

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NEW SOUTH WALES



ANNUAL REPORT 2010 - 2011



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.

Cover: Downing Centre Court 3.1, taken by Senior Crown Prosecutor Mark Tedeschi QC. We are indebted to Mr Tedeschi for his fine photographs in this Annual Report.

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

4 November 2011

Letter of Transmittal

Hon G E Smith SC
Attorney General
Level 31, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

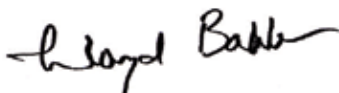
Dear Attorney

2010-2011 Annual Report

I am pleased to forward to you the 24th Annual Report for the Office of the Director of Public Prosecutions (ODPP) for presentation to Parliament. This report encompasses the ODPP's financial statements and performance review for the financial period 2010-2011.

This report has been prepared in accordance to section 34 of the *Director of Public Prosecutions Act 1986* and in compliance with the guidelines pertained in the *Annual Reports (Departments) Act 1985* and the *Public Finance and Audit Act 1983*.

Yours faithfully



Lloyd Babb SC
Director of Public Prosecutions

TABLE OF CONTENTS

The Office	2
Director's Overview	6
Management and Organisation	9
Significant Committees	15
Report Against Corporate Plan	16
Key Result Area 1: Just, Independent and Timely Conduct of Prosecutions	17
Key Result Area 2: Victim and Witness Services	20
Key Result Area 3: Accountability and Efficiency	21
Key Result Area 4: Staff Resourcing and Development	23
Key Result Area 5: Improvements in the Criminal Justice System	26
Director of Public Prosecutions Act 1986 – Important Provisions	28
Appendices	30
Appendix 1 – Quantity/Productivity	31
Appendix 2 – Quality/Effectiveness	37
Appendix 3 – Timeliness	44
Appendix 4 – Service to victims and witnesses	46
Appendix 5 – Recovery of proceeds of crime	61
Appendix 6 – Cost efficiency	63
Appendix 7 – CCA Statistics	64
Appendix 8 – Significant Legislation	65
Appendix 9 – Significant Judicial Decisions	70
Appendix 10 – 2010-2011 EEO Achievements	74
Appendix 11 – EEO STATISTICS	75
Appendix 12 – Government Energy Management Plan (GEMP)	76
Appendix 13 – Waste Reduction and Purchasing Plan and Recycling	77
Appendix 14 – Chief Executive Services and Senior Executive Service	79
Appendix 15 – Report of the Chief Information Officer on Major IM & T Projects during 2010-2011	81
Appendix 16 – Government Information (Public Access) Act 1989 (NSW)	82
Appendix 17 – Risk Management and Insurance – Motor Vehicle Claims Report	86
Appendix 18 – Occupational Health and Safety Performance	87
Appendix 19 – Overview of the Witness Assistance Service	88
Appendix 20 – Overseas Travel Information	92
Appendix 21 – Consultants	93
Appendix 22 – Ethnic Affairs Priority Statement	94
Appendix 23 – Some cases dealt with during the year	95
Appendix 24 – Credit Card Certification	101
Appendix 25 – Disability Action Plan	102
Appendix 26 – ODPP Representatives on External Committees/Steering Groups	103
Appendix 27 – Staff Awards	106
Appendix 28 – Consumer Response	107
Acronyms	108
Financial Statements 2010/11	109
Index	142
Compliance Index	143

DIRECTOR'S OVERVIEW

DIRECTOR'S OVERVIEW

It is an honour and privilege to have been appointed Director of Public Prosecutions (NSW) and to present the 24th Annual Report.

I would firstly like to acknowledge my predecessor Nicholas Cowdery AM QC, who after sixteen years of dedicated service to the organisation retired in March this year. I appreciate his leadership and acknowledge the profound impact he had on the organisation. I would also like to extend my gratitude to both Ian Temby AO QC and Luigi Lamprati SC who acted in the capacity of Director during the recruitment process.

Prosecutions

On average, the ODPP prosecutes 18,000 matters a year. Ongoing statistical analysis reflects that the Office consistently provides an effective and efficient prosecution service. This is evident in the bi-annual consumer response survey which indicates that members of the community are satisfied with the services the Office provides.

The Office is delighted to report that the findings of The Witness Assistance Service Survey indicate that our other vital function of witness support is greatly appreciated by the community. The results of this survey are reproduced in its entirety in this report.

Staff

As at 30 June 2011, the ODPP employed six hundred and twenty two personnel across its ten offices in Sydney and regional NSW.

As a former ODPP Solicitor and Crown Prosecutor, I am acutely aware of the various demands of this job and know only too well that this Office's proficiency is largely due to the steadfast commitment by the staff.

The ODPP is a highly desirable place to work, which is evident through the ever increasing applications for employment across the organisation. The Office provides extensive training and development for all staff which provides job satisfaction and enhanced opportunities for career progression within the organisation. The Office in return benefits from highly skilled and motivated staff. Many former ODPP officers are now accomplished judicial officers sitting in the Local, District and Supreme Courts.

The prosecutorial aspects of the Office are sustained by skilled and proficient corporate services and administrative teams, which provide fundamental support throughout the organisation.

Financial efficiency

A state-wide efficiency dividend required the Office having to make a 2% cut in the last financial period. This was achieved mostly through natural attrition and streamlining some of the administrative functions performed within the Office.

Independence and accountability

No guideline under section 26 of the Director of Public Prosecution 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.

Outlook

The ODPP will continue to strive to provide exceptional prosecutorial services in an efficient, ethical and transparent manner.

The Community's expectations of the Office are evolving. Over recent years, the volume and ease of accessibility to information on the internet has meant higher community interest in the outcomes of prosecutions by the Office. Our work is constantly scrutinized by the courts, by the media and by the public. The quality of our work stands up well to the scrutiny.

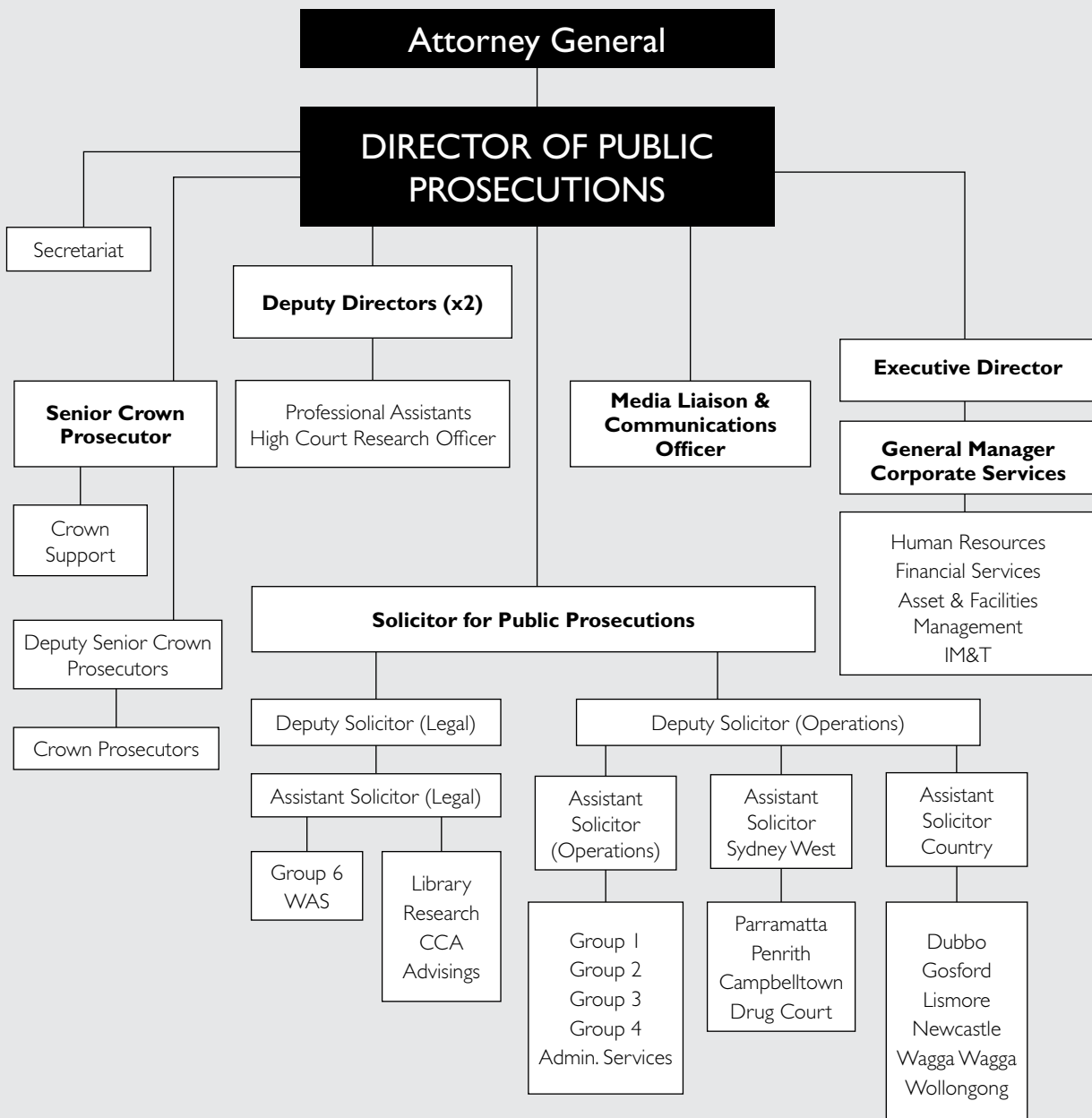
Director's Overview (continued)

As the new Director, it fills me with pride to witness the volume and quality of work achieved by the Office's dedicated staff, despite the often stressful circumstances. I hope to only enhance the efficiency of the ODPP and create an environment where the ODPP can be even more valuable to the people of NSW.

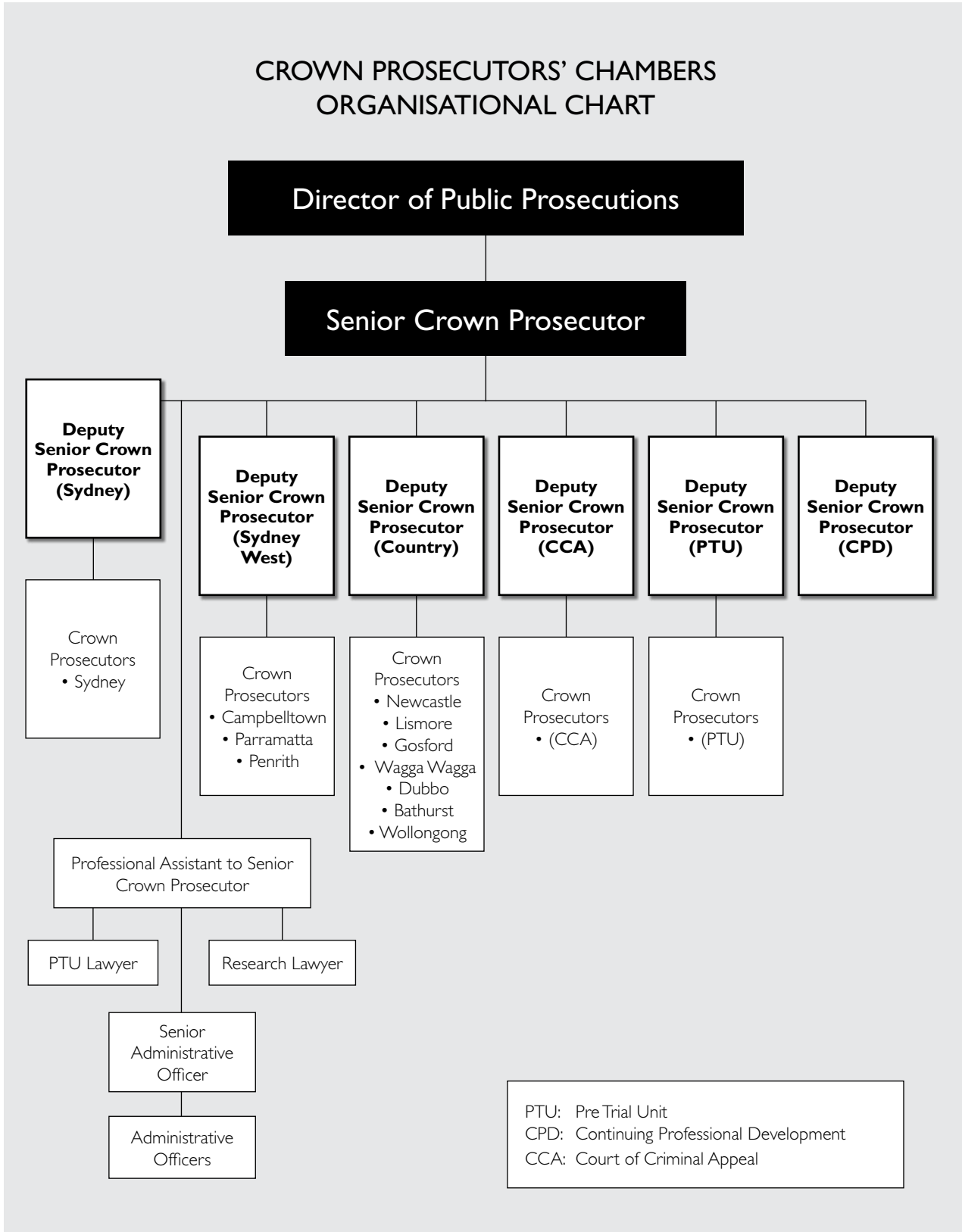
MANAGEMENT AND ORGANISATION

ORGANISATIONAL STRUCTURE

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



Organisational Structure (continued)



MANAGEMENT STRUCTURE

Luigi Lamprati SC LLM

(at 30 June 2011)

Acting Director of Public Prosecutions

Admitted as a solicitor in 1969 and worked in private practice as a barrister from 1977 until 1988. Appointed Crown Prosecutor August 1988. Appointed Acting Deputy Senior Crown Prosecutor in November 2000 and Deputy Senior Crown Prosecutor in April 2002. Appointed Senior Counsel in October 2003 and Deputy Director of Public Prosecutions in December 2003. In May 2011 appointed Acting Director of Public Prosecutions.

Christopher Maxwell QC BA LLB

Acting Deputy Director of Public Prosecutions

Admitted as a barrister in 1975 and appointed Crown Prosecutor in 1987. In 1989 appointed Queen's Counsel and shortly after appointed as a Deputy Senior Crown Prosecutor. In 2002 accepted appointment as an International Prosecutor working for the United Nations Mission in Kosovo in the former Yugoslavia, appearing in the domestic courts of Kosovo prosecuting the more serious crimes, including some war crimes cases. In 2003 appointed the Chief International Prosecutor for 2 years until he returned to his work as a Deputy Senior Crown Prosecutor in NSW in mid-2005. Acting Deputy Director of Public Prosecutions from January 2011.

David Arnott SC BA LLB

Acting Deputy Director of Public Prosecutions

Admitted as a solicitor in 1977 and worked in private practice as a barrister from 1980 until 1991. In 1991 appointed as a Crown Prosecutor and took silk in 2005. Deputy Senior Crown Prosecutor in 2006 and in 2011 was appointed as an Acting Deputy Director of Public Prosecutions.

Mark Tedeschi QC MA LLB

Senior Crown Prosecutor

Appointed Crown Prosecutor in 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 in 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.

Stephen Kavanagh LLB

Solicitor for Public Prosecutions

Practised in a city firm as a solicitor following admission in 1973. From 1976 -1988, was engaged at the State Crown Solicitor's office, primarily in the areas of civil, criminal and constitutional law. Appointed as Managing Lawyer (Advising Unit) in 1998, undertaking responsibility for a wide range of appellate litigation conducted by the unit in the Supreme and High court. Appointed Solicitor for Public Prosecutions in June 2004.

Nigel Hadgkiss APM LLB MComm

Executive Director

Joined Royal Hong Kong Police 1969 then Australian Federal Police in 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 ODPP in October 2008.

Bernard O'Keeffe B. Bus CPA

Chief Financial Officer & General Manager, Corporate Services

Joined the NSW Public sector in 1977 and worked in a number of finance roles with the Government Printing Office and Department of Education and Training. Joined Arnott's Biscuits in 1988 as the Cost and Management Accountant. Held a variety of CFO, senior financial, business management and business consulting roles in the private sector. Appointed Chief Financial Officer of the ODPP in June 2009 and the General Manager, Corporate Services in 2010. Appointed to the Advisory Board for the NSW Public Sector Community of Finance Professionals in 2010 and the NSW Public Sector Committee for CPAs Australia in 2011.

Management Structure (continued)

Executive Board

The ODPP Executive Board consists of the Director (Chair), two Deputy Directors, Executive Director, Senior Crown Prosecutor, Solicitor for Public Prosecutions, General Manager Corporate Services and two non-executive independent members. The current non-executive 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 to ensure 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
- ensure that the Attorney General receives reports upon request of any matter relating to the exercise of ODPP functions, or, after consultation with the Attorney General, on any matters it considers appropriate.

