

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NEW SOUTH WALES

ANNUAL REPORT 2009-2010



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

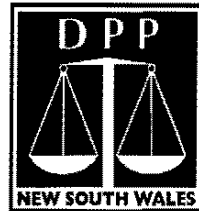
Continual improvement.

Encouraging individual initiative and innovation.

Providing an ethical and supportive workplace.

OUR REFERENCE

DIRECTOR'S CHAMBERS



YOUR REFERENCE

DATE
1 December 2010

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

Dear Attorney

2009-2010 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 2010.

Yours faithfully

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

N R Cowdery AM QC
Director of Public Prosecutions

TABLE OF CONTENTS

The Office	2
Director's Overview	6
Management and Organisation	10
Significant Committees	15
ODPP Internal Committees/Steering Groups	16
Report Against Corporate Plan	18
Key Result Area 1: Just, Independent and Timely Conduct of Prosecutions	19
Key Result Area 2: Victim and Witness Services	22
Key Result Area 3: Accountability and Efficiency	23
Key Result Area 4: Staff Resourcing and Development	25
Key Result Area 5: Improvements in the Criminal Justice System	28
Director of Public Prosecutions Act 1986 – Important Provisions	30
From Charge To Trial	31
Appendices	33
Appendix 1 – Quantity/Productivity	34
Appendix 2 – Quality/Effectiveness	40
Appendix 3 – Timeliness	48
Appendix 4 – Service to victims and witnesses	50
Appendix 5 – Recovery of proceeds of crime	56
Appendix 6 – Cost efficiency	58
Appendix 7 – CCA Statistics	59
Appendix 8 – Significant Legislation	60
Appendix 9 – Significant Judicial Decisions	66
Appendix 10 – Publications of the ODPP (NSW)	72
Appendix 11 – 2009-2010 EEO Achievements	75
Appendix 12 – EEO STATISTICS	76
Appendix 13 – Government Energy Management Plan (GEMP)	77
Appendix 14 – Waste Reduction and Purchasing Plan and Recycling	78
Appendix 15 – Chief Executive Services and Senior Executive Service	80
Appendix 16 – Report of the Chief Information Officer on Major IM & T Projects during 2009-2010	82
Appendix 17 – Freedom of Information Act 1989 (NSW)	83
Appendix 18 – Risk Management and Insurance – Motor Vehicle Claims Report	85
Appendix 19 – Occupational Health and Safety Performance	86
Appendix 20 – Overview of the Witness Assistance Service	87
Appendix 21 – Overseas Travel Information	94
Appendix 22 – Internal Audit and Risk Management	95
Appendix 23 – Consultants	96
Appendix 24 – Ethnic Affairs Priority Statement	97
Appendix 25 – Some cases dealt with during the year	98
Appendix 26 – Code of Conduct	103
Appendix 27 – Disability Action Plan	110
Appendix 28 – ODPP Representatives on External Committees/Steering Groups	111
Appendix 29 – Consumer Response	115
Acronyms	116
Financial Statements 2009/10	117
Index	150
Compliance Index	151



DIRECTOR'S OVERVIEW

DIRECTOR'S OVERVIEW

This is the Office's 23rd Annual Report and my 16th. It will be my last and I should briefly explain why that is so.

When the *Director of Public Prosecutions Act 1986* was enacted it was attempted to put the position of Director, as far as practicable, on a par with that of a Supreme Court Judge. There were (relevantly) two age-related provisions: one for the Director's retirement at age 65 and one for the Director's entitlement to a judge's pension upon fulfilment of certain conditions and upon retirement "before reaching the age of 65 years". In 1991, following the *Anti-Discrimination Act 1987*, amendments were made to all NSW legislation removing age-related retirement provisions and thus making the Director's appointment for life; however, the pension/age requirement was clearly overlooked.

Amendments were made to the *Director of Public Prosecutions Act 1987* in 2007 (relevantly) limiting the term of future Directors to ten years (not renewable), prescribing a retirement age of 72 (the same as a Supreme Court Judge) and entitling Directors to a judge's pension, inter alia, upon retirement up to 72 years of age. My position, however, was not affected.

I drew this to the Attorney General's attention in 2008 and he sought advice on it. That advice confirmed that if I stay in office until my 65th birthday on 19 March 2011, I shall be disentitled to a pension. I more recently requested the Attorney General to consider amendment to the Act to remove this obvious anomaly and to align my entitlement with that of my successors, but the Attorney General has advised that he is unable to support my suggested amendment, propounding a "floodgates" argument that I do not adumbrate here. Accordingly, the latest date at which a rational person in my position would be likely to retire is 10 March 2011.

When these issues were given some publicity earlier in 2010 the Attorney General made some generous remarks about my service in this position, for which I thank him. Unfortunately his statement to the media included the assertion that "The significant changes to criminal law and procedure during Mr Cowdery's tenure cannot be underestimated!" (Think about it...)

That publicity, however, also brought out various offers and suggestions for a continuing active life in the criminal law beyond March 2011 and I have much from which to choose.

NEW PREMISES

By far the most significant event in the life of the Office this year was the move of the head office from cramped and sub-standard premises to newly rebuilt, custom-designed accommodation at 175 Liverpool Street. Here we occupy five floors of the building, fitted out to first class standards and with a high Green Star rating of 4.5.

The ODPP commenced Sydney operations in the building of the Koala Motor Inn in Oxford Street on 13 July 1987. In 1989 it moved to 265 Castlereagh Street to premises that were then a great improvement and perfectly adequate. Over time, however, the Office outgrew the building and spilled over into four satellite leaseholds and, although some improvements were made from time to time, the standard of the accommodation deteriorated markedly. So it has been a great boost to the morale of head office staff to have moved to light and airy premises of modern design and with greatly improved services and facilities (and great views!).

The official opening by the Chief Justice of NSW was held on 5 February, attended by the Attorney General (who had been instrumental in the identification of the funding required to enable the move) and a list of distinguished guests. In the same ceremony Professor Ron McCallum AO opened the Matt Laffan Training Centre (in which the ceremony was held), named in honour of a dear colleague who passed away in March 2009 and who contributed so much to the life of the Office in his inimitable ways.

Those who successfully made this major change possible were thanked at the ceremony – and I do so again.

In the same spirit, the Parramatta office will move into new premises in January 2011. They will have suffered for some time in split accommodation, some of it well below standard. The move is eagerly anticipated and will assist the ODPP to deal more effectively and efficiently with the impact of the contraction of courts and cases from Campbelltown and Penrith into the Parramatta Justice Precinct.

Director's Overview (continued)

RESOURCES

Budgetary and reporting issues have continued to occupy a great deal of time and effort for all of us in this financial year. Once again I thank all staff, from senior managers down, for their diligence and application (often at unwarranted personal cost) in enabling us to survive another year. Unfortunately the personal toll has continued to rise, with increasing numbers of staff turning to assistance in coping with the added pressures. I commend them all for soldiering on in the face of enormous pressures and stress – but I urge them to give priority to their own care and to those close to them. Their welfare is far more important than the Office's meeting the listing demands of the courts and other requirements set by outside agencies without regard to our shrinking resources. If a case cannot go on, despite the best reasonable efforts of all concerned, then it cannot go on.

It is notable that many ODPP staff have started as juniors and risen through the ranks in the Office – one Deputy Director among them. It is a measure of success for the Office, in my view, that whole careers have been able to be forged and it shows commendable loyalty and dedication on the part of those officers. I thank and congratulate those people, too. We have been a flexible employer and that has particularly enabled women to succeed by tailoring work and family life appropriately. The proportion of female officers continues to increase at all levels.

OUTREACH

My official travel has been noted elsewhere in this Report. For six years of my time in office (two terms) I served as President of the International Association of Prosecutors (IAP). That was a great honour and privilege and a very stimulating and enjoyable experience. Through the associations developed there and elsewhere (and before and after that period) the ODPP has been able to be engaged with international colleagues with whom we have a deservedly high reputation as a leader in professional practices. We are consulted regularly by other prosecution agencies, take in prosecutors on placement, send prosecutors to overseas agencies and provide prosecutors for countries requiring such assistance. These experiences have contributed substantially to the professional development of our staff as well and I hope such arrangements will continue (subject to funding, of course).

FINAL WORDS

THE CRIMINAL JUSTICE SYSTEM

As this will be my last Annual Report, it is appropriate that some matters be recorded before I go. I have been honoured and enormously privileged to serve the people of NSW in this position for 16 years. It has been a constantly stimulating professional experience and not a day has been dull. It is perhaps a reflection on my nature that I have enjoyed coming to work every day in a job where almost every decision I have made has made someone unhappy – but that is the nature of the job. I hope that most of those decisions have been the right ones. The job description should really be "making decisions and managing crises" – but I have made time for other things, too and, I hope, have made a positive contribution (that will not be underestimated).

In my first Director's Overview in the 1994-95 Annual Report I foreshadowed improvements to the conduct of committal proceedings, the bringing forward of the time at which an accused person must make a commitment to pleading guilty or not guilty, the earlier identification of the real issues to be litigated in a defended hearing, greater assistance for witnesses and victims of crime, international staff exchanges and the takeover of summary prosecutions throughout the state. Progress has been made, I believe, in descending levels of achievement down that list. Perhaps my successor should reverse the list and try again! I hope I live long enough to see the ODPP take over the responsibility for the conduct of all criminal prosecutions in the state (which we almost did, until the Olympic Games interfered in 2000).

In my time in office the face of criminal justice in NSW has changed. Criminal laws have proliferated and become more punitive. In recent years access to bail has become more restricted (and there is no compensation scheme in this country for people incarcerated pre-trial who are ultimately not convicted). Standard non-parole periods have increased the number and

Director's Overview (continued)

length of prison sentences. While more money has been put into police and prisons (although not enough into rehabilitation), the processes and agencies in between have been constantly cut back. Restrictions on the right to trial by jury have been proposed. Measures arguably appropriate for meeting the threat of terrorism have been appropriated to "ordinary crime", with severe potential consequences for human rights and the rule of law. There has never been a greater need for a truly independent DPP and it has been heartening to note that in a recent staff survey (with a 73% response rate) one of the key strengths identified was the leadership of the Director, particularly in maintaining the independence of the Office.

STAFF

I have had the good fortune to work with a great professional team of legal professionals and administrative officers throughout my time in office. They have constantly struggled to comply with the demands of court listings and daily work pressures with inadequate resources and staff numbers. As I have said, there has been a growing toll in stress and illness and lost time for self and close ones. Government demands and strictures have had to be addressed – among them the futile objective of "cradle to grave" case representation and the push to juniorise the trial prosecutors (in the interests of saving money) – and it is usual now for large numbers of matters in many offices to remain unallocated to prosecutors until something urgent has to be done. Through all this, the 600 or so staff (at the present level) succeed amazingly in maintaining the highest professional standards and the ODPP remains a very popular employer.

I thank them all: the legal professionals in my Chambers, all Groups and Units in Head Office, Parramatta, Campbelltown, Penrith, Newcastle, Wollongong, Gosford, Wagga Wagga, Dubbo, Lismore and (when we had it) Bathurst; the administrative officers in Secretariat, the Library and all branches of Corporate Support in all offices and (since we acquired him) the Executive Director and the Witness Assistance Service.

I am put in mind of Rudyard Kipling's poem "If". Making due allowance for some infelicities of expression of that era (and omitting the lines about pitch-and-toss, because I am not a gambler) – I have aspired to meet those goals. History will judge.

INDEPENDENCE AND ACCOUNTABILITY

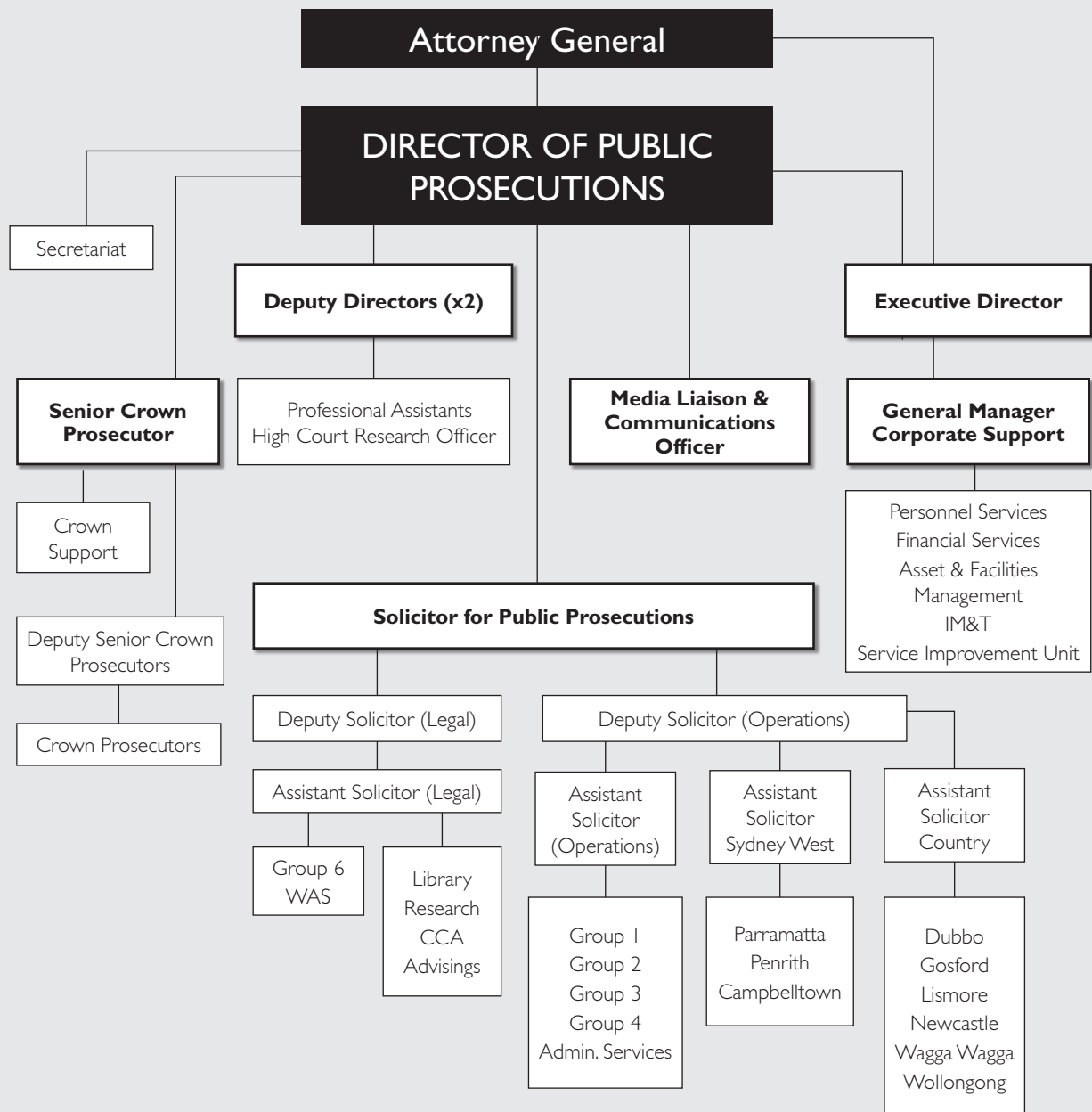
No guideline under section 26 of the Director of Public Prosecutions Act 1986 has been received from the Attorney General, nor has notice been received from him of the exercise by him of any of the functions described in section 27. No request has been made to the Attorney General pursuant to section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



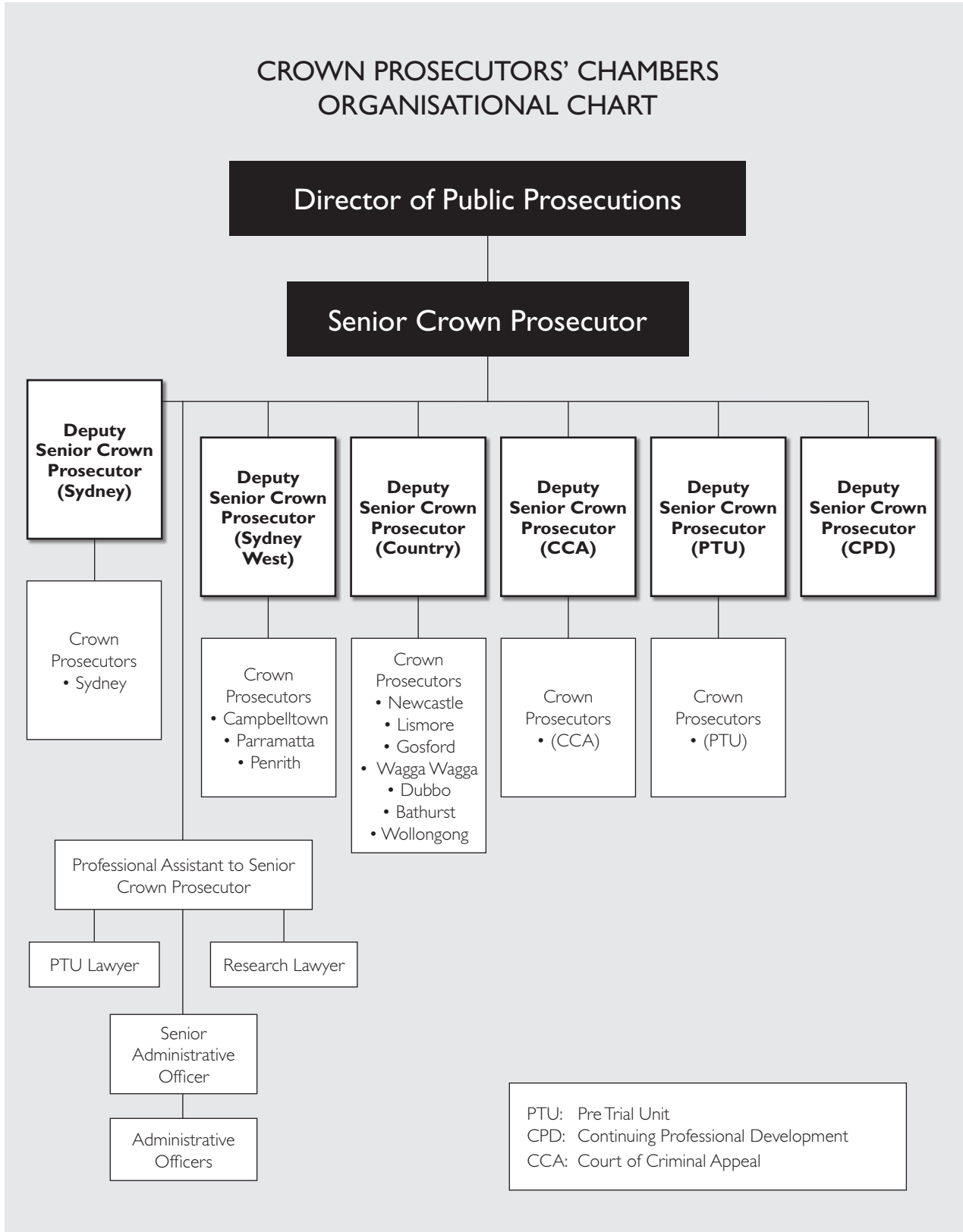
MANAGEMENT AND ORGANISATION

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), Executive Director, 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, Executive 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, 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.

The minutes and relevant papers are forwarded to the NSW Attorney General and NSW Treasury once they are confirmed as correct by the Management Committee.

Audit and Risk Committee

The Audit and Risk Committee in accordance with Treasury Policy, operates and is made up of an independent chair, an independent member and a representative of ODPP management.

Representatives of the Audit Office of NSW, the Executive Director, Solicitor's Office and the General Manager Corporate Services attend meetings by invitation.

The Audit and Risk 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 implantation 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, Executive Director; 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 bi-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 Nigel Hadgkiss	Stephen Kavanagh Gary Corkill (last meeting 13 August 2009) Bernie O'Keeffe CPA John Hunter (External representative) Sandra Egger (External representative)
Management Committee	Nicholas Cowdery AM QC (Chair) Luigi Lamprati SC Donna Woodburne SC Mark Tedeschi QC Nigel Hadgkiss Stephen Kavanagh Claire Girotto Graham Bailey	Jim Hughes Johanna Pheils Janis Watson-Wood Gary Corkill (last meeting 16 July 2009) Sashi Govind Wendy Carr Bernie O'Keeffe CPA
Audit and Risk Management Committee	Jon Isaacs (Chair / Independent) Patricia Azarias (Independent)	Chris Maxwell QC (Member) Sashi Govind (Deputy Member)
Information Management & Technology Steering Committee	Claire Girotto (Chair) Stephen Kavanagh David Arnott SC Graham Bailey Hop Nguyen Jeff Shaw (last meeting 4 Aug 2009) Janis Watson-Wood	Keith Wright Gary Corkill (last meeting 4 Aug 2009) Nigel Hadgkiss Sashi Govind Julie Wilson Wendy Carr Bernie O'Keeffe CPA
Crown Prosecutors Management Committee	Mark Tedeschi QC Chris Maxwell QC Peter Barnett SC Peter Miller Terry Thorpe Phil Ingram John Kiely SC Mark Hobart SC Margaret Cunneen SC Deborah Carney	Region Representatives Pat Barrett (alt. Nicole Noman) Giles Tabuteau (alt. John Pickering) Frank Veltro (alt. Ken McKay) Keith Alder (alt. Siobhan Herbert) Michael Fox (alt. Paul Cattini) Craig Everson (Treasurer)
Sydney Office - Accommodation Centre	General Manager, Corporate Services (Chair) Deputy Director of Public Prosecutions Executive Director Senior Crown Prosecutor Solicitor for Public Prosecutions Manager, Asset & Facilities Management Change Manager (Manager, Service Improvement) PSA Representative	

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 Gwen Edwards
	Employer Representatives Peter Burns Peter Bridge Nigel Richardson (Proxy) Chris Clarke (Proxy)	Country Bree Chisholm Vicki Taylor Tamara Shields (Proxy)
PSA/Management Joint Consultative Committee	Gary Corkill (Chair until 18/6/2009) Nigel Richardson (Chair) Nigel Hadgkiss Claire Giroto Stephen Kavanagh Graham Bailey Sashi Govind Bernie O'Keeffe CPA	Wendy Carr Amanda Brady (PSA) Fiona Horder (PSA) Stephen Spencer (PSA Industrial Officer) Jenny Wells (PSA) Andrew Horowitz (PSA) Aaron Kernaghan (PSA)
Accommodation Committee	Gary Corkill (Chair until 21/9/09) Bernie O'Keeffe CPA (Chair from 22/9/09) Luigi Lamprati SC Nigel Hadgkiss Jenny Wells (PSA)	Mark Tedeschi QC Stephen Kavanagh Peter Bridge Jeff Shaw Keith Holder
Disability Action Plan Implementation Committee	Peter Bridge Deborah Carney Anna Cooper	Diana Weston Katarina Golik 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:

80.8 % 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 0.04% of the 16,862 cases dealt with, due to the conduct of the prosecution. These figures do not represent all matters completed but those that may attract an award of costs.

See Appendix 3, Item 5 and Appendix 6 for details

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

In this reporting period there were 214 confiscations applications with 199 confiscation orders made. The total estimated value of property confiscated was \$1.76 Million. The proportion of successful applications was 93%.

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 continues to be given prominence at staff meetings and induction courses conducted through the year:

Mr Paul Monaghan, Senior Ethics Solicitor from the Law Society of NSW provided a two hour presentation on practical aspects of ethics and professional skills at the annual Solicitors' Training and Development Day held on 22 December 2009.

The Crown Prosecutors undertake presentations towards their professional development, including a strand that deals exclusively with ethics and regulations.

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

Goal	1.3 To provide timely prosecution services
Strategy	1.3.1 Comply with relevant time standards
Outcome	Speedy resolution of matters
Performance Indicator	1.3(a) Percentage of advisings completed in agreed time 1.3(b) Proportion of trials listed which were adjourned on the application of the Crown 1.3(c) Number of days between arrest and committal for trial

Measures

1.3(a) 1. Percentage of advisings completed in agreed time:

The Office provides various advising services in different categories.

Advisings as to election: 72 % completed within 14 days:

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

49 % completed within 90 days:

See Appendix 3 Item 1 for details

1.3(b) 2. Proportion of District and Supreme Court trials listed that were adjourned on the application of the Crown.

In this reporting period, 74, or 3.6% of trial listings (totalling 2079 listings) were adjourned on the application of the Crown.

See Appendix 2, Item 4 for details.

1.3(c) Number of days between arrest and committal for trial in the Local Court was 220 days on average, and 178 days between arrest and committal for sentence.

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)	Number 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". The next survey will be conducted in 2011 and its results will be included in the next annual report.

See Appendix 4 for details of previous victim and witness surveys.

2.1(b) Number of victims and witnesses assisted by the Witness Assistance Service (WAS)

During 2009 - 2010 a total of 3033 victim and witness files were active 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 2009-10 completed and submitted to the Auditor-General within the set deadline of 11 August 2010.
 - Fringe Benefit Tax (FBT): Annual return for 2009-10 submitted by due date of 21 May 2010 and quarterly payments made up to June 2010.
 - Business Activity Statement (BAS): Monthly returns submitted up to June 2010 by due dates.
 - Waste Reduction and Purchasing Plan (WRAPP): The 2009 biennial report was completed. The next report is due August 2011.
 - 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 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

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 \$7458.

This figure represents the net cost of services divided by the total number of matters conducted of the following type:

Advisings (213), Committals (5965) and Summary Hearings (452), Trials (1905) and Sentences (1846), Applications for Leave to Appeal and Appeals to the High Court (8) and CCA (295), Bail Appeals (1100), Conviction Appeals (All Grounds Appeals) to the District Court (1569) and Leniency Appeals to the District Court (20).

In the preceding reporting period the average cost of a matter was \$7410, and in the 07-08 reporting period it was \$7069.

Note that these figures do not include the cost of providing advisings as to election (3436 referrals completed), Severity Appeals to the District Court (6137) and call-ups for breaches of bonds (495).

If these matters are included, the average cost of a matter for this reporting period is \$4255. For the preceding reporting period the figure was \$4298 and for the 07-08 reporting period it was \$4134.

3.2(b) The Office operated within the allowable Controlled Net Cost of Service Limits for the financial year:

- The Executive Board and Management Committee review monthly and bi-monthly finance reports.

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 2009/2010 was 9.8%. This compares with a 13.9% turnover in 2008/2009.
- 4.1(b) The Recruitment and Employment Policy requires retraining every 3 years. 100% compliance this year. Refresher training available via E-Learning module from Department of Premier and Cabinet.
- 4.1(c) No salary increments were deferred during 2009-2010.

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 workers 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 2009-2010 was 5.74 days. This compares with an average of 6.39 days in 2008-2009.
- 4.2(b) 40% reduction in workplace injuries by June 2010, with 20% achieved by June 2009 – Achieved (40%) by June 2010.
- 4.2(c) 10% reduction by June 2010 in the proportion of injured employees still off work at 8, 12 and 26 weeks from the date of injury – achieved.
- 4.2(d) No reduction in the average cost of claims during 2009/2010. Salary increases and 2 specific expensive claims during the year made this target difficult to achieve.
- 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 2010 – 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 following training has occurred between July 2009 and June 2010. This training was determined in line with organisational priorities, determined by the Deputy Solicitor Legal. Training held at Head Office unless otherwise specified.

- Solicitors' Executive Training & Development Day 2009
- 5 x Pre-Training Day Workshops
- 8 x Technology Inductions (2 days)
- 3 x Technology Inductions (1 day)
- 12 x Justicelink Training sessions
- 17 x MCLEs
- 1 x Introductory Advocacy Pre-Workshop session
- 1 x Introductory Advocacy Workshop
- 1 x Intermediate Advocacy Pre-Workshop session
- 1 x Intermediate Advocacy Workshop
- 2 x Legal Development Program Training (2 days)
- 5 x Legal Development Program Training (1 day)
- 1 x Courtroom Drama (Advocacy Skill) Training – Wagga
- 3 x Guide to Sexual Assault Communication Privilege (Victim & Witness Issues) – Campbelltown, Wollongong, Parramatta
- 1 x Short Matters Intermediate Workshop (1/2 day)
- 1 x Communicating with Aboriginal People session (Dubbo)

- 1 x Competent Responses to Aboriginal Sexual & Family Violence – 2 day workshop
- 1 x Video Conferencing & Smartboard training session

Crown Prosecutors

Barristers must obtain ten points each year in the four strands that cover necessary professional knowledge and skill: Ethics & Regulation of the Profession, Substantive Law, Advocacy and Mediation and Barrister's Skills. Peter Miller DSCP (CPD) endeavours to cover all four strands during the period of the CPD activity each year. At the Crown Conference held on 6 April and 7 April 2010 there was a presentation by Hon. Brian Sully QC entitled "So you are a Crown Prosecutor: Really?" that went towards the Ethics & Regulation of the Profession strand.

In addition Crown Prosecutors are able to attend the presentations at the Bar Associations CPD. There have been presentations that address all four strands over the past year offered by the Bar Association.

Cumulative statistics – 1 Jul 2009 - 30 June 2010

Number of learning programs (internal & external):	88
Number of studies assistance participants:	11
Total days study leave accessed:	56.25 days
Total study reimbursements:	\$18,974.28

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) 1. Average number of days from arrest to matter disposal:

The average number of days from registration to disposal of matters across jurisdictions is 383; the median for this measure is 253.

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

5.1(b) 2. Submissions on proposed and existing legislation and committee representation:

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. The pro bono scheme to provide legal representation for victims of sexual assault to enforce the sexual assault communications privilege in criminal trials, concluded in February 2010. The ODPP participated in this project with the Women's Legal Services, the NSW Bar Association and three private legal firms, Clayton Utz, Blakes and Freehills. The project received a high commendation in the Law and Justice Foundation Awards, and although the Pilot is over, the service has continued to be provided in Sydney at the Downing Centre and Parramatta Courts.

The Director has made numerous submissions on proposals for law reform identified by the Attorney General, the NSW and Australian Law Reform Commissions, Legislative Council Standing Committee on Law and Justice and the Sentencing Council. Examples include submissions on Family Violence, People with Cognitive and Mental Health Impairment in the Criminal Justice System, Judge Alone Trials, Spent Convictions and Juveniles, and Summary Prosecutions and offences involving personal violence.

Comments were sent to the Criminal Law Review Division in relation to numerous issues such as amendments to Criminal


Procedure Act in respect of tendency and coincidence witnesses being extended the same alternative provisions as victims in sexual assault cases, (i.e. closed courts, the use of CCTV, non publication orders etc), this suggestion was acted upon in the Crimes Amendment (Child Pornography and Abuse Material) Act 2010 (No 9). Other suggestions included amending the definition of child pornography in s91H (1) (b) of the Crimes Act to address the concerns raised in the matter of R v Eades (Unreported Local Court); addressing the problems with interstate transfer of prisoners and the problems associated with delay that arises when the prisoner cannot be tried as they are incarcerated in another State; and the Defence of Claim of Right to the offence of robbery.

During the year the Office participated in the Sexual Offences Working Party chaired by Justice Elizabeth Fullerton and the Child Pornography Working Party chaired by His Honour Judge Berman SC.

