not provided for:		
Not later than one year	868	-
Total (including GST)	<u>868</u>	<u>-</u>

The total "other expenditure commitments" above includes input tax credit of \$0.079 M (30 June 2008: nil) recoverable from Australian Taxation Office.

(c) Operating lease commitments

	2009 \$'000	2008 \$'000
Future non-cancellable operating lease rentals not provided for and payable:		
Not later than one year	6,533	5,402
Later than one year and not later than five years	23,714	5,806
Later than five years	7,296	73
Total (including GST)	<u>37,543</u>	<u>11,281</u>

The total "operating lease commitments" above includes input tax credit of \$3.413 M (30 June 2008: 1.025 M) recoverable from Australian Taxation Office.

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

NOTES TO THE FINANCIAL STATEMENTS *continued*

17. Budget review

Net Cost of Services

Whilst actual accounting net cost of services (ANCOS) was up \$4.886M on the original Treasury budget extra expenditure was approved by Treasury throughout the year which gave a revised net cost of service of \$99.037M. Against the revised budget of \$99.037M, ANCOS was up by \$0.816M which is within the Treasury's 1% variance allowance.

The variance of \$4.886M is explained as follows:

Increased By:

- \$4.268M increased depreciation expense mainly due to an accelerated write off of furniture, fit out and make good provision resulting from the relocation of the HO accommodation.
- \$0.574M funds not released (out of total \$1.148M) by the AGD for the criminal case conferencing trial.
- \$0.700M funding received for fourteen temporary additional lawyers, \$0.100M for the statutory officers award increase above 2.5% and \$0.395M for staff redundancy payments.
- \$0.269M Increased expenditure resulting from an unexpected workers compensation hindsight adjustment.

Reduced By:

- \$0.519M under expenditure in witness expenses as a result of a reduced number of witness claims.
- \$0.920M net revenue increase made up of funding for the Witness Assistance program funding (\$0.753M), continuation of the Drug Court trial (\$0.107M) and a \$0.060M grant from Treasury for assistance with the preparation of the HO relocation business case.

Savings made by the Office throughout the year

- Significant work has been done by the Office to make savings during the 08/09 year. The Office developed and executed a "Savings Implementation Plan" and an "Efficiency Implementation Plan" which achieved \$1.477M in savings. These savings were broadly made in staffing cuts \$1.034M and expenditure savings \$0.443M.

Assets and liabilities

Non-current assets were \$2.005M higher than budget owing to capital expenditure of \$4.600M on the new fit out for the HO accommodation relocation and capitalised restoration cost of \$1.673M. Offset by increased depreciation due to the accelerated write off of fit out.

The current assets decreased by \$0.626M mainly due to decreased prepayments.

The non current liabilities increased by \$0.034M mainly due to increase in payables.

The current liabilities increased by \$0.977M mainly due to increased make good provision accommodation.

Cash flows

Net cash flow from operating activities was \$4.54M higher than budget mainly due to receiving additional capital appropriation for relocation of head office.

Net cash flow from investing activities was \$4.611M higher than budget mainly due to purchase of non-current assets for relocation of head office.

NOTES TO THE FINANCIAL STATEMENTS *continued***18. Reconciliation of cash flows from operating activities to net cost of services**

	2009 \$'000	2008 \$'000
Net cash flow from operating activities	6,486	2,045
Cash flows from government / appropriations	(90,782)	(84,035)
Acceptance by the Crown Entity of employee benefits and other liabilities	(7,809)	(6,386)
Depreciation and amortisation	(7,104)	(3,872)
Decrease / (increase) in provisions	(1,749)	(441)
Increase / (decrease) in prepayments and other assets	(604)	(129)
Decrease / (increase) in creditors	(350)	(1,014)
Decrease / (increase) in deferred income	392	316
Increase / (decrease) in assets	1,667	308
Net cost of services	<u>(99,853)</u>	<u>(93,208)</u>

19. Financial instruments

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations or are required to finance the Office's operations. The Office does not enter into or trade financial instruments including derivative financial instruments, for speculative purposes.

The Office's main risks arising from financial instruments are outlined below, together with the Office's objectives, policies and processes for measuring and managing risk.

The Audit and Risk Management Committee has overall responsibility for establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are established to identify and analyse the risks faced by the Office, to set risk limits and controls and to monitor risks. Compliance with policies is reviewed by the Audit and Risk Management Committee on a continuous basis.

(a) Financial instrument categories

Financial assets	Notes	Category	Carrying amount	Carrying amount
Class			2009 \$'000	2008 \$'000
Cash and cash equivalents	8	N/A	3,713	3,593
Receivables ¹	9	Receivables measured at cost	131	35
Financial liabilities	Notes	Category	Carrying amount	Carrying amount
Class			2009 \$'000	2008 \$'000
Payables ²	12	Financial liabilities measured at cost	1,494	1,409

Notes

- 1 Excludes statutory receivables and prepayments.
- 2 Excludes statutory payables and unearned revenue.