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

Management Committee

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

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

- to report, discuss and resolve operational and management issues affecting the ODPP, including (but not limited to) workload and resource allocation;
- to consider monthly financial reports and to initiate action where funding and expenditure issues are identified;
- to discuss issues affecting major policy decisions and other matters requiring referral to the ODPP Executive Board and;

- to serve as a forum for discussion by senior management of any matter affecting the operations of the ODPP, including the activities and initiatives of the various areas within the Office.

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

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.

Mark Tedeschi QC MA, LLB is the Senior Crown Prosecutor.

The Crown Prosecutors of New South Wales comprise one of the largest chambers 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 appeals in the CCA and High Court. 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 including 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. Most of the Crown Prosecutors are members of the NSW Bar Association and participate in its Council, its Committees (including Professional Conduct Committees) and its collegiate life.

Management Structure (continued)

There are Crown Prosecutors' Chambers in ODPP offices in Sydney, Parramatta, Campbelltown and Penrith and in regional offices in Newcastle, Wollongong, Lismore, Dubbo, 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 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.

SIGNIFICANT COMMITTEES

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

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 implementation of information and technology projects and to assure the strategic and cost effective use of information and systems to support ODPP activities. The Committee consists of the Chief Information Officer (currently the Deputy Solicitor (Operations)) as Chair; Solicitor for Public Prosecutions, 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.

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:

77 % 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 0.11% of the 16,254 cases dealt with, (17 cases), 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 247 confiscations applications with 240 confiscation orders made. The total estimated value of property confiscated was \$2.6 Million. The proportion of successful applications was 97%.

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.

Mandatory Law Society requirements for ongoing training for solicitors in Ethics, Practice Management and Professional Skills were met through internal training courses organised by the Learning and Development Branch and in a presentation by the Director at the Annual Solicitors' Conference held on 22 December 2010.

The Audit and Risk Management Committee, which includes an independent chair and an independent member, ensures compliance with relevant Treasury circulars. The Committee meets four times a year.

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

Measures

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

The Office provides various advising services in different categories.

Advisings as to election: 74 % completed within 14 days:

Advisings as to criminal proceedings: 15 % completed within 30 days:

37 % completed within 90 days:

See Appendix 3 Item 1 for details

I.3(b) Proportion of District and Supreme Court trials listed that were adjourned on the application of the Crown.

In this reporting period, 75, or 4% of trial listings (totalling 1922 listings) were adjourned on the application of the Crown.

See Appendix 2, Item 4 for details.

I.3(c) Number of days between arrest and committal for trial in the Local Court was 236 days on average, and 187 days between arrest and committal for sentence.

Key Result Area 2: Victims 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 2011 and revealed overall consistency in the levels of customer satisfaction. Of those surveyed, 76% of witnesses and victims rated the service provided by the Office of the Director of Public Prosecutions as "good" or "very good".

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

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

A total of 4,487 victim and witness files were active at the end of the 2010-11 reporting year.

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 2010-11 completed and submitted to the Auditor-General within the set deadline of 11 August 2011.
 - Fringe Benefit Tax (FBT): Annual return for 2010-11 submitted by due date of 21 May 2011 and quarterly payments made up to June 2011.
 - Business Activity Statement (BAS): Monthly returns submitted up to June 2011 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 being implemented and complete 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 this reporting period was \$7,589.

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

Advisings (228), Committals (5,793) and Summary Hearings (482), Trials (1,775) and Sentences (1,683), Applications for Leave to Appeal and Appeals to the High Court (4) and CCA (336), Bail Applications (1,616), Conviction Appeals (All Grounds Appeals) to the District Court (1,593), Costs Appeals (5) and Leniency Appeals to the District Court (36).

In the preceding reporting period the average cost of a matter was \$7,458, and in the 08-09 reporting period it was \$7,410.

Note that these figures do not include the cost of providing advisings as to election (2,997 referrals completed), Severity Appeals to the District Court (5,540) and call-ups for breaches of bonds (425).

If these matters are included, the average cost of a matter for this reporting period is \$4,568. For the preceding reporting period the figure was \$4,255 and for the 08-09 reporting period it was \$4,298.

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 2010/2011 was 9.2%. This compares with a 9.8% turnover in 2009/2010.
- 4.1(b) The Recruitment and Employment Policy requires retraining every 3 years. Refresher training available via E-learning module from Department of Premier and Cabinet.
- 4.1(c) No salary increments were deferred during 2010-2011.

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

Goal	4.2	To provide workplace support
Strategy	4.2.1 4.2.2	Provide accommodation, equipment and facilities in accordance with Office and OH&S standards Develop and implement OH&S and workplace relations policies
Outcome		A safe, supportive, equitable and ethical work environment
Performance Indicator	4.2(a) 4.2(b) 4.2(c) 4.2(d) 4.2(e) 4.2(f)	Average sick leave absences per capita Percentage reduction in workplace injuries Percentage reduction in the proportion of employees still off work at 8, 12 and 26 weeks from date of injury Percentage reduction in the average cost of workers compensation claims 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 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 2010/2011 was 6.10 days. This compares with an average of 5.74 days in 2009/2010.
- 4.2(b) There was a 4% reduction in workers compensation claims when compared to last year.
- 4.2(c) Individual medical restrictions have provided a challenge in reducing the overall number of injured workers who remain off work at 8, 12 and 26 weeks. The Office continues to ensure that injured workers are returned to work as soon as they are deemed medically fit to resume duties.
- 4.2(d) There was no reduction in the average cost of claims during 2010/2011. One specific significant injury occurred and resulted in an expensive claim (which was a journey claim and outside the control of the Office) during the year that made this performance indicator difficult to achieve.
- 4.2(e) The Office has maintained its 100% record with respect of managing injured workers within statutory timeframes. All workers injured within the reporting period have been returned to suitable duties and provided with graduated return to work plans in line with medical restrictions presented.
- 4.2(f) The Office continues to provide appropriate information, instruction and training to managers in their roles and responsibilities under their agency's OH&S and injury management system. Owing to turnover in managerial roles towards the end of the reporting period, an updated information program is currently being developed.

During the reporting period the Treasury Managed Fund moved workers compensation insurance to a new provider, QBE. Following this transition, access to data and general information has improved dramatically and the Office now receives an improved level of service with respect of reporting and statistical analysis. As a result the Office is now able to identify key drivers and specific factors with respect of workers compensation injuries and related costs. The Office is now able to develop a more targeted approach to reduction of both injuries and costs.

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 2010 and June 2011. 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 2010
- 7 x Pre-Training Day Sessions (1/2 day sessions)
- 7 x Technology Inductions (2 days)
- 3 x Technology Inductions (1 day)
- 1 x Technology Induction for WAS Officers (1 day)
- 1 x CASES Session (1/2 day)
- 15 x MCLEs
- 4 x MCLEs at Regional Offices (Penrith, Parramatta, Campbelltown & Lismore)
- 1 x Introductory Advocacy Pre-Workshop session
- 1 x Introductory Advocacy Workshop
- 1 x Legal Development Program Training (3 days)
- 1 x Legal Development Program Training (2 days)
- 4 x Legal Development Program Training (1 day)
- 2 x Resilience in the Workplace Workshops (1/2 day)
- 2 x Summary Hearings Workshops (1 day)
- 37 x Activity Based Costing (ABC) Training Sessions (1/2 day sessions – All ODPP Locations)

New training materials were developed for the ABC and Planner system.

Cumulative Statistics – 1 July 2010 to 30 June 2011

Number of learning programs (internal & external):	88
Number of studies assistance participants:	15
Total days study leave accessed:	36.6 days
Total study reimbursements:	\$26,629.55

Key Result Area 5: Improvements in the Criminal Justice System

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

Measures

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

The average number of days from registration to disposal of matters across jurisdictions is 375; the median for this measure is 250.

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

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

The Office was represented on a large number of interagency committees, court user groups and working parties with the main aim of considering the reform of the criminal justice system and to implement new legislation. The pro bono scheme to provide legal representation for victims of sexual assault continued to operate pending legislative changes recommended by the pilot partners. In November 2010, the Government announced that amendments would be made to the Criminal Procedure Act and \$4.4 Million provided to fund legal representation for victims. This representation is to be administered through the Legal Aid Commission. The Office continues to work with the Pro Bono partners and the Legal Aid Commission to implement a scheme for the representation of victims on privilege issues. On 7 December 2010 amendments were made to the Criminal Procedure Act, changing the way that privilege may be claimed. This includes requiring the leave of the court be sought before a subpoena is issued, that the protected confider is notified of the subpoena by the prosecution and imposing an obligation on the court to ensure that the protected confider has been made aware of their rights and has had an opportunity to seek legal advice.

The Director has made numerous submissions on proposals for law reform identified by the Attorney General, Law Reform

Commissions, Legislative Council Standing Committee on Law and Justice and the Sentencing Council. Examples include: the Bail Bill 2010, amendments to the Crimes (Sentencing Procedure) Act in particular section 35A, Family Victim Impact Statements, and Cheating at Gambling.

The ODPP made submissions to the Attorney General in relation to tendency witnesses and the need for them to have the same status as sexual assault complainants when giving evidence in court. Subsequently legislation was passed that gave them the status of "sexual offence witnesses" thus entitling them to the provisions contained in Criminal Procedure Act 1986 Chapter 6 Part 5 Division 1 Evidence in certain sexual offence proceedings.

Recommendations were sent to the Criminal Law Review Division in respect of the following issues

- the Crimes (Appeal and Review) Act amendment of notices of appeal and the proper construction of sections 63 and 69,
- the decision of R v Hilzinger concerning violent conduct in the Drug Court,
- reform of what use may be made of intimate forensic photography taken as part of a SAIK,
- the question of legislative reform on issue of the separation of trials in sexual assault cases where there is more than one victim,
- suggesting consideration of amendment to Parts 14 and 15 of the Law Enforcement (Powers and Responsibilities) Act and
- s 4 of the Privacy and Personal Information Protection Act

Key Result Area 5: Improvements in the Criminal Justice System (continued)

The Office has participated in the Strengthening Victims Rights Government Implementation Group formed by Victims Services, Department of Attorney General and Justice, activities of this forum include the creation of a Code of Practice to implement the Victims Charter. The Witness Assistance Service compiled a new information package about court support: "Supporting Victims and Witness at Court: Information for Court Support Persons".

For full details of all external committee in which the Office has participated see Appendix 26.

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.

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

Committals

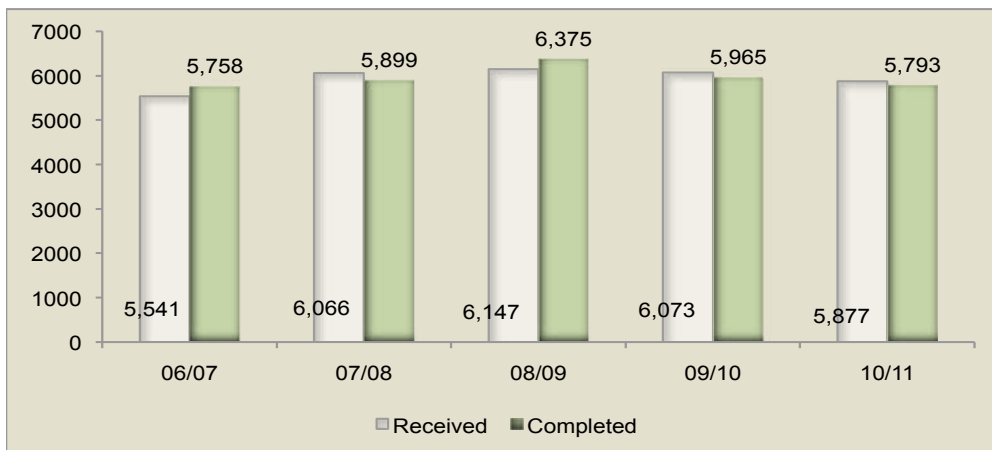
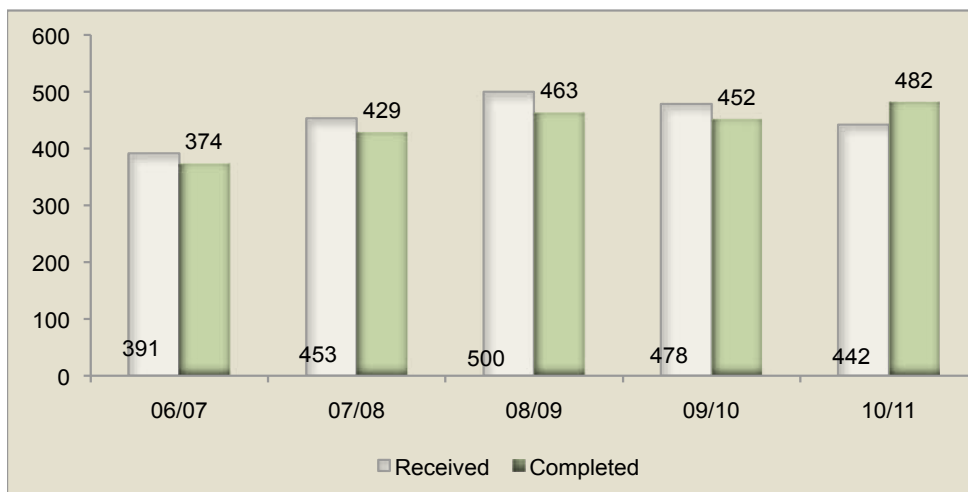


Table 2 – Local Court matters received and completed

Summary Prosecutions

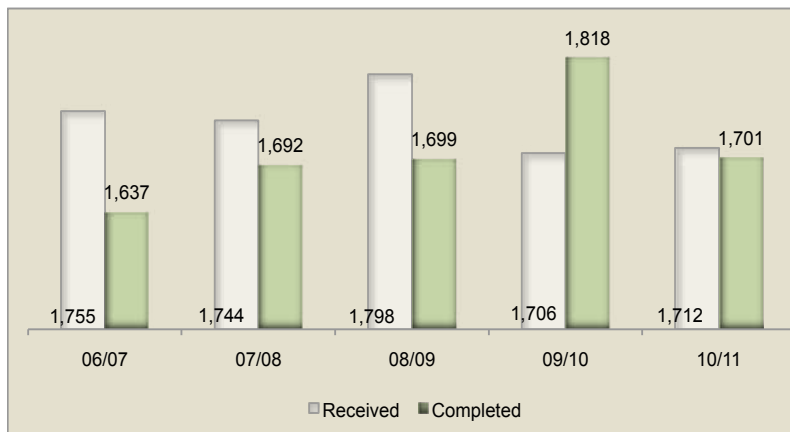


Appendix 1: Quantity/Productivity (continued)

APPENDIX I – STATE SUMMARY – DISTRICT COURT

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

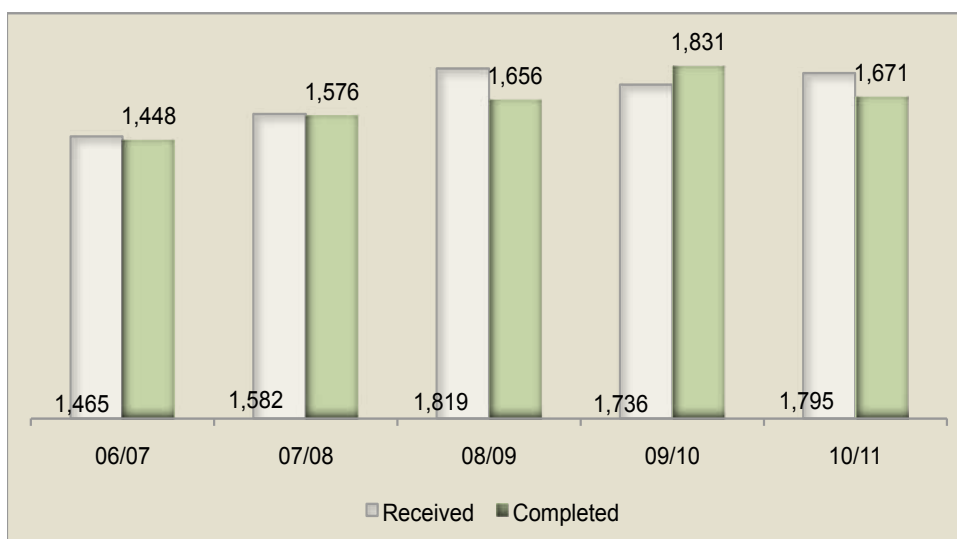
Trials



* For manner of finalisation see appendix 2 Item 3

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

Sentences



Appendix I: Quantity/Productivity (continued)