The Office has also assisted Victims Services in reviewing material to be included on the Justice Journey website, Department of Justice and Attorney General in NSW Standardised Domestic Violence Package "Your Court Your Safety", A guide to the Media for Victims and the Shopfront Legal Service and Macquarie Legal Centre's joint publication "Youth Justice: your guide to cops and court" 4th edition.

The Office was represented by the Senior Crown Prosecutor and Solicitor for Public Prosecutions on the Trial Efficiency Working Group under the Chairmanship of Justice Peter McClellan, Chief Judge at Common Law. The Report and recommendations of the Working Group led to the enactment of amendments to the Criminal Procedure Act which are designed to improve the efficiency of the trial process.

For full details of all external committees in which the Office has participated see Appendix 29.



**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.

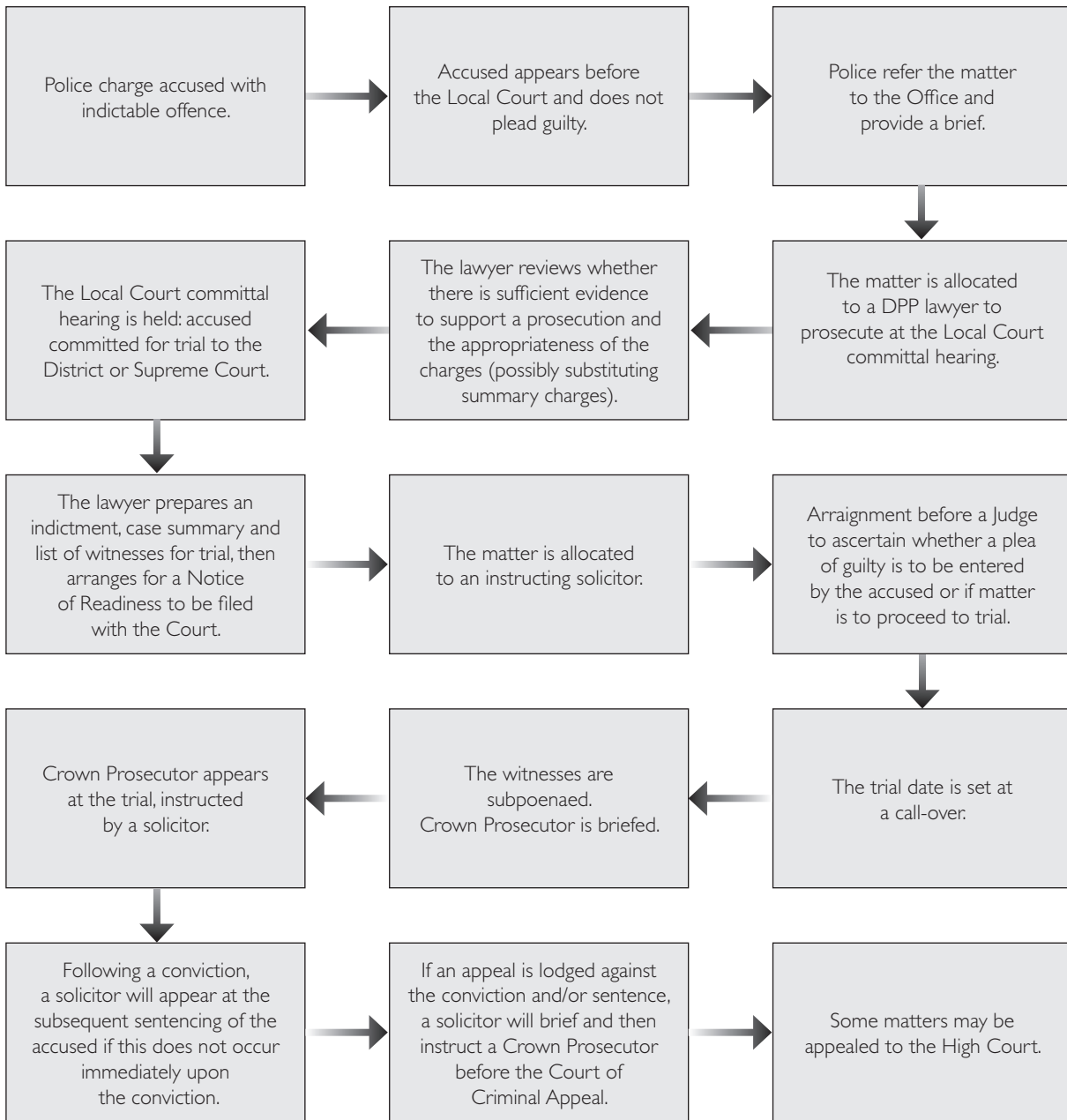
Section 33

The Director may delegate certain of his/her functions.

A blurred, black and white photograph of a courtroom scene. Three individuals are visible: a man in a suit on the left, a man in a suit in the center with his hand to his face, and a woman in a white dress on the right. The background shows the ornate architecture of a courtroom, including a sign that partially reads "DO" and another that says "WINN".

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.

A blurred, grayscale photograph of three individuals in business attire walking down a set of stairs. The person on the left is a man in a suit and tie, the middle person is a man in a suit, and the person on the right is a woman in a business suit. The background shows an ornate architectural structure with arches and a sign that partially reads "DO" and "WINN".

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

Table 1 – Local Court matters received and completed

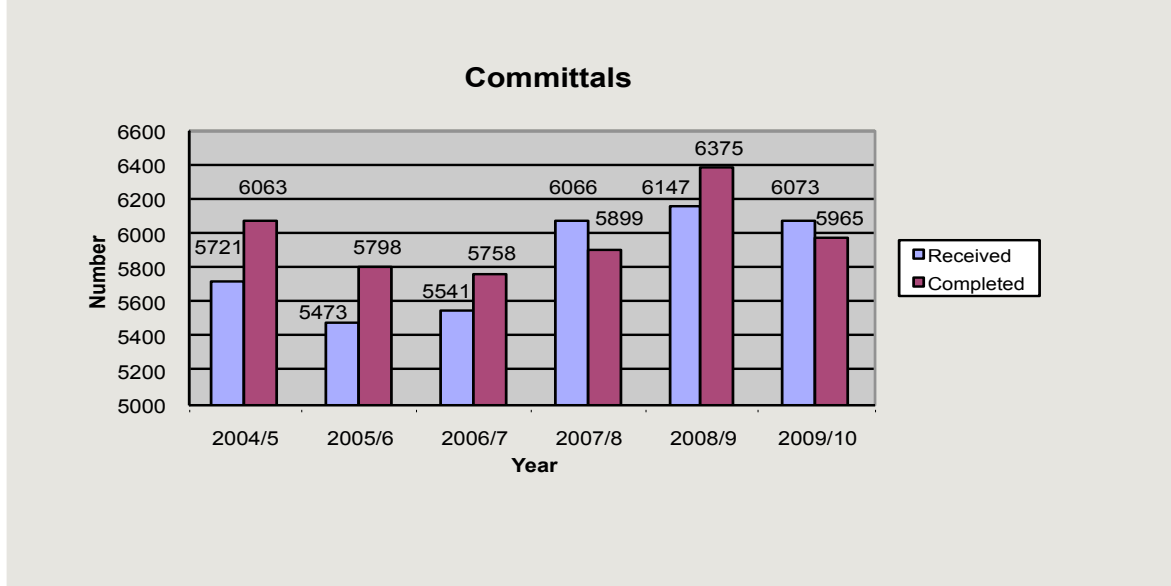
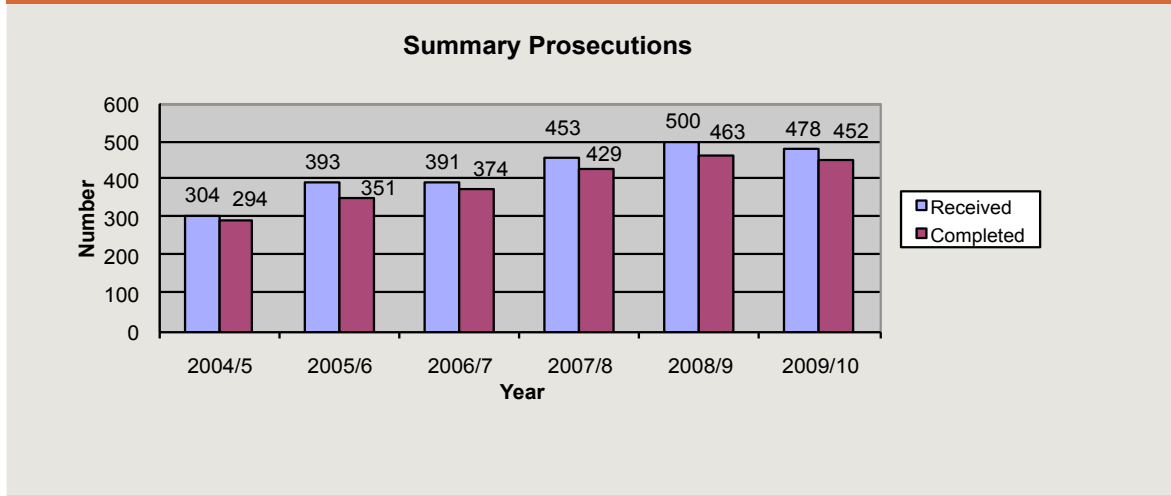


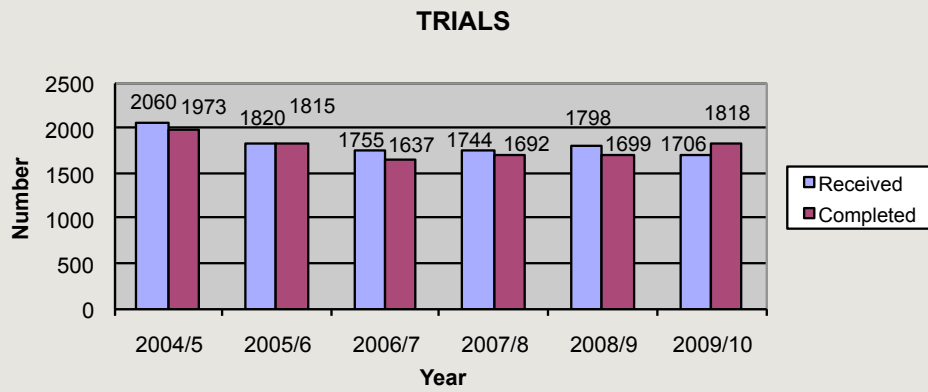
Table 2 – Local Court matters received and completed



Appendix I – Quantity/Productivity (continued)

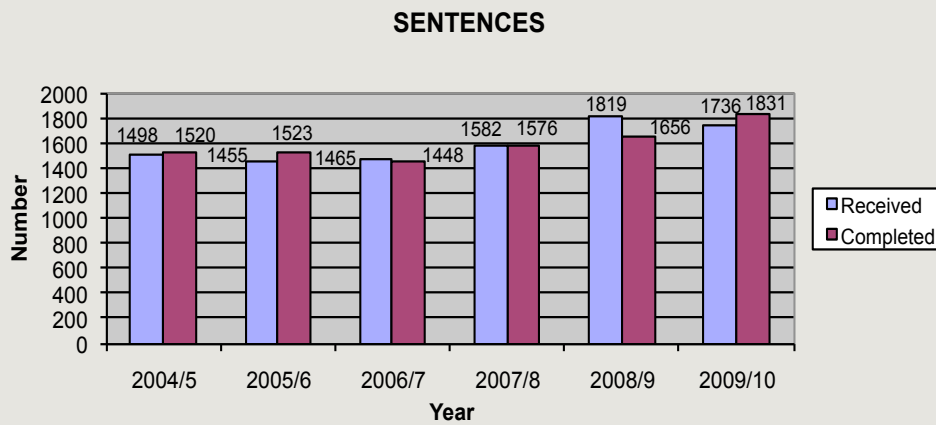
APPENDIX I – STATE SUMMARY – DISTRICT COURT

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 I – Quantity/Productivity (continued)

Table 5 – District Court Conviction Appeals received and completed.

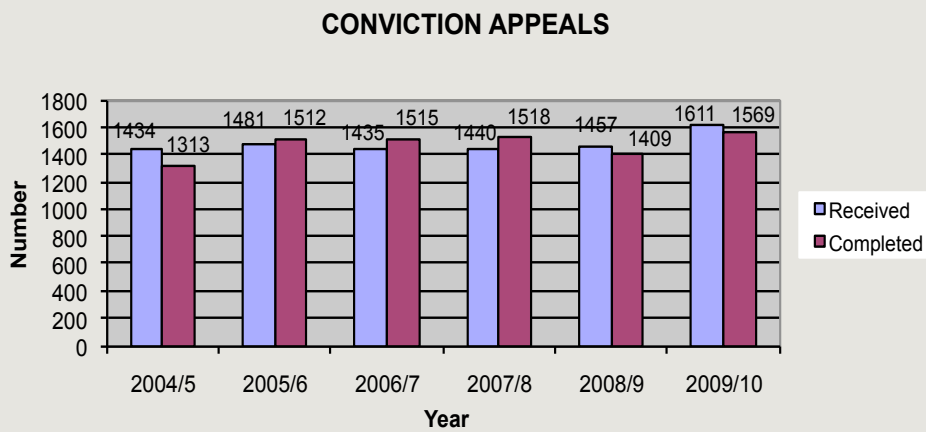
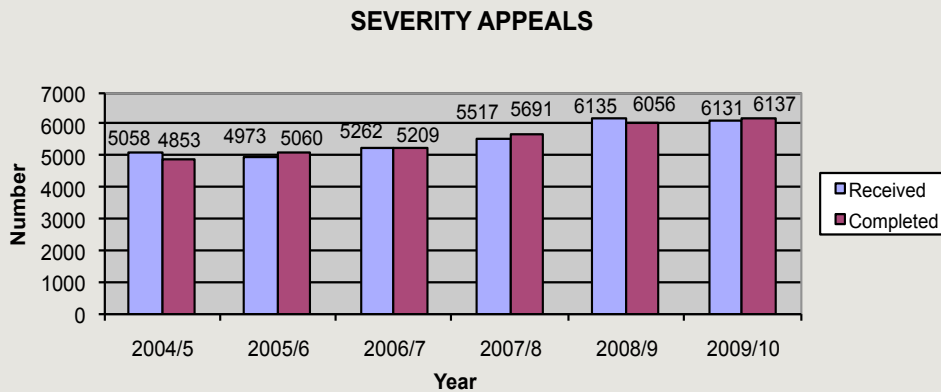


Table 6 – District Court Severity Appeals received and completed



Appendix I – Quantity/Productivity (continued)

APPENDIX I – STATE SUMMARY – SUPREME COURT

Table 7 – Supreme Court Trials received and completed

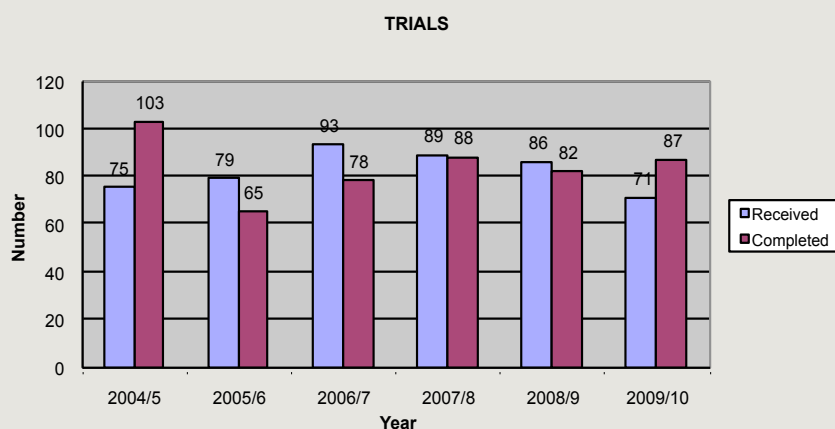
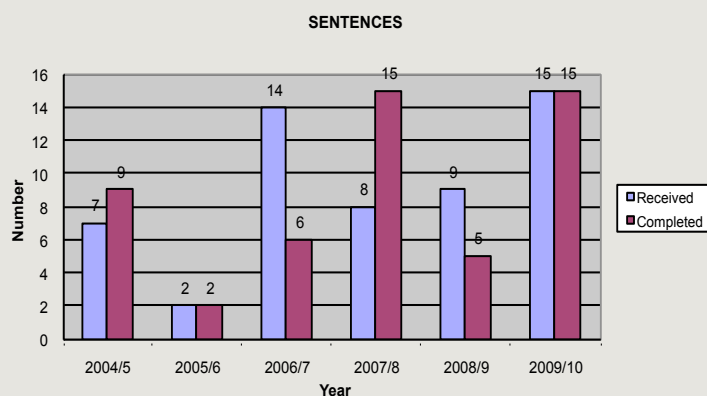


Table 8 – Supreme Court sentences received and completed



Appendix I – Quantity/Productivity (continued)

APPENDIX I – COURT OF CRIMINAL APPEAL

Table 9 – Appeals by Offenders finalised

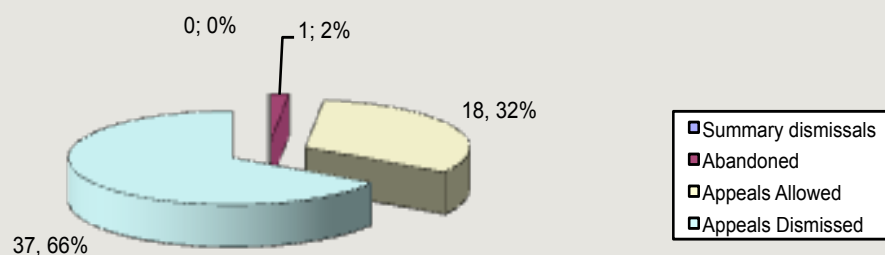
	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Conviction and sentence appeals	119	107	99	74	81	55
Sentence appeals	259	211	199	154	193	173
Summary dismissals	0	2	2	1	0	1
Appeals abandoned *	6	6	8	7	6	3
TOTAL	384	326	308	236	281	232

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

Table 10 – Other appeals finalised

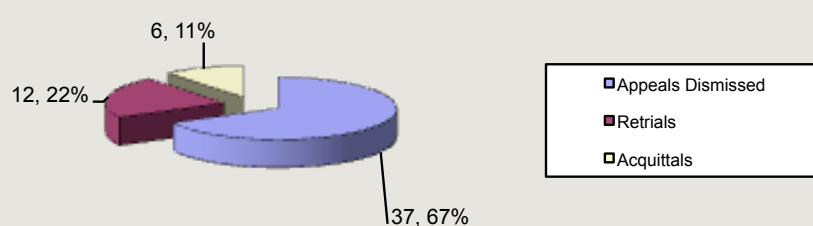
	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Crown Inadequacy Appeals *	87	80	73	72	78	48
Appeals against interlocutory judgments or orders (s.5F appeals)	20	25	20	16	15	15
Stated cases from the District Court	1	3	3	1	2	0
TOTAL ALL APPEALS FINALISED IN CCA	494	432	404	325	375	295

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

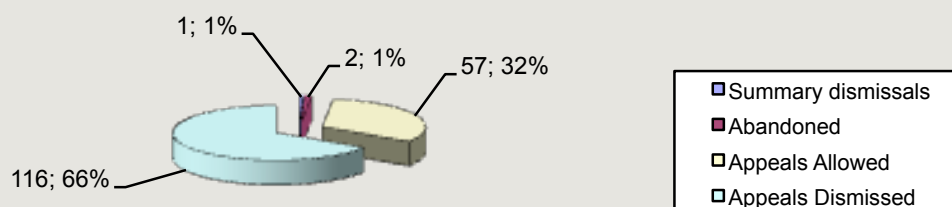
Conviction and sentence appeals finalised in 2008-09
Breakdown by number and percentage

Appendix I – Quantity/Productivity (continued)

Results of finalised conviction and sentence appeals in 2009-10
Breakdown by number and percentage



Sentence appeals finalised in 2009-10
Breakdown by number and percentage



APPENDIX I – HIGH COURT

Table I2 – High Court matters finalised

	2004/05	2005/06	2006/07	2007/08	2008/09	2009/10
Completed applications for special leave to appeal						
Applications by the offender	22	15	9	18	18	8
Applications by the Crown	1	0	1	0	0	0
Hearings conducted after grant of special leave to appeal						
Appeal by offenders	3	2	2	4	1	0
Appeal by the Crown	1	0	1	0	0	0

APPENDIX 2 – QUALITY/EFFECTIVENESS

Statistics provided in this Appendix relate to results, and should not be compared to Registrations/Quantity in Appendix 1

I. 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 1905 matters committed for trial and 1846 matters committed for sentence were finalised in the reporting period in the District and Supreme Courts.

3031 80.8% of these matters resulted in findings of guilt.

In the last reporting period 85% of matters resulted in a finding of guilt.

Supreme Court

A total of 87 matters committed for trial and 15 matters committed for sentence to the Supreme Court were finalised in the reporting period.

54 (53 %) of these matters resulted in a finding of guilt.

In the previous reporting period 76% of Supreme Court matters returned a finding of guilt.

District Court:

A total of 1818 matters committed for trial and 1831 matters committed for sentence to the District Court were finalised in the reporting period.

2959 (81%) returned a finding of guilt.

In the last reporting period, 85% of District Court matters resulted in a finding of guilt.

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

A total of 585 trials were completed in the Supreme and District Courts following a defended trial.

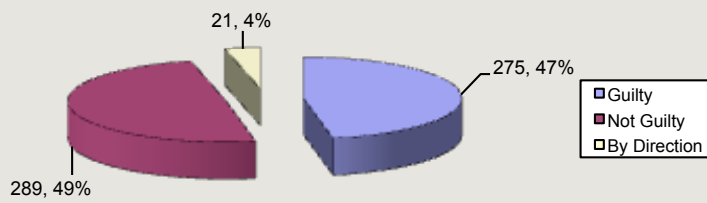
275 (47.0%) returned verdicts of guilty.

21 (3.6%) returned verdicts of not guilty by direction

289 (49.4%) returned verdicts of not guilty

Appendix 2 – Quality/Effectiveness (continued)

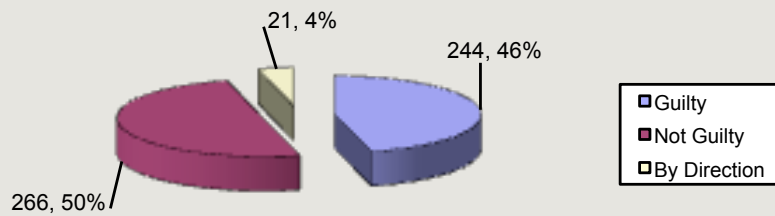
Trial Verdicts – Overall by number and percentage



Trial Verdicts – Supreme Court by number and percentage



Trial Verdicts – District Court by number and percentage

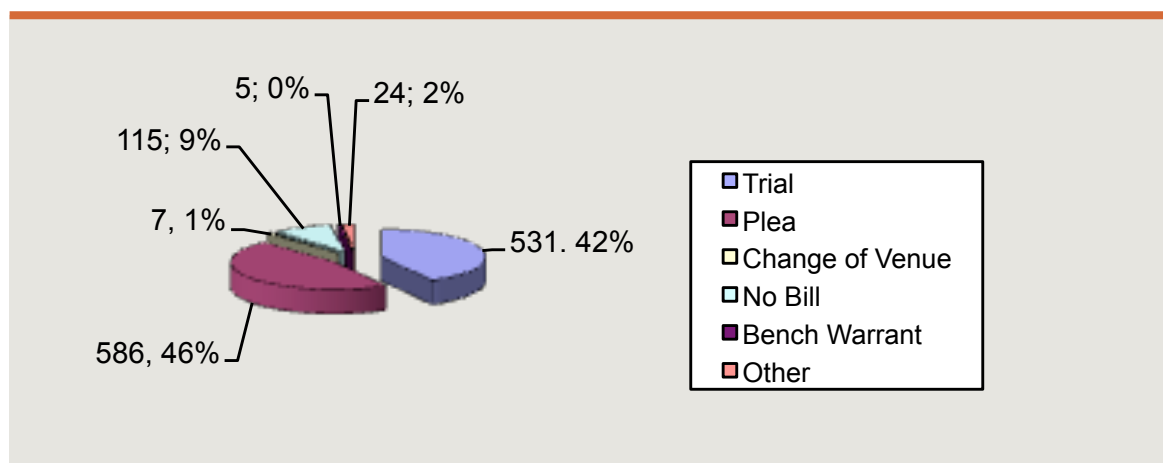


Appendix 2 – Quality/Effectiveness (continued)

3. Trial disposals

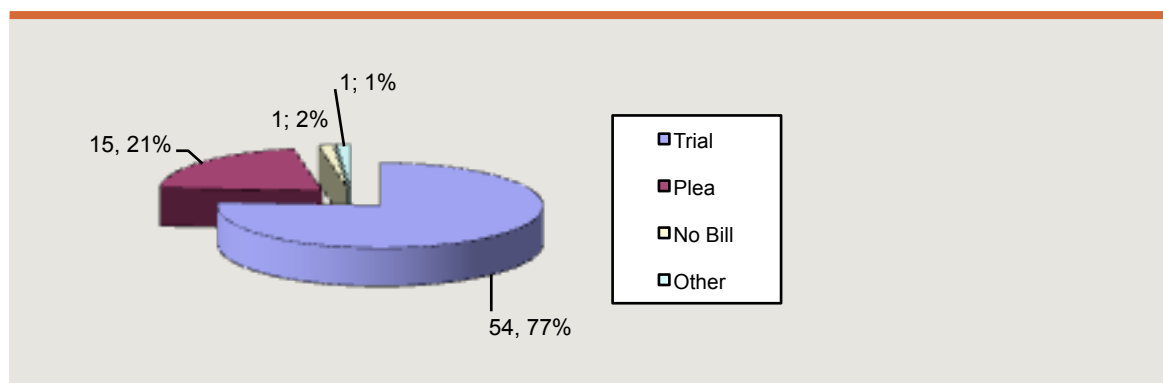
District Court

- 531 41.8% were disposed of by way of defended trial
- 586 46.0% were disposed of by way of late plea
- 7 0.5% changed venue
- 115 9.6% were discontinued after committal for trial
- 5 0.3% had bench warrants issued
- 24 1.8% disposed by other means (eg deceased, remitted to Local Court, discontinued before eve of trial or placed on Form 1)



Supreme Court

- 54 76.0% were disposed of by way of defended trial
- 15 21.2% were disposed of by way of late plea
- 1 1.4% was discontinued after committal for trial
- 1 1.4% was disposed by other means (eg deceased)



*The figures represent matters listed for trial during the reporting period, not the number of trial matters finalised.

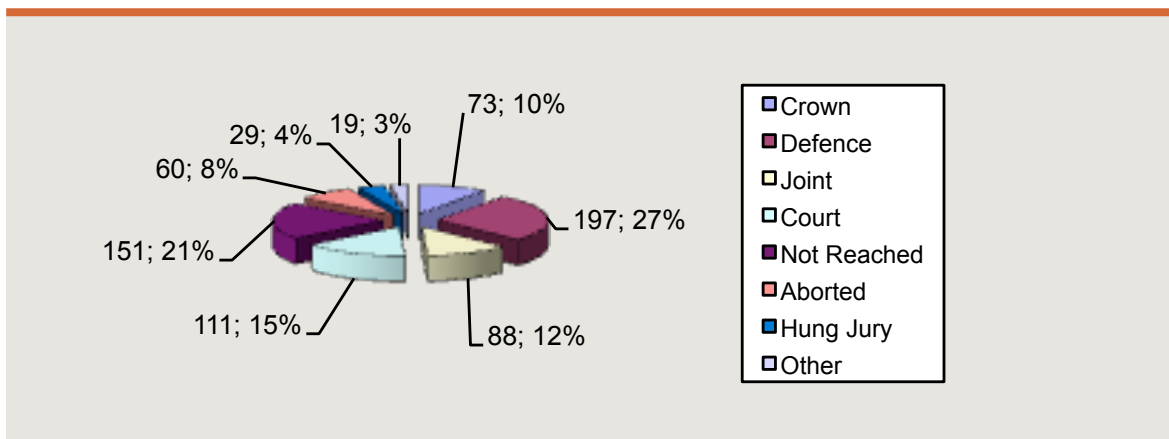
Appendix 2 – Quality/Effectiveness (continued)

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

73	10.0%	were adjourned on Crown application
197	27.0%	were adjourned on Defence application
88	12.0%	were adjourned on joint application
111	15.3%	were adjourned by the Court
151	20.8%	were not reached
60	8.3%	were aborted and were adjourned
29	4.0%	resulted in hung juries and were adjourned
19	2.6%	were adjourned for other reasons *

Total number of trial listings that were adjourned: 728

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

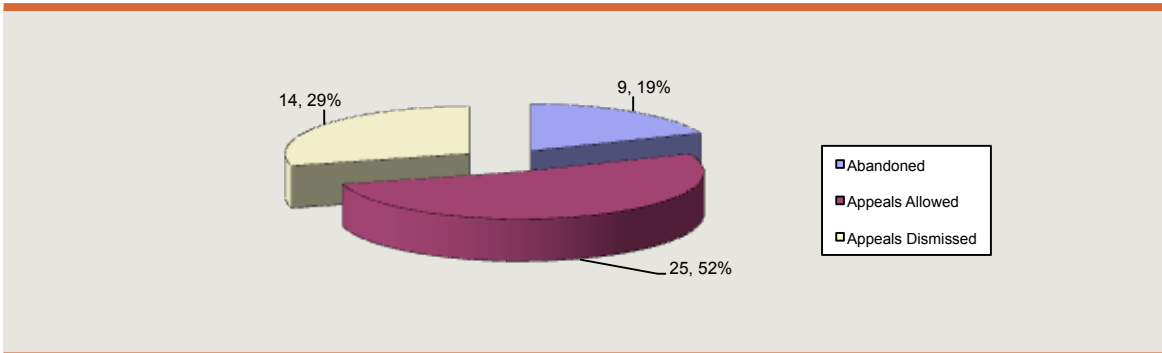


Appendix 2 – Quality/Effectiveness (continued)

5. Number and proportion of successful sentence appeals by Crown

48 appeals on the inadequacy of sentence were finalised by the Crown in this reporting period

- 9 19 % were abandoned
- 14 29 % were dismissed
- 25 52 % were allowed

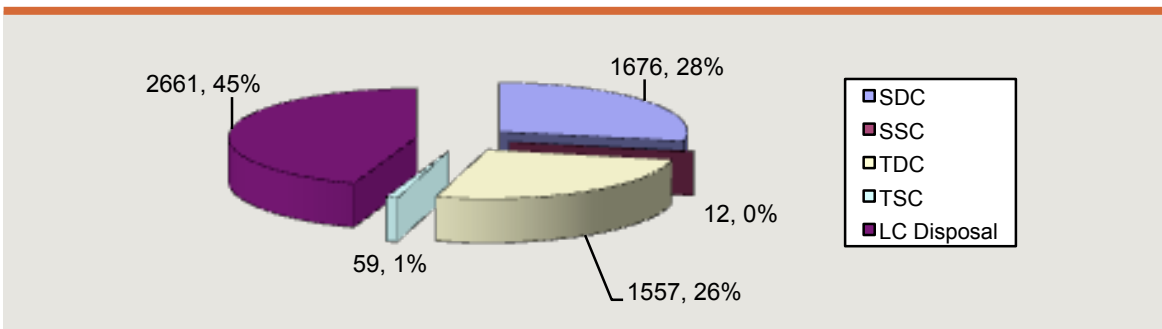


6. Local court committal disposals

State-wide

A total of 5965 committals were completed in the reporting period

- 1676 28% early pleas were committed for sentence to District Court
- 12 0.2% early pleas were committed for sentence to Supreme Court
- 1557 26.1% were committed for trial to the District Court
- 59 1% were committed for trial to the Supreme Court
- 2661 44.6% were disposed of in the Local Court



Appendix 2 – Quality/Effectiveness (continued)

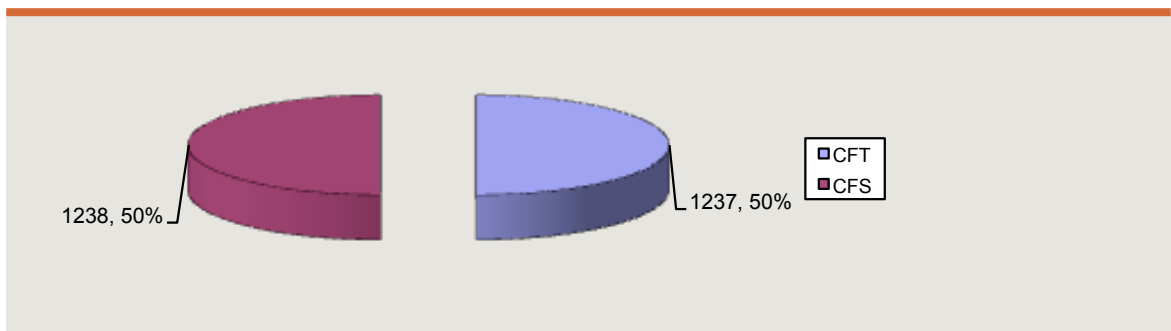
7. Criminal Case Conferencing

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 and has been extended to 31 December 2010.