NOTES TO THE FINANCIAL STATEMENTS *continued***(b) Credit risk**

Credit risk arises when there is the possibility of the Office's debtors defaulting on their contractual obligations, resulting in a financial loss to the Office. The maximum exposure to credit risk is generally represented by the carrying amount of the financial assets (net of any allowance for impairment).

Credit risk arises from the financial assets of the Office, including cash and receivables. No collateral is held by the Office. The Office has not granted any financial guarantees.

Credit risk associated with the Office's financial assets, other than receivables, is managed through the selection of counterparties and establishment of minimum credit rating standards.

Cash

Cash comprises cash on hand and bank balances within the NSW 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 NSW Treasury.

Receivables – trade debtors

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand. Debts, which are known to be uncollectible, are written off. An allowance for impairment is raised when there is objective evidence that the entity will not be able to collect all amounts due. This evidence includes past experience, and current and expected changes in economic conditions and debtor credit ratings. No interest is earned on trade debtors. Sales are made on 30-day terms.

The Office is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors. Based on past experience, debtors that are not past due (2009:\$0.006M; 2008:\$0.003M) and not less than 3 months past due are not considered impaired and together these represent 100% of the total debtors. Most of the Office's debtors have a 100% credit rating. There are no debtors which are currently past due or impaired whose terms have been renegotiated.

2009	Total ^{1,2} \$'000	Past due but not impaired ^{1,2} \$'000	Considered impaired ^{1,2} \$'000
< 3 months overdue	-	-	-
2008	Total \$'000	Past due but not impaired \$'000	Considered impaired \$'000
< 3 months overdue	228	228	-

Notes

- Each column in the table reports 'gross receivables'.
- The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7 and excludes receivables that are not past due and not impaired. Therefore, the 'total' will not reconcile to the receivables total recognised in the balance sheet.

(c) Liquidity risk

Liquidity risk is the risk that the Office will be unable to meet its payment obligations when they fall due. The Office continuously manages risk through monitoring future cash flows planning to ensure adequate holding of high quality liquid assets. The objective is to maintain a balance between continuity of funding and flexibility through the use of other advances.

During the current and prior years, there were no defaults or breaches on any payables. No assets have been pledged as collateral. The Office's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

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 2008: \$nil).

(d) Market risk

The Office's borrowing is nil. The Office has no exposure to foreign currency risk and does not enter into commodity contracts.

Sensitivity disclosure analysis

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below, for interest rate risk and other price risk. A reasonably possible change in risk variable has been determined after taking into account past performance, future expectations, economic forecasts and management's knowledge and experience of the financial markets. The sensitivity analysis is based on risk exposures in existence at the balance sheet date. The analysis is performed on the same basis for 2008. The analysis assumes that all other variables remain constant.

Interest rate risk

The Office has no interest bearing liabilities.

Other price risk

The Office has no direct equity investments.

(e) Fair value

Financial instruments are generally recognised at cost and the carrying amount is a reasonable approximation of fair value.

20. *Contingent liabilities*

The contingent liability estimated by Crown Solicitor's Office of \$2.75M as at 30 June 2009 (Nil as at 30 June 2008), which are civil matter claims that have been made against the Office. The Crown Solicitor's Office has confirmed in writing to this Office that the NSW Treasury Managed Fund will meet the settlement if the claimant is successful.

21. *After balance date events*

The Public Sector Employment and Management (Departmental Amalgamations) Order 2009 under the *Public Sector Employment and Management Act 2002* were issued on the 27 July 2009. Division 5 of the Order makes provision for the Office staff involved in the Corporate Services function to be transferred to the newly created Department of Justice and Attorney General if determined as required. Under the Agency groupings the Office of the Director of Public Prosecutions is listed as coming under the newly formed Department of Justice and Attorney General. Changes that may emanate from this Order which will impact on the Office are not at this stage determined. The Office has retained its independence and still operates under the *Director of Public Prosecutions Act 1986*.

The Office is not aware of any other circumstances that occurred after balance date, which would materially affect the financial statements.

End of audited financial statements

ACCOUNT PAYMENT PERFORMANCE

1 JULY 2008 TO 30 JUNE 2009

Aged analysis at the end of each quarter

Quarter	Current (ie within due date) \$	Less than 30 days overdue \$	Between 30 and 60 days overdue \$	Between 60 and 90 days overdue \$	More than 90 days overdue \$
September	182,088	-	951	-	-
December	98,965	-	1,729	-	-
March	170,248	-	2,379	-	-
June	1,045,986	-	-	-	-

Accounts paid on time within each quarter

Quarter	Total Accounts Paid on Time			Total Amount paid
	Target %	Actual %	\$	\$
September	98%	100%	10,287,682	10,329,752
December	98%	99%	13,642,914	13,733,771
March	98%	98%	11,295,671	11,502,590
June	98%	99%	21,086,844	21,237,636

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

Reasons for Accounts Not Paid on Time

Suppliers invoices were not received on time for payment.

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Note: Each Office is open Monday to Friday (excluding Public Holidays) from 9.00 a.m. to 5.00 p.m. Appointments may be arranged outside these hours if necessary



OFFICE OF THE DIRECTOR OF PUBLIC
PROSECUTIONS
NEW SOUTH WALES