Table 5 – District Court Conviction Appeals received and completed

Conviction Appeals

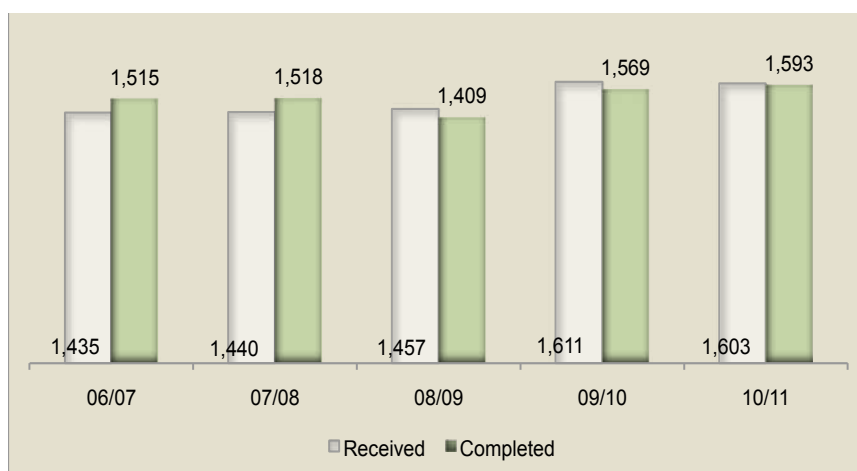
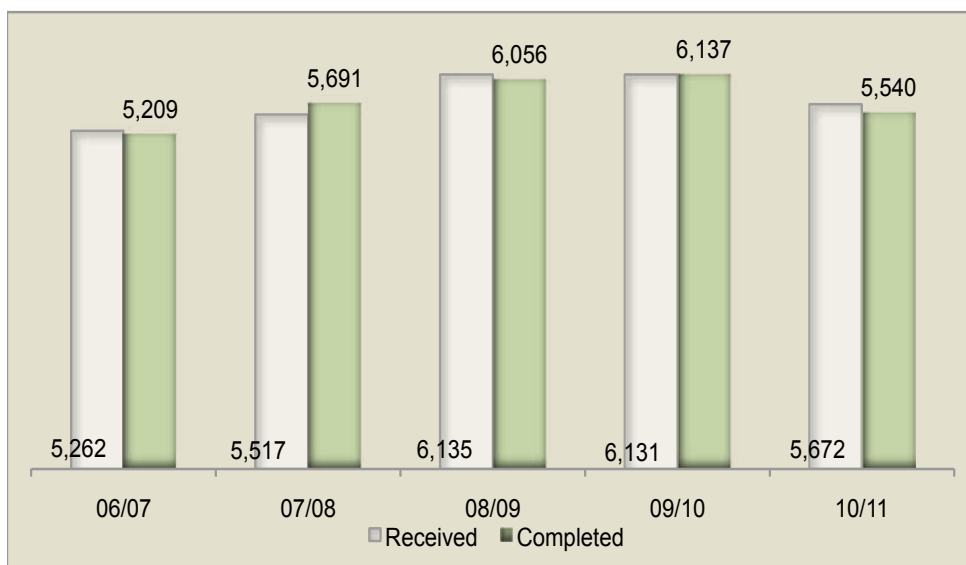


Table 6 – District Court Severity Appeals received and completed

Severity Appeals



Appendix 1: Quantity/Productivity (continued)

APPENDIX I – STATE SUMMARY – SUPREME COURT

Table 7 – Supreme Court Trials received and completed

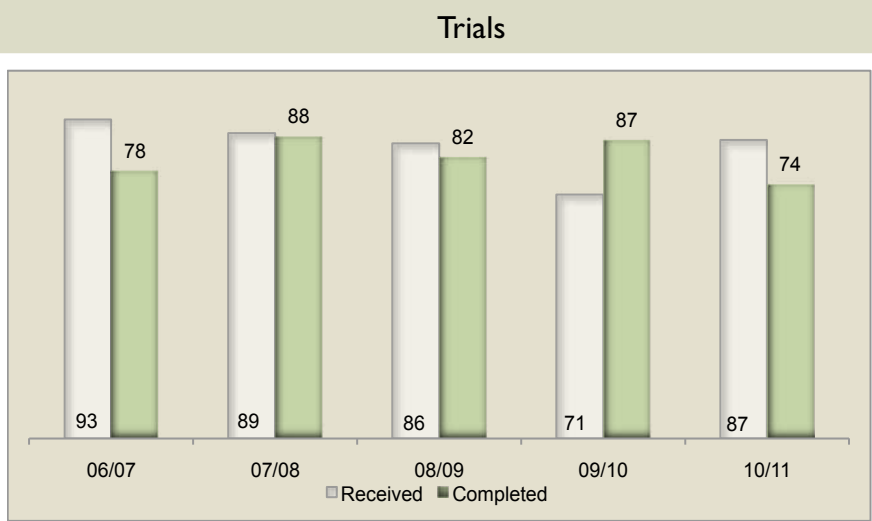
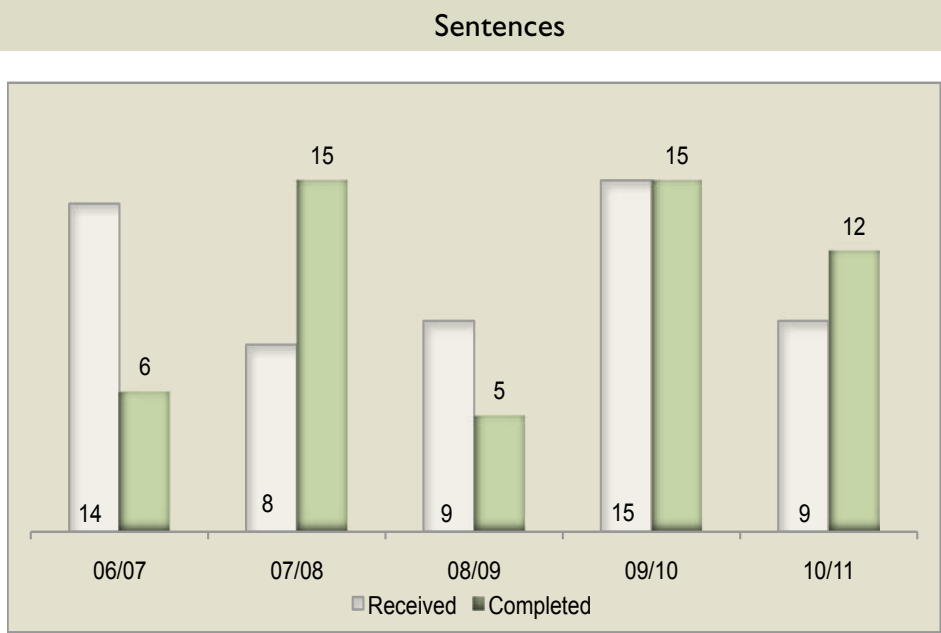


Table 8 – Supreme Court sentences received and completed



Appendix 1: Quantity/Productivity (continued)

APPENDIX 1 – COURT OF CRIMINAL APPEAL

Table 9 – Appeals by Offenders finalised

	2006/07	2007/08	2008/09	2009/10	2010/11
Conviction and sentence appeals	99	74	81	55	87
Sentence appeals	199	154	193	173	166
Summary dismissals	2	1	0	1	0
Appeals abandoned *	8	7	6	3	7
Total Appeals by offenders	308	236	280	232	260

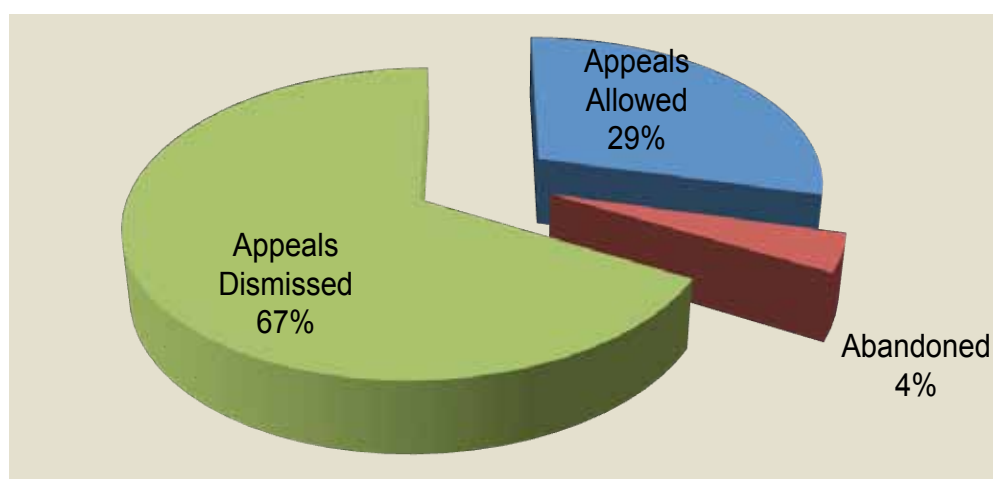
* This figure includes both conviction and sentence appeals

Table 10 – Other appeals finalised

	2006/07	2007/08	2008/09	2009/10	2010/11
Crown Inadequacy Appeals *	73	72	78	48	58
Appeals against interlocutory judgments or orders (s.5F appeals)	20	16	15	15	17
Stated cases from the District Court	3	1	2	0	1
Total Other Appeals	96	89	95	63	76
TOTAL APPEALS FINALISED IN CCA	404	325	375	295	336

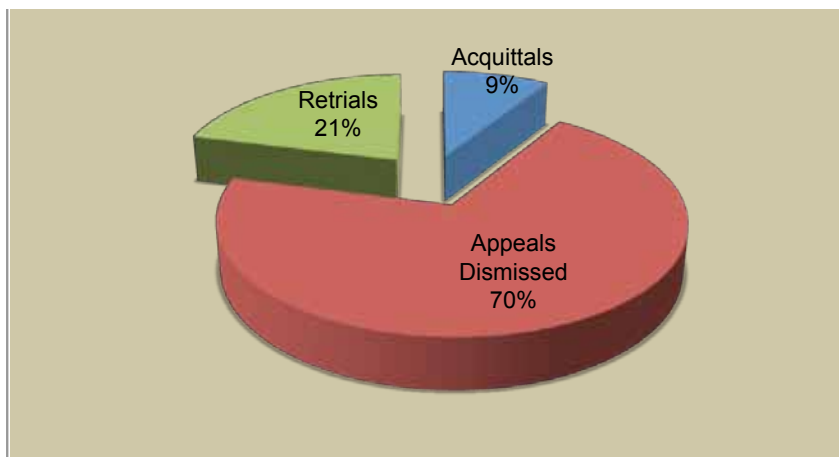
* See Appendix 2, Item 5 for number and proportion of Crown Inadequacy Appeals finalised and results

Conviction and sentence appeals finalised in 2010-11

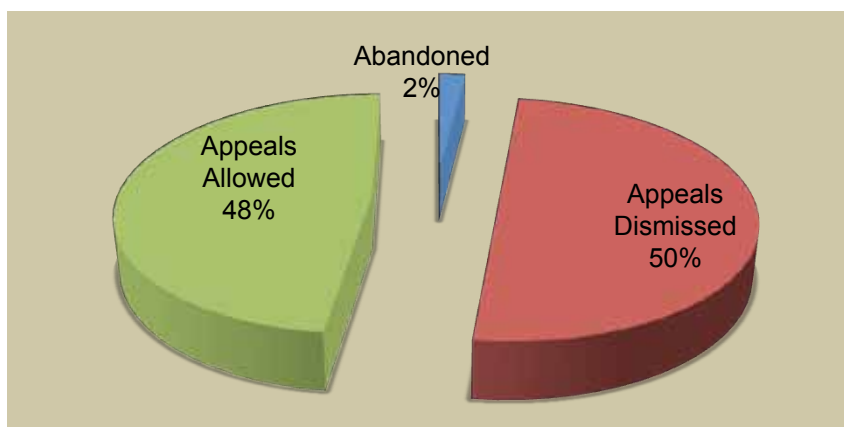


Appendix I: Quantity/Productivity (continued)

Results of finalised conviction and sentence appeals in 2010-11



Sentence appeals finalised in 2010-11



APPENDIX I – HIGH COURT

Table 11 – High Court matters finalised

	2006/07	2007/08	2008/09	2009/10	2010/11
Completed applications for special leave to appeal					
Applications by the offender	9	18	18	8	16
Applications by the Crown	1	0	0	0	0
Hearings conducted after grant of special leave to appeal					
Appeal by offenders	2	4	1	0	4
Appeal by the Crown	1	0	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

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

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

A total of 1,775 matters committed for trial and 1,683 matters committed for sentence were finalised in the reporting period in the District and Supreme Courts.

2,675 77% of these matters resulted in findings of guilt.

In the last reporting period 80.8% of matters resulted in a finding of guilt.

Supreme Court

A total of 74 matters committed for trial and 12 matters committed for sentence to the Supreme Court were finalised in the reporting period.

45 (52 %) of these matters resulted in a finding of guilt.

In the previous reporting period 53% of Supreme Court matters returned a finding of guilt.

District Court:

A total of 1,701 matters committed for trial and 1,671 matters committed for sentence to the District Court were finalised in the reporting period.

2,629 (80%) returned a finding of guilt.

In the last reporting period, 81% 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 477 trials were completed in the Supreme and District Courts following a defended trial.

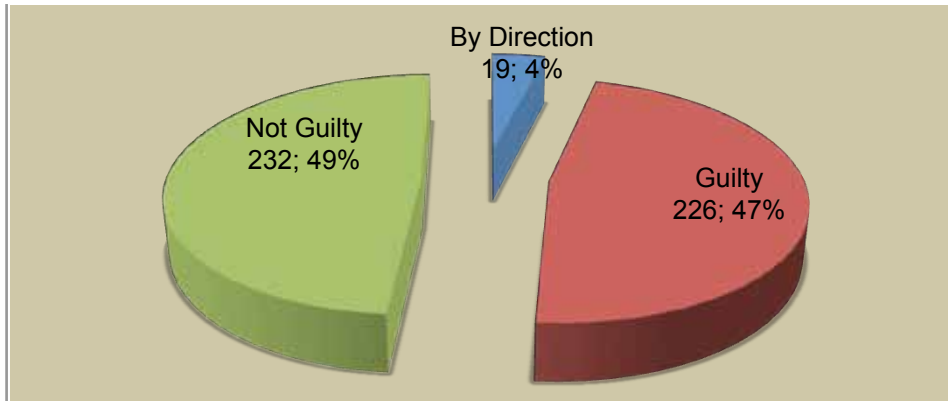
226 (47.4%) returned verdicts of guilty.

19 (4%) returned verdicts of not guilty by direction.

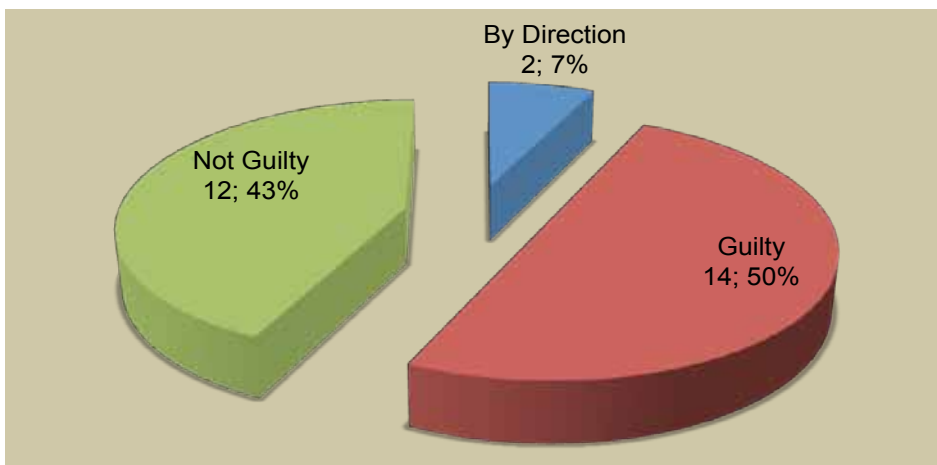
232 (48.6%) returned verdicts of not guilty.