State Wide excluding Criminal Case Conferencing trial

A total of 2479 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:

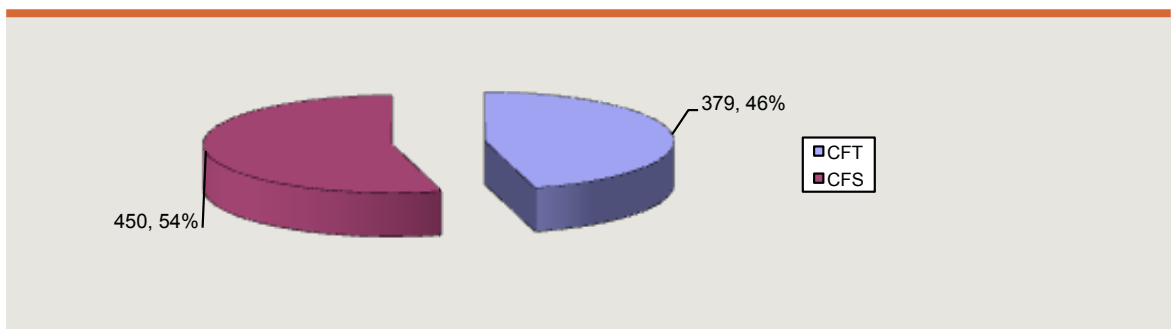
- 1237 50% were committed for trial
- 1238 50% early pleas were committed for sentence



Criminal Case Conferencing Trial

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

- 379 45.7% were committed for trial
- 450 54.3% early pleas were committed for sentence

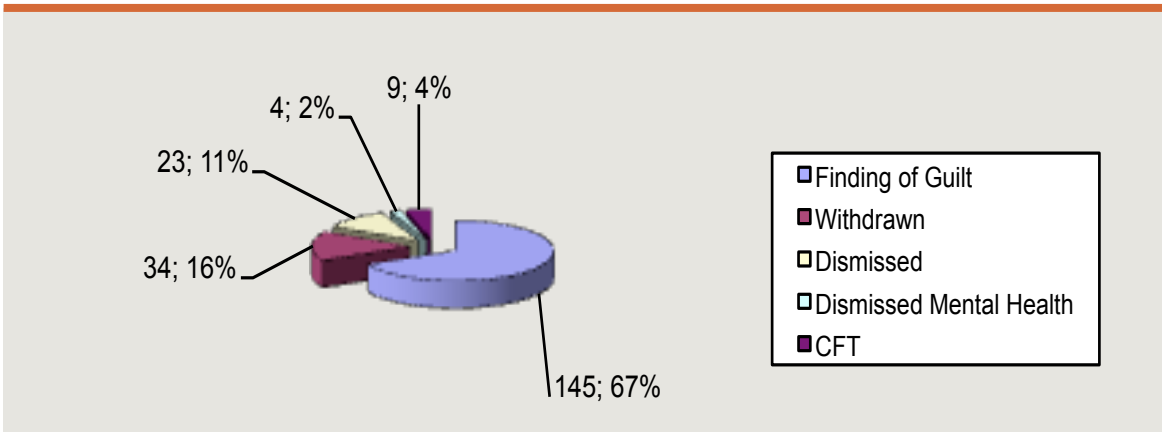


Appendix 2 – Quality/Effectiveness (continued)

8. Child Sexual Assault Summary Prosecutions

A total of 215 Child Sexual Assault summary prosecutions were conducted in the Local and Children's Court.

145	67.4%	returned a finding of guilt
34	15.8%	were withdrawn before hearing
23	10.7%	were dismissed after hearing
4	1.9%	were dismissed under mental health provisions
9	4.2%	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 may occur either as a result of an application by the accused, or on the initiative of the DPP.

In the reporting period submissions were received to discontinue a total of 635 matters. 168, or 26.45% were discontinued.

Of the 168 that were discontinued, 57 or 34% were discontinued because the complainant did not wish the matter to proceed.

The remainder were discontinued because there was no real prospect of conviction having regard to the nature or quality of the evidence at the time the submission was made. The discontinuance of 168 matters represents 4.5% of all cases finalised after committal and 8.8% of trial matters completed.

Appendix 2 – Quality/Effectiveness (continued)

SANCTIONS

The Attorney General has delegated to the Director, by orders published in the Government Gazette, authority to consent to prosecutions for particular offences. Such delegation is permitted by s 11(2) of the Director of Public Prosecutions Act 1986. Section 11(6) provides, "The Director shall notify the person who gives an authorisation under this section of the giving or refusal of consent under the authorisation."

The giving and refusal of consent pursuant to these authorisations for the year 2009-2010 are as follows:

Consent given

- Section 78A, Crimes Act 1900 (incest) x 2
- Section 66F, Crimes Act 1900 (sexual intercourse with person with cognitive impairment) x 4

Consent refused

- Section 327, Crimes Act 1900 (perjury)
- Section 66F, Crimes Act 1900 (sexual intercourse with person with cognitive impairment)
- Sections 7(1)(b) and 11(1), Surveillance Devices Act 2007 (use listening device to record a private conversation and communicate knowledge obtained through use of listening device).

APPENDIX 3 – TIMELINESS

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

A total of 3436 referrals for election were processed in the reporting period.

2471 72% were completed within 14 days

A total of 213 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

105 49% were completed within 90 days

2. Summary matters

Average and median number of days between:

Arrest and service of brief	130 (average) 83 (median)
Service of brief and disposal	170 (average) 105 (median)
Date of arrest and disposal	308 (average) 252 (median)

3. Local Court Committals

¹ The decision to elect may be 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. These statistics include time spent in further investigation and collection of evidence by police and other agencies. 40% of Advisings Briefs required further investigation.

Average and median number of days between:

Arrest and brief service

<i>Committals for trial</i>	99 (average) 66 (median)
<i>Committals for sentence</i>	81 (average) 61 (median)

Brief service and committal

<i>Committals for trial</i>	121 (average) 99 (median)
<i>Committals for sentence</i>	97 (average) 71 (median)
<i>Summary disposal</i>	167 (average) 94 (median)

4. Disposal in Higher Courts

Average and median number of days between:

Committal and completion

<i>Matters committed for trial</i>	349 (average) 274 (median)
<i>Matters committed for sentence</i>	170 (average) 126 (median)

Court of Criminal Appeal

Notice of Appeal to finalisation	206 (average) 147 (median)
----------------------------------	-------------------------------

High Court

Application for special leave to finalisation	272 (average) 233 (median)
---	-------------------------------

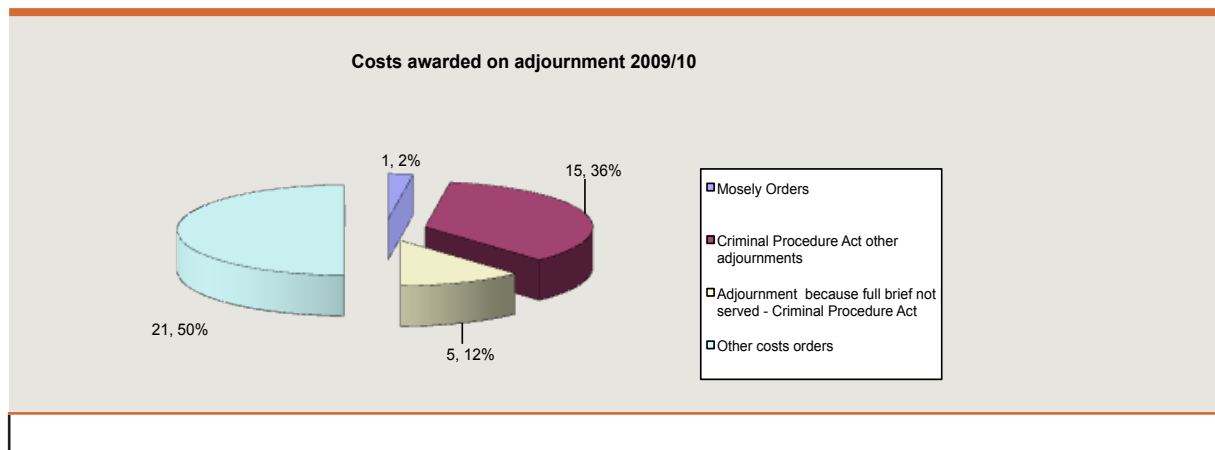
Appendix 3 – Timeliness

5. Costs awarded against the ODP: Applications for adjournment

The Criminal Procedure Act 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, 2008-9, 2009-10 where costs were awarded on prosecution applications for adjournment. In 5 matters costs (12%) 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	2009/10
“Mosely Orders”	2	5	1
Criminal Procedure Act other adjournments	6	9	15
Adjournment because full brief not served – Criminal Procedure Act	11	11	5
Other costs orders	36	42	21
Total	55	67	54



APPENDIX 4 – SERVICE TO VICTIMS AND WITNESSES

Key Performance Indicators

I. ODPP Prosecution Victim Matters with WAS Involvement

Table I Indicates the number of ODPP matters by charge category where there has been WAS involvement during 2009-2010. WAS involvement is indicated by the presence of a WAS Icon on the ODPP matter file.

Charge Category	Count of WAS Icon	Total matters	% WAS Involvement
ASS (Assaults - including DV matters)	224	3562	6.3%
CSA (Child Sexual Assault)	527	667	79.0%
CUL (Dangerous Driving incl. deaths)	79	168	47.0%
DAM (Damage to Property)	1	306	0.3%
DRU (Drug related matters)	0	1889	0.0%
FRA (Fraud)	0	419	0.0%
HOM (Homicide)	89	151	58.9%
LAW	0	2	0.0%
ROB (Robbery)	36	1110	3.2%
SEX (Adult Sexual Assault)	302	406	74.4%
THE (Theft)	31	2375	1.3%
TRA (Traffic)	0	3255	0.0%
ZZZ (Other e.g. Child pornography)	46	2443	1.9%
Total	1335	16753	8.0%

- Highlight denotes WAS priority matters.
- Highlight denotes matters where some are WAS priority matters but not all.

Overall there was a WAS Icon on 8.0% of ODPP files during 2009-2010. In the three distinct WAS priority categories highlighted of child sexual assault, adult sexual assault and homicides the WAS icon appears on 71% of ODPP files.

Variables impacting on the statistics and percentages:

- Multiple offender matters - a CASES file is often initially opened for each offender however the WAS Officer will only register the victim(s) against one of the offenders. Hence a WAS Icon only appears on one file.
- Other WAS priorities are hidden in more general matter types such as domestic violence and child physical assaults in ASS and dangerous driving involving death in CUL and child pornography in ZZZ.
- Other files opened by the ODPP and which relate to victim matters may include Advising files and bail files; in a number of these matters WAS will not be involved or will have registered a WAS ICON on the main file. A number of Victims matters that come to the ODPP as an advising do not proceed as an ODPP prosecution as charges are not laid or the matter is referred back to the Police to prosecute. WAS will not have contact with victims in these matters.

Appendix 4 – Service to victims and witnesses (continued)

2. Time taken from registration to initial contact with victims or witness registered with WAS

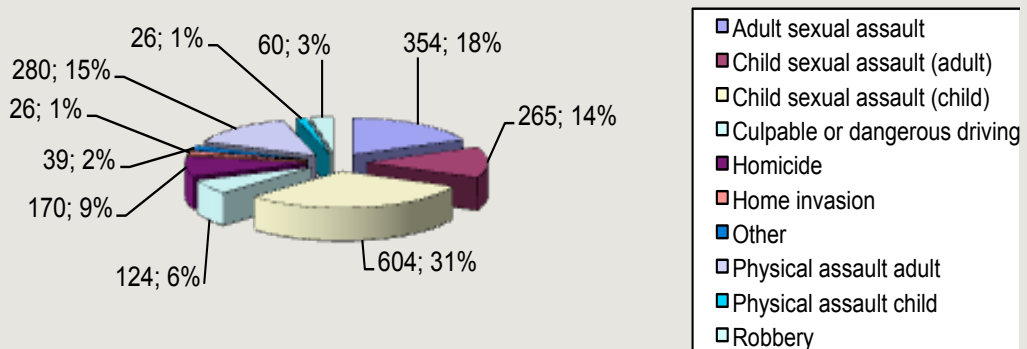
Average time taken between registration and first contact with victim or witness was 34.5 days. This time frame is greater than the recommended time of 2 weeks. Factors impacting on this time frame include:

- Time taken to obtain victims contact details for early referrals
- Victims not contactable for some time
- Contact delayed due to recommendations of solicitor or police.
- Matter registered on the WAS database but not allocated to WAS Officers due to staff vacancies, high caseloads and referral waiting lists.

Service Delivery Witness Assistance Service 2009-2010

During 2009-2010 there were 1948 new WAS registrations. As the number of new WAS registrations is contingent on the number of WAS staff at any point in time, the number of new WAS registrations in 2009-2010 was 245 less than for 2008-2009. This reflects the necessity to strengthen priorities and implementing the *Interim WAS Strategy*. This has resulted in referral waiting lists of unallocated matters and some referrals not being accepted. In June 2010 there were 313 unallocated WAS priority matters across the state. Graph 1 shows the number of new WAS registrations during 2009-2010 according to matter type. Graph 2 shows a comparison of new registrations by year since 2001.

Graph 1. New WAS Registrations by matter type 2009/10



Appendix 4 – Service to victims and witnesses (continued)

Graph 2. New Referrals to Witness Assistance Service, 2001 – 2009



During 2009-2010 there were a total of 3033 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

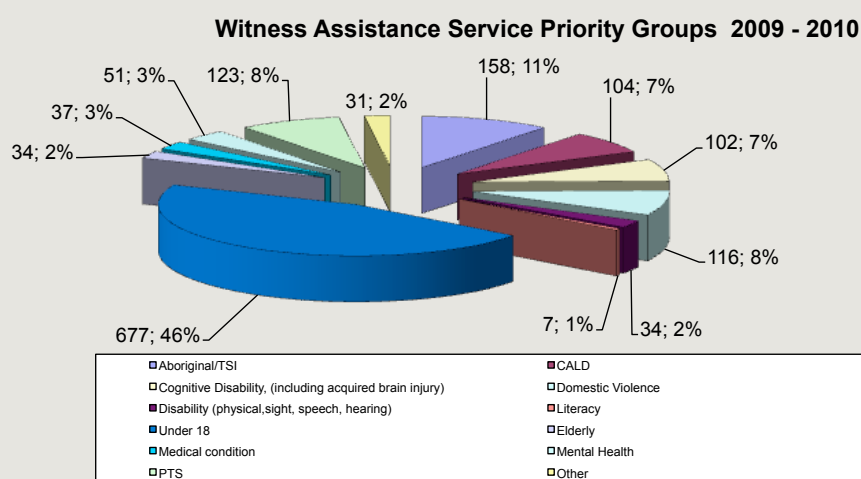
LOCATION	NUMBER of ACTIVE FILES
CAMPBELLTOWN	113
DUBBO	101
GOSFORD	79
LISMORE	160
NEWCASTLE	285
PARRAMATTA	152
PENRITH	134
SYDNEY	519
WAGGA WAGGA	135
WOLLONGONG	237
*PENRITH/DUBBO PILOT	33
TOTAL	1948

Appendix 4 – Service to victims and witnesses (continued)

Special priority groups and vulnerable witnesses

WAS prioritises services for those victims and vulnerable witnesses with special needs. Graph 3 shows the breakdown of the type of special needs of victims and witnesses registered in 2009 – 2010.

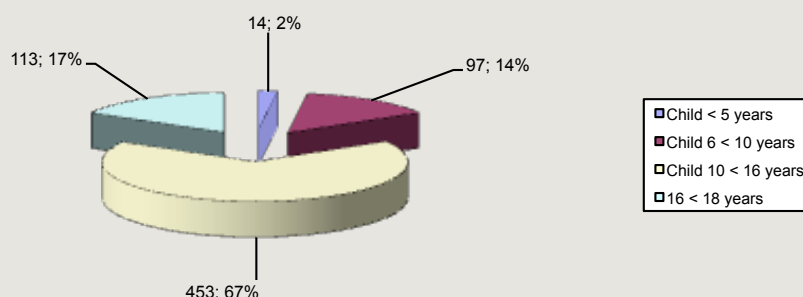
Graph 3. Witness Assistance Service Special Priority Groups 2009 - 2010



1440 victims or witnesses were registered during 2009-2010 and identified as having special needs including:

- 677 children and young people under 18 years of age with the majority being in the 10-16 years category; (see Graph 4)

Graph 4. Special Priority Group – Under 18 years

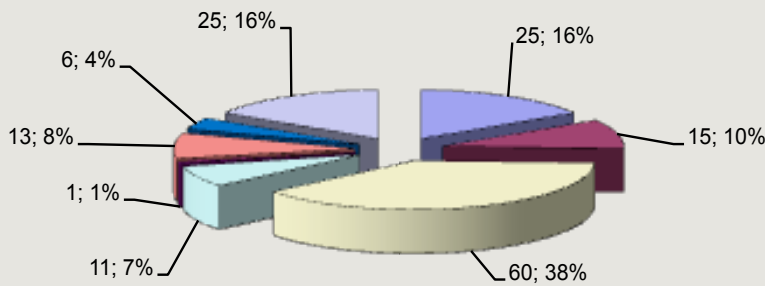


- 140 people with a disability including acquired brain injury, intellectual or cognitive disability, physical disability, sight or hearing impairment or mental health issues;
- 104 people from culturally and linguistically diverse backgrounds;
- 34 older or frail aged people or people with serious health problems;
- 123 victims were identified as experiencing severe post traumatic stress symptoms.
- 158 victims and witnesses were identified as Aboriginal or Torres Strait Islanders (see Graph 5)

Appendix 4 – Service to victims and witnesses (continued)

Graph 5. Aboriginal and Torres Strait Islander Victims and Witnesses – new WAS registrations by matter type

Aboriginal and Torres Strait Islander Victims and Witnesses - new WAS registrations by matter type



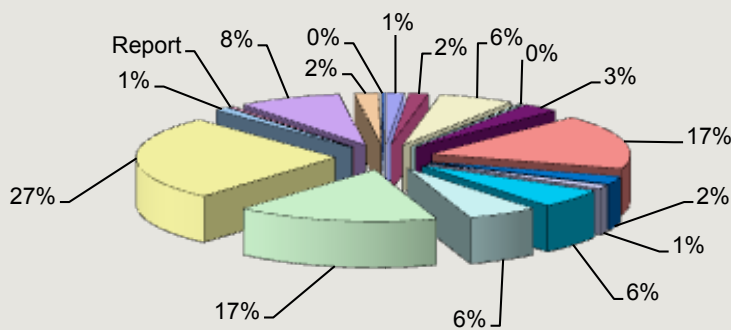
- Adult sexual assault
- Child sexual assault (adult)
- Child sexual assault (child)
- Dangerous driving
- Home invasion
- Homicide
- Other
- Physical Assault

Services Provided by WAS

WAS recorded 18,054 hours of services provided in 2009/10. 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 (see Graph 6).

Services Provided by WAS 2008 – 2009

Services provided by Witness Assistance Service 2009 - 2010



- Initial contact
- Crisis counselling
- Debriefing
- Interagency Liaison
- Referral
- Victim Impact statements
- Assessment
- Court preparation
- Email communication
- Liasion with DPP lawyers
- Report
- Victims Register
- Conference
- Court support
- Information provided
- OTHER
- Travel

Appendix 4 – Service to victims and witnesses (continued)

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. The next survey will be conducted in 2011 and results will be published in the next annual report.

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 is clear from all surveys conducted since 1994 that the determining factor in relation to satisfaction with the service provided by the Office is the level of communication received. Positive comments about the service provided by ODPP staff are the level of professionalism, support and courtesy afforded to victims and witnesses. Less positive comments relate to lack of continuity of representation, time taken off work and insufficient remuneration for attendance at court.

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. To accommodate the amendments, the ODPP has (From 1 January 2008) 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 the obligations required under CoPoCA. This funding is partly applied to the position of a full time confiscation lawyer in Sydney with the remainder being applied to other related resources required in the area, including information technology development and training. The Assistant Solicitor (Legal) and Manager Advising Unit manage and provide legal advice in this area of practice.

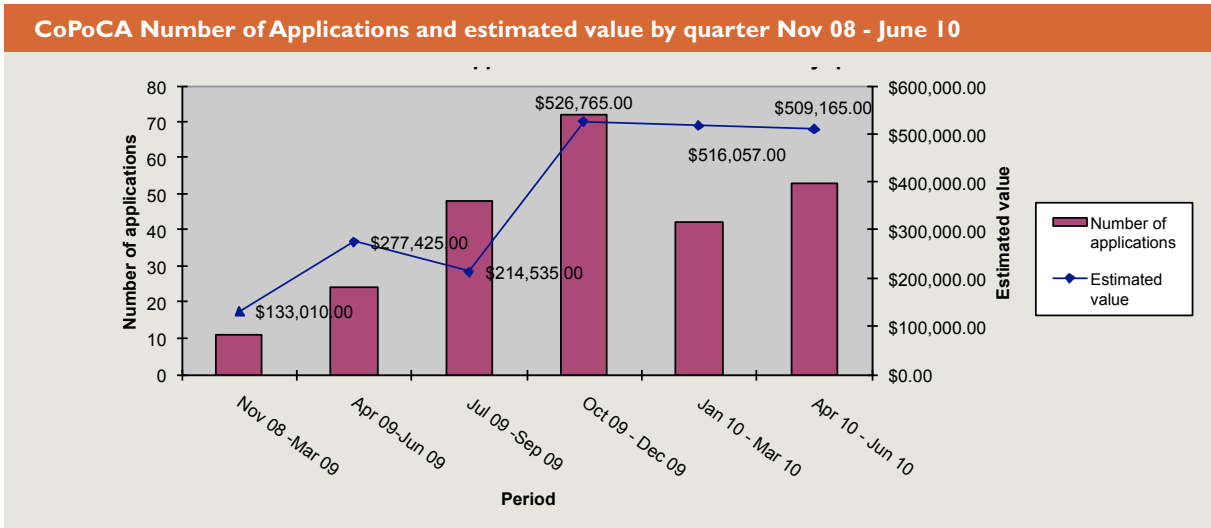
Additional funds were provided by Treasury to the ODPP to enhance CASES to manage and record information about proceedings pursuant to CoPoCA. The enhancements to CASES commenced on 12 November 2008.

Performance and Statistics

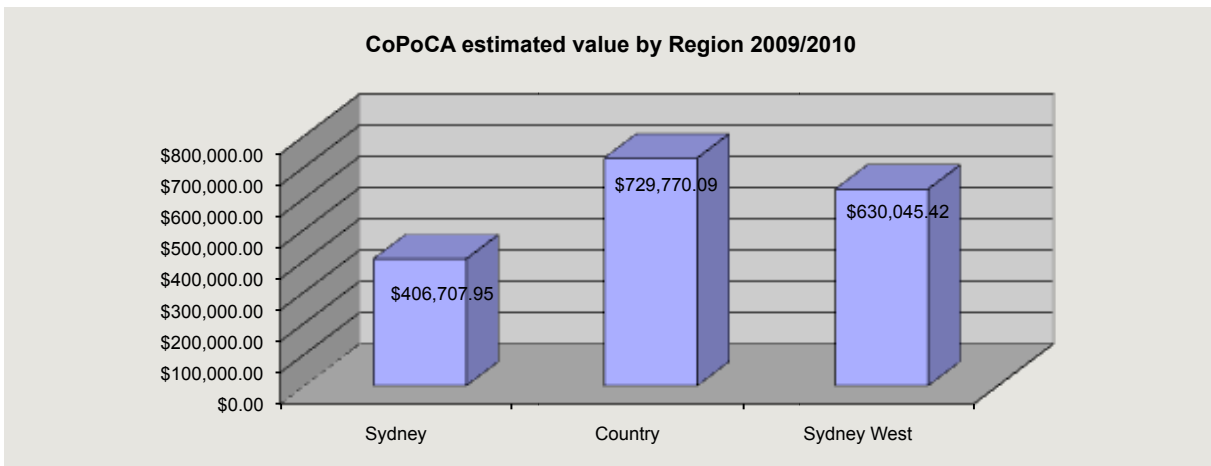
Following the enhancements to CASES the Assistant Solicitor (Legal) reports quarterly to the Management Committee on the performance of the Office pursuant to CoPoCA. During the 2009/2010 financial year there was a significant rise in the number of applications made pursuant to the Act and the estimated value of property confiscated by the ODPP. Particulars appear in the table and graph below.

	2008/2009	2009/2010
Number of Orders Applied for (FO, PPO & DPO)	54	214
Number of Orders Granted	49	199
Number of Forfeiture Orders (FO)	43	188
Number of Pecuniary Penalty Orders (PPO)	1	7
Number of Drug Proceeds Orders (DPO)	5	19
Percentage of matters where application was successful	90.8%	93%
Total Estimated Value of property confiscated	\$0.506 million	\$1.76 million

Appendix 5 – Recovery of proceeds of crime



Cash was the most common property confiscated, followed by motor vehicles. Computers used in child pornography, mobile phones, and hydroponics equipment were also forfeited. The following table depicts the estimated value of property confiscated by region.



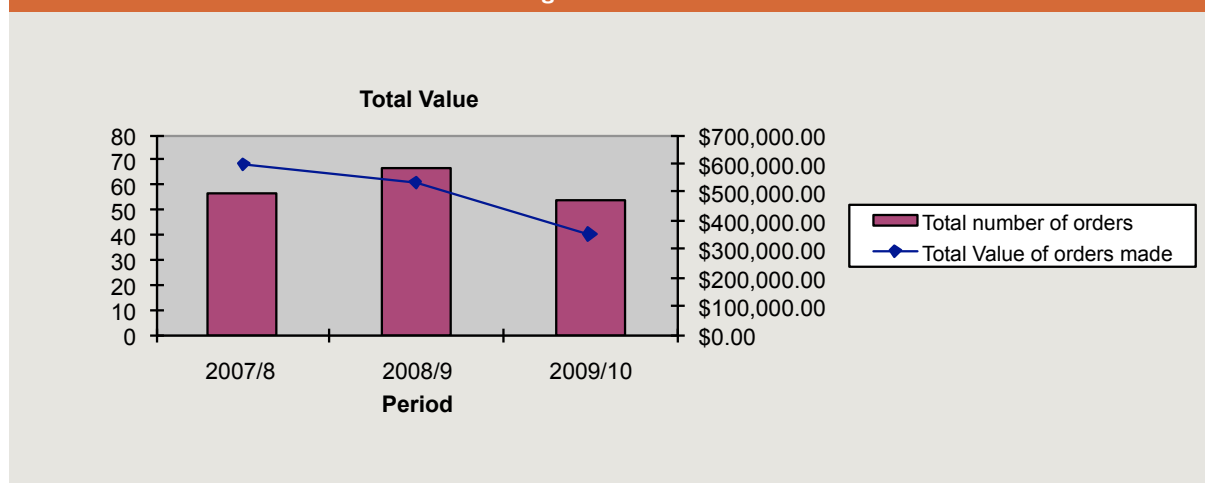
Between 1 July 2009 and 30 June 2010, 2118 matters have been identified on CASES where confiscation action warrants consideration.

APPENDIX 6 – COST EFFICIENCY

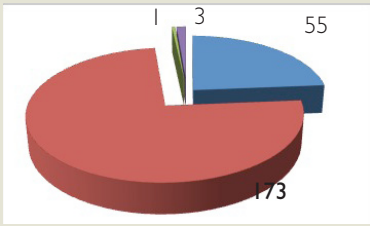

Costs were awarded against the ODPP in 2009/10 in 54 matters; this is a decrease from 67 matters in 2008/9. The total value of costs orders made in 2009/10 was \$352,373.00, a significant reduction on immediately preceding years.

Matters where costs awarded against ODPP			
	2007/8	2008/9	2009/10
Criminal Procedure Act	39	59	35
Costs in Criminal Cases Act	11	5	14
“Mosely” Orders	2	5	1
Crimes (Appeal & Review) Act	5	0	4
Total number of orders	57	67	54
Total value of orders made	\$600,261.79	\$535,252.36	\$352,373.00
Number of matters dealt with by ODPP in period	15123	17023	16862
Number of costs awarded where fault of prosecution	9	12	6
Percentage of matters where costs orders were made due to the conduct of the prosecution	0.05%	0.07%	0.04%

Value and number of costs orders awarded against the ODPP 2007 - 2010



APPENDIX 7 – CCA STATISTICS

A. Appeals by offenders finalised		
Conviction and sentence appeals	55	
Sentence appeals	173	
Summary dismissals (defence 5F counted at c below)	1	
Appeals abandoned	3	
TOTAL	232	
B. Crown inadequacy appeals finalised		
Abandoned	9	
Allowed	25	
Dismissed	14	
TOTAL	48	
C. Appeals against interlocutory judgments or orders (5F appeals)	15	
D. Stated cases from the District Court	0	
E. Total of all appeals finalised	295	

Conviction and sentence appeals finalised in 2009-2010 in Court of Criminal Appeal	Break down by number
SUMMARY DISMISSAL	0
ABANDONED	1
APPEALS ALLOWED	18
APPEALS DISMISSED	37

Conviction and sentence appeals finalised in 2009-2010 in Court of Criminal Appeal	Break down by percentage
SUMMARY DISMISSAL	0%
ABANDONED	2%
APPEALS ALLOWED	32%
APPEALS DISMISSED	66%

Results of finalised conviction and sentence appeals in Court of Criminal Appeal in 2009-2010	Break down by percentage
APPEALS DISMISSED	67%
RETRIALS	22%
ACQUITTALS	11%

Sentence appeals finalised in Court of Criminal Appeal in 2009-2010	Break down by number
SUMMARY DISMISSALS	1
ABANDONED	2
APPEALS ALLOWED	57
APPEALS DISMISSED	116

Sentence appeals finalised in Court of Criminal Appeal in 2008-2009	Break down by percentage
SUMMARY DISMISSALS	0.6%
ABANDONED	1.1%
APPEALS ALLOWED	32.3%
APPEALS DISMISSED	66%

APPENDIX 8 – SIGNIFICANT LEGISLATION

Criminal Procedure Amendment (Case Management) Act 2009 (No 112)

Assent 14/12/2009, LW 18/12/2009. Commences 1/2/2010.
Published LW 22/1/2010.

The **Criminal Procedure Amendment (Case Management) Act 2009** amends the **Criminal Procedure Act 1986** to: (1) make additional provision for the case management of criminal trials to reduce delays in proceedings on indictment; and (2) to extend the application of s 130A of the **Criminal Procedure Act 1986** to any pre-trial orders and discontinued proceedings.

The new Chapter 3, Part 3, Div 3 of the **Criminal Procedure Act 1986** creates three tiers of case management. These are: (a) Compulsory exchange of notices between the Crown and the defence before the trial begins, which contain “non-sensitive information about each party’s case.” (b) Intermediate case management, comprising pre-trial hearings and pre-trial conferences, the purpose of which is to determine issues such as the admissibility of evidence before a jury is empanelled. (c) A third tier of case management which empowers courts to order pre-trial disclosure, requiring the defence to give a more detailed response to the first prosecution notice. Although the defence is not required to disclose its case, it is called on to identify, for example, those parts of the Crown case referred to, in the first Div 3 notice, that will be disputed and also Crown evidence that will be objected to. The third tier of case management enables a court to make pre-trial disclosure orders as it thinks fit, without first conducting pre-trial conferences or pre-trial hearings. In addition, courts are given a general power to manage the conduct of a trial after it begins.

Details of selected amendments made to the **Criminal Procedure Act 1986** appear below: Section 130A (Pre-trial orders and orders made during trial bind trial judge) is substituted. Prior to 1 February 2010, s 130A provided that a pre-trial order made by a judge in certain sexual offence proceedings was generally binding on the trial judge, unless it was not in the interests of justice. The new s 130A extends to all proceedings on indictment. This means that if a new trial is ordered, following a conviction appeal for an offence on indictment, a pre-trial order made by a judge or a trial order made by the trial judge, about the proceedings from which conviction arose, is binding on the trial judge who hears the fresh proceedings. This rule is subject to two exceptions; first, where the judge who presides over the fresh proceedings considers it is not in the interests of justice for the order to be binding; and secondly, unless the order is inconsistent with an appeal order.

Where proceedings on indictment before a trial judge are discontinued, for any reason, a pre-trial order or an order made during the trial, (where both are made by judges), concerning those proceedings, is binding on the trial judge who hears any later trial proceedings which relate to the same offence as the discontinued proceedings. This rule is subject to one exception, namely, where the trial judge hearing the retrial considers that it would not be in the interests of justice for the order to be binding. For the purposes of s 130A, “pre-trial order” means “any order made after the indictment was first presented but before the empanelment of a jury.”

Chapter 3, Part 3, Div 3, Case management and other measures to reduce delays: Before 1 February 2010, Chapter 3, Part 3, Div 3 of the **Criminal Procedure Act 1986** enabled “the Supreme Court or District Court to order pre-trial disclosure by the prosecutor and the accused person in proceedings on indictment, but only if satisfied that the trial” would be complex based on its likely length, the nature of the evidence and the legal issues likely to arise. Chapter 3, Part 3, Div 3 of the **Criminal Procedure Act** was replaced by ss 131A-130F to introduce a new scheme to manage proceedings on indictment to reduce delays. This is achieved by (a) applying certain pre-trial disclosure requirements to the Crown and the defence; and (b) enabling the court to conduct case management of its own accord, or in response to an application made by a party to the proceedings.

Section 136 provides that at the first mention of proceedings in the court, before which the trial is to be heard, the presiding judge is required to give directions for the conduct of the trial, including the time by which notice of the Crown case is to be given under s 137 and notice of the defence response pursuant to s 138. Section 137 requires the Crown to give the accused comprehensive notice of the prosecution case including material which the Crown already provides to the accused, such as a copy of the indictment, statement of facts, statement of each witness whose evidence the Crown proposes to adduce at trial, copy of any exhibit the Crown proposes to adduce at trial etc. Additional information the Crown must provide under s 137 includes, but is not limited to (i) a copy of any information, document or other thing provided by police to the prosecutor; or otherwise in the possession of the prosecutor; that may reasonably be regarded as relevant to the prosecution or the defence case, and that has not otherwise been disclosed to the accused, a list identifying, among other things, any information, document or thing of which the prosecutor is aware and that would reasonably be regarded as being relevant to the case but that is not in the prosecutor’s possession and is not in the accused

Appendix 8 – Significant Legislation (continued)

person's possession; and a copy of any information which the prosecutor has that is relevant to the reliability or credibility of a Crown witness.

Under s 138 the prosecutor is entitled to a defence response from the accused which includes: (a) the name of the accused's Australian legal practitioner; (b) notice of any consent under s 190 of the **Evidence Act 1995** that the accused proposes to issue at trial, in respect of a witness statement that the Crown proposes to adduce at trial and a summary of evidence the Crown proposes to adduce at trial; (c) a statement as to whether the accused intends to issue an alibi notice under s 150 of the Evidence Act; and (d) a statement as to whether the accused intends to give any notice regarding an intention to adduce evidence of substantial mental impairment.

In relation to pre-trial hearings, the court is empowered to do and to order a range of things. For example, it can make "such orders, determinations or findings, or give such directions or rulings" as it thinks fit for the efficient conduct and management of the proceedings": s 139(2). This includes (i) ordering a pre-trial conference under s 140; (ii) ordering pre-trial disclosure under s 141; (iii) issuing a ruling or making a finding under s 192A of the **Evidence Act 1995** as if the trial had begun; and (iv) issuing a ruling on any question of law that may arise during the trial: s 139(3)(g). Section 139 precludes hearing and determining objections to the indictment, and the making of rulings or findings under s 192A of the **Evidence Act** from being raised at trial, without the court's leave, if a pre-trial hearing was convened and these matters were not raised in that forum: s 139(6). Leave is not granted unless the court thinks it would be contrary to the interests of justice to decline leave to raise the issue: s 139(7). Pre-trial conferences, court ordered pre-trial disclosure and the requirements for a prosecution notice under court ordered pre-trial disclosure are dealt with by ss 140, 141 and 142.

For the purposes of court ordered pre-trial disclosure in a particular case, under s 141(1)(a), the prosecution notice must contain (a) matters in the notice of the prosecution case under s 137; (b) a copy of any "information, document or other thing" which the Crown has that is reasonably regarded as adverse" to the accused's credit or credibility; and (c) a list of witness' statements where the witness is proposed to be called by the Crown at trial.

The requirements for the defence response to court ordered pre-trial disclosure are listed in s 143. They involve a more detailed defence response to the Crown case than the requirements for a defence response under s 138. They include "statements as to the facts, matters or circumstances alleged by the prosecution that the defence intends to dispute and notice of certain matters that the defence

intends to raise in relation to the evidence proposed to be adduced by the prosecution." For example, and where relevantly disclosed by the Crown, the accused is required to give notice about whether it proposes to dispute the following: (i) the admissibility of proposed Crown evidence and the basis for objection; (ii) any expert Crown evidence and which evidence is disputed; (iii) any continuity of custody of proposed Crown exhibits; (iv) the authenticity/accuracy of any transcript and the areas which are disputed; and (v) the authenticity/accuracy of proposed Crown documentary evidence or other Crown exhibit.

In court ordered pre-trial disclosure, under to s 144, the Prosecution provides a response to the defence response. The information which must be provided in this response is similar in some respects to the items listed in the defence response under s 143. For example, and where relevantly disclosed by the defence, the Crown is required to give notice as to whether it intends to dispute: (i) defence expert evidence and the areas of dispute; (ii) continuity of custody of exhibits; (iii) accuracy/admissibility of defence documentary evidence or other exhibit; (iv) the admissibility of any other proposed evidence and the reason for the Crown's objection; and (v) a copy of any "information, document or other thing" which the Crown has and which has not already been disclosed to the accused, "that might reasonably be expected" to assist the defence case.

Section 145 (Dispensing with formal proof), expressly applies in addition to the **Evidence Act 1995**, especially s 190 of that Act. Under s 146 of the new legislation the court can impose sanctions for non-compliance with pre-trial disclosure requirements. It can exclude evidence that was not disclosed in accordance with the pre-trial disclosure requirements of Chapter 3, Part 3, Div 3 and exclude expert evidence where a copy of the expert's report was not provided to the other party to the proceedings in accordance with Div 3. The court may also grant an adjournment if one of the parties seeks to adduce evidence not previously disclosed, that would prejudice the other party to the proceedings.

The new disclosure requirements are ongoing in that the parties are required to comply with Div 3 until the accused is either convicted or acquitted of the charges on indictment or the prosecution is terminated.

A court has the power, under s 148, to waive any pre-trial disclosure requirement in Div 3 on its own motion or on application made by the Crown or the accused.

The manner in which notices under Div 3 are to be given is governed by s 149. A party obliged to give notice under Div 3 "must file a copy of the notice with the court as soon as practicable after giving it, or as otherwise required by

Appendix 8 – Significant Legislation (continued)

the court.” (s 149(5)) Copies of exhibits, and other things, are not to be provided if it is impracticable or impossible to do so. However, the party required to give notice is to advise in the notice of a “reasonable time and place” for inspection and is to allow the other party to the proceedings a reasonable opportunity to inspect the proposed exhibit, document or thing: s 149A(2)

A prosecutor is prohibited from disclosing, in any notice under Div 3, the address or telephone number of any proposed Crown witness, or “any other living person”, unless this information is “a materially relevant part of the evidence” or the court makes an order allowing the disclosure: s 149B(1). An address may be disclosed where the disclosure does not identify the information as belonging to a particular person or it cannot reasonably be inferred from the material disclosed, that it is a particular person’s address: s 149B(4). A non-disclosable address or telephone number may be deleted or made illegible in a witness statement, without referring back to the maker of the statement, before it is provided to the accused: s 149B(5).

Where a witness statement in a Div 3 notice is not wholly in English, the statement must have appended to it, an English translation of the non-English material: s 149C(2).

Under s 149D the prosecutor is not required to include in a Div 3 notice anything already included in a brief of evidence regarding the matter served on the accused or which has been provided or disclosed to the accused: s 149D. Similarly, the accused is not required to include in a Div 3 notice, anything that has already been provided or disclosed to the prosecutor.

The court has powers under s 149E to ensure the proper management and conduct of the trial and, on or after the trial begins, can make orders, determinations or findings, or give directions or rulings to achieve this.

A number of miscellaneous provisions appear in s 149F. These include, for example, that Part 3, Chapter 3, Div 3 does not affect pre-trial disclosure generally as provided for by Div 4 of the **Criminal Procedure Act** (s 149F(3)) and that the operation of Div 3 does not prevent voluntary pre-trial disclosure by the accused, to the prosecutor, of anything the accused proposes to adduce in evidence in the proceedings: s 149F(4). In addition, Div 3 does not limit obligations which arise beyond the Division for pre-trial disclosure, and which can be complied with concurrently with Div 3 requirements. However, where inconsistency arises, Div 3 prevails to the extent of any inconsistency. Such obligations include common law requirements, court rules, legal profession rules pursuant to Part 7.5 of the **Legal Profession Act 2004** and the **DPP Prosecution Guidelines**: s 149F(5). Importantly, where there is any

inconsistency between Div 3 and the **Evidence Act 1995**, Div 3 prevails to the extent of any inconsistency: s 149F(8). Division 3 does not affect immunities which apply to the disclosure of anything, including for example, legal professional privilege, client legal privilege, public interest immunity and sexual assault communications privilege under Chapter 6, Part 5, Div 2 of the **Criminal Procedure Act 1986**: s 149F(6).

A review of Chapter 3, Part 3, Div 3 of the **Criminal Procedure Act** is to be conducted by the Attorney General, as soon as possible, two years after the commencement of s 314A, (ie) two years after 1 February 2010. A report of the review is to be tabled in Parliament within 12 months following the expiry of the two year period.

In terms of savings and transitional provisions, the new s 130A of the **Criminal Procedure Act 1986** applies only to proceedings where the indictment was presented or filed on or after 1 February 2010. The new Chapter 3, Part 3, Div 3 applies only to proceedings where the indictment was presented or filed on or after 1 February 2010. Chapter 3, Part 3, Div 3 as in force immediately before its substitution on 1 February 2010, continues to apply to proceedings where the indictment was presented or filed before 1 February 2010.

Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009 (No 99)

Assent 14/12/2009, LW 18/122009. Commenced 22/2/2010. LW 19/2/2010.

The **Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009** amends the Crimes Act 1900 in three main areas. These are: “deception offences”, referred to as fraud and fraud related offences, identity offences, which involve the misuse of personal identification information and forgery. The amending legislation modifies the criminal law in four significant respects: (a) It introduces a statutory definition of “dishonest” based on the test in **R v Ghosh** [1982] QB 1053; (b) It requires the Crown to prove the additional element of “intention to permanently deprive” in deception offences; (c) It introduces statutory definitions of intention to permanently deprive; and (d) It creates new “Identity Offences” based on possessing and/or dealing with “identification information”.

Section 4B introduces a new definition of “dishonest”, where the mental element in the concept of dishonesty means “dishonest according to the standards of ordinary people and known by the defendant to be dishonest according to the standards of ordinary people.” Whether conduct is dishonest is a matter for the tribunal of fact. This definition is

Appendix 8 – Significant Legislation (continued)

used in the **Criminal Code Act 1995** (Cth) and reflects the test adopted in the English decision of **R v Ghosh** [1982] QB 1053.

Fraud is dealt with in new Part 4AA. Sections 192B-192D provide definitions of Deception, Obtaining property belonging to another and Obtaining a financial advantage or causing financial disadvantage respectively. Four new fraud and fraud related offences are contained in Part 4AA, Div 2. They are Fraud (s 192E), Intention to defraud by destroying or concealing accounting records (s 192F); Intention to defraud by false or misleading instrument (s 192G) and Intention to deceive members or creditors by false or misleading statement of officer or organisation: s 192H.

The new "Identity Offences" are contained in Part 4AB (ss 192I-192M). "Deal" in identification information includes make, supply or use any such information. "Identification information" means information about a person that can be used by itself or with other data to identify or purport to identify a person, whether they are living, deceased, real, fictitious, natural or incorporated. Eleven examples of identification information are given in s 192I and these include name, address, date or place of birth, driver licence number; credit or debit card number; biometric data, digital signature, an ABN etc. Dealing in identification information, with the intention of committing or facilitating the commission of an indictable offence, is an offence under s 192J which carries a maximum penalty ten years imprisonment. The offence of possessing identification information with the intention of committing or facilitating the commission of an indictable offence, contrary to s 192K, has a maximum penalty of seven years imprisonment.

An offence is committed under s 192L where a person possesses equipment, material etc capable of being used to create a document or other thing which contains identification information and where the person intends the document etc will be used to commit or facilitate the commission of an indictable offence. The maximum penalty is imprisonment for three years.

The new changes exclude persons dealing in their own identification information: s 192M(1). Also, an attempt to commit an offence under Part 4AB does not constitute an offence: s 192M(2). Under s 309A of the **Criminal Procedure Act 1986**, a victim of an identity offence under Part 4AB of the **Crimes Act** can obtain a certificate from a court stating that an identity offence has been committed. This is to assist the victim resolve problems the offence has caused in relation to his or her personal or business affairs.

New offences of Forgery are set out in Part 5 (ss 250-256). Section 250 explains the meaning of a "false document" and s 250(1) provides that a document is false if, and only if, the document or any part of it purports to have any one of the

eight characteristics listed in s 250(1)(a)-(h), eg "To have been made in the form in which it is made by a person who did not in fact make it in that form": s 250(1)(a). A person is treated as having made a false document if the person alters the document to make it false within the meaning of s 250, irrespective of whether the document is false in some other way apart from the alternation: s 250(2).

Section 251 clarifies that "a reference to inducing a person to accept a false document as genuine includes a reference to causing a machine to respond to a document as if it were a genuine document." Further, if it is necessary under Part 5 "to prove an intent to induce some person to accept a false document as genuine, it is not necessary to prove that the accused intended so to induce a particular person." s 251(2)

The concepts of "obtaining property belonging to another" and "obtaining financial advantage or causing financial disadvantage" used in relation to fraud offences in Part 4AA apply to Forgery offences in Part 5.

An offence of "Forgery – making false document" is committed contrary to s 253 where a person makes a false document intending that they or another will use it to induce a person to accept it as genuine, and as a result of it being accepted as genuine, (i) obtain property belonging to another; (ii) obtain any financial advantage or cause any financial disadvantage; or (iii) influence the exercise of a public duty. Maximum penalty imprisonment ten years.

Three "forgery related" offences are established. The first is **Using false document** contrary to s 254. This offence is committed where a person knowingly uses a false document intending to induce a person to accept it as genuine and, as a result of it being accepted as genuine, obtaining property belonging to another; or any financial advantage or causing any financial disadvantage or influencing the exercise of a public duty. the offence has a maximum penalty of ten years imprisonment. The second forgery related offence is **Possession of false document** contrary to s 255. This offence is made out where a person possesses a false document, knowing it to be false, and intending that they or another will use it to induce a person to accept it as genuine and, as a result of it being accepted as genuine (i) obtain any property belonging to another; or (ii) obtain any financial advantage or cause a financial disadvantage or influence the exercise of a public duty. A maximum penalty of ten years imprisonment applies. The third forgery related offence is **Making or possession of equipment etc for making false documents** in breach of s 256 of the **Crimes Act**. This offence is committed where a person makes or possesses any equipment, material or thing designed or adapted to make a false document, where the person knows it is so designed or adapted and intends that they or another will use the equipment, material or thing to commit a forgery. A maximum penalty of ten years imprisonment

Appendix 8 – Significant Legislation (continued)

applies: s 256(1). Two other, less serious offences are created under s 256(2) and s 256(3).

Section 256 applies (a) to any “equipment, material or thing” designed or adapted to make a false document irrespective of whether the equipment etc has another purpose (s 256(4)) and (b) to a person who intends to commit an offence even where commission of the offence is impossible or the relevant offence is to be committed at a later time: s 256(5). An attempt to commit a s 256 offence do not constitute an offence: s 256(6).

In addition to the amendments summarised above, the **Crimes Amendment (Fraud, Identity and Forgery Offences) Act 2009** amends the **Criminal Procedure Act 1986** and a number of other statutes.

Crimes Amendment (Child Pornography and Abuse Material) Act 2010 (No 9)

Assent 28/04/2010, Published LW 30/4/2010. Sch 2 [4]-[6] and [10] commenced on assent. Remainder to be proclaimed.

The Crimes Amendment (Child Pornography and Abuse Material) Act 2010 (No 9) amends the **Crimes Act 1900** in a number of significant respects. It replaces provisions regarding the possession, production and dissemination of child pornography, (now called “child abuse material”), replaces the previous defence that the material was produced for “child protection, scientific, medical, legal, artistic or other public benefit purposes” with a narrower defence, and generally makes the law more consistent with that on child pornography offences contained in the **Criminal Code Act 1995 (Cth)**. The **Criminal Procedure Act 1986** is also modified to allow the use of random sample evidence in proceedings for child abuse material and to extend to certain witnesses in child abuse material proceedings, the protections given to complainants in sexual offence proceedings, .

Significant amendments to the **Crimes Act 1900** are as follows: The term “child abuse material” is defined in s 91FB(1) as “material that depicts or describes, in a way that reasonable persons would regard as being, in all the circumstances, offensive” based on criteria listed in s 91FB(1) (a)-(d). eg Where the child appears to be, or is implied to be, a victim of torture, cruelty or physical abuse etc. Section 91FB(2) contains those matters which may be considered in determining whether reasonable persons, in all the circumstances, would regard the material as offensive.

A new s 91H is added which provides that to “**disseminate** child abuse material” includes to send, supply, exhibit, transmit, communicate or make it available

to another person, or agree or arrange to do so: s 91H(1). “To **possess** child abuse material” includes in relation to material in data form, defined in s 91FA as including “(a) information in any form, or (b) any program (or part of a program)”, being in possession or control of data as defined in s 308F(2). “To **produce** child abuse material” includes, under s 91H(1)(a), to “film, photograph, print, or otherwise make child abuse material, or alter or manipulate any image or otherwise make child abuse material,” or agree or arrange to do so. The production, dissemination or possession of child abuse material is an offence which carries a maximum penalty of imprisonment for ten years: s 91H(2).

Previously existing defences are replaced with new, narrower defences under ss 91G and/ or ss 91H of the **Crimes Act**. These defences are innocent production, dissemination or possession of child abuse material (s 91HA(1)-(2); the conduct was engaged in for the public benefit (s 91HA(3)-(5)); the conduct was committed by a law enforcement officer pursuant to his or her official duties and was “reasonable in the circumstances”: s 91HA(6); the material was classified before or after the alleged offence under the **Classification (Publications, Films and Computer Games) Act 1995 (Cth)**, excluding “refused classification (RC)”: s 91H(7); the conduct was necessary for, or assisted in, “scientific, medical or educational research” and was approved by the Attorney General in writing and the approval conditions were complied with: s 91HA(8).

The Crimes Amendment (Child Pornography and Abuse Material) Act 2010 also amended the **Criminal Procedure Act 1986**. Those amendments include, but are not limited to, the following: A new Part 4A is added on the “Use of random sample evidence” in proceedings for child abuse material offences. A definition of “authorised analyst” is given and the terms “child abuse material”, “material” and “child abuse material offence” in s 289A take the meanings they have in Div 15A, Part 3 of the **Crimes Act 1900**.

The use of random sample evidence in child abuse material cases is provided for by s 289B. An “authorised analyst” can examine a random sample of child abuse material or alleged material, the subject of a child abuse material offence: s 289B(1). The authorised analyst’s findings regarding the nature and content of the random sample, as adduced in evidence by the prosecutor at proceedings for the relevant child abuse material offence, are admissible as evidence of the nature and content of the whole of the material from which the random sample was taken: s 289B(2). An authorised analyst’s certification that the random sample was taken, and the examination conducted in accordance with any Regulations, and certification as to the findings of the nature and content of the random sample, are admissible in

Appendix 8 – Significant Legislation (continued)

proceedings for a child abuse material offence as evidence of the matters certified: s 289B(4). In the absence of evidence to the contrary, a certificate signed by a purported authorised analyst is taken to be that of an authorised analyst: s 289B(5).

Evidence is admissible under s 289B only where the court is satisfied that the accused, or his or her Australian legal practitioner, has been given a reasonable opportunity to view all the actual or alleged child abuse material the subject of the proceedings: s 289B(6). Section 289B does not affect the provisions of Part 2A which restrict an accused's access to sensitive evidence: s 289B(7). Section 289B provides that the Regulations may make further provision regarding the taking and admissibility of random sample evidence under s 289B.

The definition of "complainant" is replaced in s 290A to mean "the person, or any of the persons, against whom a prescribed sexual offence with which the accused person stands charged is alleged to have been committed." A new s 290A(2) provides that a reference to the alleged victim of a prescribed sexual offence includes an alleged subject of sexual servitude under s 80E of the **Crimes Act 1900**; and a person under the age of 18 alleged to have participated in child prostitution or used to produce child abuse material under ss 91D, 91E, 91F or 91G, respectively, of the **Crimes Act 1900**.

A reference to "pornographic purposes" in the definition section in s 306A of the **Criminal Procedure Act 1986** is replaced with "the production of child abuse material".

A new s 294D (Protections afforded to complainants extend to witnesses against whom accused person is alleged to have committed sexual offence) is inserted. In relation to prescribed sexual offence proceedings, the protection granted to complainants in Div 1, Part 5 is extended to a "sexual offence witness". A "sexual offence witness" is defined in s 294D(2) as "any witness in the proceedings against whom a prescribed sexual offence is alleged to have been committed by the accused person, being a prescribed sexual offence that is not the subject of the proceedings concerned: s 294D(2). As a result of the amendment, a

reference to a complainant includes a reference to a "sexual offence witness": s 294D(3). The court may prohibit public disclosure of the identity of the "sexual offence witness": s 294D(4). Where this occurs, the "sexual offence witness" is deemed to be a complainant for the purposes of s 578A of the **Crimes Act 1900**. This section prohibits the publication of any matter identifying, or likely to lead to identification of, the complainant. Where a court is satisfied that the Crown has given notice to the accused of its intention to adduce evidence that the accused committed a prescribed sexual offence against the witness, that witness is to be treated as a "sexual offence witness", even if the witness has not yet given evidence in the proceedings: s 294D(6).

Savings and transitional provisions inserted into Sch 2 of the **Criminal Procedure Act 1986** make three separate arrangements for the application of the new amendments. First, and in relation to the use of random sample evidence, Part 4A of Ch 6 (as inserted by the **Crimes Amendment (Child Pornography and Abuse Material) Act 2010**) (the amending Act) applies to proceedings instituted or partly heard, but not finally disposed of, before the commencement of the amendments. Therefore, the amendments extend to offences under Part 3, Div 15A of the **Crimes Act 1900** allegedly committed before the commencement of the amendments. Secondly, a reference in the amending Act to child abuse material includes a reference to "child pornography" as defined in s 91H of the **Crimes Act 1900**, as in force before being replaced by the amending Act. Thirdly, in relation to the extension of complainant protections to other witnesses, s 294D (as inserted by the amending Act) applies to proceedings instituted or partly heard, but not finally disposed of, before the commencement of the amendments. Note that s 294D does not affect the admissibility of any evidence given in proceedings, or the validity of anything done or omitted before the commencement of that section.

The **Crimes Amendment (Child Pornography and Abuse Material) Act 2010** makes minor amendments to a range of other Acts in light of the changes listed above.

APPENDIX 9 – SIGNIFICANT JUDICIAL DECISIONS

High Court of Australia

Dupas v The Queen [2010] HCA 20

16 June 2010

The appellant was charged with the murder of H. Prior to his trial he sought a permanent stay of proceedings on the basis that extensive pre-trial publicity gave rise to irremediable prejudice such as would preclude his fair trial at any time. That publicity included the fact that he had been convicted of 2 previous murders for which he was serving terms of life imprisonment, and that each of the 3 cases involved the killing of a vulnerable woman by an extremely brutal knife attack. The publicity had identified the appellant as a suspect in relation to the murder of H at an early stage.

The trial judge refused the application, and the appellant was subsequently convicted and sentenced to a 3rd term of life imprisonment.

On appeal to the Court of Appeal (Victoria) the appellant's conviction was quashed on grounds not presently relevant. However the Court of Appeal (Victoria) refused to overturn the trial judge's refusal of the application for a permanent stay, and ordered a new trial.

The appellant was granted special leave to appeal to the High Court of Australia against the latter orders.

In the High Court the appellant contended that the pervasive pre-trial publicity attributed guilt to the appellant in relation to the murder of H, and could not be dismissed from the jury's consideration.

In dismissing the appeal the High Court noted that certain prejudicial material was admissible in the trial, such that the jury would inevitably learn of at least one of the appellant's prior convictions for murder, and that the appellant's counsel had met the forensic challenge thereby posed by having the jury told at the outset of both prior murder convictions. The High Court also noted that the trial judge repeatedly directed the jurors about the need to act fairly, without prejudice, and solely on the evidence led in court, and to exclude from their consideration anything read or seen outside the court.

The High Court endorsed the statements in *R v Glennon* (1992) 173 CLR 592 to the effect that a permanent stay will only be ordered in an extreme case, and that there must be a fundamental defect of such a nature that nothing that a trial judge can do in the conduct of the trial can relieve against its unfair consequences.

The High Court went on to hold that there is nothing

remarkable or singular about extensive pre-trial publicity, especially in notorious cases involving heinous acts, and that the fact that a trial is conducted against such a background does not of itself render a case extreme, in the sense that the unfair consequences of any prejudice thereby created can never be relieved against by the judge during the course of the trial.

The High Court noted that a further consideration was the need to take into account the substantial public interest of the community in having those who are charged with criminal offences brought to trial.

The High Court concluded that the apprehended defect in the appellant's trial, namely unfair consequences of prejudice or prejudgment arising out of extensive adverse pre-trial publicity, was capable of being relieved against by the trial judge, and that accordingly a permanent stay was not warranted.

Supreme Court of NSW

DPP v Eades [2009] NSWSC 1352

17 December 2009

The defendant was alleged to have incited a 13 year old girl to send a nude photograph of herself to the defendant's mobile phone. A charge of "inciting a person under the age of 16 years to commit an act of indecency towards him" under s 61N of the Crimes Act 1900 was dismissed after a hearing in the Local Court.

In dismissing the charge the magistrate held that in determining whether the act of sending the nude photograph was an 'act of indecency' within the meaning of s 61N he was entitled to have regard only to the photograph itself, and was not entitled to take into account the context in which the sending of the photograph took place, including the sexual inferences able to be drawn from the text messages by which the act was incited, the intention and purpose of the defendant, and the ages of the defendant and the complainant.

The DPP appealed to the Supreme Court against the dismissal of the charge. The Supreme Court allowed the appeal, holding, following the decision of *R v McIntosh* (NSW CCA Unreported 26/9/94), that the magistrate should have held that he was entitled to take the context of the act into account in determining the issue of "indecency".

The defendant then contended that the magistrate's decision should nevertheless be affirmed because the sending of the photograph as a text message attachment was not

Appendix 9 – Significant Judicial Decisions (continued)

capable in law of being an act “towards” the defendant. In rejecting this contention the Supreme Court held that an act of indecency incited by a defendant could be committed “towards” the defendant even though it was not performed in either his physical or audible presence, and that modern electronic methods of communication should be taken into account in determining the issue.

An application for leave to appeal to the Court of Appeal against the Supreme Court’s orders has been filed.

DPP v Horwood [2009] NSWSC 1447

18 December 2009

A police officer investigating a complaint of a car window being smashed was informed by witnesses that the person responsible was one of a group of 4 men believed to be in a nearby hotel. The officer entered the hotel and saw a group of 4 men answering the description given. He approached the group and spoke to one of the men, the defendant. The officer identified himself and informed the defendant that he believed that he had been present when the window had been smashed, and may be able to assist in the investigation of that offence. Pursuant to his authority under s 11 of the Law Enforcement (Powers and Responsibilities) Act 2002 (LEPRA) he asked the defendant for details of his identity, informing him that he was required by law to comply with that request. The defendant refused. The officer then arrested him, and the defendant resisted that arrest. He was charged with Refuse to comply with request under s 11 of LEPRA (s 12 LEPRA) and Resist arrest (s 58 Crimes Act).