Appendix 2: Quality/Effectiveness (continued)

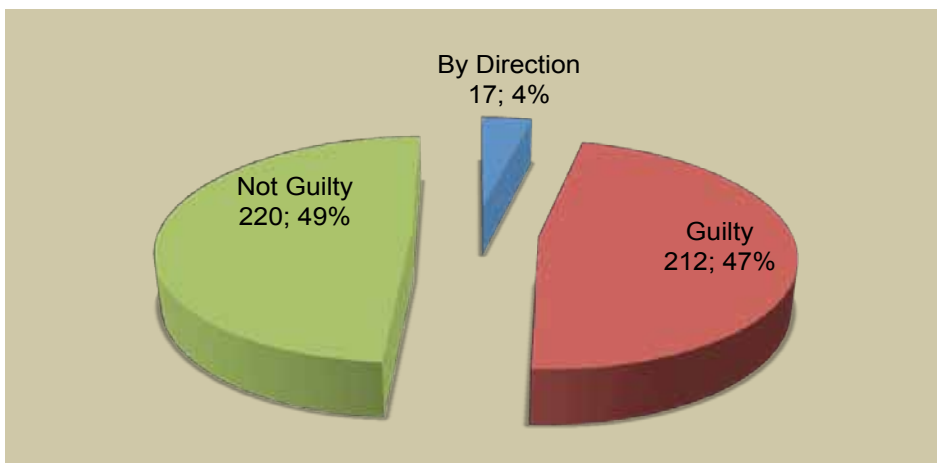
Trial Verdicts – Overall by number and percentage



Trial Verdicts – Supreme Court by number and percentage



Trial Verdicts – District Court by number and percentage

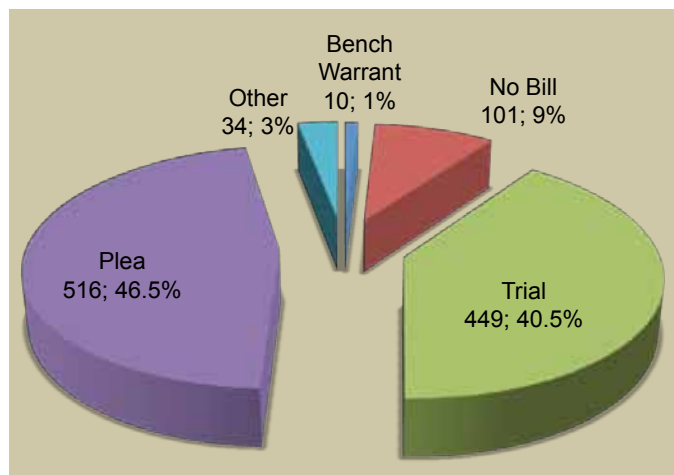


Appendix 2: Quality/Effectiveness (continued)

3. Trial disposals

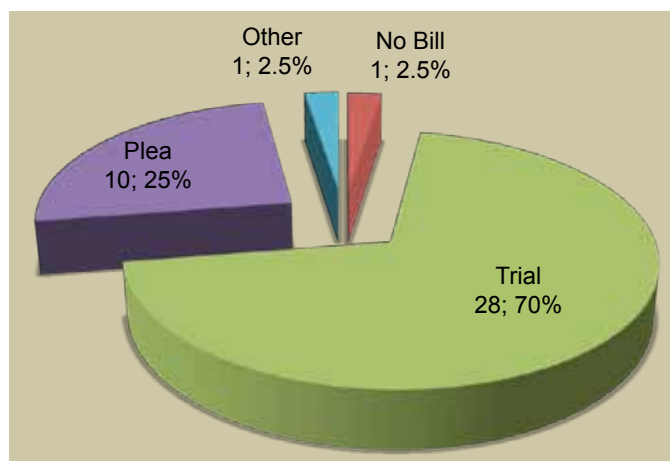
District Court

449	40.5%	were disposed of by way of defended trial
516	46.5%	were disposed of by way of late plea
101	9%	were discontinued after committal for trial
10	1%	had bench warrants issued
34	3%	disposed by other means (eg deceased, changed venue, remitted to Local Court, discontinued before eve of trial or placed on Form 1)



Supreme Court

28	70%	were disposed of by way of defended trial
10	25%	were disposed of by way of late plea
1	2.5%	was discontinued after committal for trial
1	2.5%	was disposed by other means (eg unfit to be tried)



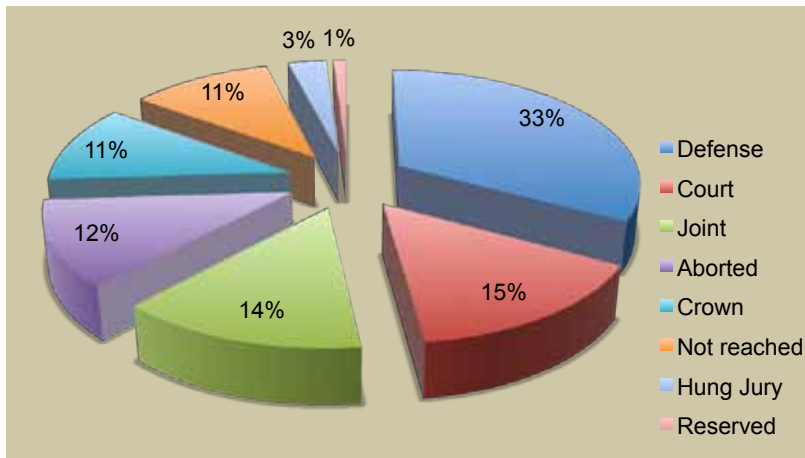
The figures represent matters listed for trial during the reporting period, not the number of trial matters finalised.

Appendix 2: Quality/Effectiveness (continued)

4. Matters listed for trial in the District Court that were adjourned or not completed

218	33.0%	Adjourned, Defence application
96	15.0%	Adjourned, by Court
93	14.0%	Adjourned, Joint application
79	12.0%	Trial aborted
75	11.0%	Adjourned, Crown application
75	11.0%	Not reached
20	3.0%	Hung jury
5	1.0%	Judgement Reserved

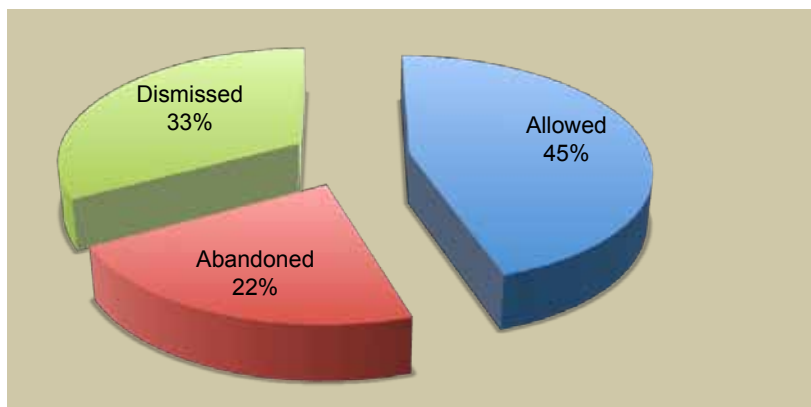
Total number of trial listings that were adjourned: 661



5. Number and proportion of successful sentence appeals by Crown

58 appeals from the Local Court were finalised by the Crown in this reporting period on the inadequacy of sentence

13	22 %	were abandoned
19	33 %	were dismissed
26	45 %	were allowed



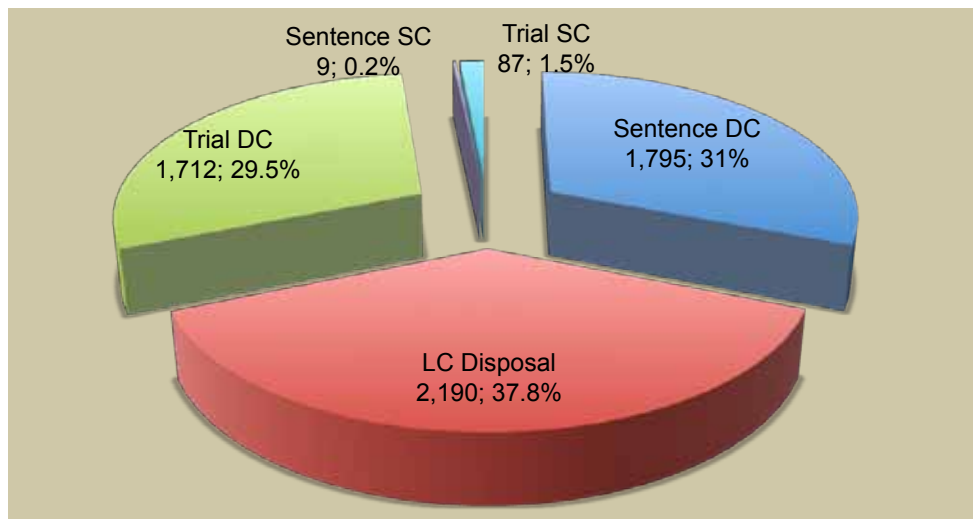
Appendix 2: Quality/Effectiveness (continued)

6. Local Court committal disposals

State-wide

A total of 5,793 committals were completed in the reporting period

1,795	31%	early pleas were committed for sentence to District Court
9	0.2%	early pleas were committed for sentence to Supreme Court
1,712	29.5%	were committed for trial to the District Court
87	1.5%	were committed for trial to the Supreme Court
2,190	37.8%	were disposed of in the Local Court



7. Criminal Case Conferencing

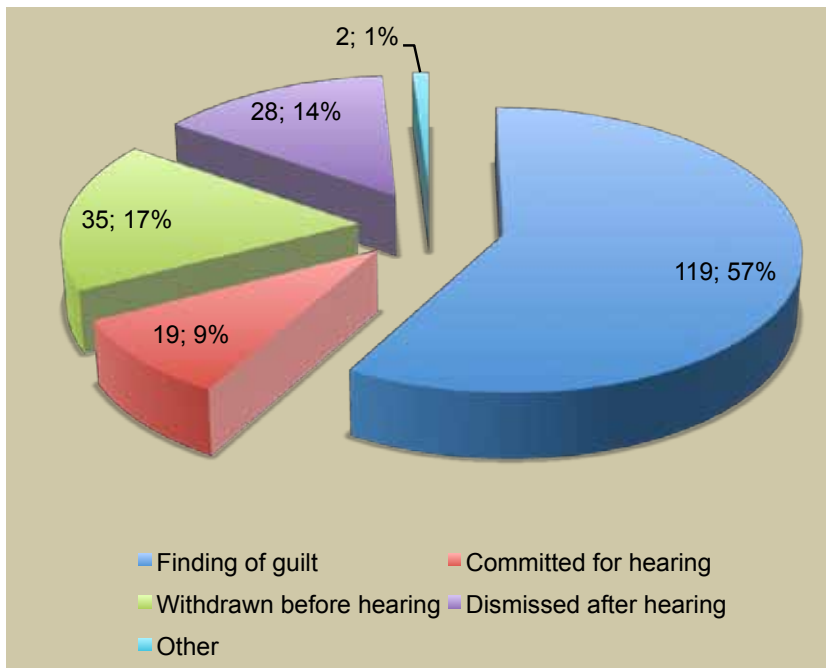
A legislative trial has been underway for committal matters conducted in the Central and Downing Centre Local Courts. The aim of the trial is to encourage early pleas of guilty through compulsory case conferences between the prosecution and the defence where pleas of guilty have not been negotiated prior 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 progressively extended by regulation to 30 June 2011.

Appendix 2: Quality/Effectiveness (continued)

8. Child Sexual Assault Summary Prosecutions

A total of 207 Child Sexual Assault summary prosecutions were conducted in the Local and Children's Court.

119	57%	returned a finding of guilt
35	17%	were withdrawn before hearing
28	14%	were dismissed after hearing
4	2%	were dismissed under mental health provisions
19	9%	were committed for trial
2	1%	Other (e.g. deceased)



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 724 matters. 175, or 24% were discontinued.

Of the 175 that were discontinued, 50 or 29% 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 175 matters represents 5% of all cases finalised after committal and 10% 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 2010-2011 are as follows:

Consent given

- Section 66F, Crimes Act 1900 (sexual intercourse with person with cognitive impairment) x 9
- Section 78K, Crimes Act 1900 (homosexual intercourse with male 10-18 years) x 1
- Section 78H, Crimes Act 1900 (homosexual intercourse with male under 10 years) x 1
- Section 78I, Crimes Act 1900 (attempted homosexual intercourse with males under 10 years) x 1
- Section 7(1)(c), Surveillance Devices Act 2007 (prohibited installation, use or maintenance of listening device) x 1

Consent refused

NIL

APPENDIX 3: TIMELINESS

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

A total of 2,997 referrals for election were processed in the reporting period.

2,225 74% were completed within 14 days¹

A total of 228 referrals for advice as to sufficiency of evidence or appropriateness of charges were completed in the reporting period:

35 15% were completed within 30 days
84 37% were completed within 90 days²

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.

2. Summary matters

Average and median number of days between:

Arrest and service of brief	132 (average) 85 (median)
Service of brief and disposal	173 (average) 111 (median)
Date of arrest and disposal	297 (average) 232 (median)

3. Local Court Committals

Average and median number of days between:

Arrest and brief service

<i>Committals for trial</i>	97 (average) 67 (median)
<i>Committals for sentence</i>	82 (average) 59 (median)

Brief service and committal

<i>Committals for trial</i>	139 (average) 114 (median)
<i>Committals for sentence</i>	105 (average) 79 (median)
<i>Summary disposal</i>	151 (average) 105 (median)

4. Disposal in Higher Courts

Average and median number of days between:

Committal and completion

<i>Matters committed for trial</i>	365 (average) 284 (median)
<i>Matters committed for sentence</i>	178 (average) 133 (median)

Court of Criminal Appeal

Notice of Appeal to finalisation	208 (average) 150 (median)
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High Court

Application for special leave to finalisation	304 (average) 383 (median)
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Appendix 3: Timeliness (continued)

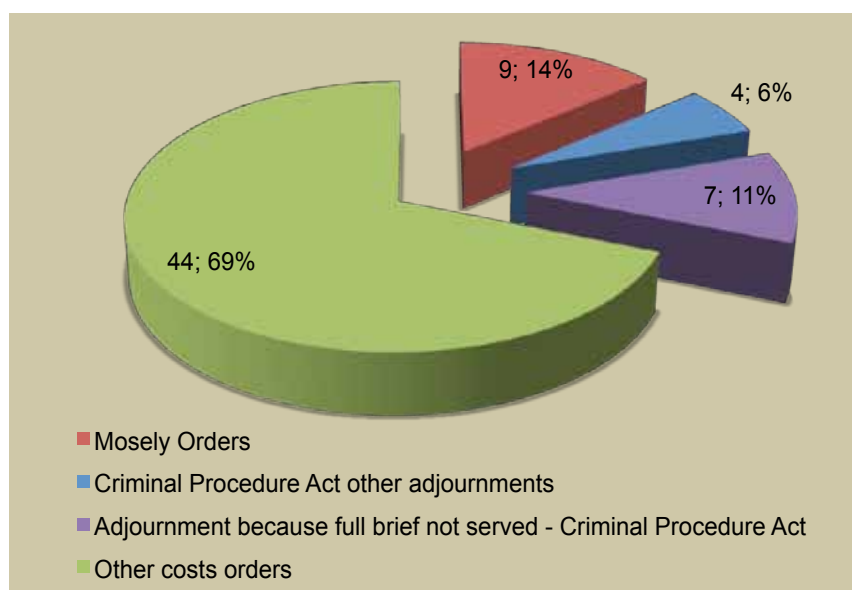
5. Costs awarded against the ODP: Applications for adjournment

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 this year and 2007-8, 2008-9 & 2009-10 where costs were awarded on prosecution applications for adjournment. In 7 matters costs (11%) were awarded because the NSW Police had failed to serve a full brief within the timetable specified by the court.

Matters where costs were awarded on adjournment				
	2007/8	2008/9	2009/10	2010/11
"Mosely Orders"	2	5	1	9
Criminal Procedure Act other adjournments	6	9	15	4
Adjournment because full brief not served – Criminal Procedure Act	11	11	5	7
Other costs orders	38	44	33	44
Total	57	69	54	64

Costs awarded on adjournment 2010/11



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 was WAS involvement during 2010 -2011. WAS involvement is indicated by the presence of the WAS icon on the ODPP matter file.

Charge Category	Count of WAS Icon	Total matters	% WAS Involvement
ASS (Assaults - including DV matters)	363	3,466	10.47%
CSA (Child Sexual Assault)	516	614	84.04%
CUL (Dangerous Driving incl. deaths)	66	149	44.30%
DAM (Damage to Property)	0	349	0.00%
DRU (Drug related matters)	3	1,714	0.18%
FRA (Fraud)	1	372	0.27%
HOM (Homicide)	107	150	71.33%
LAW	0	1	0.0%
ROB (Robbery)	32	1,110	2.88%
SEX (Adult Sexual Assault)	335	415	80.72%
THE (Theft)	41	2,613	1.57%
TRA (Traffic)	5	3,075	0.16%
ZZZ (Other e.g. Child pornography)	75	22,226	13.37%
Total	1,544	16,254	9.50%

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

There was a WAS icon on 9.5% of ODPP files during 2010-2011, which is an increase from 8.0% on the previous year.

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 which affects the overall figures.
- 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. Accurate figures and percentage for these priority groups are unavailable.
- Other files opened by the ODPP related to victim matters might include Advising files and bail files and 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 a victim or witness was 34.5 days, which was the same time frame as for 2009-2010. This timeframe is greater than the recommended time of 2 weeks or 14 days in the *WAS Best Practice Referral Protocol*.

Factors impacting on the timeframe include:

- time taken to obtain victim contact details from police or solicitor for early referrals
- victims not contactable
- contact delayed due to recommendations of solicitor or police
- time lag between a matter being registered on the WAS database and matter being allocated to a WAS Officer and
- referral waiting lists

Witness Assistance Service Delivery Outcomes 2010-2011

During 2010-2011 there were 2,327 referrals and new WAS registrations, compared to 1,948 in 2009-2010 (see Graph 1). Of the 2,327 WAS referrals, 77.0% (1,749) constituted early referrals which were obtained electronically or at an early stage from ODPP legal clerks. An additional 17.7% (426) WAS referrals were received from ODPP solicitors and managing lawyers. Non-priority matters are referred to WAS by ODPP solicitors, managing lawyers and Crown Prosecutors where there were vulnerable victims or witnesses. Referrals were also received from Police, JIRT, counsellors, family and friends and victims and witnesses themselves.