Both charges were dismissed in the Local Court. The magistrate held that as the defendant had not been ruled out as a suspect for the offence under investigation, the officer was not empowered under s 11 to ask him to disclose his identity, because to do so would be an infringement of his right to silence. The magistrate went on to hold that as a consequence the arrest was unlawful, and that the evidence led in support of the charge of resist arrest was tainted by that illegality.

The DPP appealed to the Supreme Court against the magistrate’s decision. In allowing the appeal the Supreme Court held that unless and until a person who police believe was present when an indictable offence was committed is arrested and charged with committing the offence, that person, even if he or she may be regarded as a potential suspect, is, pursuant to s 11 of LEPRA, obliged to disclose their identification details to police upon request. The court further held that the limited extent to which s 11 of LEPRA did abrogate the right to silence was intended by Parliament.

DPP v Clear [2010] NSWSC 392

6 May 2010

Police saw the defendant driving in a manner which suggested he may be intoxicated. They stopped him for a random breath test, which proved negative. Following some conversation between police, the defendant and the defendant’s passenger, police searched the car and found amphetamines. The defendant then admitted having recently used amphetamines. Police formed the view that the defendant was under the influence of a drug and arrested him pursuant to s 26 of the Road Transport (Safety and Traffic Management) Act (the Act) for the purpose of supplying a blood and urine sample. The defendant was transported to hospital, where, pursuant to s 27(1) of the Act, he was formally required to supply samples of blood and urine for analysis. He refused, and was charged with that refusal pursuant to s 29(2)(a) of the Act.

Before the Local Court the magistrate held that the terms of s 29(2)(a) of the Act made it an offence to refuse to supply a sample of either blood or urine but not both, such that the defendant was entitled to choose to supply a urine sample only. As that option was not offered to him the charge was dismissed.

The DPP appealed to the Supreme Court against the magistrate’s decision. The Supreme Court allowed the appeal, holding that on a correct construction of the legislation the defendant was required to supply samples of both blood and urine, and to refuse to supply either constituted an offence under s 29(2)(a). He was not entitled to choose to provide one type of sample only.

R v Ceissman [2010] NSWCCA 50

22 March 2010

Mr Ceissman was charged with multiple offences including; break, enter and commit serious indictable offence (steal motor vehicle): s 112(1)(a) **Crimes Act 1900**; being carried in a conveyance without the owner’s consent (s 154A(1)(b) **Crimes Act**); dishonestly obtaining a valuable thing: s 178BA **Crimes Act**; robbery armed with a dangerous weapon (s 97(2) **Crimes Act**); steal motor vehicle (s 154F **Crimes Act**); assault with intent to rob, armed with a dangerous weapon (s 97(2) **Crimes Act**); robbery with an offensive weapon: s 97(1) **Crimes Act**.

The Crown case was that between 14 July 2008 and 28 August 2008 five separate criminal enterprises were committed by two men, one of whom was Mr Ceissman. This offending involved stealing a car and driving to a bowling club in western Sydney, breaking into an unsecured part of the premises, waiting until staff with keys to the safe

Appendix 9 – Significant Judicial Decisions (continued)

arrived, “donning balaclavas before threatening the staff with a firearm” (in four of the robberies), robbing the club of cash and leaving in a stolen vehicle or in a car owned by an employee of the club. at [3] RM, an alleged co-offender, pleaded guilty to offences regarding four of the five robberies. He was sentenced on the basis that he would give evidence in Mr Ceissman’s trial that the taller of the two men in each case was Mr Ceissman. Offences constituting the fifth robbery, were alleged to have been committed by Mr Ceissman, and another person, and were the subject of admissions made by Mr Cesissman to RM.

At the trial, the judge made two rulings which the Crown objected to. One ruling granted the defence application to separate 22 counts on the indictment; the other dismissed the Crown’s application to admit tendency and coincidence evidence. The Crown appealed against these rulings under ss 5F(2) and 5F(3A) of the **Criminal Appeal Act 1912**.

On appeal the issues for determination were; first, whether the order excluding the use of tendency and coincidence evidence was correctly made; and secondly, whether the order for separate trials was correctly made? The NSW Court of Criminal Appeal (NSWCCA) allowed the appeals, and set aside the rulings on tendency and coincidence evidence and the trial judge’s order separating the trials.

The NSWCCA held as follows: (1) The ruling which excluded the tendency and coincidence evidence was incorrectly made because the required analysis in **R v Zhang** [2005] NSWCCA 437 by Simpson J was not carried out by the trial judge.

The NSWCCA said the trial judge correctly addressed an initial issue under s 98 of the **Evidence Act 1995** which concerns the coincidence rule. The trial judge listed the events which the Crown relied on as “relevantly similar” for both coincidence and tendency evidence in her judgment. These matters were characterised as “substantially similar” and considered to have occurred in “substantially similar” circumstances.

The trial judge was then required to apply Simpson J’s analysis in **R v Zhang** [2005] NSWCCA 437 at [139]; 158 A Crim R 504 at 537 in respect of both tendency and coincidence evidence. In undertaking this analysis, the first question is whether the tendency and coincidence evidence is capable of rationally affecting the probability of the existence of a fact in issue, where the issue is the identity of the taller man. If the answer to this question is yes, the second issue for the judge to assess, on the evidence available, is the likelihood the jury would allocate “significant probative value” to the tendency and or coincidence evidence. In determining this issue the CCA said that the trial judge —

“... appears to have determined the application on the basis that the evidence of a co-offender deprived the related events of their co-incidental character, because the events could be otherwise explained by the fact that they represented the co-offender’s *modus operandi*”. at [12]

In criminal offences, *modus operandi* may be a powerful example of tendency and or coincidence evidence: **R v Ellis** [2003] NSWCCA 319; 58 NSWLR 700. The commission of a series of offences in a particular of way “does not necessarily deprive the evidence tending to establish those distinctive characteristics of its force.” at [14] In this matter there was no basis for concluding that both alleged offenders, regardless of their identity, did not jointly participate in their planning and commission, including the theft of motor vehicles, the type of the premises robbed, the manner of gaining entry, the method of disguise and the means of escape. at [14]

Latham J held that the judge’s approach to the analysis contained the following errors: First, in deciding whether the evidence was capable of rationally affecting the probability of Mr Ceissman being involved in the offences, the trial judge “conflated” the two steps required by **Zhang**. The evidence of “related events” is capable of rationally affecting the probability that the offences were committed by the same persons.

“The test is one of capability, that is, is it open to the jury to conclude from the ‘related events’ that the offences were committed by the same offenders: **R v Shamouil**; [2006] NSWCCA 112 at [61]-[65].”

The answer to this question is yes.

The second stage of the **Zhang** analysis requires combining the “related events” with other evidence relied on by the Crown, and to ask, in light of all the evidence, whether the jury is likely to give the evidence of “related events” significant probative value? Latham J answered “yes” to this question, and said that there was no indication that the trial judge had conducted this exercise. Secondly, the trial judge was held to have made an error in deciding that the co-offender’s evidence “deprived the evidence of the ‘related events’ of any significance for tendency or co-incidence purposes.” at [18]

(2) The second holding of the NSWCCA was that the trial judge’s ruling which allowed separation of the counts on the indictment was wrongly made. Strictly speaking, it was incorrect to describe the “related events” evidence as inadmissible. If it was not admissible for a tendency and/ or coincidence purpose, then the jury had to be directed accordingly. The trial judge applied s 29 of the **Criminal Procedure Act 1986** and decided that the offences

Appendix 9 – Significant Judicial Decisions (continued)

were related and “form or are part of a series of offences of the same or similar character” at [20]. Further, the trial judge determined that, in the interests of justice, the counts should be separated because the jury would have difficulty in returning a verdict without adverting to the “inadmissible evidence”, notwithstanding any directions that may be given to them.

Latham J held this approach was erroneous. Latham J said that the interests of justice were not confined to the respondent’s interests: **Samadi and Djat v R** [2008] NSWCCA 330 at [108]. Strictly speaking, it was wrong to describe the “related events” evidence as being “inadmissible”. This evidence was admissible in a prosecution of the 22 counts, but if it could not be admitted as tendency or coincidence evidence, the trial judge was required to direct the jury that it was not possible for them to reason based on tendency and coincidence. In dealing with the matter, the trial judge wrongly determined that any direction to this effect would not be capable of preventing the jury from engaging in impermissible reasoning. at [21]

IANASTASIOU, Andrew v R [2010] NSWCCA 100

13 May 2010

Mr Anastasiou was convicted of 28 charges including multiple larceny (theft) offences, one count of attempted break and enter a dwelling with intent to commit a serious indictable offence and one count of possess house breaking implements. On 2 March 2009 the Drug Court imposed terms of imprisonment for 15 charges and suspended those sentences. On 16 April 2009, ten further larceny offences were dealt by the Drug Court and an order made and wholly suspended, for imprisonment for 12 months. On 26 June 2009 two further larceny offences were dealt with, and sentence orders imposed for those offences for which suspended sentences were previously made.

Mr Anastasiou (the applicant) applied for leave to appeal against the final sentence imposed by the Drug Court on 26 June 2009. He argued that his terminal liver condition and reduced life expectancy were not known about on sentence, and therefore could not have been taken into account in determining an appropriate sentence.

In dealing with this appeal the NSWCCA was required to resolve two issues; first, whether the court could consider fresh medical evidence about the applicant’s serious medical condition? Secondly, if so, what is the relationship between the sentence imposed and the treatment for the applicant’s condition?

The NSWCCA granted leave to appeal and dismissed the appeal on the following bases:

- (1) A sentencing judge’s failure to consider absent medical evidence on sentence does not constitute error. Based on medical evidence, the applicant suffers from terminal liver cancer, which is related to his long term drug use. The applicant’s condition, though likely to have been present on sentence in 2009, was undiagnosed at the time. For that reason, it was not taken into account on sentence. The NSWCCA is restricted to correcting error that is “identifiable and manifest” and which warrants appellate intervention: **House v R** [1936] HCA 40; (1936) 55 CLR 499. A sentencing judge’s omission to consider material that was not before the court at the relevant time does not amount to error: **R v MJM** [2004] NSWCCA 66.
- (2) Courts of Criminal Appeal can receive fresh medical evidence post sentence, where relevant events were not known about when sentence was imposed. **R v Josef Miodszewski** [2004] NSWCCA 154 per Dunford at [30] is authority for the proposition that a sentence can only be quashed, and a fresh one imposed, if the court is satisfied the original sentence was not warranted in law. Later events involving medical treatment are generally a matter for Executive Government (at [17]) in terms of a person’s care and treatment, and the exercise of the Executive prerogative of mercy. See also Howie J in **R v Miodszewski** who cited **R v Ashton** [2002] NSWCCA 498; (2002) 137 A Crim R 73. In **Ashton** the court relied on **Bailey** (1988) 35 A Crim R 458 and **R v Ehrenberg** (unrep, 14/12/1990, NSWCCA) for the principle that courts will allow fresh evidence to be adduced of post sentence events, concerning the physical or mental condition of a prisoner, where those events were not known or insufficiently appreciated at the time sentence was imposed.

As the applicant’s condition was unknown at sentence, medical evidence of it is admissible under one of the established exceptions: **R v Smith** (1987) 44 SASR 587; **Iglesias v T** [2006] NSWCCA 261. (at [20]) The fact that a court is permitted to consider fresh medical evidence in a sentence appeal does not necessarily mean that a different sentence will result. Sentencing calls for all circumstances to be taken into account, including the Executive Government’s capacity to “exercise its discretion to account for any sympathy which no doubt may arise.” at [21]

- (3) An offender’s health, and the effect of imprisonment on it, is relevant in determining an appropriate sentence, but courts must be careful as to the degree of influence

Appendix 9 – Significant Judicial Decisions (continued)

this factor is given in sentencing. In **R v Smith** (1987) 44 SASR 587 King CJ stated at 589 that:

“... Ill health cannot be allowed to become a licence to commit crime, nor can offenders generally expect to escape punishment because of the condition of their health. It is the responsibility of the Correctional Services authorities to provide appropriate care and treatment for sick prisoners. Generally speaking ill health will be a factor tending to mitigate punishment only when it appears that imprisonment will be a greater burden on the offender by reason of his state of health or when there is a serious risk of imprisonment having a gravely adverse effect on the offender’s health.” at [22] of judgment. See also **R v Sopher** (1993) 70 A Crim R 570 at 573-574.

The applicant was receiving reasonable treatment at Long Bay prison hospital and prior to that was cared for at Prince of Wales hospital for six weeks to stabilise his condition. The applicant’s imprisonment is more onerous because of his medical condition and from time to time he is in pain. However, when not in pain he is able to socialise and move around the hospital wards. If he was not in hospital, the applicant may have served his sentence at a low security gaol or camp, and for this reason, his conditions are more restrictive than they otherwise might have been. However, it is not the applicant’s custodial status which necessitates greater restrictions upon him. The restrictions are based upon his illness and the need for medical treatment and, on the available evidence, would occur irrespective of whether he was in custody.

A suggested alternative to remaining in prison and being treated by Justice Health was a placement at Foster House, a facility administered by the Salvation Army. Confirmation of accommodation at Foster House was before the court, though there was some doubt (in affidavit evidence) that Foster House would be able to accommodate the prisoner as his illness became more incapacitating. Ultimately, facilities at a hospice may be required. No other evidence was adduced as to the availability of other medical treatment or the applicant’s capacity to arrange and afford such treatment.

- (4) The sentence imposed on Mr Anastasiou was not harsh and no complaint has been made that it was. It was not suggested that imprisonment would aggravate his condition and the applicant is receiving appropriate treatment from Justice Health. It cannot be said that “even with the illness, if it were known at the time of sentencing, Mr Anastasiou would have escaped the imposition of a full-time custodial sentence.” at [32]

Fundamental to the court’s intervention is whether the applicant’s medical condition, as it is now understood, will

make his imprisonment more onerous than was known about when sentence was imposed. In one sense it does, but in another “his incarceration may be providing him with medical care that is otherwise not available.” at [32]

The CCA held that while it had sympathy for the applicant’s terminal illness, it was not sympathy but principle which the court was obliged to apply. In addition, the applicant was “entitled to apply for and be granted parole or subject to the prerogative of mercy.” at [35] Section 160(1) of the **Crimes (Administration of Sentences) Act 1999** Parole Act gives the Parole Authority power to release an offender on parole based on “exceptional, extenuating circumstances” and s 270 of that Act preserves the Executive Government’s prerogative of mercy.

Hong v Regina [2009] NSWCCA 242

14 September 2009

In 2007 police arrested Ricky Thoo when they conducted a search of his garage. They found two sports bags containing 55 packages of methylamphetamine in plastic bags. Some of the packages contained other plastic bags, and 72 bags in all were found. Mr Hong’s fingerprints were found on the outside of seven plastic bags, inside of which were other plastic bags containing varying quantities of methylamphetamine amounting to 941.3 grams. A total of 1.4 kilograms of methylamphetamine was found.

Mr Hong was tried and convicted, by a jury, of one count of knowingly take part in supply of commercial quantity of prohibited drug (methylamphetamine) contrary to s 25(2) **Drug Misuse and Trafficking Act 1986**. He was sentenced to a term of imprisonment comprising a non-parole period of three years, and a balance of term of 18 months.

At trial, the Crown case against Mr Hong was entirely based on circumstantial evidence. The sole circumstantial evidence was the presence of Mr Hong’s fingerprints on seven of the 72 plastic bags discovered by police. A defence witness, previously employed until September 2006 by Allphones, a mobile telephone company owned by Mr Thoo, gave evidence that Mr Hong collected items for repair that were packaged in freezer style bags, and that these bags were the kind used by Allphones. The telephone company was owned and operated by Mr Thoo, when the offences were committed.

Two police officers testified that there was no way of determining when Mr Hong’s fingerprints came to be on the plastic bags. Also, there was also no way of telling whether the plastic bags were empty when Mr Hong handled them. Another police officer who gave evidence was involved in

Appendix 9 – Significant Judicial Decisions (continued)

extensive surveillance of the premises at which the drugs were discovered. He agreed that there was no evidence linking Mr Hong to the premises. Further, no fingerprint or DNA evidence belonging to Mr Hong was found “on any surface” inside the premises. Mr Thoo told police that Mr Hong only ran errands for his business and was not involved in the drug activities.

Mr Hong appealed against his conviction to the NSWCCA. On appeal the issue for determination was whether the guilty verdict was unreasonable and unable to be supported by the evidence, because the Crown had failed to discharge the onus of excluding a reasonable hypothesis (proposition) consistent with innocence?

The NSWCCA allowed the appeal, quashed the conviction and directed a verdict of acquittal. It held that the fingerprint evidence was not compelling enough to support the jury’s conclusion, beyond a reasonable doubt, that the Crown had discharged the onus of excluding the reasonable hypothesis that Mr Hong was innocent. The court’s reasoning in deciding the appeal is summarised below.

The principles relevant to whether a verdict is unreasonable or cannot be supported by the evidence are set down in **M v The Queen** [1994] HCA 63; (1994) 181 CLR 487 at 493; **MFA v The Queen** [2002] HCA 53; (2002) 213 CLR 606 at [25], [55]-[57]; **Rasic v Regina** [2009] NSWCCA 202 at [25], [26] and [30].

Given the nature of Mr Hong’s contact with the plastic bags, there was a real issue about whether the jury could have concluded, to the required standard, that his fingerprints were imprinted on the plastic bags while being involved in the supply of prohibited drugs. At the trial, the Crown had

emphasised the number of different plastic bags on which the Mr Hong’s fingerprints were found. Spigelman CJ said on appeal at [25] that the critical issue was “... whether the fact that fingerprints appeared on seven out of 72 bags was sufficient to tip the scales and enable the Crown to prove its case beyond reasonable doubt, or alternatively, to disprove the hypothesis consistent with innocence.” at [25]

Ultimately, it was not open to the jury to convict Mr Hong. The jury should have doubted whether the Crown had discharged its onus of excluding a reasonable premise consistent with Mr Hong’s innocence. Spigelman CJ said at [30] that:

“The appellant attended the premises two to three times per week. He did so over an extended period of time. His practice was to carry equipment for repair in plastic bags and to bring back that equipment after repair in such bags. He must have touched numerous bags. The evidence, which was questioned, but not ultimately challenged in cross-examination, that bags were kept for reuse, is entitled to weight. Accordingly, it is possible that as many as seven such bags, that were ultimately used in a business of drug supply, were touched by the appellant as an employee of the legitimate business in which he was employed.”

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 2010–2012

The Corporate Plan 2010–2012 contains information on the Office's goals, objectives and implementation strategies which will guide the operation of the ODPP until 2012.

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.

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 – 2009-2010 EEO ACHIEVEMENTS

A Staff survey was distributed to all staff towards the end of the 2009/2010 Financial Year, allowing all staff to provide their views on numerous facets of their employment with the Office. It is envisaged that feedback from the survey will be incorporated into policy review and HR strategies developed over the next 12 months.

A Mandatory Continuing Legal Education session – Communicating with Aboriginal People – was held in the Dubbo Office.

Formal inductions now include providing new starters with how to lodge a grievance procedure, expected behaviour and the dignity and respect charter.

The Office's new Sydney Office has a designated parent space for breastfeeding and lactation.

The Office has designated a non denominational space in the Sydney Office that can be used for prayer.

The Office received approval for Elsa Dixon funding for two 12 week graduate work experience placements. The position was advertised through university networks and in the Koori mail. Unfortunately, the positions were not filled, however, there will be an ongoing campaign to engage and recruit Aboriginal staff. The Office also advertised in the Koori Mail for experienced Aboriginal lawyers to apply for positions in the Office.

International Women's Day was celebrated in April 2010. This year's topic was Empowering Women to End Poverty by 2015. Katie Wood, Governance Co-ordinator for Amnesty International and Ronni Khan, Director and Founder of OzHarvest, presented talks to staff.

APPENDIX 12 – EEO STATISTICS

A. Trends in the Representation of EEO Groups

EEO Group	Benchmark or Target	% of Total Staff			
		2007	2008	2009	2010
Women	50%	60%	62%	62%	61%
Aboriginal people and Torres Strait Islanders	2.6%	1.1%	0.7%	0.8%	0.7%
People whose first language was not English	19%	16%	17%	16%	16%
People with a disability	12%	5%	7%	5%	5%
People with a disability requiring work-related adjustment	7%	1.7%	3.2%	2.2%	1.9%

B. Trends in the Distribution of EEO Groups

EEO Group	Benchmark or Target	Distribution Index			
		2007	2008	2009	2010
Women	100	80	82	83	85
Aboriginal people and Torres Strait Islanders	100	n/a	n/a	n/a	n/a
People whose first language was not English	100	92	88	89	91
People with a disability	100	93	93	94	94
People with a disability requiring work-related adjustment	100	n/a	96	n/a	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 Prosecutions (ODPP) continued its commitment to sound energy management practices. The Office submitted its 2009 GEMP Report in October 2009 and will submit the 2010 Report in October 2010.

By this commitment, the ODPP:

- Attempts to minimise energy wastage by installing energy efficient equipment, lighting and utilities.
- Attempts to utilise energy more efficiently and eliminate wastage.
- Buys energy at the most economical price purchasing in-contract Green Power.
- Purchases energy efficient star-rated equipment and providing training in its operation.
- Makes staff aware of the Office's commitment and opportunities for their involvement in implementing energy management practices by promoting the use of power save facilities on Office equipment .
- Uses the recent refurbishment and relocation of the Office's Sydney Office (2009) and the forthcoming relocation of the Parramatta office (January 2011) to improve energy management by implementing energy management methodology. The Department of Public Works assisted and continues to assist in this process by advising the ODPP in the refurbishment process how it can maximise energy management technology.

The ODPP's General Manager, Corporate Services, has the overall responsibility for the energy management of the Office, with the day to day GEMP-related tasks being the responsibility of the Manager, Asset and Facilities Management Branch.

The ODPP's ongoing goals under the GEMP include:

1. Assisting the Government to achieve a reduction of the state-wide total energy consumption for government buildings by attaining the highest tenancy star rating possible.
2. Upgrading the energy efficient facilities at every opportunity but particularly when refurbishments occur; when lighting upgrades to efficient sensor operated systems, can be effected.
3. Purchasing electricity within Government contracts to ensure the minimum Green Power content is obtained.
4. Continuing to purchase equipment which complies with SEDA's energy star rating requirements and reduce equipment overall by consolidating copiers, printers and facsimile machines by purchasing and utilising Multi-Function Devices (MFD).
5. Achieving savings in vehicle fleet use by the acquisition of fuel efficient vehicles.
6. Increasing staff awareness of energy management by publishing best practise methodology and providing the facilities to undertake best practice, i.e. placement of power points above modular furniture and within easy reach so power points can be turned-off easily at close of business.

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

The ODPP has assisted in achieving savings in the overall State power usage in this reporting period, by the extensive re-use of modular furniture and steel furniture and fittings and equipment relocated to the new Sydney office from the existing premises in November 2009. The ODPP relocated and re-used modular timber furniture (workstations, overhead shelving, bookcases and robe lockers), steel furniture (mobile cabinets, filing cabinets, compactus units and library shelving), task and visitors chairs and electrical equipment.

As well as the significant capital costs savings in the purchase of and energy saved in the manufacture of new furniture and shelving, etc, there was a significant benefit to the environment by not reducing these items to landfill.

Future Direction

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

APPENDIX 14 – WASTE REDUCTION AND PURCHASING PLAN AND RECYCLING (WRAPP)

The Office of the Director of Public Prosecutions (ODPP) understands that it is critical to look after the environment. We do that through the introduction of waste reduction mechanisms (if it is economically viable to do so within the Office's funding limitations) by recycling, reusing and reviewing products purchased to ensure those products have a recycled content or are low waste products.

With Federal and State Government, Local Council and community awareness widening in respect of waste reduction, the implementation of waste reduction methods has been achieved with the co-operation of staff of the ODPP in the Sydney office, the three Greater Sydney offices and the six Country offices.

Development of Strategies to Reduce Waste and Recycle

The Office has adopted established strategies and where necessary developed our own strategies to ensure the reduction of waste and recycling within the Office.

The Office concentrated on the following wastes when implementing these strategies and by being somewhat conservative appears to be having some success:

- Paper wastes, including copy, printer, letterhead, envelopes, packaging and cardboard
- Equipment, including multi-function devices, computers, printers and facsimile machines
- Furniture
- Electricity
- Water
- Toner Cartridges
- Co-mingled Waste.

In the main Sydney office, the amount of co-mingled waste collected and sent to recycling was 14,520 litres for the period November 09 to June 2010. If this was averaged out over a 12 month period then we would expect that around 21,780 litres of potential landfill would have been recycled. Under desk boxes are provided in all offices and work stations and posters are displayed in areas where co-mingled recycling otto-bins (120 litre) are located. An education program was undertaken when the recycling program was introduced in Head Office some 2 years ago and publicity continues to be displayed.

Attempts have been made in local offices (Regions) to implement similar schemes. However it has been difficult in the privately leased premises due to the lack of co-operation from lessors and or building managers. The main issue is the storage and collection points that are made available, because basements have little storage space available that can be accessed by the collection trucks. We are happy to

report that the Lismore office lessor has confirmed the introduction of a co-mingling collection scheme later in 2010.

Since relocating to a single building commencing in August 2009, the Sydney office paper waste collection has steadily increased. The Office's cleaners assist in the process by collecting the waste and recycled paper separately. The co-operation of staff and the cleaners has seen the trend of paper recycling substantially increase from 3 units a month (660 litre bins) being collected in August 2009 rising to 16 units a month (660 litre bins) being collected in June 2010.

Each of the wastes and the strategies for avoidance and recycling are detailed below:

Paper Wastes:

We've reduced the general consumption of paper by purchasing photocopier machines and printers that offer multiple page and double-sided copying while ensuring clear and concise instructions and training in the use of copying machines and printers. Multi-destination envelopes are available to staff for use and re-use, avoiding the single-use envelope option.

All suitable paper wastes are removed from the premises for recycling.

Used folders and binders are conveniently stored and made available to staff to re-use.

The Intranet (DPPnet) provides well acknowledged savings where e-notices replace paper and the ODPP utilizes and takes advantage of this media.

Stationery items (paper and printed items) use paper which is 100% recycled, acid free and made in Australia. The paper is on NSW Government Contract and made under certification of AS/NZS ISO 9001 for quality management and AS/NZS ISO 14001 for environmental management.

Prosecution file cover folders stock: the board used in file folders varies - some is 40-60 percent recycled and has:

- Environmental accreditation
- Elemental chlorine free
- Wood fibre from sustainable forests

Letterhead and With Compliments Slips: the laser paper required for letterheads is not recycled, but has:

- Environmental accreditation
- Elemental chlorine free
- Archival (an important requirement)
- Confirms to ISO 14001 International Standard

Appendix 14 – Waste Reduction and Purchasing Plan and Recycling (WRAPP) (continued)

Business card stock: is not recycled, but has:

- Environmental accreditation
- Elemental chlorine free
- Wood fibre from sustainable forests

All envelope stocks are manufactured from predominantly recycled paper stock.

Brochures (e.g. Witness Assistance Service Information brochures) are generally, printed on Waratah Recycled Satin stock which is 30% recycled and has ISO 14001 Environmental accreditation.

Annual Reports are printed on laser paper required for digital press production and is not recycled, but has:

- Environmental accreditation
- Elemental chlorine free
- Archival (an important requirement)
- Confirms to ISO 14001 International Standard

Equipment

Photocopiers: Current strategies are to purchase multi function devices and combine the copy, printer and facsimile facilities. These machines are traded-in at the expiry of their serviceable life and reused as re-engineered machines or stripped for the supply of parts.

Furniture: Office furniture is re-used where possible, sold by auction or tender or transferred to other Government Departments. The option to send furniture to land fill is a last resort and absolutely avoided wherever possible. The ODPP's Sydney office relocation is testament to our commitment to re-use items. As reported in the WRAPP report, extensive re-use of modular furniture and steel items contributed to an overall saving to the relocation budget. The re-use of modular furniture components in the new fitout saved \$200,000. In consultation with in-contract supplier of modular furniture, Workspace Commercial Furniture, new and used furniture was integrated seamlessly into the new fitout. The re-use of library shelving contributed to the overall saving in the amount of \$60,000, which not only saved the project in the purchase of new shelving, but also the environment in the gases that were prevented in the manufacture of new steel and the land fill where the old shelving would have been dumped.

Electricity

Lighting systems in all new fitouts (offices and meeting rooms) are programmed to react to movement so lights stay extinguished unless someone is in the room/s. Photocopiers have power reduce buttons; air conditioning plant is fitted with timers to limit operation only to business hours. Timed after hours air conditioning is available on demand. Energy efficient hot water systems are used in bathrooms and kitchens. Staff are encouraged to turn power to equipment off after hours. In the recent Sydney office fitout this action has been made easier by power points being placed above desk height and in easy reach.

Water

The new Sydney location includes water efficient taps in bathrooms and kitchens and auto flushing systems in the men's toilets, while showers are fitted with water saving heads. Hydra boil or mini boil hot water units are installed to eliminate water wastage from the use of kettles, etc.

Proposed Strategies

Reduce Printers and Facsimile Machines

The Office is currently planning the reduction of stand-alone printers and facsimile machines and use multi-function devices for these functions. This is part of the overall Department of Justice and the Attorney General (DJAG) ICT strategy. This strategy is anticipated to have a marked effect on electricity and consumables usage and maintenance costs as well as providing a Capital Budget saving each year for the next 3 years.

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 2006	30 June 2007	30 June 2008	30 June 2009	30 June 2010
SES Level 1 – \$144,800 – \$169,550	3	2	3	3	3
SES Level 2 – \$169,551 – \$181,900	3	2	3	3	2
SES Level 3	-	-	-	-	-
SES Level 4	-	-	-	-	-
SES Level 5	-	-	-	-	-
SES Level 6 – \$259,851 – \$292,050	-	-	-	1	1
Statutory Appointments					
Under the DPP Act	4	3	4	4	4
Number of positions filled by women	2	1	3	4	3

* 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 2005	30 June 2006	30 June 2007	30 June 2008	30 June 2009	30 June 2010
Statutory Appointed & SES	105	105	100	97	94	92
Lawyers	315	324	311	299	301	300
Administration & Clerical Staff	233	225	219	216	211	210
Total	653	654	630	612	606	602

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

Recruitment Statistics

	2005/06	2006/07	2007/08	2008/09	2009/2010
Senior Executive Service	0	0	0	1	0
Statutory Appointed	0	0	0	0	0
Crown Prosecutors	2	2	1	0	2
Prosecution Officer (Lawyers)	17	25	19	28	18
Prosecution Officer (Admin)	73	41	45	48	35
Total	92	68	65	77	55

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 <i>Public Sector Employment and Management Act 2002</i> .

APPENDIX 16 – REPORT OF THE CHIEF INFORMATION OFFICER ON MAJOR IM & T PROJECTS DURING 2009-2010

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 members are the Chief Information Officer (currently the Deputy Solicitor (Operations) as Chair; the Executive Director; the Solicitor for Public Prosecutions, Deputy Solicitor (Legal), Assistant Solicitor (Country), Assistant Solicitor (Operations), a Deputy Senior Crown Prosecutor; Professional Assistant to the Director; the General Manager - Corporate Services, the Manager of Information Management & Technology and the Manager Information and Business Systems.

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

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

The SPMS was implemented during the financial year and provided management with reports on the key performance indicators outlined in the Results and Services Plan. Preliminary ABC reports have been developed with further reports to be investigated after the completion of the CASES Workflow review. Activity Based Costing for 100% of matters is a major project for the Office. The target implementation date is March 2011.

ICT Infrastructure Upgrades

All development work for the Portal has been completed but the implementation remains delayed owing to changes in resources and priorities. The portal is scheduled to be implemented during 2010/11.

JusticeLink and Joined up Justice (JuJ)

JusticeLink is a project of the Department of Justice & Attorney General (DJAG), designed to implement a common case management system across the Local, District and Supreme Courts. It commenced operation in the Supreme and District Courts in 2008 and commenced in the Local Court in August 2009. Read only access has been granted to specified users within the Office of the Director of Public Prosecutions (ODPP).

The Joined Up Justice (JuJ) Data Exchange Project is a joint project undertaken by the ODPP and Legal Aid NSW (LANSW). It aims to develop interface programs that will allow us to exchange information electronically between JusticeLink and the CASES application in the ODPP and LANSW and also ATLAS in LANSW. The project was started in September 2009 and is expected to be completed in September 2011.

Security Certification

The Office's IM&T Information Security Management System has been re-certified for the new location of the ODPP Head Office located at 175 Liverpool Street, Sydney.

CASES Workflow Review

The Office has initiated a comprehensive review of its workflow systems to provide greater assurance of the accuracy of ODPP information. This is aligned with the Auditor General's recommendations of improved data management practices.

APPENDIX 17 – FREEDOM OF INFORMATION ACT 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP)

Period

1 July 2009 to 30 June 2010

Contact

Freedom of Information Coordinator
Deputy Solicitor (Legal)
Telephone (02) 9285 8669

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 2010 under the FOI Act is included at the end of this Appendix.

In the period 1 July 2009 to 30 June 2010 the ODPP received 6 applications under the FOI Act for access to documents. 3 applications were refused as they sought material relating to the ODPP prosecution function, 1 was refused because the request was unclear, and another refused because no fee was received. One request was partially granted. The ODPP was consulted by one Agency 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	2009-10	2007-8	2008-9	2009-10	2007-8	2008-9	2009-10
Number received	4	0	2	5	5	4	9	5	6
Number completed	4	0	2	5	5	4	9	5	6
Total Processed	4	0	2	5	5	4	9	5	6
Results*									
Granted in full	0	0	0	1	0	0	1	0	0
Granted in part	1	0	0	0	0	1	1	0	1
Refused	2	0	2	3	4	3	5	4	5
No documents held	1	0	0	1	1	0	2	1	0

* See "Summary" section for explanation of results.

Appendix 17 – Freedom of Information Act 1989 (NSW) (continued)

Summary of Affairs as at 30 June 2010 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 and which are currently being reviewed. 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 275 Liverpool 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.

This 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 2010.

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 275 Liverpool 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 275 Liverpool Street, Sydney.

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

Risk Management and Insurance – Motor Vehicle, Property and Miscellaneous Claims Report

The General Manager, Corporate Services has overall responsibility for risk management. The Manager, Asset and Facilities Management is responsible for the day-to-day functions of risk management for Motor Vehicles, Property and Miscellaneous Claims.

Motor Vehicles:

In the 2009-2010 reporting period, the Office's Motor Vehicle claims as at 30 June 2010 numbered thirty (30), representing an average net cost per vehicle of \$2,131.00 in claim payments for the four quarters. This compares with twenty-eight (28) claims processed in the four quarters during 2008-2009 (as at 30 June 2009), at an average net cost per vehicle of \$2,143.00. The 2009-2010 year represents very similar overall cost of claims compared to 2008-2009.

Property:

In the 2009-2010 reporting period the Office's Property Claims at 30 June 2010 numbered two (2). Neither of the claims was contributed to by the Office, and liability has been determined as the other party in both claims. Action has been taken to recover the full costs of the damage being \$16,666.

Miscellaneous:

No claims have been lodged.

APPENDIX 19 – OCCUPATIONAL HEALTH AND SAFETY PERFORMANCE

During 2009-10, work continued on the implementation of a comprehensive ODPP OHS Management System. While various factors, including the relocation of Head Office in October 2009, have delayed the overall implementation of this System, a number of projects have been completed, are currently underway or are planned for the 2010-11 financial year. Risk management of Workplace ergonomics was one of those projects completed. The Office Ergonomic Checklist designed to allow employees to self assess their workstation set up and related issues. It was distributed to all staff in the second half of 2009. The active promotion and direct engagement with Managers resulted in the majority of Checklists being completed and returned to the OHS Co-ordinator for review. This initiative allowed for direct follow up where required and resulted in the provision of various OHS aids across the Office. There has been a subsequent increase in demand for items such as document holders and telephone headsets. The Checklist significantly raised the awareness and understanding of sound work practices to minimise the chances of workplace injuries.

The Office continues to target risk prevention, accident/incident and workplace injury management policies and procedures to ensure they are relevant, easy to access and easily understood.

There were a number of difficult issues addressed during 2009-10 including office accommodation, court environments, personal security and manual handling. A number of these involved consultation with and assistance from the NSW Work Cover Authority. The majority of these issues were resolved to the satisfaction of those concerned. The Office continues to actively seek resolution to issues such as secure transport drop off points for employees and sound OHS court environments.

Work also continued on establishing policies and programs for the prevention and management of workplace stress and psychological injury. A comprehensive action plan is to be submitted to the ODPP Executive in 2010-11. Similarly, the OHS Committee processes have undergone review in 2009-10. Recommendations for changes to workplace inspections processes and Committee member communications will also be released for review in 2010-11. These recommendations are designed to make the inspection process more practical and communications more effective.

As noted above, work will continue on the implementation of the ODPP OHS Management System. Effective injury prevention strategies and injury management programs are crucial in limiting the risk of injury to employees and in turn reducing the cost of worker's compensation premiums. In 2009-10, the number of compensable claims fell in comparison to 2008-09. However, the direct cost of claims increased. This highlights the need for ongoing vigilance and commitment to ensuring an effective OHS Management Plan is supported at all levels of the organisation.

New initiatives are to be presented in 2010-11 throughout the entire Office that will encourage greater involvement in addressing those difficult areas discussed. This consultation process is seen as critical to the Office providing practical, relevant solutions to the OHS challenges ahead.

APPENDIX 20 – OVERVIEW OF THE WITNESS ASSISTANCE SERVICE (WAS)

The Witness Assistance Service (WAS) is an integral part of the ODPP. The WAS works in close partnership with solicitors and Crown Prosecutors to provide assistance to victims and witnesses and assist the ODPP meet its obligations under the Charter of Victims Rights (Victims Rights Act 1996).

WAS provides a frontline specialist service to victims of crime and vulnerable witnesses in specific priority prosecution matters. The aim of WAS is 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 give evidence to the best of their ability.

The WAS is based on an integrated proactive model of service delivery that is strength-based and resilience focussed. Interagency liaison and collaboration are a vital element of service delivery for the WAS.

Since 1 March 2009 the WAS employee related funding has been administered by the NSW Department of Justice and Attorney General (DJAG). Monthly reports on service outcomes are provided to DJAG in line with the Funding and Performance Accountability Framework for the Witness Assistance Service.

The Witness Assistance Service in 2009-2010

The period of 2009-2010 presented many challenges for the WAS. Due to the ongoing budget constraints faced by the ODPP, the WAS saw a gradual reduction in staffing numbers through natural attrition coupled with the simultaneous freezing of staff vacancies. At a low point the WAS had an average staff vacancy rate across the state of 25%, causing an unplanned concentration of vacancies in some regions, particularly the Dubbo/Bathurst area and Sydney West.

Vacant positions during the financial year included

- the permanent WAS Officer positions previously based at Bathurst vacated June 2008;
- Penrith position vacated December 2008;
- The Aboriginal WAS Officer position based at Sydney vacated January 2009
- A permanent position in Parramatta vacated since December 2009;
- Temporary position Parramatta vacated February 2009;
- Three temporary positions in Sydney;
- Two maternity leave positions at Campbelltown vacated June 2009 and Dubbo vacated February 2010.

Since the WAS Interim Strategy was implemented in early 2008 across NSW, it has continued throughout to assist in managing the impact of the vacant positions on caseloads for WAS Officers, and to allow cross-regional cover for priority matters. In 2009-10, WAS Officers 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 has severely impacted on the capacity of the WAS to provide services to some groups of victims and witnesses. The quality of services provided, early victim contact and pro-active service delivery have all been compromised at times. Where possible, referrals have been made to other appropriate services.

At the opening of the new ODPP Head Office premises in February 2010 the Attorney General, The Hon. John Hatzistergos MLC, announced additional and ongoing funding for WAS. This funding announcement enabled vacant positions to gradually be recruited, re-establishing the service to 33 funded positions (just short of the staffing establishment of 34.6 positions between 2004-2006). The majority of vacant positions had been recruited by 30 June 2010. The benefit of this funding enhancement should have a noticeable flow-on effect into the next financial year.

As part of the Office's commitment to ongoing service improvement, the Witness Assistance Service has been expanding the range and type of communication with victims, witnesses and interagency partners. There has been an increasing emphasis on the use of electronic communication formats including e-mail with victims of crime located overseas, use of electronic links or attachments, sending SMS messages to young people who are victims or witnesses, and providing witnesses and victims with copies of court preparation DVDs. The Witness Assistance Service has developed template e-mails to enhance e-mail communication and information provision for victims, witnesses and external agencies.

Regional Witness Assistance Services

Staffing has been the overarching issue impacting on WAS in regional areas. The efforts of the regional WAS officers who continued to provide services to victims and witnesses throughout a very difficult period are acknowledged as is the efforts of Sydney WAS officers who assisted regional areas where possible.

Challenges faced in rural areas include high caseloads, increases in circuit court sittings, travel required to ensure services are accessible, lack of support services to refer victims and witnesses, services not always being available to provide court support and services not always having the

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

expertise or experience to provide court preparation and court familiarisation. The increase in the number of country circuits has especially impacted on the amount of time spent travelling for country WAS officers.

After the closure of the Bathurst office, the WAS Officer position was transferred to the Dubbo ODPP. Following difficulties recruiting the position at Dubbo, the position has been temporarily transferred to the Penrith Office (where a portion of cases from the Dubbo district are prosecuted).

Sydney West WAS staffing was considerably depleted; by April 2010 there was a 75% vacancy rate with only one WAS officer at Penrith, one at Campbelltown and no WAS Officer at Parramatta. Maintaining a quality service in this region was a major challenge and remaining staff were considerably strained at this time. They are thanked for their hard work and patience.

The recent centralisation of District Court trials at the Sydney West Trial Courts at Parramatta means many matters generated at Penrith and Campbelltown are being listed for trial at Parramatta. As a result WAS Officers from Penrith and Campbelltown are often having to travel and work out of Parramatta and increasingly they face the dilemma of which court to attend when they have matters listed in more than one location on the same date. This emerging work flow pattern is providing both a challenge and opportunity for Sydney West WAS to look at new ways of working in the future.

Senior WAS Officers have continued to provide clinical supervision and guidance for WAS Officers in the regions. Regular regional WAS meetings have been more difficult to maintain under the circumstances over the last financial year period however, when they can be organised, they have provided opportunities for group supervision and professional development, case discussion and review of best practice.

Regional WAS Officers liaise with many local services such as sexual assault and domestic violence services, JIRT and local interagency groups.

Witness Assistance Service Delivery Outcomes 2009-2010

The WAS has a proactive WAS Best Practice Referral Protocol to assist in making early contact with victims and vulnerable witnesses. During 2009-2010 66.5% (1296) of WAS referrals constituted early referrals which were obtained electronically or from legal clerks. An additional 23.6% (490) of WAS referrals were received from ODPP solicitors, including non-priority matters where there may be vulnerable victims or witnesses. Referrals were also received

from Police, JIRT, counsellors, family and friends and victims and witnesses themselves.

During 2009-2010 there were 1948 new WAS registrations. The number of new WAS registrations is directly contingent of the WAS staffing capacity at any point in time. The number of new WAS registrations in 2009-2010 was 245 less new registrations than for 2008-2009. This reflects both the necessity to strengthen priorities and the implementation of the Interim WAS Strategy. The Interim WAS Strategy has helped develop referral waiting lists of unallocated matters and some referrals not being accepted. In June 2010 there were 313 unallocated WAS priority matters across the state.

WAS priority matters include:

- child sexual assault (CSA - child and adult);
- adult sexual assault (including sexual assault in a domestic violence context (ASA)); child abuse matters (PAC);
- homicide (HOM);
- dangerous driving (DANDRI) matters involving death.

These priority matters accounted for 1662 of the 1948 new registrations - 79.2% of all new WAS registrations during 2009-2010. This percentage is higher than the previous two years and reflects a tightening of priorities.

Domestic and family violence related matters (not including sexual assault) most commonly fall into the adult physical assault category. There were 280 new WAS registrations for physical assault matters which constitutes 14.4% of all new registrations. This is less than for the previous financial year, again reflecting a tightening of priorities throughout 2009-2010 and the subsequent impact for this group of victims.

Table 2 provides a breakdown of the total 4232 active WAS files (where service contacts were registered during 2009-2010) and a picture of the workflow between WAS in various locations during 2009-2010. The figures in the first column represent the WAS caseloads by location at early contact when a matter is in the earlier stages of the prosecution process. The figures in the second column indicate the caseloads as matters progress through the legal process.

Many matters are transferred from the country regions to Sydney Higher Courts for trial such as homicides, large multi-victim matters, complex or special interest matters. Other matters follow the Judge for part-heard hearings or sentencing. Most of these matters are re-allocated to Sydney WAS Officers and, during 2009-2010, meant an additional workload of 355 clients for Sydney WAS.

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

Table 2: Number of Active WAS files 2009-2010

Location as at earliest contact date		Location as at latest contact date	
Campbelltown	327	Campbelltown	254
Dubbo	243	Dubbo	220
Gosford	242	Gosford	163
Lismore	363	Lismore	334
Newcastle	722	Newcastle	669
Parramatta	446	Parramatta	365
Penrith	264	Penrith	248
Sydney	859	Sydney	1214
Wagga	273	Wagga	270
Wollongong	469	Wollongong	457
*Penrith/ Dubbo pilot	24	*Penrith/ Dubbo pilot	38
Total	4232	Total	4232

*Note: Penrith/ Dubbo Pilot commenced 15 June 2010

Special priority groups and vulnerable witnesses

Sexual Assault and Domestic Violence Victims and Witnesses

During 2009-2010 there were 116 victims identified by WAS Officers as victims in domestic violence related matters. During the past two financial years the WAS has not always been able to prioritise domestic violence matters due to staffing shortages.

In 2009-2010, 1223 of the 1948 new WAS referrals were victims / witnesses in child sexual assault, historical child sexual assault and adult sexual assault matters. This represents sixty three percent (63%) of overall referrals and is slightly higher than 2008-2009, reflecting the necessary tightening of priorities for WAS referrals during the last financial year.

WAS Officers have continued to assist the ODPP in referral of relevant victims of sexual assault to the Sexual Assault Communications Privilege Pro Bono Referral Project.

In April 2010, the Crimes Amendment (Child Pornography and Abuse Material) Act 2010 (No 9) amended the Criminal

Procedure Act 1986. Consequently, in relation to prescribed sexual offence proceedings, the protection afforded to complainants in Div 1 Pt 5 applies in the same way to a sexual offence witness. In line with this legislative reform and recommendations from the Sexual Assault Review Committee, the Witness Assistance Service expanded service priorities to include sexual offences witnesses. Sexual offences witnesses have also been added as a role category on the WAS database system for future data collection purposes. The inclusion of this group of witnesses as a WAS priority will be an additional demand on the service without any additional resources.

An additional challenge for Sydney WAS during 2009-2010 has been the number of historical child sexual assault matters with a large number of victims and sexual offences witnesses.

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

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

young people giving evidence at court. Additionally, 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, child victims, their parents and carers in these matters constituted 31.3% of all new registrations.

During 2009-2010, of the total 677 children and young people under the age of 18 years that were registered

- 572 were victims or witness in CSA matters with 6 under the age of 6;
- 89 were between the age of 6 and under 10 years;
- 407 were aged between 10 and 16 years;
- 70 were in the 16 and under 18 year group.

There were also 12 young people in the 16-18 year group who were victims of recent sexual assaults which were categorised as adult sexual assault matters.

Others matters types including children and young people registered with WAS during 2009-2010 included fourteen (14) children and young people as victims or witnesses in adult physical assault matters (majority being domestic violence related); 6 in home invasion related matters; 20 in matters involving death such as homicide and dangerous driving and 22 in child physical assault related matters.

During 2010 the WAS Manager and Senior WAS Team assisted the Assistant Solicitor (Legal) in drafting the new ODPP Child Protection Procedures for Reporting Children at Risk. This contributes to legislative reforms and the NSW Government "Keep Them Safe: A shared approach to child wellbeing" five-year plan.

Indigenous Victims and Witnesses

The WAS continues to prioritise services for Aboriginal and Torres Strait Islander victims and witnesses. The WAS has three substantive Aboriginal identified WAS officers positions; each officer covers approximately a third of the state. It must be noted that even when there is a full staffing complement, the Aboriginal WAS Officers carry heavy caseloads with a high travel component.

For a considerable part of 2009-2010 there has been only one Aboriginal WAS Officer for the whole of NSW. The other two positions were temporarily vacated due to staff going on Maternity Leave and one of those staff members

ultimately relocated interstate. The positions remained vacant for some time due to budget constraints and unsuccessful attempts to fill the positions. Further recruitment processes are currently underway. The permanent Aboriginal WAS Officer position is being taken up on 16 August 2010 and options to fill the temporary position at Dubbo were being explored at time of writing the annual report.

Total registrations were 158, which is approximately 8.1% of the overall new WAS registrations. Of those Aboriginal victims and witnesses receiving a service by WAS:

- 37.3% are child sexual assault matters;
- 9.5% are historical child sexual assault matters;
- 15.8% are adult sexual assault matters;
- 15.8% in physical assault matters (generally domestic violence related)
- 13.9% in matters involving the death of the primary victim.

Particular mention is made of the efforts of Aboriginal WAS Officer Louise O'Neill who is the Aboriginal WAS Officer based at Newcastle DPP. Given the Aboriginal WAS Officer positions at Sydney and Dubbo have been vacant for sometime, Louise has been providing the best service possible to as many Aboriginal victims and witnesses across the state.

Louise O'Neill has had to prioritise her services, especially for child sexual assault matters. Where possible Louise has been assisted by the generalist WAS Officers who have worked in consultation with Louise in supporting Aboriginal victims and witnesses.

Louise works creatively with Aboriginal communities in rural areas in supporting family victims in homicide and dangerous driving matters, especially when they have to travel to attend trials in other locations. During 2010 Louise also contributed to an innovative Road map for young men project. This program was established by a rural Aboriginal community to support and assist young Aboriginal men affected by a murder in that rural community. Louise's support is greatly appreciated by victims and witnesses and also by the ODPP solicitors and Crown prosecutors with whom she works closely.

The ODPP continues to respond to the NSW Interagency Plan: To Tackle Child Sexual Assault in Aboriginal Communities 2006-2011. Strategies included:

- An MCLE session held in September 2009 titled Communicating with Aboriginal People. This was presented by Dr Diana Eades. Dr Eades is Honorary Research Fellow at UNE and her research in the areas of Aboriginal languages and communication methods is of particular interest to

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

- the legal profession.
- The ODPP Solicitor's Office Training and Development workshop day on 21 December 2009. This included a half day session on Responding to Child Sexual Assault in Aboriginal Communities presented by representatives from Premiers Department and Corrective Services. The workshop used the DVD resources "Bingo Night", "Not My Sister" and "Speak Out".
- A two day workshop Competent Responses to Aboriginal Sexual and Family Violence, which was conducted by the Education Centre Against Violence in June 2010. These training opportunities were attended by a number of ODPP Lawyers and WAS Officers.
- for Childhood Grief
- "Responding to Child Sexual Assault in Aboriginal Communities" presented by Pam Hansford, Senior Project Officer, Performance Improvement and Review Unit, Department of Premier and Cabinet, and Nita Dowel, Senior Project Officer, Community Strategies, Aboriginal Planning and Support Unit, Corrective Services.

During the Solicitors Office Training and Development Day, WAS Officers attended a mix of presentations for solicitors and specific WAS sessions which included:

- Enhancing Services for Victims of Crime – Mandy Young, Acting Director Victims Service, Department of Justice and Attorney General.
- Child visitations to prisoners in custody and the role of the Child Protection Coordination and Support Unit at Department of Corrective Services – Nicola Wilson, Director Child Protection Coordination and Support Unit DCS
- Keep Them Safe: An overview presented by WAS manager Lee Purches
- Best practice- Witness Preparation presented by WAS manager Lee Purches

Supervision, Training and Professional Development

Clinical supervision is provided for regional WAS Officers by Senior WAS Officers based at Parramatta, Newcastle and Wollongong. Sydney WAS Officers are able to access external clinical supervision in the absence of a Senior WAS Officer position based at Sydney.

Sydney WAS Officers currently attend a monthly group supervision session.

Despite the challenges of heavy caseloads, the WAS staff is committed to ongoing professional development and training. WAS Officers remain abreast of developments in diverse areas of the criminal justice system including victimology, best practice in witness preparation, disabilities, child development, grief and loss and bereavement, sexual assault and child sexual assault, domestic violence, cultural awareness, profession boundaries and ethics as well as relevant professional fields in the areas social work and psychology.

In December 2009 the annual WAS Statewide Conference was integrated for the first time with the ODPP Solicitor Professional Development and Training Day and workshop day. This initiative proved to be very successful providing WAS Officers an opportunity to gain training alongside their legal colleagues, to network and build working partnerships, and also to contribute to the workshop program by organising and facilitating sessions that were well attended and highly regarded by solicitors as well as WAS Officers. The workshops organised and facilitated by WAS included:

- "The Chaos of Grief" presented by Mal McKissock OAM; Co-Director Bereavement CARE Centre and Co-Director Clinical Services, National Centre

A two week orientation training program was conducted for new WAS Officers commencing duties in late May and early June 2010. WAS Officers, Solicitors, Crown Prosecutors, Executive officers, Corporate Services, the Library and a range of external agencies contributed to the comprehensive training program.

Below is an overview of training attended by individual WAS Officers during 2009-2010.

ODPP MCLE sessions attended:

- "Are you mentally competent before the age of 21?" presenter Prof Ian Hickie; 9 September 2009
- "Prevention Treatment and Management of Conduct Problems in Childhood" Presenter David M. Fergusson NSW Bureau of Crime Statistics and Research; 9 September 2009
- "Communicating with Aboriginal People", presenter Dr Diana Eades Hon. Research Fellow, UNE; 10 September 2009
- New Forensic Regime & The Tribunal's Role (Mental Health Review Tribunal); 17 March 2010
- "Cedar Cottage Pre-trial Diversion of Offenders Program (Child Sexual Assault)", Presenter Dale Tolliday from Cedar Cottage; 26 May 2010

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

Training workshops and seminars attended:

- “21st Century Approaches to Grief Counselling and Therapy” and “Traumatic Loss; Bereavement after Sudden, Unexpected and Violent Death” Presenter Jack Jordan Australian Centre for Grief and Bereavement. Two day workshop; 27 and 28 July 2009
- “Keep Them Safe: Maintaining Collaborative Partnerships”, 1 day ECAV workshop; 9 September 2010
- “Evaluation And Practice Standards in the sexual assault and violence against women fields”; Melbourne; Tuesday 8 December 2009
- “Keep Them Safe” workshops conducted by TAFE at various locations 2009
- WAS Manager and WAS Officer were invited to attend an informal presentation at the Directors Chambers by Crown Counsel Joanna Cherry QC on the Scottish National Sexual Crimes Unit; 1 April 2010
- “Attachment Theory: understanding the process of attachment in coping with loss and grief.” Presenter; Ruth Schmidt Neven, Australian Centre for Grief and Bereavement. One day workshop; 7 May 2010
- “Healing Broken Bonds: Traumatic Attachment & Affect Dysregulation” presenter Dr Janina Fisher. 2 day workshop; 25-26 May 2010.
- “Mothers, Children and Change: Strengthening Service Support and Safety”, Domestic and Family Violence Clearinghouse Forum; 4 June 201
- “Competent Response to Aboriginal Sexual and Family Violence” Education Centre Against Violence, a 2 day ODPP workshop; 8 and 9 June 2010.
- “Adolescents: Some adventures and misadventures with media and new technologies, from possible new norms to addressing sexually abusive behaviours”. Presenter Brandon Wilson, ANZATSA; 4 June 2010
- “Individual and Family Responses to Loss; Clinical Approaches to Traumatic Grief”. Presenter Dr Stephen Fleming, The Australian Centre for Grief and Bereavement; 27 July 2010 Brisbane
- Technology training for managers of support staff and administration staff at Sydney on Video conferencing facilities, Smartboards, and TTY facilities.

Training and Community Education Provided

The WAS Manager and WAS Officers conducted a number of training and community education presentations for external organisations throughout the year. These have included:

- Prince of Wales Hospital Social Work Dept interagency forum and presentations 2 September 2009
- Canterbury Social Work After Hours Team; 1 October 2009
- Northern Sydney Sexual Assault Service Court Preparation Day for Victims of Sexual Assault; 16 October 2009
- NSW Health State-wide SAS and Child Protection Coordinators Group Presentation on “Challenges of best practice in witness preparation and court support”; 23 February 2010
- NSW Health Education Centre Against Violence Specialist Sexual Assault New worker training; 17 March 2010
- Mission Australia Court Support Service training for new volunteers; 29 October 2009
- Victims and Witnesses of Crime Court Support induction program for new volunteers; 23 March 2010
- Orientation for social work students at Victims Services Monday 15 2009
- NSW Rape Crisis Centre – new counsellors in-service 31 March 2010
- ODPP Legal Development Program – WAS session Monday 1 February 2010
- A number of other orientation sessions for students and new workers.

Interagency Committees, Liaison and Consultations

During 2009-2010 the WAS engaged in interagency liaison at two levels:

- At a case management level there were 1117 hours spent in interagency liaison as part of service delivery to victims and witnesses
- At a broader interagency level there were 189 hours spent participating in interagency committees, forum, working groups, liaison meetings (excluding training, community education and policy development).

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

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 2009-2010 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
- Dubbo Aboriginal Community Justice Group
- Dubbo community interagency group
- Liaison meetings with NGOs such as Homicide Victims Support Group, Mission Australian Court Support Service, Salvation Army, Victims and Witnesses of Crime Court Support.
- Meetings with JJRT in Wollongong

The ODPP and WAS assisted in providing feedback on a number of publications for other organisations. Examples include:

- Shopfront Youth Legal Centre and Macquarie Legal centre joint publication "Youth Justice: your guide to cops and court" 4th Edition".
- Dept. of Justice and Attorney General - NSW Standardised Domestic Violence Package "Your Court, Your Safety".
- Victims Services - Justicejourney website information
- Disability Advocacy NSW Inc; Manual for Disability Advocates Assisting Victims of Crime
- CatholicCare revised booklet "Looking After Yourself During Court"

Contributions to Reform, Research and Interstate Networking

Liaison visit to Victorian OPP on 7 December 2009 by the WAS Manager Lee Purches, Senior Lawyer Amy Watts and Assistant Solicitor (Legal) Johanna Pheils.

Australian Law Reform Commission Family Violence Inquiry - Lee Purches (WAS Manager) , Johanna Pheils (Assistant Solicitor Legal), Amy Watts (Senior Lawyer) and Marianne Carey (Managing Lawyer Group 6) attended a consultation meeting at the ALRC on 9 December 2009.

NSW Victim Impact Statement Research conducted by University of Sydney Masters Fiona Tait. WAS has provided support for distributing information to victims.

Sexual Assault Communications Privilege Pro Bono Referral Project Evaluation – WAS Administration Officer provided research support reviewing case files.

APPENDIX 2I – OVERSEAS TRAVEL INFORMATION

Staff Member	Date, Place and Travel Details	Reason for Travel and Expenses (\$AUD)	Total Cost
N Cowdery AM QC	12 - 17 December 2009 Samoa	Pacific Islands Law Officers Network (PILON) Travel Allowance \$163.57 and Incidentals \$18.49	\$182.06
N Cowdery AM QC	18 - 22 January 2010 Bahrain	Global Prosecutors E-Crime Network (GPEN) Development Board Meeting Incidentals \$69.15	\$69.15
N Cowdery AM QC	18 - 20 March 2010 Prague	International Association of Prosecutors Executive Committee meeting Travel Allowance	\$441.83
N Cowdery AM QC	31 May - 4 June 2010 Samoa	Pacific Prosecutors Association Conference Travel Allowance	\$168.00
N Cowdery AM QC	8 - 15 June 2010 Maldives	Global Prosecutors E-Crime Network (GPEN) Training Seminar Travel Allowance	\$210.00
TOTAL			\$1,071.04

APPENDIX 22 – INTERNAL AUDIT AND RISK MANAGEMENT

The ODPP Audit Committee was reconstituted in October 2008 as a result of the NSW Government report into Internal Audit capacity in the NSW Public Sector. The Committee's membership contained for the first time two independent members (in addition to five ODPP staff). The Committee has been further restructured and now is in accordance with the Treasury guidelines promulgated in June 2009. The guidelines provide a model Charter, require a majority of independent members, stipulate responsibilities of the Committee, mandate the appointment of a Chief Audit Executive and require monitoring by the Audit Office of NSW.

The ODPP's Audit and Risk Committee membership is:

- Jon Isaacs (Independent Chair)
- Patricia Azarias (Independent member)
- Chris Maxwell QC
- Sashi Govind (alternative to Chris Maxwell)

Attendees at meetings include the Executive Director (who has been appointed the Chief Audit Executive), the General Manager Corporate Services and the Audit Office. ODPP staff members attend when requested to present reports on matters addressed by the Committee.

Meetings were held on 6 August 2009, 15 October 2009, 3 December 2009, 9 March 2010 and 4 June 2010.

The Committee's standing agenda items include:

- Internal Audit reports
- Risk
- External Audit
- Financial position
- Misconduct
- Auditor-General Report/McLelland Report recommendations and progress

The Committee has no executive authority. Matters reviewed during the period included:

Internal Audit

The Committee recommended the outsourcing of the Internal Audit function, reporting to the Executive Director. A tender for the development of the ODPP risk profile leading to an Internal Audit program was considered at the December 2009 meeting. The Internal Audit Bureau was recommended and subsequently agreed upon.

End of year Financial Statements

The Committee reviewed the Statements prior to submission to the Audit Office. The Audit Office commended the ODPP for the quality of the Statements which was a credit to the officers within the ODPP Finance Section.

Activity Based Costing (ABC) and CASES implementation

The Committee discussed progress on the program to fully implement ABC within the CASES system and has made recommendations on the risk management and implementation of the program.

Auditor-General Report/McLelland Report recommendations

The Committee received each meeting a report from the Executive Director on progress on meeting the recommendations of the above reports. The Audit Office review of progress received at our August 2009 meeting stated that it was "pleased that the Office's [ODPP] submission indicates that it has accepted all our recommendations and is making good progress in implementing them". The Committee noted the substantial progress being made.