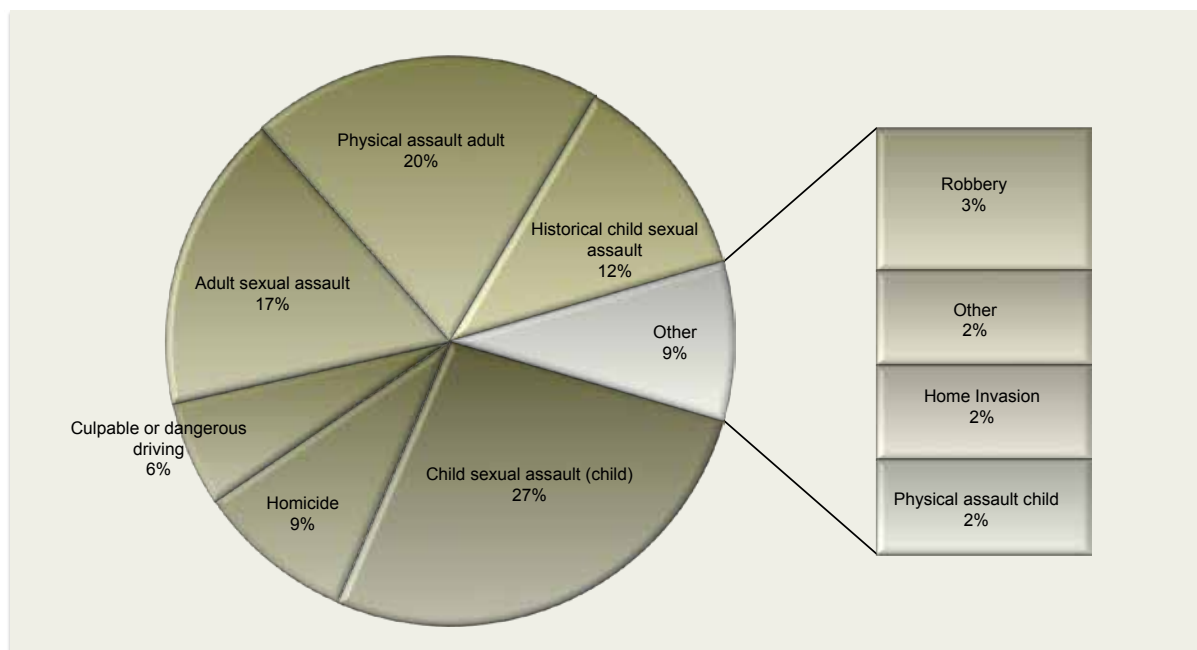
Graph 1 - New Referrals to the Witness Assistance Service 2001 - 2011



Appendix 4: Service to victims and witnesses (continued)

Graph 2 - New WAS Registrations by Matter Type 2010-2011

Graph 2 shows the percentage of New WAS registrations by matter type.



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 2 – New WAS Registrations by Location 2010-2011

Location	New WAS Registration
Campbelltown	208
Central West	75
Dubbo	70
Gosford	111
Lismore	163
Newcastle	390
Parramatta	262
Penrith	223
Sydney	477
Wagga	124
Wollongong	224
Total	2,327

Appendix 4: Service to victims and witnesses (continued)

Table 2 provides a breakdown of the total 2,327 new WAS registrations by location during 2010-2011. Of particular note during 2010-2011 has been the marked increase in new registrations at Newcastle from 285 in 2009-2010 to 390 in 2010-2011, and Parramatta from 152 in 2009-2010 to 262 in 2010-2011.

Total number of victims and witnesses provided a service

Table 3 provides a breakdown of the 4,487 active WAS files where service contacts were registered during 2010-2011. This table also provides a picture of the workflow between WAS in various locations during 2010-2011.

Location as at earliest contact date		Location as at latest contact date	
Campbelltown	385	Campbelltown	340
Central West	55	Central West	35
Dubbo	140	Dubbo	94
Gosford	180	Gosford	174
Lismore	339	Lismore	297
Newcastle	748	Newcastle	690
Parramatta	671	Parramatta	663
Penrith	160	Penrith	211
Sydney	1,106	Sydney	1,304
Wagga	251	Wagga	239
Wollongong	452	Wollongong	440
Total	4,487	Total	4,487

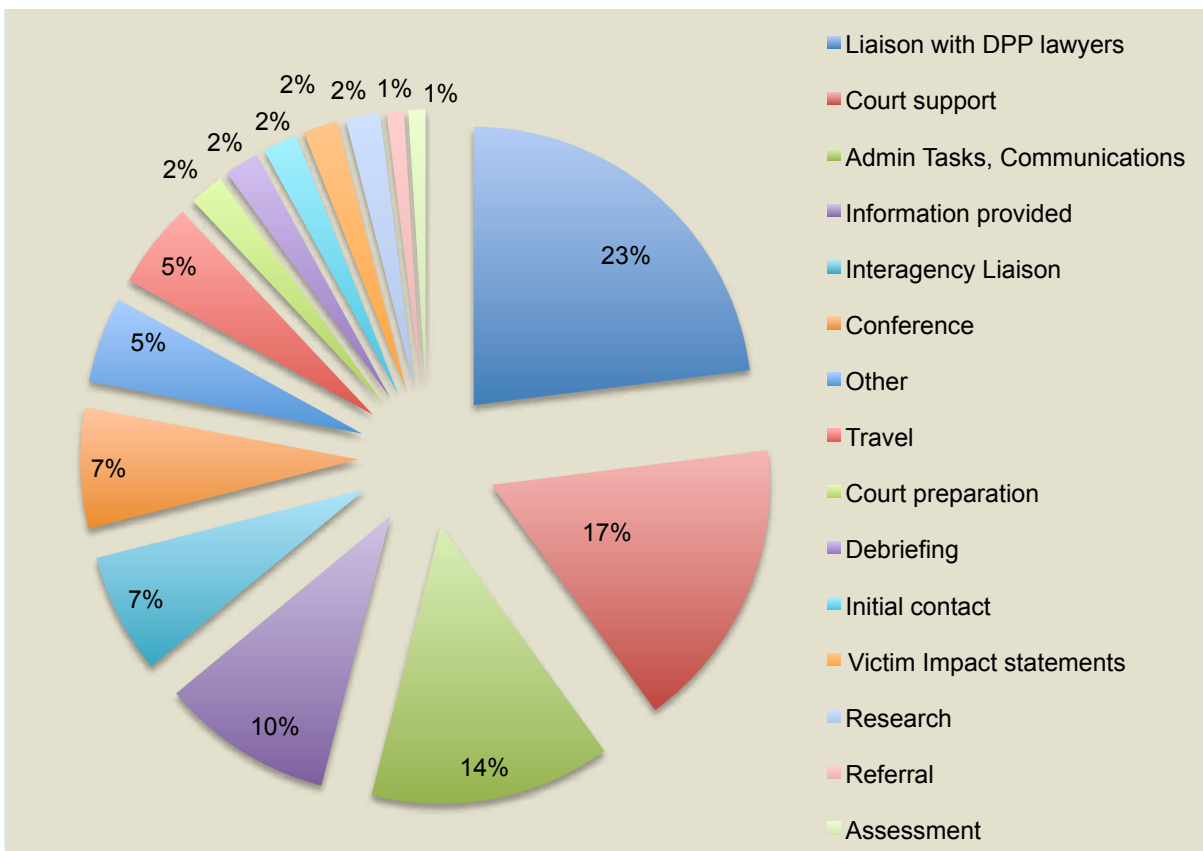
The figures in the first column of Table 3 “**Location at earliest contact date**” represent the WAS caseloads by location when a matter is in the earlier stages of the prosecution process. The figures in the second column “**Location at latest contact date**” indicate the caseloads handled by WAS in each location as matters progress through the legal process. Usually, matters are transferred from the regions to Sydney for trial particularly homicides trials, large multi-victim trials, complex or special interest matters. Other matters follow the circuit Judge for part-heard hearings or sentencing.

Appendix 4: Service to victims and witnesses (continued)

Services Provided by WAS

The total time spent by the WAS in service delivery contacts during 2010-2011 was 22,220 hours.

Graph 3 - Services provided by Witness Assistance Service 2010-2011

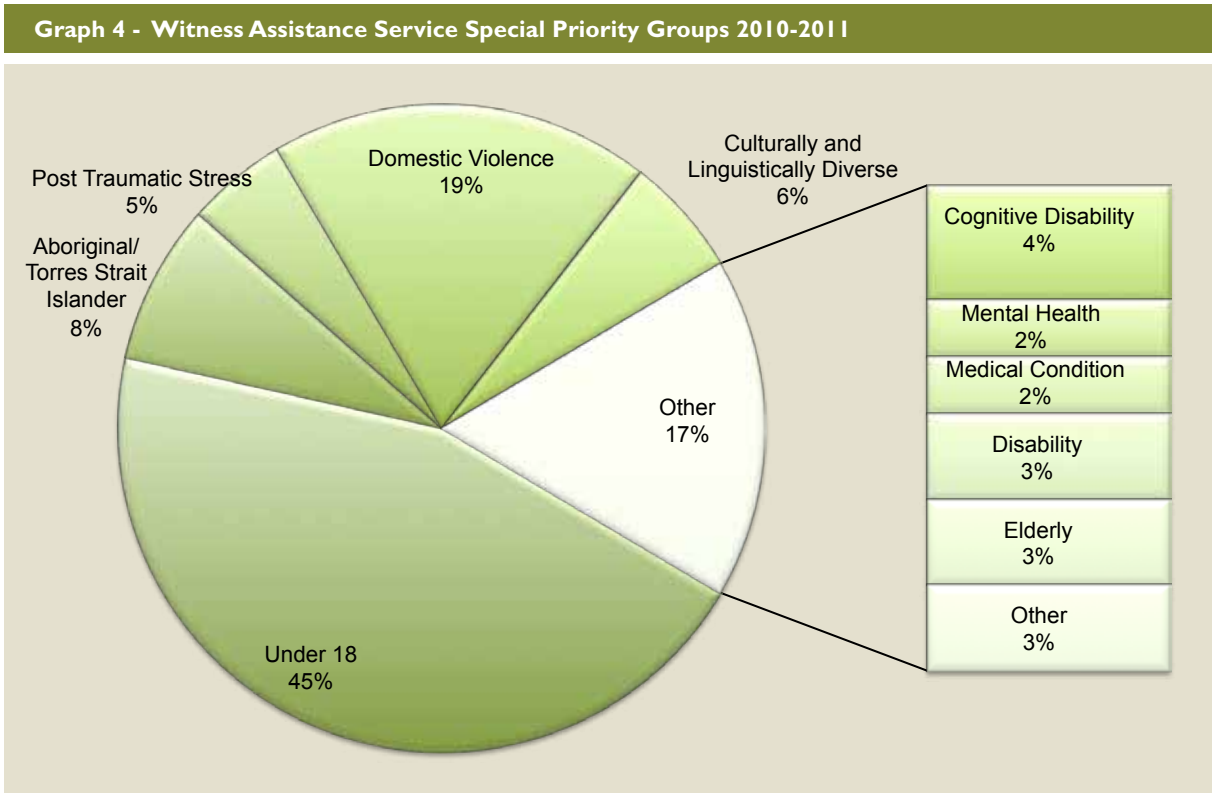


In Graph 3 the service contacts which take up the greater amount of WAS time include: liaison with solicitors and Crowns, court support, administration and communication tasks, information provision, interagency liaison with police and other services, support provided in various types of conferences and travel to provide a service (particularly in rural areas).

Special priority groups and vulnerable witnesses

WAS prioritises services for victims of crime and vulnerable witnesses with special needs. The special priority groups registered by WAS during 2010-2011 are represented in Graph 4.

Appendix 4: Service to victims and witnesses (continued)

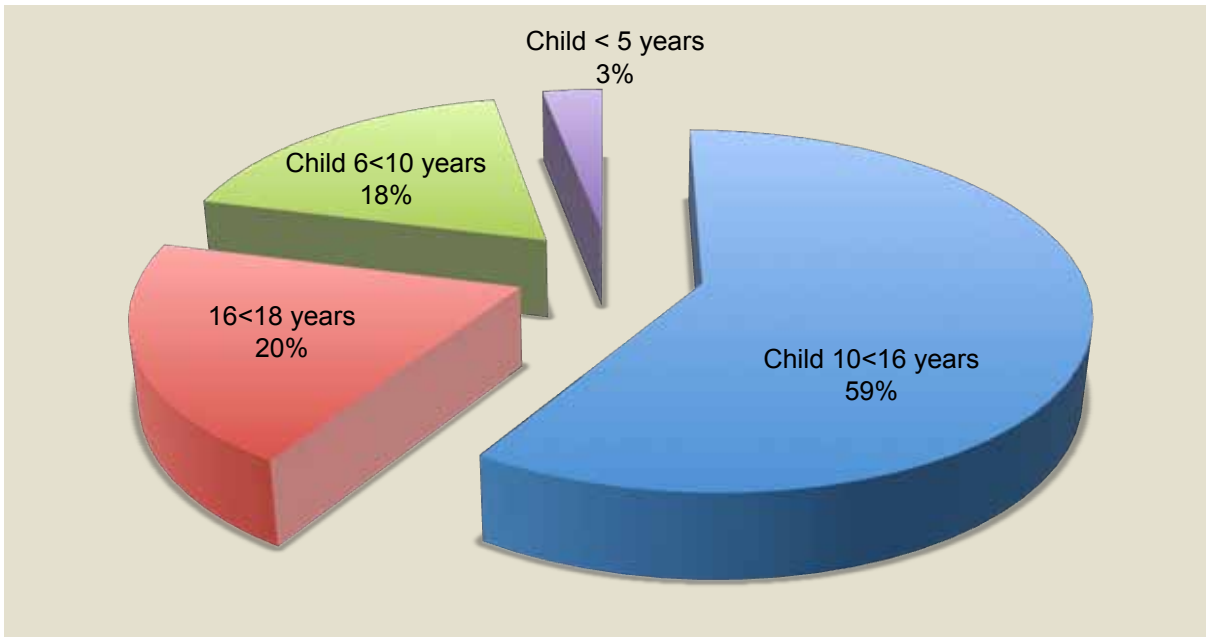


In 2010-2011, a total of 1,646 victims or witnesses were assessed as fitting one or more of the WAS special priority groups including:

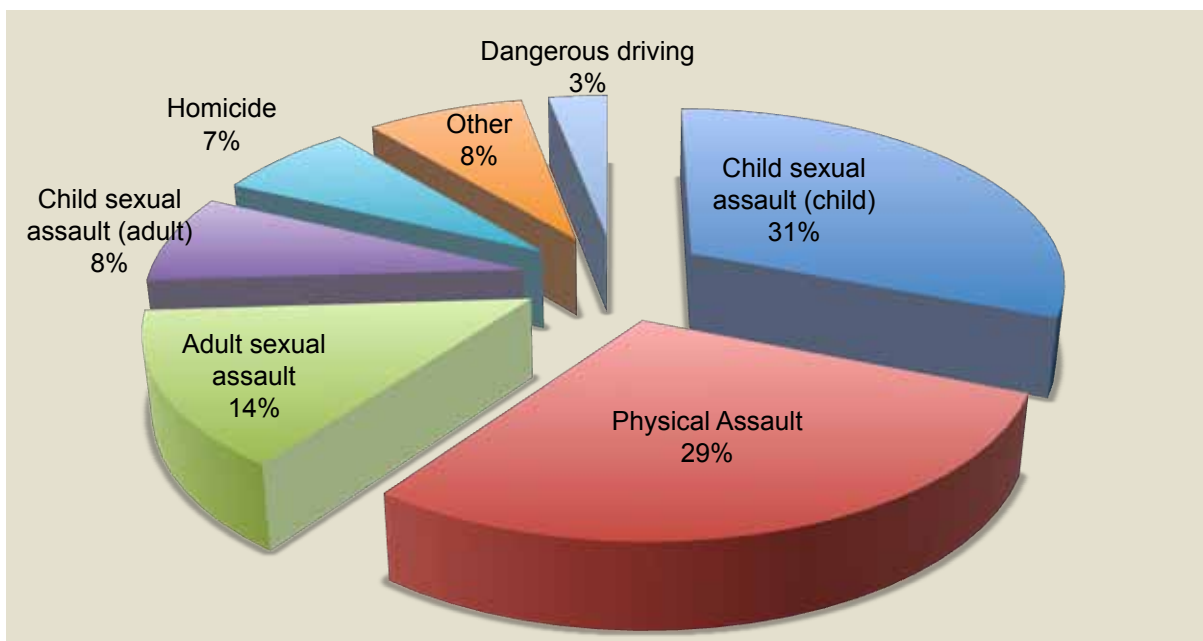
- 152 people with a disability including acquired brain injury, intellectual or cognitive disability, physical disability, sight or hearing impairment and mental health disabilities
- 92 victims were identified as experiencing severe post traumatic stress symptoms
- 318 victims were identified as being victims of domestic violence
- 89 victims were classified as having severe post traumatic stress symptoms
- 88 people experienced barriers related to culturally and linguistically diverse backgrounds
- 51 victims were older or frail aged people or people with serious health problems
- 739 children and young people under 18 years of age (see Graph 5)
- 132 people identified as being of Aboriginal or Torres Strait Islander descent (8%)

Appendix 4: Service to victims and witnesses (continued)

Graph 5 - Special Priority Group – Children and Young People Under 18 years



Graph 6 - Aboriginal and Torres Strait Islander victims and witnesses new WAS registrations by matter type 2010-2011



Appendix 4: Service to victims and witnesses (continued)

Victim and Witness Survey

Executive Summary

In March 2011 the Office of the Director of Public Prosecutions (ODPP) conducted a Witness Satisfaction Survey of non expert witnesses to assess witness satisfaction levels with ODPP services. The survey was sent to 1576 witnesses from trials listed in the New South Wales District and Supreme courts between 1 October 2010 and 31 January 2011. Approximately 15% of those witnesses, that is, 28 victims and 201 civilian witnesses, responded to the survey.