OH&S

The Committee at its December 2009 meeting received a presentation on the impact of stress on the health of legal staff. The Committee continued to receive further reports at subsequent meetings discussing stress-related leave with other organisations and jurisdictions.

Information Technology

The IT systems were independently reviewed. A concern was raised about the under-resourcing of the IT unit. The Committee requested the manager to identify the risks arising from this observation. The Committee noted that the IT function is subject to reviews by DPC (as part of a public sector-wide review of ICT) and the deliberations of DJAG corporate services reform.

APPENDIX 23 – CONSULTANTS

PAYEE	CATEGORIES	AMOUNT Exc. Of GST
Internal Audit Bureau of NSW	Advice on Human Resources	\$544
Internal Audit Bureau of NSW	Organisation-wide Risk Assessment	\$26,320
Lesley O'Loughlin	Preparation of a project proposal for review of the Library services	\$5,550
TOTAL		\$32,414

APPENDIX 24 – ETHNIC AFFAIRS

PRIORITY STATEMENT

Over the past year the ODPP has continued its commitment to the Community and Ethnic Affairs Priority Statement. All members of staff strive to ensure that members of the community are afforded every respect when dealing with the ODPP.

The Office continues to adhere to the Memorandum of Understanding with the Community Relations Commission and the Attorney General's Department. This was implemented in 2008 and its main objectives are to ensure that no person dealing with the Local, District or Supreme Court will be disadvantaged at any stage.

All witnesses, victims and accused are entitled to access free interpreter services.

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 victim 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.

International Delegations

In previous years the ODPP has hosted a number of international delegations, particularly from mainland China. However, in the aftermath of the world financial crisis, these visits are noticeably less frequent. Last year there were only two Chinese delegations, this year another two Chinese delegations visited.

In February 2010 the Director and a Deputy Director undertook an intensive workshop with a group of senior managerial welfare workers in various Iraqi human rights agencies. This trip was sponsored and organised by the federal Human Rights Training Program. The workshops have proved to be an excellent learning experience for both visitors and hosts; it is envisaged that these workshops will become an annual event for the ODPP.

APPENDIX 25 – SOME CASES DEALT WITH DURING THE YEAR

RV JAMAL – discharge firearm with intent to do grievous bodily harm

In the very early hours of Sunday 1 November 1998, four men in a stolen Commodore pulled up outside the Lakemba Police Station and opened fire into the glass front doors of the Station. At the time, there were two police officers behind the front counter of the Station talking to three police officers who were standing on the public side of the counter, which was located just behind the front doors. Another police officer was sitting at a desk in the back of the Station.

Ballistic examination of the scene later established that a minimum of 16 shots were fired in and around the Station. Bullets tore through the plate glass doors, spraying shattered glass across the foyer and over the counter. Fortunately, the only physical injuries sustained by the officers inside the Station were lacerations from broken glass.

The stolen Commodore was driven to a dead-end street a few blocks away, where it was set alight.

During the course of the investigation, police recovered a pistol, the barrel of which had fired some of the bullet jackets seized from the Lakemba Police Station. The pistol had been discarded during a gunfight with police in a tennis court at White City in December 1998 in which Michael Kanaan, was badly wounded.

This discovery led police to focus their attention on a group responsible for a number of shootings in the latter half of 1998, including the murders of Adam Wright and Michael Hurlie at Five Dock, the shooting of "EE" at Greenacre, the drive-by shooting of the EPI night club in Kings Cross and a shoot-up of Eveleigh St, Redfern.

On 17 September 1999, Jamal was arrested in relation to the shooting. He was committed to stand trial with Michael Kanaan and Wassim El Asaad on 1 March 2004. Ten days into proceedings, the trial was aborted due to Jamal's ill health.

On 12 March 2004, the trial was re-listed for later in the year.

On 22 March 2004, Jamal boarded a flight from Sydney bound for Lebanon using a false passport. About 2 months later, he was arrested in Lebanon for passport and terrorism offences and was extradited back to Australia in September 2006 after serving a gaol sentence there.

Upon his return to Australia, Jamal first stood trial in relation to the shooting of "EE" at Greenacre and was found guilty. His trial in relation to the shooting of the Lakemba Police Station commenced on 2 November 2009. The

jury returned a verdict of guilty on the first count on the Indictment, that being maliciously discharge firearm with intent to do grievous bodily harm. That offence carried a maximum penalty of 14 years imprisonment.

Jamal was sentenced to 12 years imprisonment with a non-parole period of 6½ years. He is eligible for release to parole on 14 March 2015.

He has filed a notice of intention to appeal both his conviction and sentence but has not lodged his appeal to date.

RV ISAAKO – attempt murder; robbery cause grievous bodily harm

On Saturday 9 August 2008 in the early hours of the morning the victim, David Keohane was attacked by two males without any provocation. One of these males was Thomas Isaako. It was later discovered that the other male was Kane Tupuolamou.

As a result of the attack the victim suffered extremely serious injuries. The victim was described by the media as an "Irish backpacker" but in fact David had been in Australia for sometime and was looking to settle here. As a result of the attack the victim suffered extremely serious injuries. He was in coma for 116 days and remained in hospital for 325 days. He suffered permanent brain damage and will never be able to lead a full and independent life.

The accused was charged with attempted murder and aggravated robbery. The matter came before the Sydney District Court as a trial. Before the court the accused pleaded guilty to robbery causing grievous bodily harm and not guilty to attempted murder. The matter proceeded to trial on the attempted murder.

The jury returned a verdict of not guilty on the Attempted Murder. The matter then proceeded by way of sentence in relation to the plea of guilty to the charge of Robbery causing grievous bodily harm.

The trial attracted significant media attention and the victim's father and sister attended the trial. The entire family had earlier flown out to Australia in order to fly David home.

The court sentenced the accused on the Robbery charge to 15 years with a non parole period of 10 years which will expire on 15/9/18.

The family of the victim and the victim were able to watch the sentence being handed down by the court by video link from Ireland.

Appendix 25 – Some Cases dealt with during the year (continued)

R v REYNOLDS and SMALL – manslaughter and dangerous navigation cause death

In the early hours of the morning on 1 May 2008, following a night out at the Commercial Hotel Balmain, a group of fourteen young people boarded a work boat at the Darling Street Wharf Balmain and travelled across the harbour to Watson's Bay. The workboat was skippered by the accused Matthew Reynolds and the co-accused Percy Small was one of the passengers.

On the return journey from Watson's Bay a collision took place between the workboat and a 41 foot fishing vessel ('Jordans'), in the vicinity of Bradleys Head on Sydney Harbour. It was alleged that at the time of the collision Percy Small was at the helm of the workboat. The collision resulted in the deaths of six of the young people who were on board the workboat at the time. All the deceased were seated along the port side which bore the brunt of the collision.

Following the collision, recreational fishermen, on a nearby boat, came to the aid of the passengers on the workboat.

Given the inaccessible terrain at Bradleys Head police officers directed the workboat to Taronga Park Zoo wharf where it was met by ambulance officers and other police. The survivors were taken to Royal North Shore Hospital.

An extensive investigation, led by Detective Sergeant Bryan Parker, was carried out by NSW Police.

On 23 February 2010 Matthew Reynolds was indicted in the Supreme Court before Grove J on six counts of manslaughter with alternative counts of aid and abet dangerous navigation causing death. Percy Small was indicted on six counts of dangerous navigation causing death. In respect of Matthew Reynolds, manslaughter was left to the jury on the basis of gross (criminal) negligence.

The Trial proceeded over six weeks in the Supreme Court and was the subject of intense media attention. Numerous police and civilian witnesses gave evidence. Complex expert evidence was given across a number of fields including, pharmacology, biomechanical engineering, maritime law

and marine surveying. The Trial was also the first to utilise specialist laser scanning technology which was used to produce 3 dimensional scale models of the boats involved in the collision. This gave the maritime experts the opportunity after the fact, to recreate the position the boats at the calculated point of impact. Computer animation of the boats, based on the expert's calculations, was presented to the jury.

The jury undertook two views. The first view involved travelling to the site of the Commercial hotel at Balmain and around the surrounding area. The jury were then taken by boat to relevant points on the Harbour, including Watson's Bay and Bradleys Head. A second view of the relevant harbour sites also took place, this time though at night.

On 31 March 2010 the jury retired to consider their verdict. A verdict was returned on 6 April 2010. Matthew Reynolds was found guilty of six counts of manslaughter and Percy Small guilty of six counts of dangerous navigation occasioning death. The accused were sentenced on 25 June 2010. Both received an effective sentence of five years non parole and a total term of seven years and six months. Notices of Intention to Appeal against conviction have been lodged by both accused.

These proceedings demonstrate the invaluable contribution of Witness Assistance Officers to meeting the ODPP'S commitment to victims. The two Witness Assistance Officers assigned to the case provided a high level of support to the bereaved parents and families and to the survivors of the collision.

The aftermath of the collision highlighted the harrowing nature of the work carried out by emergency services personnel including ambulance and police officers. A number of civilians were also involved in the rescue effort. Justice Grove in his Remarks on Sentence commended the actions of the three fishermen who came to the aid of the work boat, namely Nasser Farache, Samar Owek and Ahmed Awik. He said "The community should rightly be grateful for their admirable conduct which gratitude I seek to express on its behalf by this acknowledgement."

Appendix 25 – Some Cases dealt with during the year (continued)

CRIMINAL COURT OF APPEAL

Burrell v R [2009] NSWCCA 193

CONVICTION APPEAL DISMISSED

The CCA dismissed the appeal against conviction for the murder of Dorothy Davis on or about 30 May 1995. The CCA rejected arguments that the evidence did not support the verdict and that publicity had influenced the jury. The Court, Giles JA with whom Buddin and Howie JJ agreed, assessed the whole of the evidence (**Hillier** (2007) 228 CLR 618 and **Keenan** [2009] HCA 1) and rejected the approach urged by the argument of the appellant which tended to take two events or areas of evidence in isolation rather than as part of the circumstances as a whole from the cumulative weight of which guilt was to be found. There was a note from the jury. This did not indicate that the jury was influenced by the publicity. The Court held that the trial judge dealt appropriately with the jury's note and leave to appeal under Rule 4 was also refused in relation to this; nor was the publicity such that a miscarriage of justice was occasioned.

Orkopoulos v R [2009] NSWCCA 213

CONVICTION APPEAL DISMISSED SENTENCE APPEAL ALLOWED IN PART

The appellant, who had been elected to NSW Parliament in 1999 and appointed a Minister in August 2005, was charged with 36 counts on an Indictment containing charges relating to supplying drugs and sexual offences in relation to three complainants. He pleaded guilty to 2 offences and the jury having been directed to return verdicts of not guilty in relation to 3 counts ultimately returned verdicts of guilty in respect of 28 counts. The appeal against conviction was dismissed. The CCA held that the verdicts were not unsafe or unsatisfactory; the evidence of each complainant was detailed and relevantly confirmed by the observations of others. There was no suggestion of concoction or collusion. The appellant's evidence was far from persuasive and on occasions obviously untruthful. The argument that the trial judge failed to give adequate directions in respect of the tendency evidence was also rejected by the Court. The CCA allowed the sentence appeal in part. An overall sentence of

13 years 11 months with a non parole period of 9 years 3 months had been imposed. The Court reduced to a modest extent the sentences on each of the s 78 K offences to reflect the fact that that offence has now been abolished. The practical consequence was that both the overall sentence and the non parole period was reduced by 3 months.

R v PL [2009] 261 ALR 365 NSWCCA 256

CROWN APPEAL ALLOWED.

The respondent stood trial for murder in the Supreme Court. On 4 May 2009, Rothman J directed the jury to return a verdict of not guilty to murder which was the charge on the Indictment, and not guilty to manslaughter. The CCA upheld the Crown appeal against the directed verdict pursuant to s107 of the **Crimes (Appeal and Review) Act 2001** and held:

- The formulation "question of law alone", in the context of s107 in overturning a fundamental principle of criminal law, namely the principle of double jeopardy, indicates that an appeal on a mixed question of fact and law is not permitted under s107 [24]–[25]. A ground of appeal alleging that the trial judge did not correctly apply stated principles to the facts of a case involves a mixed question of facts and law because it entails an assessment of the facts [26];
- It is not necessary to establish a precise act causing death in order to establish either murder or manslaughter [46]–[49]. Rothman J erred by proceeding on the basis that it was necessary for the Crown to identify a particular act of the accused which caused the injuries that led to death. This error raised a question of law alone [59], [66]–[70], [72].
- Rothman J directed a verdict of acquittal on both murder and manslaughter. It was open to the CCA to quash one or both of these verdicts under s107(5) [82]. The CCA held that the Court was intended to be able to exercise its discretionary powers so as to minimise the injustice associated with a new trial after an acquittal. Even if there had not been a directed verdict on both murder and manslaughter, it would be open to the Court, pursuant to s107(6) to order a new trial limited to manslaughter and the Court did that in this case [84], [93]–[96].

Appendix 25 – Some Cases dealt with during the year (continued)

TG v Regina [2010] NSWCCA 28

SENTENCE APPEAL DISMISSED

The applicant had pleaded guilty to four counts of the offence of dangerous driving causing death. Each of the deceased victims was a passenger in the applicant's car. The sentencing judge determined the applicant's moral culpability to be above mid range in seriousness and imposed an overall sentence of 4 years with a non parole of 2 years. The order was made that the applicant serve his sentence as a juvenile offender until he attained the age of 21. The CCA held the sentence was not excessive; rather the sentence was "verging on the inadequate". The sentencing judge's finding that the applicant's moral culpability was high was correct. Although the sentencing judge erred in taking into account the number of deaths as a factor relevant to an assessment of the moral culpability, His Honour also failed to take into account as an aggravating factor that the applicant was putting at risk the lives of four people in his vehicle.

Application by the Attorney General No 3 of 2002 (The PCA Guideline Judgment) (2004) 61 NSWLR 305 at [108]; R v Price [2004] NSWCCA 186. The CCA rejected the arguments raised by the majority of the grounds that insufficient weight had been given to the applicant's very favourable subjective case. The CCA held that it would be unprincipled and an error of discretion for the sentencing judge or the court to reduce (or construct) a sentence solely in an attempt to avoid a juvenile offender spending a period of custody in an adult facility [at 24-26]. Leave to appeal was refused.

Einfield v R [2010] NSWCCA 87

SENTENCE APPEAL DISMISSED

The CCA by majority dismissed an appeal against the total sentence of three years with a non parole period of two years imposed for offences of perjury and perverting the course of justice to which the applicant had pleaded guilty. Whilst all agreed the individual sentences were within range, Basten JA resolved that the applicant's physical and psychological conditions should have been taken into account when fixing the non parole term as well as the overall term. Hulme and Latham JJ determined that it would have been erroneous double-counting to take into account the effect of the sentence on the applicant's physical and mental health by reference to the non-parole period, it having been taken into account in fixing the overall sentence: [192] and [198]–[199]. That aside, the Court resolved:

- The further evidence tendered on the appeal did not demonstrate that the applicant was suffering from a previously undiagnosed bipolar disorder: [68]–[71].

- The sentencing judge did not err in taking into account that the applicant was a barrister and had for many years been a judge of a superior Court; these were factors of great significance: at [81]. His status and experience not only rendered him capable of appreciating fully the seriousness of the offences, but also rendered the offences more serious than they would otherwise have been: at [82]–[83].
- The sentencing judge was entitled to take into account effective "punishment" which arose beyond the confines of the sentences imposed by the Court: including the revocation of his commission as Queen's Counsel and the non-renewal of his practising certificate: at [92] and [95]. These factors were taken into account and given adequate weight by the sentencing judge: at [97]. It was appropriate for the sentencing judge to take into account the public opprobrium he had suffered and the public destruction of his reputation: at [98]. The sentencing judge did not err in his approach to these matters.
- The sentencing judge was also entitled to take into account as an aggravating factor, the fact the applicant had allowed himself to be addressed by the title "Justice" in giving evidence, at a time when he was not a judicial officer: at [109].

R v JW [2010] NSWCCA 49 and R v Carroll, Carroll v R [2010] NSWCCA 55

CROWN APPEALS ALLOWED.

The Court of Criminal Appeal sat as a Court of five judges in order to consider these cases both of which were Crown appeals against sentence and raised an important issue for the administration of criminal justice, namely the interpretation of the statutory provision, section 68A of the **Crimes (Appeal and Review) Act 2001**, which abolished the doctrine of double jeopardy with respect to a Crown appeal against sentence. The Court held that the words "double jeopardy" in section 68A of the **Crimes (Appeal and Review) Act 2001** refer to the distress and anxiety which a respondent suffers from being exposed to the risk of a more severe sentence. Section 68A prevents the Court from exercising its discretion not to intervene on a Crown appeal on the basis of the distress and anxiety to which all respondents to a Crown appeal are presumed to be subject. The section also prevents the Court on a Crown appeal from reducing the sentence which it otherwise

Appendix 25 – Some Cases dealt with during the year (continued)

believes to be appropriate on the basis of such distress and anxiety. Section 68A does not remove the Court's residual discretion to reject a Crown appeal for reasons other than double jeopardy. The Court held that the section was valid and did not offend the operation of Chapter III of the Constitution.

APPENDIX 26 – CODE OF CONDUCT

There has been no change to the Code of Conduct in 2009-2010.

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 26 – 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 26 – 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/smutfy), offensive comments about other staff members and material which is racist, sexist, harassing, threatening or defamatory). If such material is received, immediately delete it and advise the line manager or the Senior Crown Prosecutor, as appropriate;
- 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 26 – 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 26 – 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

Appendix 26 – Code of Conduct (continued)

or preferential treatment or misuses information or material obtained in the course of duty.

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

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 26 – Code of Conduct (continued)

Appendix B.

Version	Date	Author	Description or Clause Change
Version 1	02/04/2004	Jeff Shaw	Clause 21 – Conflicts of Interest now incorporates a hyperlink to the Ombudsman’s Fact Sheets No. 4. Appendix A now incorporates hyperlinks to relevant Acts and Manuals.
Version 2	05/05/2004	Jeff Shaw	Clause 16 – Use of Resources, Facilities and Equipment/Financial Management now reflects the Office’s adoption of the recently published ODPP Information Security Policies and Guidelines.
Version 3	07/12/2006	Jeff Shaw	Clause 20 – Acceptance of Gifts or Benefits.
Version 4	17/04/2007	Jeff Shaw	Clause 22 – References. General References.
Version 5	15/02/2008	Gary Corkill	Clause 24 – Criminal Conduct. Suspected or alleged criminal conduct.
Version 6	14/05/2008	Jeff Shaw	Appendix B – Added Document Change History.

APPENDIX 27 – 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 2009-2010, 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 continue in 2010-2011.

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 28 – ODPP REPRESENTATIVES ON EXTERNAL COMMITTEES/STEERING GROUPS

Committee/Steering Group	ODPP Representative
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	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 Information Act Advisory Group	Helen Cunningham
Court of Criminal Appeal/Supreme Court Crime Users Group	David Arnott SC Dominique Kelly
Court Security Committee	John Kiely SC
Criminal Case Processing Committee	Claire Giroto
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
Forensic Procedures Review Working Group	Nicholas Cowdery AM QC
Global Prosecutors E-Crime Network (GPEN) Development Board	Nicholas Cowdery AM QC
Heads of Prosecuting Agencies Conference	Nicholas Cowdery AM QC
Homicide Squad Advisory Council	Patrick Barrett
Inter-agency Exhibit Management Committee	Johanna Pheils
International Association of Prosecutors	Nicholas Cowdery AM QC
Joined Up Justice Governance Committee	Wendy Carr Hop Nguyen
Joint Investigation Response Teams State Management Group	Amy Watts
Justice Executives Group	Nicholas Cowdery AM QC

Appendix 28 – ODPP Representatives on External Committees/ Steering Groups (continued)

Committee/Steering Group	ODPP Representative
Justice Sector Disability Action Plan Senior Officers Group	Lee Purches Katarina Golik
Justice Sector Information Exchange Coordinating Committee (JSIECC)	Wendy Carr Hop Nguyen
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 Sashi Govind
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 Bernie O'Keeffe
NSW Case Law Users' Group	Helen Cunningham
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
Parramatta CC Criminal Court User Group	Sashi Govind
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 Wendy Carr
Professional Standards Liaison Group	Marianne Carey

Appendix 28 – ODPP Representatives on External Committees/ Steering Groups (continued)

Committee/Steering Group	ODPP Representative
Prosecution Liaison Steering Committee	Michael Day Sashi Dovind Wendy Carr Claire Girotto Jim Hughes Judith Nelson Claire Partington Philippa Smith
Sex Crimes and Joint Investigation Response Squad Advisory Council Meeting	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
Video Conferencing Steering Committee	Johanna Pheils
Working Group examining Part 9 of LEPPRA	Johanna Pheils

Appendix 28 – ODPP Representatives on External Committees/ Steering Groups (continued)

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
Western	Graham Bailey Ron England Roger Hyman Susan Ayre

APPENDIX 29 – CONSUMER RESPONSE

The Office undertakes a comprehensive victim and witness satisfaction survey biennially as the main qualitative measure of its service. The next survey is due to be conducted in the next reporting period and its results will be available for the next annual report.

The table below shows the results of the past eight surveys conducted by the Office. The respondents' comments in all the surveys reveal that the level of professionalism, emotional support and communication received from the Office are the defining factors in relation to the satisfaction with the service. Results of surveys conducted indicate that case outcomes have no significant impact on service satisfaction levels.

The following table shows the steady increase in 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. By 2009 the State average for satisfaction levels of victims and witness with the service provided by this Office had increased by 76.6%.

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%

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
COCOQ	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

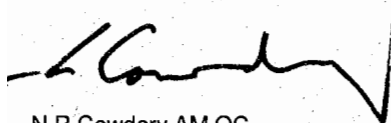
A blurred, grayscale photograph of three business professionals in suits walking on a staircase. The image is used as a background for the title text. The text is centered and reads:

**AUDITED FINANCIAL
STATEMENTS
2009/10**

Office of the Director of Public Prosecutions
Statement by Director for the year ended 30 June 2010

Pursuant to Section 45F of the Public Finance and Audit Act 1983, I state that:

- (a) the accompanying financial statements have been prepared in accordance with applicable Australian Accounting Standards, the requirements of the *Public Finance and Audit Act 1983*, and the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the *Public Finance and Audit Regulation 2010* and the Treasurer's Directions;
- (b) the statements exhibit a true and fair view of the financial position and transactions of the Office; and
- (c) there are no circumstances, which would render any particulars included in the financial statements to be misleading or inaccurate.



N R Cowdery AM QC
Director of Public Prosecutions

Sydney
15 October 2010



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 statements of the Office of the Director of Public Prosecutions (the Office), which comprise the statement of financial position as at 30 June 2010, the statement of comprehensive income, statement of changes in equity, statement of cash flows, 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 statements:

- present fairly, in all material respects, the financial position of the Office as at 30 June 2010, and its financial performance for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- are in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2010.

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

The Director's Responsibility for the Financial Statements

The Director is responsible for the preparation and fair presentation of the financial statements 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 statements that are 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 statements 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 statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial statements, 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 statements 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 statements.

I believe 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
- about the assumptions used in formulating the budget figures disclosed in the financial statements.

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
- 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.



Peter Coulogeorgiou
Director, Financial Audit Services

18 October 2010
SYDNEY

Office of the Director of Public Prosecutions
Statement of comprehensive income for the year ended 30 June 2010

		Actual 2010 \$'000	Budget 2010 \$'000	Actual 2009 \$'000
	Notes			
Expenses excluding losses				
Operating expenses				
Employee related	2(a)	80,092	78,773	78,880
Other operating expenses	2(b)	14,024	13,510	13,065
Depreciation and amortisation	2(c)	3,025	3,891	7,104
Other expenses	2(d)	<u>2,908</u>	<u>3,524</u>	<u>2,974</u>
Total expenses excluding losses		<u>100,049</u>	<u>99,698</u>	<u>102,023</u>
Revenue				
Sale of goods and services	3(a)	31	71	77
Investment revenue	3(b)	132	217	229
Grants and contributions	3(c)	3,823	2,174	1,494
Other revenue	3(d)	<u>230</u>	<u>125</u>	<u>355</u>
Total revenue		<u>4,216</u>	<u>2,587</u>	<u>2,155</u>
Gain / (loss) on disposal	4	<u>43</u>	<u>5</u>	<u>15</u>
Net Cost of Services	18	<u>95,790</u>	<u>97,106</u>	<u>99,853</u>
Government contributions				
Recurrent appropriations	5	84,474	85,003	84,422
Capital appropriation	5	8,539	10,713	6,360
Acceptance by the Crown Entity of employee benefits and other liabilities	6	<u>7,111</u>	<u>7,467</u>	<u>7,809</u>
Total government contributions		<u>100,124</u>	<u>103,183</u>	<u>98,591</u>
SURPLUS / (DEFICIT) FOR THE YEAR		<u>4,334</u>	<u>6,077</u>	<u>(1,262)</u>
Other comprehensive income for the year		-	-	-
TOTAL COMPREHENSIVE INCOME FOR THE YEAR		<u>4,334</u>	<u>6,077</u>	<u>(1,262)</u>

The accompanying notes form part of these financial statements.

Office of the Director of Public Prosecutions
Statement of financial position as at 30 June 2010

	Notes	Actual 2010 \$'000	Budget 2010 \$'000	Actual 2009 \$'000
ASSETS				
Current assets				
Cash and cash equivalents	8	4,673	3,173	3,713
Receivables	9	<u>923</u>	<u>2,146</u>	<u>1,826</u>
Total current assets		<u>5,596</u>	<u>5,319</u>	<u>5,539</u>
Non-current assets				
Plant and equipment	10	16,622	18,344	11,207
Intangible assets	11	<u>477</u>	<u>169</u>	<u>484</u>
Total non-current assets		<u>17,099</u>	<u>18,513</u>	<u>11,691</u>
Total assets		<u>22,695</u>	<u>23,832</u>	<u>17,230</u>
LIABILITIES				
Current liabilities				
Payables	12	3,505	3,381	2,709
Provisions	13	7,713	9,031	9,089
Other	14	<u>239</u>	<u>1</u>	<u>91</u>
Total current liabilities		<u>11,457</u>	<u>12,413</u>	<u>11,889</u>
Non-current liabilities				
Provisions	13	<u>2,044</u>	<u>482</u>	<u>481</u>
Total non-current liabilities		<u>2,044</u>	<u>482</u>	<u>481</u>
Total liabilities		<u>13,501</u>	<u>12,895</u>	<u>12,370</u>
Net assets		<u>9,194</u>	<u>10,937</u>	<u>4,860</u>
EQUITY				
Reserves		356	356	356
Accumulated funds		<u>8,838</u>	<u>10,581</u>	<u>4,504</u>
Total equity		<u>9,194</u>	<u>10,937</u>	<u>4,860</u>

The accompanying notes form part of these financial statements.

Office of the Director of Public Prosecutions

Statement of changes in equity for the year ended 30 June 2010

	Accumulated Funds \$'000	Assets Revaluation Surplus \$'000	Total \$'000
Balance at 1 July 2009	<u>4,504</u>	<u>356</u>	<u>4,860</u>
Surplus / (deficit) for the year	<u>4,334</u>	<u>-</u>	<u>4,334</u>
Total comprehensive income for the year	<u>4,334</u>	<u>-</u>	<u>4,334</u>
Balance at 30 June 2010	<u>8,838</u>	<u>356</u>	<u>9,194</u>
Balance at 1 July 2008	<u>5,766</u>	<u>356</u>	<u>6,122</u>
Surplus / (deficit) for the year	<u>(1,262)</u>	<u>-</u>	<u>(1,262)</u>
Total comprehensive income for the year	<u>(1,262)</u>	<u>-</u>	<u>(1,262)</u>
Balance at 30 June 2009	<u>4,504</u>	<u>356</u>	<u>4,860</u>

Office of the Director of Public Prosecutions
Statement of cash flows for the year ended 30 June 2010

	Actual 2010 \$'000	Budget 2010 \$'000	Actual 2009 \$'000
Notes			
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Employee related	(72,123)	(70,655)	(70,436)
Other	<u>(18,502)</u>	<u>(19,120)</u>	<u>(17,427)</u>
Total payments	<u>(90,625)</u>	<u>(89,775)</u>	<u>(87,863)</u>
Receipts			
Sale of goods and services	31	71	77
Interest received	135	227	347
Other	<u>6,668</u>	<u>3,929</u>	<u>3,310</u>
Total receipts	<u>6,834</u>	<u>4,227</u>	<u>3,734</u>
Cash flows from government			
Recurrent appropriation	84,713	85,003	84,423
Capital appropriation	8,539	10,713	6,360
Cash transfers to the Consolidated Fund	<u>(1)</u>	<u>-</u>	<u>(168)</u>
Net Cash Flows From Government	<u>93,251</u>	<u>95,716</u>	<u>90,615</u>
NET CASH FLOWS FROM OPERATING ACTIVITIES	<u>18 9,460</u>	<u>10,168</u>	<u>6,486</u>
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from sale of plant and equipment	41	5	15
Purchases of plant and equipment	(8,541)	(10,663)	(6,381)
Other	<u>-</u>	<u>(50)</u>	<u>-</u>
NET CASH FLOWS FROM INVESTING ACTIVITIES	<u>(8,500)</u>	<u>(10,708)</u>	<u>(6,366)</u>
NET INCREASE (DECREASE) IN CASH	960	(540)	120
Opening cash and cash equivalents	<u>3,713</u>	<u>3,713</u>	<u>3,593</u>
CLOSING CASH AND CASH EQUIVALENTS	<u>8 4,673</u>	<u>3,173</u>	<u>3,713</u>

The accompanying notes form part of these financial statements.

Supplementary financial statements:

Office of the Director of Public Prosecutions

Service group statements for the year ended 30 June 2010

	Service Group 19.1 Prosecutions *		Service Group 19.2 Victim and Witness Assistance *		Not Attributable		Total	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
OFFICE'S EXPENSES AND INCOME								
Expenses excluding losses								
Operating expenses								
• Employee related	77,531	76,423	2,561	2,457	-	-	80,092	78,880
• Other operating expenses	13,551	12,580	473	485	-	-	14,024	13,065
Depreciation and amortisation	2,897	6,744	128	360	-	-	3,025	7,104
Other expenses	-	-	2,908	2,974	-	-	2,908	2,974
Total expenses excluding losses	93,979	95,747	6,070	6,276	-	-	100,049	102,023
Revenue								
Sale of goods and services	31	77	-	-	-	-	31	77
Investment revenue	128	222	4	7	-	-	132	229
Grants and contributions	1,486	741	2,337	753	-	-	3,823	1,494
Other revenue	223	344	7	11	-	-	230	355
Total revenue	1,868	1,384	2,348	771	-	-	4,216	2,155
Gain / (loss) on disposal	41	14	2	1	-	-	43	15
Net Cost of Services	92,070	94,349	3,720	5,504	-	-	95,790	99,853
Government contributions **	-	-	-	-	100,124	98,591	100,124	98,591
SURPLUS / (DEFICIT) FOR THE YEAR	(92,070)	(94,349)	(3,720)	(5,504)	100,124	98,591	4,334	(1,262)
Other Comprehensive Income	-	-	-	-	-	-	-	-
TOTAL COMPREHENSIVE INCOME	(92,070)	(94,349)	(3,720)	(5,504)	100,124	98,591	4,334	(1,262)

* The name and purpose of each program is summarised in Note 7.

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

Supplementary financial statements

Office of the Director of Public Prosecutions

Service group statements for the year ended 30 June 2010

	Service Group 19.1 Prosecutions *		Service Group 19.2 Victim and Witness Assistance *		Not Attributable		Total	
	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000	2010 \$'000	2009 \$'000
OFFICE'S ASSETS & LIABILITIES								
Current Assets								
Cash and cash equivalents	4,464	3,420	209	293	-	-	4,673	3,713
Receivables	901	1,748	22	78	-	-	923	1,826
Total current assets	<u>5,365</u>	<u>5,168</u>	<u>231</u>	<u>371</u>	-	-	<u>5,596</u>	<u>5,539</u>
Non-current Assets								
Plant and equipment	15,857	10,624	765	583	-	-	16,622	11,207
Intangibles	455	458	22	26	-	-	477	484
Total non-current assets	<u>16,312</u>	<u>11,082</u>	<u>787</u>	<u>609</u>	-	-	<u>17,099</u>	<u>11,691</u>
TOTAL ASSETS	<u>21,677</u>	<u>16,250</u>	<u>1,018</u>	<u>980</u>	-	-	<u>22,695</u>	<u>17,230</u>
Current liabilities								
Payables	3,171	2,484	334	225	-	-	3,505	2,709
Provisions	7,481	8,805	232	284	-	-	7,713	9,089
Other	-	86	239	5	-	-	239	91
Total current liabilities	<u>10,652</u>	<u>11,375</u>	<u>805</u>	<u>514</u>	-	-	<u>11,457</u>	<u>11,889</u>
Non-current liabilities								
Provisions	1,978	466	66	15	-	-	2,044	481
Total non-current liabilities	<u>1,978</u>	<u>466</u>	<u>66</u>	<u>15</u>	-	-	<u>2,044</u>	<u>481</u>
TOTAL LIABILITIES	<u>12,630</u>	<u>11,841</u>	<u>871</u>	<u>529</u>	-	-	<u>13,501</u>	<u>12,370</u>
NET ASSETS	<u>9,047</u>	<u>4,409</u>	<u>147</u>	<u>451</u>	-	-	<u>9,194</u>	<u>4,860</u>

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

Supplementary financial statements

Office of the Director of Public Prosecutions

Summary of compliance with financial directives for the year ended 30 June 2010

	2010			2009			
	Recurrent Appropriation \$'000	Expenditure / Net Claim on Consolidated Fund \$'000	Capital Appropriation \$'000	Expenditure / Net Claim on Consolidated Fund \$'000	Recurrent Appropriation \$'000	Expenditure / Net Claim on Consolidated Fund \$'000	Capital Appropriation \$'000
ORIGINAL BUDGET APPROPRIATION / EXPENDITURE							
• Appropriation Act	85,003	84,352	10,713	8,539	84,432	83,215	1,760
	85,003	84,352	10,713	8,539	84,432	83,215	1,760
OTHER APPROPRIATIONS / EXPENDITURE							
• Treasurer's Advance	122	122	-	-	1,207	1,207	4,600
	122	122	-	-	1,207	1,207	4,600
Total Appropriations / Expenditure / Net Claim on Consolidated Fund (includes transfer payments)	85,125	84,474	10,713	8,539	85,639	84,422	6,360
Amount draw down against Appropriation							
Liability to Consolidated Fund *		239				84,423	
						1	

The summary of compliance is based on the assumption that Consolidated Fund monies 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". Net claim on Consolidated Fund was \$2.174M less than Capital Appropriations due to the savings made in the build of the new premises and make good on old premises.

Office of the Director of Public Prosecutions**Notes to the financial statements for the year ended 30 June 2010****Index to the notes to the consolidated financial statements**

- 1 Summary of Significant Accounting Policies
- 2 Expenses Excluding Losses
- 3 Revenue
- 4 Gain / (Loss) on Disposal
- 5 Appropriations
- 6 Acceptance by the Crown Entity of Employee Benefits and Other Liabilities
- 7 Service Groups of the Office
- 8 Current Assets - Cash and Cash Equivalents
- 9 Current Assets - Receivables
- 10 Non-Current Assets - Plant and Equipment
- 11 Non-Current Assets - Intangible
- 12 Current Liabilities - Payables
- 13 Current / Non-Current Liabilities - Provisions
- 14 Current / Non-Current Liabilities - Other
- 15 Commitments for Expenditure
- 16 Budget Review
- 17 Contingent Liabilities and Contingent Assets
- 18 Reconciliation of Cash Flows from Operating Activities to Net Cost of Services
- 19 Financial Instruments
- 20 After Balance Date Events

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

1 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 statements for the year ended 30 June 2010 have been authorised for issue by the Director on 15 October 2010.

(b) *Basis of preparation*

The Office's financial statements are general purpose financial statements which have 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; 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 statement 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 statements.

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 statement of cash flows 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.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

1 Summary of Significant Accounting Policies (cont'd)

(f) *Income recognition (cont'd)*

(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 contributions is normally obtained upon the receipt of cash. Appropriations are not recognised as income in the following circumstance:

- 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) Acquisitions of assets

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is 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 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 07-1). 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 uses, 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.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

1 Summary of Significant Accounting Policies (cont'd)

(g) Assets (cont'd)

(iii) Revaluation of plant and equipment (cont'd)

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.

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 asset 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.

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

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

1 Summary of Significant Accounting Policies (cont'd)**(g) Assets (cont'd)****(vi) Restoration costs**

The estimated cost of dismantling and removing an asset 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 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 statement of comprehensive income in the periods in which they are incurred. Property lease fixed escalations are spread equally over the period of the lease term.

(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 entity 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 surplus / (deficit) for the year.

When an available for sale financial asset is impaired, the amount of the cumulative loss is removed from equity and recognised in the surplus / (deficit) for the year, 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 surplus / (deficit) for the year.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

1 Summary of Significant Accounting Policies (cont'd)

(g) *Assets (cont'd)*

(xi) Impairment of financial assets (cont'd)

Any reversals of impairment losses are reversed through the surplus / (deficit) for the year, 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 de-recognised 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 de-recognised when the obligation specified in the contract is discharged or cancelled or expires.

(xiii) Other assets

Other assets are recognised on a cost basis.

(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 payables 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 as at 30 June 2010 and at 30 June 2009. However, refer Note 17 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 5.08% 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.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

1 Summary of Significant Accounting Policies (cont'd)**(h) Liabilities (cont'd)****(iii) Employee benefits and other provisions (cont'd)**

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 amounts of payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee 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 (ie Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (ie State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(c) 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 5.08% , 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 statement of comprehensive income and the statement of cash flows are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the statement of financial position, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; i.e. per the audited financial statements (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.

Office of the Director of Public Prosecutions**Notes to the financial statements for the year ended 30 June 2010****1 Summary of Significant Accounting Policies (cont'd)****(k) Lease incentive**

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 the Office 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

AASB 9 and AASB 2009-11 regarding financial instruments

AASB 2009-5 regarding annual improvements

AASB 2009-9 regarding first time adoption

AASB 124 and AASB 2009-12 regarding related party transactions

Interpretation 19 and AASB 2009-13 regarding extinguishing financial liability with equity instruments

AASB 2009-14 regarding prepayments of a minimum funding requirement

AASB 2010-1 regarding AASB 7 comparatives for first time adopters.

AASB 2009-5 regarding annual improvements

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

2 Expenses Excluding Losses

	2010 \$'000	2009 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)	64,559	62,381
Superannuation - defined benefit plans	3,528	3,788
Superannuation - defined contribution plans	3,725	3,473
Long service leave	3,382	3,798
Workers' compensation insurance	298	387
Payroll tax and fringe benefit tax	4,408	4,410
On-cost on long service leave	117	525
Temporary staff	75	118
	<u>80,092</u>	<u>78,880</u>
	2010 \$'000	2009 \$'000
(b) Other operating expenses include the following:		
Auditor's remuneration - audit or review of the financial statements	35	35
Cleaning	274	268
Consultancy costs	32	159
Insurance	252	240
Motor vehicle expenses	288	291
Operating lease rental expense - minimum lease payments	6,605	5,579
Telephone	780	936
Printing	102	102
Stores and equipment	474	399
Training	57	61
Travel**	1,048	1,062
Other expenses	884	1,028
Outgoings	319	341
Books	110	34
Fees - private barristers	786	666
Fees - practising certificates	254	258
Fees - security	158	150
Gas and electricity	282	256
Postage	113	113
Courier	15	15
Repairs and routine maintenance *	1,156	1,072
	<u>14,024</u>	<u>13,065</u>
<i>* Reconciliation - Total maintenance</i>		
Maintenance expense - contracted labour and other (non-employee related), as above	1,156	1,072
Employee related maintenance expense included in Note 2(a)	15	14
Total maintenance expenses included in Note 2(a) + 2(b)	<u>1,171</u>	<u>1,086</u>

** Travel expenses represent expenditure incurred by all staff of the Office.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

2 Expenses Excluding Losses (cont'd)

	Notes	2010 \$'000	2009 \$'000
(c) Depreciation and amortisation expense			
Depreciation			
Plant and Equipment *		1,295	5,478
Computer equipment		1,116	858
Library collection		253	189
Total Depreciation		<u>2,664</u>	<u>6,525</u>
Amortisation			
Intangible assets		361	579
		<u>3,025</u>	<u>7,104</u>

* \$0.653M was written back in 2009-10 as a result of over provision in 2008-09 for the make good on the head office premises that were evacuated in November 2009 when the Office relocated to its new premises.

		2010 \$'000	2009 \$'000
(d) Other expenses			
Allowances to witness		2,878	2,953
Living expenses of non Australian citizens defendants		30	21
		<u>2,908</u>	<u>2,974</u>

3 Revenue

		2010 \$'000	2009 \$'000
(a) Sale of goods and services			
Rendering of services		3	3
Commissions - miscellaneous deductions		2	3
Cost awarded		15	24
Appearance fees		5	47
On-cost - Officers on loan		6	-
		<u>31</u>	<u>77</u>

		2010 \$'000	2009 \$'000
(b) Investment revenue			
Interest revenue from financial assets not at fair value through profit or loss		132	229
		<u>132</u>	<u>229</u>

		2010 \$'000	2009 \$'000
(c) Grants and contributions			
Contribution from Budget Dependant agencies		3,823	1,494
		<u>3,823</u>	<u>1,494</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

3 Revenue (cont'd)

	2010 \$'000	2009 \$'000
(d) Other revenue		
Lease incentives	90	225
Other revenue	<u>140</u>	<u>130</u>
	<u>230</u>	<u>355</u>

4 Gain / (Loss) on Disposal

	2010 \$'000	2009 \$'000
Gain / (loss) on disposal of computer equipment		
Proceeds from disposal	48	15
Written down value of assets disposed	<u>(5)</u>	<u>-</u>
Net gain / (loss) on disposal of office equipment	<u>43</u>	<u>15</u>

5 Appropriations

	2010 \$'000	2009 \$'000
Recurrent appropriations		
Total recurrent drawdowns from NSW Treasury (per Summary of compliance)	84,713	84,423
Less: Liability to Consolidated Fund (per Summary of compliance)	<u>239</u>	<u>1</u>
	<u>84,474</u>	<u>84,422</u>
Comprising:		
Recurrent appropriations (per Statement of comprehensive income)	<u>84,474</u>	<u>84,422</u>
	<u>84,474</u>	<u>84,422</u>
	2010 \$'000	2009 \$'000
Capital appropriations		
Total capital drawdowns from NSW Treasury (per Summary of compliance)	8,539	6,360
Less: Liability to Consolidated Fund (per Summary of compliance)	<u>-</u>	<u>-</u>
	<u>8,539</u>	<u>6,360</u>
Comprising:		
Capital appropriations (per Statement of comprehensive income)	<u>8,539</u>	<u>6,360</u>
	<u>8,539</u>	<u>6,360</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

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:

	2010 \$'000	2009 \$'000
Superannuation - defined benefit	3,528	3,788
Long service leave	3,382	3,798
Payroll tax on defined benefit superannuation	201	223
	<u>7,111</u>	<u>7,809</u>

7 Service Groups of the Office**(a) Service Group 19.1 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 19.2 Victim and Witness Assistance

Objectives: To provide victims and witnesses 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 minimise 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.

8 Current Assets - Cash and Cash Equivalents

	2010 \$'000	2009 \$'000
Cash at bank and on hand	4,612	3,530
Permanent witness advance	61	183
	<u>4,673</u>	<u>3,713</u>

For the purposes of the statement of cash flows, 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 2010:

- 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 statement of financial position are reconciled at the end of the financial year to the statement of cash flows as follows:

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

8 Current Assets - Cash and Cash Equivalents (cont'd)

	2010 \$'000	2009 \$'000
Cash and cash equivalents (per statement of financial position)	<u>4,673</u>	<u>3,713</u>
Closing cash and cash equivalents (per statement of cash flows)	<u>4,673</u>	<u>3,713</u>

Refer Note 19 for details regarding credit risk, liquidity risk, and market risk arising from financial instruments.

9 Current Assets - Receivables

	2010 \$'000	2009 \$'000
Rendering of services	28	20
Goods and Services Tax recoverable from ATO	243	740
Prepayments	572	955
Interest	71	75
Advances	9	36
	<u>923</u>	<u>1,826</u>

Details regarding credit risk, liquidity risk and market risk, including financial assets that are either past due or impaired, are disclosed in Note 19.

10 Non-Current Assets - Plant and Equipment

	Plant and Equipment \$'000
At 1 July 2009 - fair value	
Gross carrying amount	37,666
Accumulated depreciation	<u>(26,459)</u>
Net carrying amount	<u>11,207</u>
At 30 June 2010 - fair value	
Gross carrying amount	34,689
Accumulated depreciation	<u>(18,067)</u>
Net carrying amount	<u>16,622</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 2010

Net carrying amount at start of year	11,207
Additions	8,084
Disposals	(5)
Depreciation expense	<u>(2,664)</u>
Net carrying amount at end of year	<u>16,622</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

10 Non-Current Assets - Plant and Equipment (cont'd)

	Plant and Equipment \$'000
At 1 July 2008 - fair value	
Gross carrying amount	31,775
Accumulated depreciation	<u>(22,015)</u>
Net carrying amount	<u>9,760</u>
At 30 June 2009 - fair value	
Gross carrying amount	37,666
Accumulated depreciation	<u>(26,459)</u>
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 previous 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	<u>(6,525)</u>
Net carrying amount at end of year	<u>11,207</u>

11 Non-Current Assets - Intangible

	Software and Others \$'000
At 1 July 2009	
Cost (gross carrying amount)	9,591
Accumulated amortisation	<u>(9,107)</u>
Net carrying amount	<u>484</u>
At 30 June 2010	
Cost (gross carrying amount)	9,946
Accumulated amortisation	<u>(9,469)</u>
Net carrying amount	<u>477</u>

Reconciliation

A reconciliation of the carrying amount of each class of intangibles at the beginning and end of the previous reporting period is set out below.

Year ended 30 June 2010

Net carrying amount at start of year	484
Additions	354
Amortisation (recognised in "depreciation and amortisation")	<u>(361)</u>
Net carrying amount at end of year	<u>477</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

	Software and Others \$'000
At 1 July 2008	
Cost (gross carrying amount)	9,539
Accumulated amortisation	<u>(8,537)</u>
Net carrying amount	<u>1,002</u>
At 30 June 2009	
Cost (gross carrying amount)	9,591
Accumulated amortisation	<u>(9,107)</u>
Net carrying amount	<u>484</u>

Reconciliation

A reconciliation of the carrying amount of each class of intangibles at the beginning and end of the previous reporting period is set out below.

Year ended 30 June 2009

Net carrying amount at start of year	1,002
Additions	61
Amortisation (recognised in "depreciation and amortisation")	<u>(579)</u>
Net carrying amount at end of year	<u>484</u>

12 Current Liabilities - Payables

	2010 \$'000	2009 \$'000
Payables		
Accrued salaries, wages and on-costs	2,039	1,337
Creditors	930	1,046
Accruals	<u>536</u>	<u>326</u>
	<u>3,505</u>	<u>2,709</u>

Details regarding credit risk, liquidity risk and market risk, including a maturity analysis of the above payables, are disclosed in Note 19.

13 Current / Non-Current Liabilities - Provisions

	2010 \$'000	2009 \$'000
Current		
Employee benefits and related on-costs		
Recreation leave	5,359	5,321
On-cost on long service leave	1,152	1,097
Payroll tax on-cost for recreation leave and long service leave	<u>1,202</u>	<u>1,145</u>
	<u>7,713</u>	<u>7,563</u>
Other provisions		
Restoration costs	-	1,523
Rent adjustment reserve	-	<u>3</u>
	<u>-</u>	<u>1,526</u>
Total provisions - Current	<u>7,713</u>	<u>9,089</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

13 Current / Non-Current Liabilities - Provisions (cont'd)

	2010 \$'000	2009 \$'000
Non-current		
Employee benefits and related on-costs		
On-cost on long service leave	61	58
Payroll tax on-cost for long service leave	<u>63</u>	<u>60</u>
	124	118
Other provisions		
Restoration costs	1,790	363
Rent adjustment reserve	<u>130</u>	<u>-</u>
	<u>1,920</u>	<u>363</u>
Total provisions - Non-current	<u>2,044</u>	<u>481</u>
Aggregate employee benefits and related on-costs		
Provisions - current	7,713	7,563
Provisions - non-current	124	118
Accrued salaries, wages and on-costs (Note 12)	<u>2,039</u>	<u>1,337</u>
	<u>9,876</u>	<u>9,018</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:

	Restoration costs \$'000	Rent adjustment reserve \$'000	Total \$'000
Non-current liabilities			
Carrying amount at the beginning of financial year	1,886	3	1,889
Additional provisions recognised	774	127	901
Amounts used	<u>(870)</u>	<u>-</u>	<u>(870)</u>
Carrying amount at end of financial year	<u>1,790</u>	<u>130</u>	<u>1,920</u>

14 Current / Non-Current Liabilities - Other

	Notes	2010 \$'000	2009 \$'000
Other			
Liability to consolidated fund		239	1
Deferred income		<u>-</u>	<u>90</u>
		<u>239</u>	<u>91</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

15 Commitments for Expenditure

	2010	2009
	\$'000	\$'000

(a) Capital commitments

Aggregate capital expenditure for the acquisition of computer equipment and library reference materials contracted for at balance date and not provided for:

Not later than one year	87	2,239
Total (including GST)	87	2,239

The total "capital commitments" above includes input tax credit of \$0.008 M (30 June 2009 : \$0.204 M) recoverable from Australian Taxation Office.

(b) Other expenditure commitments

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	35	868
Total (including GST)	35	868

The total "other expenditure commitments" above includes input tax credit of \$0.003 M (30 June 2009 : \$0.079 M) recoverable from Australian Taxation Office.

	2010	2009
	\$'000	\$'000

(c) Operating lease commitments

Future non-cancellable operating lease rentals not provided for and payable;

Not later than one year	6,974	6,533
Later than one year and not later than five years	23,043	23,714
Later than five years	1,619	7,296
Total (including GST)	31,636	37,543

The total "operating lease commitments" above includes input tax credit of \$2,876 M (30 June 2009: \$3,413M) recoverable from Australian Taxation Office.

Non-cancellable leases relate to commitments for accommodation for twelve leased premises throughout the state and lease of motor vehicles. Commitments for accommodation are based on current costs and are subject to future rent reviews.

16 Budget Review**Net cost of services**

Net cost of services (NCOS) was down \$1.316M on the original Treasury budget.

The variance of \$1.316M is explained as follows:

Over budget expenditure: \$1.827M

\$0.265M for staff redundancy payments owing to certain positions no longer required by the Office.

\$1.054M net increase in employee related expenditure extra staff were required to meet workload demand. This increase in cost was funded through increased revenue.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

16 Budget Review (cont'd)

\$0.508M increased private barrister expenditure owing to insufficient number of Crown Prosecutors to meet court demand.

Under budget expenditure: \$1.476M

\$0.866M - decreased depreciation expense mainly due to a write back for furniture, fit out and make good provision resulting from the relocation of the HO accommodation.

\$0.596M - reduced number and amount of witness expense claims.

\$0.014M in other expenditure savings

Increased Revenue: \$1.629M

Witness Assistance program funding \$0.164M, continuation of the Drug Court trial \$0.107M and continuation of Criminal Case Conferencing \$1.378M and offset by \$0.020 M reduction in other revenue.

Gain on sale of assets: \$0.038M.

Disposal of IT equipment.

Assets and liabilities

Non-current assets are \$1.414M lower than budget. The Office received a budget of \$13.2M spread over two years for the relocation of its Head Office. Significant savings of \$2.174M were made in the build of the new premises and make good on the old premises.

The current assets increased by \$0.277M mainly due to timing in cash payments

The non current liabilities increased by \$1.562M mainly due to take up of make good provision on the new head office accommodation

The current liabilities decreased by \$0.956M mainly due to the pay down and write off on the make good provision for terminated head office accommodation.

Cash flows

Net cash flow from operating activities was \$0.708M lower than budget owing to capital budget savings on the new head office building of \$2.174M offset by unused protected witness expenditure \$0.596M and increased general expenditure payments of \$0.870M.

Net cash flow from investing activities was \$2.208M lower than budget mainly due to capital budget savings of non-current assets for relocation of head office.

17 Contingent Liabilities and Contingent Assets**Contingent liabilities**

The Office was not aware of any contingent asset or liability as at 30 June 2010 (nil in 2009)

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

18 Reconciliation of Cash Flows from Operating Activities to Net Cost of Services

	2010 \$'000	2009 \$'000
Net cash flow from operating activities	9,460	6,486
Cash flows from Government / Appropriations	(93,013)	(90,782)
Acceptance by the Crown Entity of employee benefits and other liabilities	(7,111)	(7,809)
Depreciation and amortisation	(3,025)	(7,104)
Decrease / (increase) in provisions	(187)	(1,749)
Increase / (decrease) in prepayments and other assets	(903)	(604)
Decrease / (increase) in creditors	(796)	(350)
Decrease / (increase) in other liabilities	(148)	392
Increase/(decrease) in Assets	(67)	1,667
Net cost of services	<u>(95,790)</u>	<u>(99,853)</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 Director has overall responsibility for the 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 Committee on a continuous basis.

(a) Financial instrument categories

Financial Assets	Note	Category	Carrying Amount 2010 \$'000	Carrying Amount 2009 \$'000
Class:				
Cash and cash equivalents	8	N/A	4,673	3,713
Receivables ¹	9	Receivables measured at cost	108	131
Financial Liabilities	Note	Category	Carrying Amount 2010 \$'000	Carrying Amount 2009 \$'000
Class:				
Payables ²	12	Financial liabilities measured at cost	2,272	1,494

1 Excludes statutory receivables and prepayments

2 Excludes statutory payables and unearned revenue

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

19 Financial Instruments (cont'd)

(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) 11am 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. Collectible 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 (2010: nil; 2009: \$0.006M) and not less than 3 months past due are not considered impaired and together these represent 100% of the total trade debtors. Most of the Office's debtors have a 100% credit rating. There are no debtors which are currently not past due or impaired whose terms have been renegotiated.

(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 overdrafts, loans and other advances.

During the current and prior years, there were no defaults or breaches on any payable. 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 2009: \$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.

Interest rate risk

The Office has no interest bearing liabilities.

Other price risk

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2010

19 Financial Instruments (cont'd)

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 After Balance Date Events

The Office is not aware of any circumstances that occurred after balance date, which would materially affect the financial statements.

End of audited financial statements

Account Payment Performance

1 July 2009 to 30 June 2010

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	129,360	-	3,083	2,227	-
December	66,007	-	-	-	-
March	309,913	-	-	-	-
June	930,678	-	2,241	-	-

Accounts paid on time within each quarter

Quarter	Total Accounts Paid on Time			Total Amount paid	
	Target %	Actual %	\$	\$	
September	98%	99%	12,026,651	12,091,796	
December	98%	94%	15,166,997	16,191,268	
March	98%	98%	15,915,803	16,183,700	
June	98%	98%	15,349,467	15,602,740	

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.

INDEX

Achievements – Report Against Corporate Plan	18	Internal Audit	95
Acronyms.....	116	Internal Committees/Steering Groups	16
Aims and Objective.....	3	Judicial Decisions – Significant	66-71
Annual Report Cost	139	Legislative Changes – Significant	60-65
Appendices 1–29	33-115	Liabilities	133
Assets.....	131	Management Structure	13
Attorney General's use of powers under s27 of DPP Act	7	Occupational Health and Safety	86
Cases Dealt with During the Year	98	Office Hours and Locations.....	Inside back cover
CEO's Statement of Performance	80	Organisation Structure	11,12
Charge to Trial – Flowchart	32	Overseas Travel	94
Charter – The Office	Inside front cover	Publications	72-74
Chief Executive Service and Senior Executive Service	80	Recycling	78
Chief Information Officer Report	82	Report Against Corporate Plan	18-28
Code of Conduct	103	Risk Management and Insurance	85
Compliance Index	151	Role of the Office	3
Consultants	96	SES Numbers	80
Consumer Response	115	Significant Committees	15
Contents	5	Staff Numbers	80
Corporate Goals	19-28	Statement by Director (Financial Statements)	118
Defended Matter Flowchart	32	Statistics – Court	34-46
Director's Overview	5	Summary of Affairs	84
Disability Action Plan	110	Summary of Significant Accounting Policies	129
DPP Act – Important Provisions	30	Systems Reviews and Program Evaluations	95
EEO Annual Report	76	Waste Reduction and Purchasing Plan	78
EEO Achievements	75	Witness Assistance Service Report	87
EEO Statistics	76		
Ethnic Affairs Priority Statement	97		
External Inter-Agency Committees/Steering Groups	111		
Financial Statements	117		
Freedom of Information Act	83		
Government Energy Management Plan	77		
Hours of Business	Inside back cover		
Independence and Accountability	9		
Independent Audit Report	119		

COMPLIANCE INDEX

TO BE UPDATED

Budgets	
Detailed Budget for the year reported on	121
Particulars of material adjustments to detailed budget for the year reported on	121
Report of Operations	
Manner of establishment and purpose of organisation	
Principal legislation administered/operating under	Inside front cover
Aims and Objectives	
Objectives of the organisation	3
Access	
Address of principal office/s	Inside back cover
Telephone number of principle office/s	Inside back cover
Business and service hours	Inside back cover
Management and Structure	
Titles and names of senior/principal officers and their qualifications	13,14
Organisational chart indicating functional responsibilities	11,12
Summary Review of Operations	
Narrative summary of significant operations	7
Program/operation information	7
Monetary amount of recreation leave and long service leave entitlements	133,142
Legal Change	
Change in acts and subordinate legislation	60
Significant judicial decisions	66
Management and activities	
Nature and range of activities	13
Measures and indicators of performance	19-28
Internal and external performance of review conducted	95
Benefits from management and strategy reviews	95-96
Management improvement plans and achievements	19-28, 75, 87, 115
Major problems and issues	7, 87
Human Resources	
Number of employees by category and comparison to prior three years	81
Personnel policies and practices	72, 75, 87, 95, 97
Overseas visits with the main purposes highlighted	94
Consultants	
Name of consultant	96
Title of project	96
Equal Employment Opportunity	
Achievements and strategies	75
Statistical information as prescribed by the Treasurer	76
Promotions	
Publications/other information available indicating those published during the year	72
Consumer Response	
Extent and main feature of complaints	115
Services improved/changed in response to complaints/suggestions	115
Late payment of accounts	
Reasons for late payments	147
Interest paid due to late payments	147
Payments of Accounts	
Performance	149
Report on Risk Management and Insurance Activities	85
Chief and Senior Executive Officers	
Total number of executive positions at each level of current and prior reporting years	80
Number of female executive officers for current and prior reporting years	80
For each executive officer of, or above level 5:	
Name and position and level	80
Period in position	80
Statement of performance	81
Information on Chief Executive Officer not holding an executive position	81
Identification of Audited Financial Information	118
Inclusion of Financial Statements as part of Annual Report	118
Financial Statement Format	118
Audit Opinion	119
Letter of Submission to Minister Stating:	
Report submitted to Minister for presentation to Parliament	4
Provisions under which report is prepared	4
Printing Requirements	
Total External Cost	\$9,952.80 incl.GST
Inclusion of other Reports and Information	
Freedom of Information Act	83
Performance of waste reduction, purchasing and recycling activities	78
Listing requirements for all NSW Government publications	72
Program evaluation results	95
Government Energy Management Plan	77
Government's Action Plan for Women (Witness Assistance Service Report)	75, 87

This page has been left blank intentionally

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS LOCATIONS

Head Office

175 Liverpool Street, (Level 15 Reception)
 SYDNEY NSW 2000
 Locked Bag A8, SYDNEY SOUTH NSW 1232
 Telephone: (02) 9285 8606 Facsimile: (02) 9285 8600

DX:11525
 Sydney Downtown

Regional Offices

Campbelltown

DX:5125

Level 3, Centrecourt Building
 101 Queen Street
 CAMPBELLTOWN NSW 2560
 PO Box 1095, CAMPBELLTOWN NSW 2560
 Telephone: (02) 4629 2811
 Facsimile: (02) 4629 2800

Parramatta

DX:8210

4 George Street from 31 January 2011
 PARRAMATTA NSW 2150
 PO Box 3696, PARRAMATTA NSW 2124
 Telephone: (02) 9891 9800
 Facsimile: (02) 9891 9866

Dubbo

DX:4019

Ground Floor, 130 Brisbane Street
 DUBBO NSW 2830
 PO Box 811, DUBBO NSW 2830
 Telephone: (02) 6881 3300
 Facsimile: (02) 6882 9401

Penrith

DX:8022

Level 2, 295 High Street
 PENRITH NSW 2750
 PO Box 781, PENRITH POST BUSINESS CENTRE
 NSW 2750
 Telephone: (02) 4721 6100
 Facsimile: (02) 4721 4149

Gosford

DX:7221

Level 2, 107–109 Mann Street
 GOSFORD NSW 2250
 P O Box 1987, GOSFORD NSW 2250
 Telephone: (02) 4337 1111
 Facsimile: (02) 4337 1133

Wagga Wagga

Level 3, 43-45 Johnston Street
 WAGGA WAGGA NSW 2650
 PO Box 124, WAGGA WAGGA NSW 2650
 Telephone: (02) 6925 8400
 Facsimile: (02) 6921 1086

Lismore

DX:7707

Level 3 Credit Union Centre
 101 Molesworth Street
 LISMORE NSW 2480
 PO Box 558, LISMORE NSW 2480
 Telephone: (02) 6627 2222
 Facsimile: (02) 6627 2233

Wollongong

DX:27833
 Wollongong Court

Level 2, 166 Keira Street
 WOLLONGONG NSW 2500
 PO Box 606, WOLLONGONG EAST NSW 2520
 Telephone: (02) 4224 7111
 Facsimile: (02) 4224 7100

Newcastle

DX:7867

Level 2, 51–55 Bolton Street
 NEWCASTLE NSW 2300
 PO Box 779, NEWCASTLE NSW 2300
 Telephone: (02) 4929 4399
 Facsimile: (02) 4926 2119

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