The survey revealed that the majority of the respondents were happy with the service provided by the ODPP with 76 % rating it as good or very good. Witnesses were more satisfied than victims with 77 % rating the service they received as good or very good compared to 69% of victims.

The rating of the level of service across region varied, with victims in Sydney and Sydney West being more satisfied than those in the Country. Country victims had a higher percentage of responses rating the service as poor or very poor (22% compared to the State average of 14%).

As expected, respondents who had contact with the Witness Assistance Service (WAS) had more positive feedback. 86% of those who had WAS contact gave a rating of good or very good compared to 71% of respondents who did not have WAS contact.

A majority of respondents (54%) said they were satisfied or very satisfied with the outcome of their case but is difficult to assess what impact that response had on satisfaction levels with ODPP services. It was also noted that respondents with WAS contact had a higher percentage of dissatisfaction with the outcome of the case.

The 31 expert witnesses who responded were not included in the measure for witness satisfaction. Their feedback indicated that when they had contact with the ODPP, their interaction was very professional and courteous. However they felt that pre-trial conferences would assist them in providing better evidence. Their main complaint was the lack of communication about attendance in court.

Aspects of the ODPP service that made the difference included good communication, professionalism, courteous and supportive behaviour of ODPP staff. Frustration from court delays, uncertainty about court attendance and delay in payment of witnesses expenses were the major dissatisfaction factors.

To improve the analysis of the data more effectively in the future, the ODPP will need to consider the timing of the

survey to increase the response rate, review the format and questions and computerise the survey to enable a more efficient method of assessment and data categorisation.

A. Methodology

Each survey was sent with a reply paid envelope requesting respondents to return the completed survey by 20 April 2011. Respondents were advised that their responses would be confidential.

For the purposes of data collection, the survey area was divided into three regions, Sydney, Sydney West and Country with colour coded survey forms to separate them by location, that is, white forms were sent to Sydney witnesses, pink to Sydney West and blue and green to Country witnesses. The respondents were divided between victims and witnesses and the surveys to victims were printed with an asterisk to differentiate their responses from other witnesses.

The survey sought the following:

- a rating of the level of service received from the ODPP on a scale from very good to very poor
- whether the witnesses had any contact with the Witness Assistance Service
- satisfaction with the outcome of the case from a rating of extremely satisfied to extremely dissatisfied
- comments about experience with the ODPP

Although the surveys were forwarded to some expert witnesses, their responses were not included in measuring satisfaction levels of ODPP services. This survey was not designed for experts because a number of them were service providers and their responses were only aimed at obtaining some feedback about their interaction with the prosecution process.

Total Sample

A total of one thousand five hundred and seventy six (1,576) forms were sent out to the following witnesses.

	Total	Victims	Witnesses
Sydney	627	91	536
Sydney West	302	48	254
Country	647	90	557
Total	1,576	229	1,347

This was an increase of 65% from the 2009 survey when 955 forms were sent out.

Appendix 4: Service to victims and witnesses (continued)

Response Rates

The total number of responses constituted 15% of potential respondents. This amounted to a total of two hundred and twenty nine (229) people. They were split into 28 victims (13%) and 201 witnesses (87%).

	Total	Victims	Witnesses
Sydney	88	5	83
Sydney West	34	8	26
Country	107	15	92
Total	229	28	201

There has been a steady decline in the response rate over the past few years. In 2004 the response rate was 17.2%, in 2006 it was 17% and in 2009 it was 16.5%.

Thirty one (31) expert witnesses also responded to the survey.

Ninety seven (97) letters were returned to the office marked "return to sender". There were 33 from Sydney, 20 from Sydney West and 44 from Country.

B. Survey Results

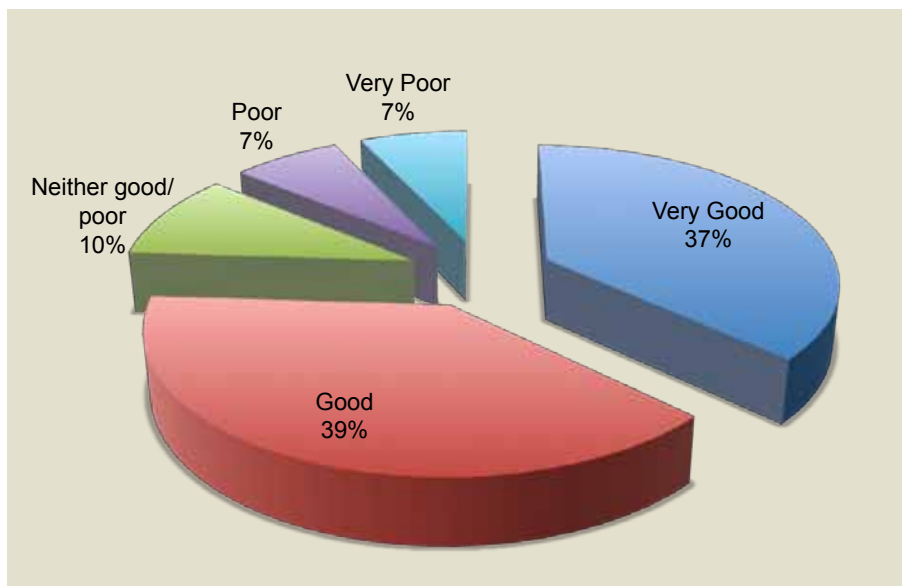
Overall analysis of the survey data was conducted on all respondents, with a total base of 229 respondents.

Survey results were also analysed between regions. This analysis accounted for the differences in the reach of ODPP services across regions. Results were also analysed to account for any potential differences in experience and satisfaction between victims (a base of 28 people) and witnesses (a base of 201 people).

Evaluation of ODPP services

Results from Question 1 showed that more than three-quarters (76%) of respondents rated the service they received from the ODPP as being very good or good. Only 14% rated the service they received from the ODPP as being negative in any way, that being, either poor or very poor.

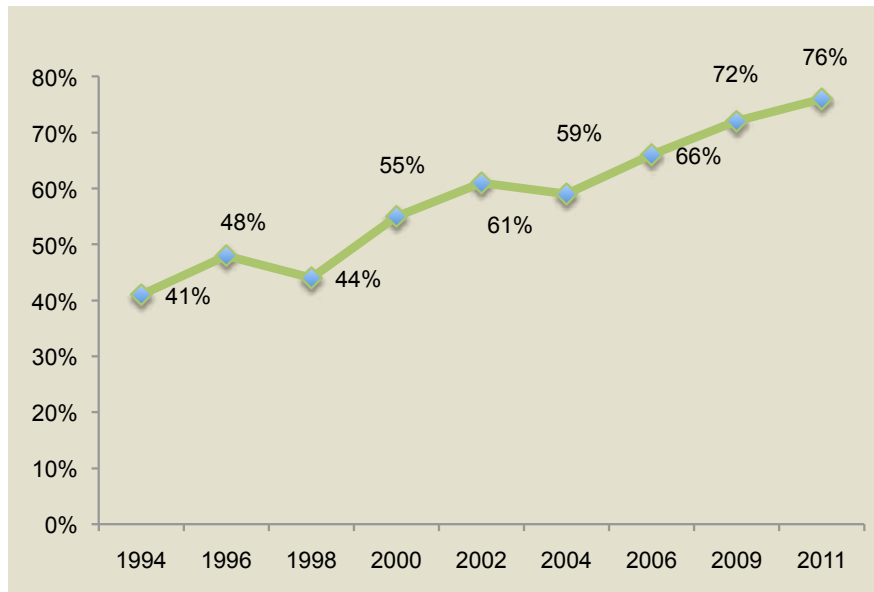
Graph 7 - Rating of Services of ODPP



Appendix 4: Service to victims and witnesses (continued)

Graph 8 shows the steady increase in satisfaction ratings from surveys conducted by the ODPP from 1994.

Graph 8 - Comparison of Rating of Services of ODPP from 1994 to 2011

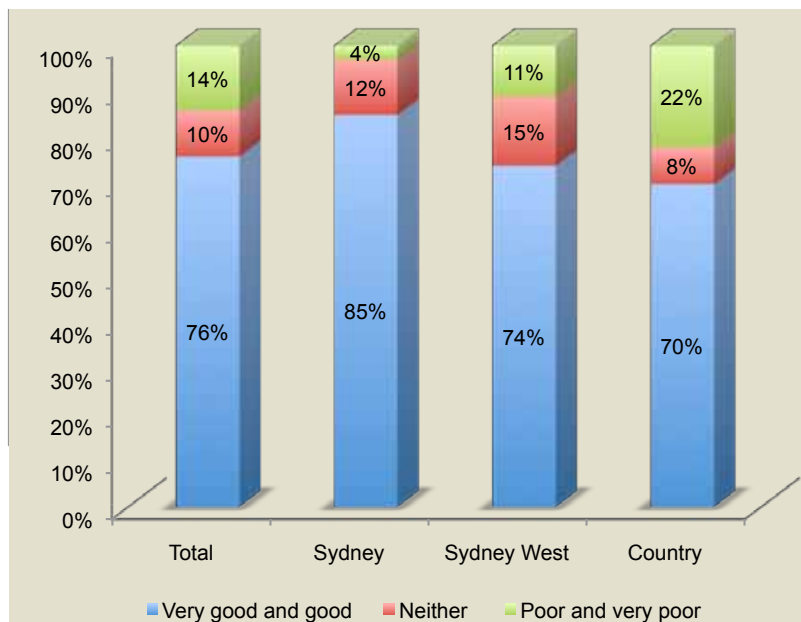


Regions

Respondents from the Sydney region had the highest ratings for service received from the ODPP, with 85% rating the service they received as either good or very good. Country respondents had the lowest rating in this category with 70%. Of Sydney West respondents 74% of rated the service as either very good or good.

Nearly a quarter (22%) of Country respondents rated the services they received from the ODPP as poor or very poor. Only 4 % of Sydney witnesses and 11 % of Sydney West witnesses rated ODPP services as poor or very poor.

Graph 9 - Rating of Services by Regions



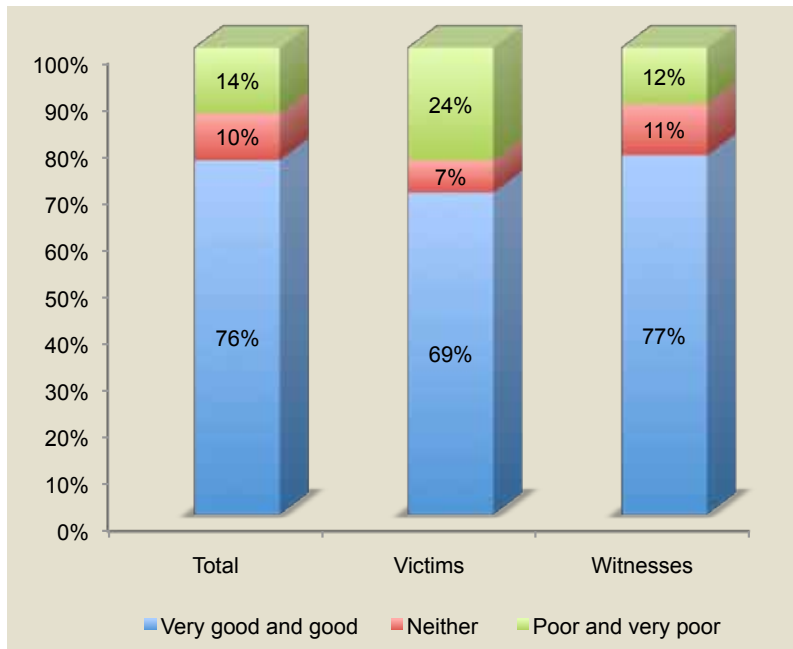
Appendix 4: Service to victims and witnesses (continued)

Victims and Witnesses

There were some differences in the ratings of service between victims and witnesses. Witnesses overall were happy with ODPP service with 77% saying it was good or very good. About 77% witnesses compared to 69% victims rated the services they received as good or very good.

Although there was only a very small sample of victim responses, the survey showed that twice as many victims compared to witnesses rated the ODPP services as either poor or very poor; 24% compared to 12%. This response could be a reflection of their dissatisfaction with the outcome of the case but it is difficult to reach any significant conclusions without additional data.

Graph 10 - Rating of Services by Witnesses/Victims



Comments from victims who rated ODPP services as good or very good:

- "Received letter from ODPP updating progress and calls offering support & assistance."
- "People from ODPP were compassionate & understanding. I was very nervous and it was very difficult."
- "I found ODPP very helpful, professional and friendly. But obvious that we were doing a duty because paid very little expenses and very late."
- "ODPP kept me well informed and were professional but had to wait around for too long."
- "My mother was killed & it was a traumatic situation but ODPP was compassionate and caring. Gave me a better insight into the court system."
- "ODPP was very professional but it would have been better if they had explained exactly what would happen in the court room."

Comments from Witnesses who rated ODPP services as good or very good:

- "Informative, supportive, honest and very efficient. Briefing prior to giving evidence explained processes."
- "Exceptional service. We were kept well informed. Good service at a difficult time. But court kept us waiting for ever. Was very draining."
- "Very helpful and kept us up to date. Harrowing experience but DPP barrister was fair & encouraging"
- "Everybody was very helpful and friendly. Communication timely and effective. Good follow up. Prosecutor met before case. Exemplary conduct. I was very impressed."

Appendix 4: Service to victims and witnesses (continued)

- *"Everyone I dealt with was thoroughly professional & helpful. All aspects of the case were explained well. But expenses paid after a long time."*
- *"Explained in full and time was taken out to make me feel comfortable with the process."*
- *"WAS and lawyer were very helpful. Made the case run smoothly and said that they were still there if needed help afterwards."*
- *"I was very nervous but everyone was helpful and caring. Talking to prosecutor before trial helped."*
- *"Was a horrible situation but WAS & OPP were amazing and very helpful."*
- *"I was 82 yrs old and was treated with respect & consideration. Well briefed by DPP counsel before trial."*
- *"Couldn't have been treated any better. Everyone very supportive and put me at ease. The help I received in preparing for court case was excellent. Conference before trial helped."*
- *"Did not attend court but discussions re: possible appearance was satisfactory."*
- *"All officers of ODPP were very helpful, respectful and extremely professional in all respects. Despite limited resources did a thoroughly competent job."*
- *"DPP very courteous and hardworking. Did tremendous job. Shame outcome was disappointing."*
- *"DPP excellent job in understanding complex case....had outstanding assistance and advice. Waited around for a while before anything happened in court."*

Comments from victims that rated the ODPP services as poor or very poor

- *"Little on no communication from ODPP."*
- *"He had it easy. I was the one suffering."*
- *"We were very poorly represented. Cops and barrister took easy way out."*
- *"Only one letter from ODPP. Had to ring to get updates. Poor communication. Poor outcome."*
- *"WAS very good but was disappointed in the level of professionalism, tact and outcome."*
- *"Barrister and solicitor should have asked more questions. Only asked what was in the statement. Not give full story."*
- *"I had to say whether to drop charge. Should not have been left to me to make that decision."*
- *"Was good case but he did not go to gaol."*

Comments from witnesses who rated the ODPP services as poor or very poor

- *"No contact by ODPP. Not told when court was cancelled."*
- *"Had to chase up prosecutor for information about court. Never heard from them."*
- *"Very little to no assistance from DPP. When case postponed was not informed."*
- *"Did not hear from DPP re reimbursement of expenses and loss of wages."*
- *"No follow up."*
- *"Disgusted because accused was released on bail."*

Witness Assistance Service Involvement

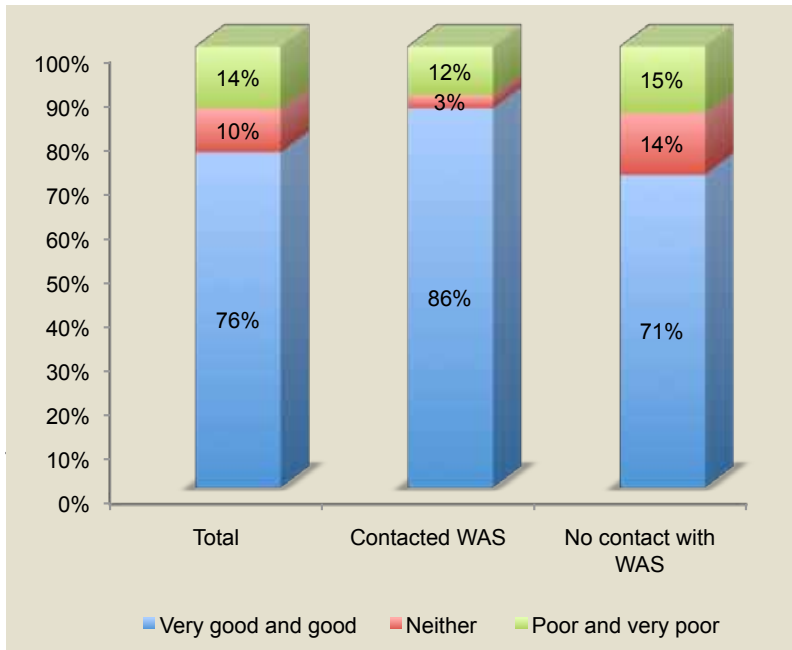
Results from Question 2 showed that 31% of the respondents had contact with the ODPP Witness Assistance Service (WAS). Country reported the highest contact with WAS at 37%. Sydney West respondents at 26% and Sydney respondents at 25% had a similar amount of WAS contact probably because both regions carried WAS vacancies in 2010-2011.

Predictably nearly half the victims surveyed (48%) reported contact with WAS. This is compared to just over a quarter (28%) of witnesses who reported contact with WAS.

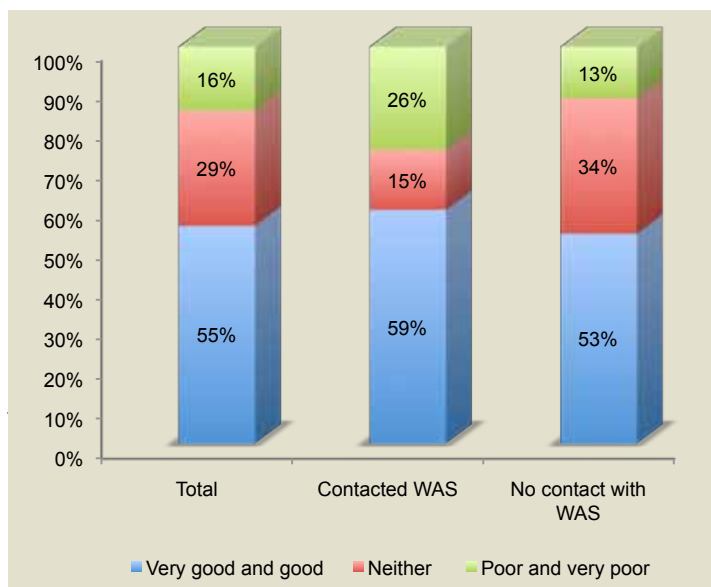
As expected, WAS involvement had a positive effect on ratings of services received. Those who had contact with WAS were more likely to rate the services they received from ODPP as being good or very good. As shown in Graph 5 below, 86% of those who reported contact with WAS rated ODPP services as good or very good compared to 71% who reported no contact with WAS.

Appendix 4: Service to victims and witnesses (continued)

Graph 11 - Rating of Services by WAS contact



Graph 12 - Satisfaction with outcome by WAS contact



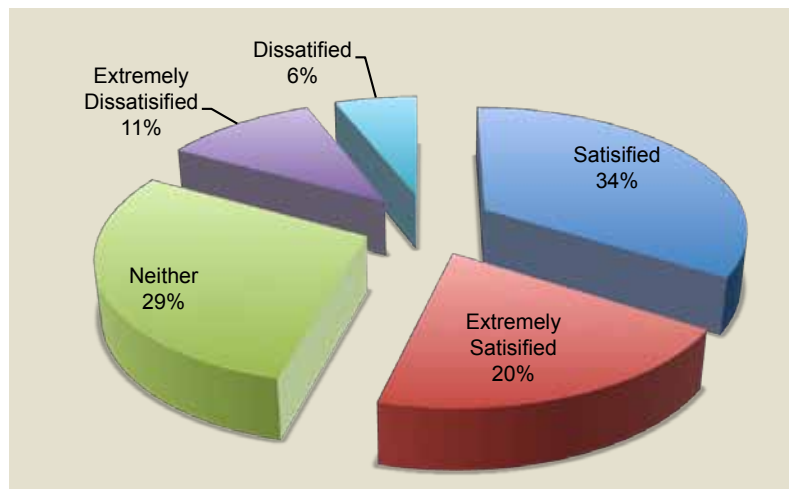
As seen in Graph 12, there was very little difference in the percentage of respondents with WAS contact (59%) that were satisfied or very satisfied with the outcome of the case and those with no WAS contact (53%). However 26% that had WAS contact expressed dissatisfaction compared to 13% who didn't have WAS contact. As WAS involvement is in more serious or sexual assault offences that experience a higher rate of acquittal, it is understandable that those witnesses may be unhappy with the outcome.

Appendix 4: Service to victims and witnesses (continued)

Satisfaction with Outcome of Case

Results analysed from Question 3 show that the majority of respondents (54%) were extremely satisfied or satisfied with the outcome of the case. Nearly a third (29%) said they were neither satisfied nor dissatisfied. 17% said they were dissatisfied in some way.

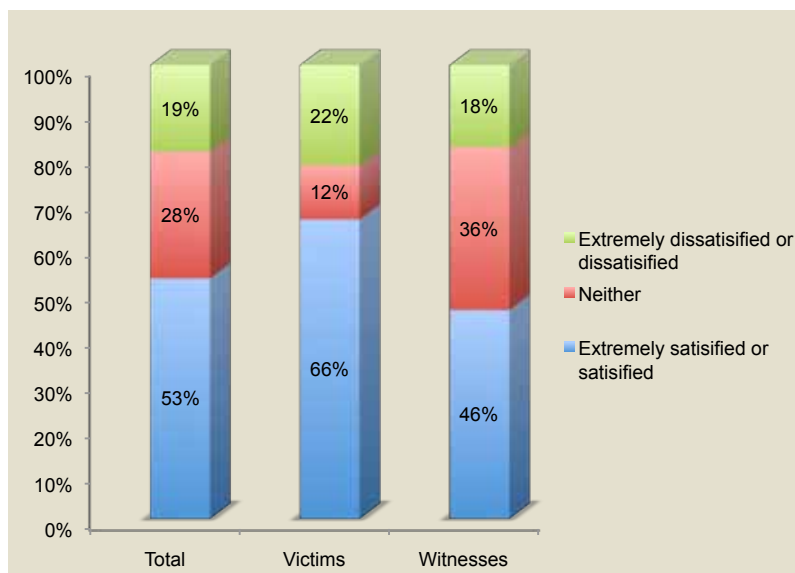
Graph 13 - Satisfaction with outcome



There were no notable differences in satisfaction with outcome between respondents from different regions. Sydney recorded 55%. Sydney West had 54% and Country had 63% of respondents who expressed satisfaction with the case outcome.

There were some differences in the satisfaction with outcome between victims and witnesses. Victims had a higher satisfaction rating of extremely satisfied or satisfied, 66% compared to 46% for witnesses. Witnesses were three times as likely compared to victims to rate themselves as neither satisfied or dissatisfied with the outcome, 36% compared to 12%. This result could be a reflection of the ODPP practice of only notifying victims of the outcome of the case. Victims receive better explanation of court processes than witnesses so they may have more realistic expectations.

Graph 14 - Satisfaction with outcome by Witnesses/Victims



Appendix 4: Service to victims and witnesses (continued)

Expert Witnesses

The 31 expert witnesses that responded to the survey were mainly from laboratories, fire and ambulance services. Their responses did not form part of this survey but are informative for general ODPP operations.

Expert witnesses commented that they found ODPP to be professional and courteous. They felt that ODPP expectations of them varied according to the experience and knowledge of the prosecutor. However the majority said that they were able to provide better evidence when the ODPP held a pre-trial conference to help to refresh their memory and to focus on relevant issues particularly those in dispute.

Their main complaint was that they were regularly subpoenaed but there was no communication from the prosecution team about whether they were required to attend court. The other major complaint related to frustration with court delays. They also felt that the ODPP should provide feedback on their performance to assist them in providing better evidence.

C. Conclusion

The Witness Satisfaction survey provided very positive feedback about the services provided by the ODPP. There has been an 85% increase in satisfaction with ODPP services since 1994 when the first survey was conducted and a 6% increase since 2009 when the last one was carried out.

Respondents with WAS contact expressed greater satisfaction with ODPP services. Naturally victims had greater WAS contact than the other witnesses. Regional distances may account for Country victims providing a slightly higher percentage of responses rating the level of service as poor or very poor.

Although slightly more than half the respondents expressed satisfaction with the outcome of the case, it is not surprising that respondents with WAS contact had a higher dissatisfaction rating considering the type of cases that have greater WAS involvement. Due to the poor response rate and without additional information it is difficult to draw any meaningful conclusions from this data.

Factors which provided witnesses greater satisfaction included good communication about the case, its progress and court processes. Witnesses also commented on courteous, professional and supportive behaviour of ODPP staff.

Factors that caused dissatisfaction included:

- frustration with lack of communication about progress of cases,
- reasons for adjournments,
- bail and general discontent about court decisions such as grant of and outcome of the case.

Delay in payment of witness expenses and frustration from waiting around the court have been continuing cause for complaint. Unfortunately there is very little that the ODPP can do about those issues.

Some expert witnesses responded as well commenting on good professional interaction with the ODPP especially when pre-trial conferences were conducted. Their main complaint was that they were regularly subpoenaed but did not receive any communication about whether their attendance in court was required.

Issues that require review include:

1. Timing and method (electronic and manual) of sending the survey needs to be reconsidered in an endeavour to improve the response rate.
2. The format of the survey requires re-examination and consideration of the following suggestions:
 - additional demographic data eg age and gender could be included to obtain a more detailed assessment of which witnesses were more satisfied with the services.
 - computerising the survey form so that results can be assessed electronically by scanning the document.
 - adding another option to Q3 of "unaware of outcome of case" to assess whether this would reduce the dissatisfaction rating.

Overall the survey results showed that ODPP staff have been successful in assisting the majority of respondents through a traumatic experience in the Criminal Justice System.

APPENDIX 5: RECOVERY OF PROCEEDS OF CRIME

Confiscation of Proceeds of Crime Act 1989 (CoPoCA)

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

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

Resources

The ODPP receives recurrent funding of \$310,000 per annum to fulfil 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.

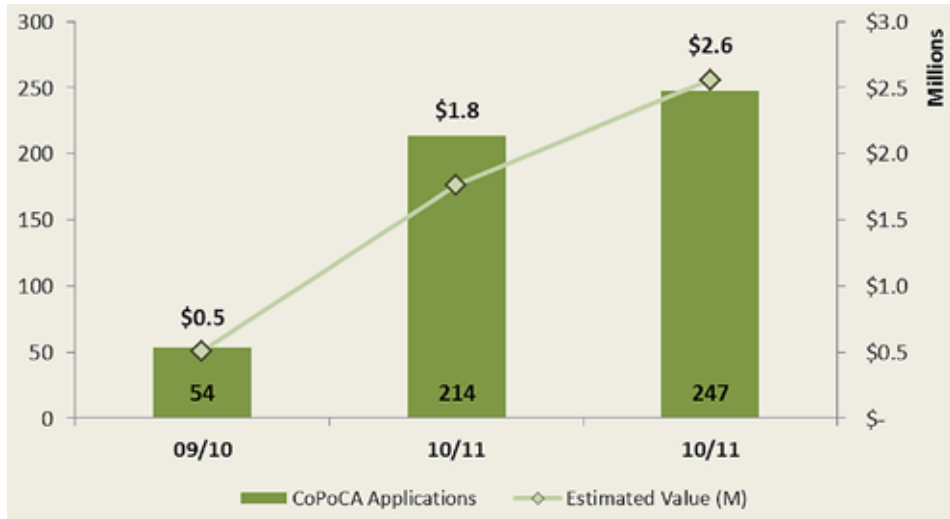
Performance and Statistics

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 2010/2011 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 following table and graph.

	08/09	09/10	10/11
Number of Orders Applied for (FO, PPO & DPO)	54	214	247
Number of Orders Granted	49	199	240
Number of Forfeiture Orders (FO)	43	188	226
Number of Pecuniary Penalty Orders (PPO)	1	7	4
Number of Drug Proceeds Orders (DPO)	5	19	10
Percentage of matters where application was successful	91%	93%	97%
Total Estimated Value of property confiscated	\$0.5	\$1.8	\$2.6

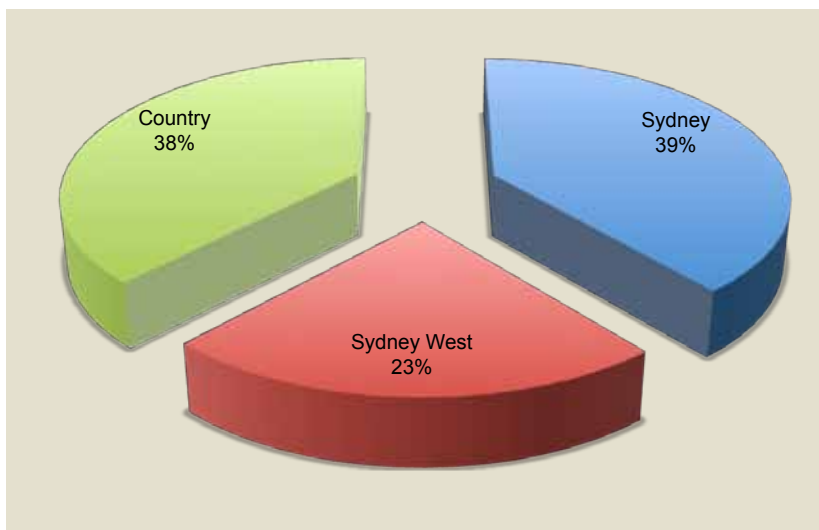
Appendix 5: Recovery of proceeds of crime (continued)

Number of Applications and estimated value



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

CoPoCA estimated value by region 2010/11



Between 1 July 2010 and 30 June 2011, 1,910 matters have been identified on CASES where confiscation action warrants consideration.

APPENDIX 6: COST EFFICIENCY

Costs were awarded against the ODPP in 2010/11 in 64 matters; this is an increase from 54 matters in 2009/10. The total value of costs orders made in 2010/11 was \$1,288,155.

Matters where costs awarded against ODPP				
	2007/8	2008/9	2009/10	2010/11
Criminal Procedure Act	39	59	35	35
Costs in Criminal Cases Act	11	5	14	17
“Mosely” Orders	2	5	1	9
Crimes (Appeal & Review) Act	5	0	4	1
CoPoCA				2
Total number of orders	57	69	54	64
Total value of orders made	\$600,262	\$535,252	\$352,373	\$1,288,155
Number of matters dealt with by ODPP in period	15,123	17,023	16,862	16,254
Number of costs awarded where fault of prosecution	9	12	6	18
Percentage of matters where costs orders were made due to the conduct of the prosecution	0.05%	0.07%	0.04%	0.11%

Value and number of costs orders awarded against the ODPP



APPENDIX 7: CCA STATISTICS

Finalised Appeals in 2010-2011

A. Appeals by offenders		260
■	Conviction and sentence appeals	87
■	Sentence appeals	166
■	Summary dismissals	(defence 5F counted at c below) 0
■	Appeals abandoned	7
B. Crown Inadequacy Appeals Finalised		58
■	Abandoned	13
■	Allowed	26
■	Dismissed	19
C. Appeals Against Interlocutory Judgments Or Orders (s.5F Appeals)		17
D. Stated Cases From The District Court		1
Total Appeals Finalised		336

Conviction And Sentence Appeals Finalised In 2010-2011 in Court of Criminal Appeal	No.	%
Summary Dismissal	0	0%
Appeals Dismissed	61	67%
Appeals Allowed	26	29%
Abandoned	4	4%

Results of Finalised Conviction and Sentence Appeals in Court of Criminal Appeal in 2010-2011	No.	%
Appeals Dismissed	61	70%
Retrials	18	21%
Acquittals	8	9%

Sentence Appeals Finalised In Court Of Criminal Appeal In 2010-2011	No.	%
Summary Dismissals	0	0%
Appeals Dismissed	85	50%
Appeals Allowed	81	48%
Abandoned	3	2%

APPENDIX 8: SIGNIFICANT LEGISLATION

Crimes (Sentencing Procedure) Amendment Bill 2010

Assent 7/12/2010. Commencement 14/3/2011

This Bill amended the **Crimes (Sentencing Procedure) Act 1999** (the **Sentencing Act**) and certain other Acts to implement recommendations of the NSW Sentencing Council in its report "Reduction in Penalties at Sentence" of August 2009, and amended the **Sentencing Act** to provide for the aggregation of sentences.

Consultation with victim during charge negotiation

The Sentencing Council Report in Recommendation 11 had a direct impact on the procedures to be followed by the ODPP in circumstances where charge negotiation has occurred, recommendation 11 provided:

"(i) any statement of facts tendered to the court on sentence to be accompanied by a certificate signed by an appropriate responsible officer to the effect that the statement of facts has been the subject of consultation with the victim (or his or her family where the victim is deceased), and with the police officer-in-charge of the case and that the statement constitutes a fair and accurate account of the objective criminality of the offender having regard to the relevant and provable facts. Where there has been no such consultation, the certificate should record the reasons why that has not occurred.

(ii) any Form 1 listing additional matters to be taken into account on sentence to be accompanied by a certificate signed by an appropriate responsible officer to the effect that there has been consultation with the victim the subject of the charge in respect of which the Form 1 matters have been taken into account, and with the police officer-in-charge of the case, so far as that has been possible, that the terms thereof have been recorded, and that the inclusion of each matter in the Form 1 is in accordance with ODPP Guidelines. Where there has been no such consultation the certificate should record the reasons why that has not occurred."

Section 35A implementing this recommendation was proclaimed on 14 March 2011. Section 35A applies to any proceedings where there has been a plea negotiation.

Consultation is required with the victim, as defined in s26. That means a primary victim or a family victim. "Primary victim" means a person against whom an offence was committed,

or a witness to the act of actual or threatened violence, the sexual offence, the death or infliction of physical bodily harm concerned, being in either case a person who has suffered actual physical bodily harm or psychological or psychiatric harm as a result of the offence. "Family victim" in relation to an offence as a direct result of which a primary victim has died means a person who was, when the offence was committed, a member of the primary victim's immediate family (which expression itself is defined in s26) whether or not that person has suffered personal harm as a result of the offence.

Section 35A (2) provides that the court cannot on sentence take into account matters on the Form 1 or the statement of agreed facts unless the certificate has been filed.

Further amendments to sentencing procedure were introduced by this Bill including:

Guilty pleas

Section 22 of the **Sentencing Act** requires a court to take a guilty plea into account in passing sentence for an offence and enables it to impose a lesser penalty than it would otherwise have imposed.

In accordance with Sentencing Council Recommendation 1, section 22 of the **Sentencing Act** was amended to require a court to take into account the circumstances in which an offender indicated an intention to plead guilty in passing sentence. It allows the court to take into consideration factors that may have affected the timeliness of the offender's offer or willingness to plead guilty.

Sentencing Council Recommendation 2 is implemented by amending section 22 of the **Sentencing Act** to specifically require that any lesser penalty imposed by the court under the section must not be unreasonably disproportionate to the nature and circumstances of the offence.

Power to reduce penalties for pre-trial disclosure

Section 22A of the **Sentencing Act** gives a court the discretion to impose a lesser penalty than it would otherwise impose on an offender, having regard to the degree to which the offender made pre-trial disclosures for the purposes of the trial.

Sentencing Council Recommendation 8 was implemented by amending section 22A to enable a court to impose a lesser penalty having regard to the degree to which the administration of justice has been facilitated by the defence (whether by disclosures made pre-trial or during the trial or otherwise).

Appendix 8: Significant Legislation (continued)

Power to reduce penalties for assistance provided to law enforcement authorities

Section 23 of the **Sentencing Act** empowers a court to impose a lesser penalty if an offender has assisted, or undertaken to assist, law enforcement authorities in the prevention, detection or investigation of an offence and sets out various factors to be taken into account in deciding whether to impose the lesser penalty.

Sentencing Council Recommendations 4 and 5 are implemented by repealing sections 23 (2) (a) and 23 (2) (j), respectively, of the **Sentencing Act**.

The provisions repealed specify as factors the effect of the offence on the victim or victims of the offence and their families and the likelihood of the offender re-offending on release. The Sentencing Council stated that these factors served no useful purpose in the context of section 23 (para 8.44–47 of the Report).

In accordance with Sentencing Council Recommendation 6 sections 23 (4) – (6) were introduced. It requires a court that imposes a lesser penalty than it would otherwise impose on an offender because the offender has assisted or undertaken to assist law enforcement authorities, to indicate to the offender, and make a record of the fact, that the lesser penalty is being imposed for that reason, to state the penalty that it would otherwise have imposed and, where the lesser penalty is being imposed for both reasons, to state the amount by which the penalty has been reduced for each reason.

Fact that offender is prohibited person to be disregarded in sentencing

Section 24A of the **Sentencing Act** provides that a court must not take into account, as a mitigating factor in sentencing an offender, certain matters relating to mandatory supervision of sex offenders.

Sentencing Council Recommendation 9 is implemented by including within section 24A the fact that an offender is prohibited from engaging in child-related employment under the **Commission for Children and Young People Act 1998** as a result of being convicted of a serious sex offence, the murder of a child or a child-related personal violence offence.

Confiscation of assets and forfeiture of proceeds of crime to be disregarded in sentencing

Sentencing Council Recommendation 10 is implemented by inserting section 24B into the **Sentencing Act** to prevent a court from taking into account, as a mitigating factor in sentencing, the consequences for the offender of any order of a court imposed because of the offence under confiscation or forfeiture legislation (for example, forfeiture orders,

pecuniary penalty orders and drug proceeds orders under the **Confiscation of Proceeds of Crime Act 1989**).

Aggregate Sentencing

The Sentencing Act was also amended to enable a court, in sentencing an offender for more than one offence, to impose an aggregate sentence of imprisonment in respect of all or any 2 or more of those offences instead of imposing a separate sentence of imprisonment for each (section 53A).

The term of an aggregate sentence of imprisonment must not be more than the sum of the maximum periods of imprisonment that could have been imposed if separate sentences of imprisonment had been imposed in respect of each offence to which the sentence relates and must not be less than the shortest term of imprisonment (if any) that must be imposed for any separate offence or, if the sentence relates to more than one such offence, must not be less than the shortest term of imprisonment that must be imposed for any of the offences (section 49 (2)).

A court that imposes an aggregate sentence of imprisonment in respect of 2 or more offences on an offender may set one non-parole period for all the offences to which the sentence relates after setting the term of the sentence. The term of the sentence that will remain to be served after the non-parole period set for the aggregate sentence of imprisonment is served must not exceed one-third of the non-parole period, unless the court decides that there are special circumstances for it being more (in which case the court must make a record of its reasons for that decision) (section 44 (2A) and (2B)).

Courts and Crimes Legislation Amendment Act 2010 (No 88)

Assent and commencement 1/11/2010.

Committal Hearings: Offences involving violence and special reasons

Section 94 of the Criminal Procedure Act 1986 lists offences that are offences involving violence for the purposes of section 93 which prohibits a Magistrate from directing the attendance of a victim to give evidence in committal proceedings where the accused is charged with an offence involving violence unless satisfied that there are special reasons. Subsection (f1) was inserted into section 94(1) to provide that "an offence the elements of which include the commission of, or an intention to commit, an offence referred to in any of the above paragraphs" falls within the meaning of offence involving violence. This amendment, for example, includes an offence against section 112(2) of the Crimes Act 1900 (aggravated break and enter and commit serious indictable offence) where the serious indictable offence falls

Appendix 8: Significant Legislation (continued)

within section 94. Other offences include attempts to murder, wounding etc with intent to do grievous bodily harm or resist arrest, infliction of grievous bodily harm, abduction or kidnapping, robbery, an offence the elements of which include the commission of, or an intention to commit, any of offences referred to, an offence that, at the time it was committed, was an offence involving violence for the purposes of section 93 and any other offence that involves an act of actual or threatened violence that is prescribed by the regulations for the purposes of the section.

Courts and Crimes Legislation Further Amendment Act 2010 (No 135)

Assent 7/12/2010; Commencement 7/12/2010 (LW 17/12/2010)

The following amendments were made to **Criminal Procedure Act 1986** and **Victims Rights Act 1996**

Online Committals

To conduct a 12-month trial of an 'online court' to manage committal proceedings at the Downing Centre Local Court, amendments were made to allow certain aspects of the committal proceedings to be conducted in the absence of the public, but only for the purpose of facilitating the use of an electronic case management system in those proceedings under the Electronic Transactions Act 2000. The hearing of a matter may be conducted in the absence of the public, with the consent of the parties to the proceedings concerned, if the matter:

- (a) arises after the first appearance of the accused person in committal proceedings, and
- (b) is of a procedural nature, and
- (c) does not require the resolution of a disputed issue, and
- (d) does not involve a person giving oral evidence.

Trial by Judge Alone

Section 132 **Criminal Procedure Act 1986** relating to trial by judge alone in criminal proceedings in the Supreme Court and the District Court has been substituted. Under the new section 132, both the accused person and the prosecutor may apply to the court for an order that the accused person be tried by judge alone. The order must be made if both agree but cannot be made if the accused person does not agree. If the prosecutor does not agree, the court may make an order if it considers it to be in the interests of justice to do so. The court must not make an order unless it is satisfied that the accused person has obtained legal advice about the effect of the order. Despite all of those provisions, the court may make

an order if there is a substantial risk of jury tampering offences occurring and there is no other way of reasonably mitigating that risk. The new section also provides for the time within which applications for orders must be made and applications in joint trials.

Sexual Offence Witnesses

The **Criminal Procedure Act 1986** was amended to extend to certain tendency witnesses the special arrangements that apply to the giving of evidence by complainants in sexual offence cases. This witness is a person who is alleged to have been the victim of acts of the accused person that would constitute a prescribed sexual offence were those acts to occur in New South Wales at the time of the proceedings. These witnesses are now called "sexual offence witnesses" and are entitled to give their evidence from remote witness rooms, have support people, closed courts, the use of an intermediary when the accused is unrepresented as well as other provisions in Chapter 6 Part 5 Division 1 of the Act. The definition of "sexual assault offence" for the purposes of that Division has been extended to include acts that would constitute a prescribed sexual offence if those acts had occurred in this State, had occurred at some later date or had both occurred in this State and occurred at some later date.

Sexual Assault Communication Privilege

The provisions in the **Criminal Procedure Act 1986** relating to the Sexual Assault Communications Privilege (Chapter 6, Part 5, Division 2) have been extensively amended as a result of the Sexual Assault Communications Privilege Pro Bono Pilot (in which ODPP took part) and the subsequent Evaluation which contained a number of recommendations for legislative change. The amendments clarify that the criminal proceedings to which sexual assault communications privilege applies include pre-trial and interlocutory proceedings.

New requirements are

- that a document or evidence containing a protected confidence (a communication made during counselling by, to or about a victim of a sexual offence) can only be produced or adduced into evidence in relation to criminal proceedings with the leave of the court. Protected confidences continue to be inadmissible in relation to preliminary criminal proceedings (committal and bail proceedings).
- A court must satisfy itself that a witness, party or protected confider (the victim or other person who made the protected confidence), who may have grounds for making an application for leave or objecting to the production of a document or the adducing of evidence, is aware of the relevant provisions of Division 2 of Part 5 of Chapter 6 of the Criminal Procedure Act and has

Appendix 8: Significant Legislation (continued)

been given a reasonable opportunity to seek legal advice. This extends a similar requirement that currently applies only in respect of witnesses and parties. A victim now has standing in criminal proceedings or preliminary criminal proceedings if a document is sought to be produced or evidence is sought to be adduced that may disclose a protected confidence made by, to or about the victim.

- If a question arises relating to a document or evidence, a court may order the document or evidence to be produced or adduced to it for inspection or consideration. This is to be done in the absence of any jury. The document or evidence can be disclosed to a party other than the victim only if it does not contain a protected confidence or the court has given leave and the disclosure is consistent with that leave.
- An applicant for leave is required to give notice of the application to each relevant victim (or the victim's nominee) as soon as is reasonably practicable. If the victim is not a party to the proceedings the notice can instead be given to the prosecutor (or if the regulations prescribe another person or body, to that other person or body). The prosecutor must give a copy to the victim within a reasonable time after its receipt. A court cannot grant leave until at least 14 days after all necessary notices have been given but the court can fix a shorter period. The court can also waive a requirement to give notice in exceptional circumstances, if the victim consents or if notice has already been given in the proceedings in relation to the protected confidence.
- A court, when determining the leave application, is now required to take a number of factors into account including that the effectiveness of counselling is likely to be dependent on the maintenance of the confidentiality of the counselling relationship and that the adducing of the evidence is likely to infringe a reasonable expectation of privacy. The court is also able to permit a confidential statement to be made to it by or on behalf of the victim by affidavit specifying the harm the victim is likely to suffer if the application for leave is granted. The court must not disclose a confidential statement to a party other than the victim.

Victims Rights Act

The **Victims Rights Act 1996** was amended so that the provisions in the Charter of Victims Rights (the **Charter**) are expressed as matters that "will be", rather than should be, afforded to victims of crime. Amendments have also been made to the Charter to provide that a victim may make a complaint about a breach of the Charter and will, on request, be provided with information on the procedure for making a complaint. This information can be provided by Victims Services (formerly the Victims of Crime Bureau) of the Department of Attorney General and Justice or the

ODPP or other agency that is dealing with the victim's matter. Amendments have also been made to extend the application of the Charter to the provision of services to victims of crime by non-government agencies or persons funded by the State to provide those services, to provide for the publication of codes, guidelines and other practical guidance on the implementation of the Charter; to clarify the primary role of Victims Services in implementing the Charter and to increase the number of members of the Victims Advisory Board that represent the general community from 4 to 6 members.

Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010 (No 48)

Assent 28/6/2010. Commencement, except Sch 3, on 1/10/2010.

The **Crimes (Sentencing Legislation) Amendment (Intensive Correction Orders) Act 2010** (the amending Act) amends the **Crimes (Sentencing Procedure) Act 1999** to create intensive correction orders, (ICOs) a new form of community sentencing order which replaces but does not replicate periodic detention orders. On commencement of the amending Act, periodic detention orders can no longer be imposed.

Amendments to the Crimes (Sentencing Procedure) Act 1999

New section 7 provides that a court which has sentenced an offender to imprisonment for not more than two years may make an ICO "directing that the sentence be served by way of intensive correction in the community." In making an ICO, a court is precluded from setting a non-parole period.

The new section 7 is subject to Part 5 (**Sentencing procedures for intensive correction orders**) and under s 64 "applies in circumstances in which a court is considering, or has made, an intensive correction order." Restrictions on the power to make ICOs are set out in Part 5, Div 2. Under section 66, ICOs cannot be imposed for a sentence of imprisonment for a "prescribed sexual offence".

Under section 67(1) a court may only make an ICO regarding a sentence of imprisonment where it is satisfied that the offender is of or above the age of 18 years; is suitable to serve an ICO; it is appropriate that the sentence be served by way of ICO; and that the offender has signed an undertaking to comply with his or her obligations under the order.

Prior to imposing an ICO, a court may refer an offender for an assessment as to their suitability for intensive correction in the community: section 69. A court referral for a suitability assessment may only be made after the court is satisfied

Appendix 8: Significant Legislation (continued)

that no other sentence, other than one of imprisonment, is appropriate and that such sentence is likely to be for no more than two years: section 69(2). Under section 67(2) in determining whether to make an ICO, a court is to consider an offender assessment report provided under section 70 and evidence from the Commissioner of Corrective Services which the court considers is necessary to determine whether an ICO should be made.

Amendments to the Crimes (Administration of Sentences) Act 1999

Under Part 3, Div 1, s 82(2), the sentencing court is required to impose those conditions on an ICO which are specified as mandatory under clause 175 of the **Crimes (Administration of Sentences) Regulation 2008**. Examples of the 17 mandatory conditions are good behaviour, living at premises approved by a supervisor and not using prohibited drugs, obtaining drugs unlawfully or abusing drugs which are lawfully obtained.

APPENDIX 9: SIGNIFICANT JUDICIAL DECISIONS

High Court of Australia

Wainohu v The State of NSW [2011] HCA 24

23 June 2011

In July 2010 the Acting Commissioner of Police for NSW applied to a judge of the Supreme Court for a declaration under Part 2 of the then NSW *Crimes (Criminal Organisations Control) Act 2009* (the Act) to the effect that the Hells Angels Motorcycle Club was a 'declared organisation'. Such a declaration could be made if an eligible judge were satisfied that the members of the organisation associated for the purpose of organising, planning, facilitating, supporting or engaging in serious criminal activity and that the organisation represented a risk to public safety and order in New South Wales. If such a declaration were made the Supreme Court became empowered to make control orders against individual members of the club, with the effect that such individuals would be prohibited from associating with one another and barred from certain classes of business and occupation.

The plaintiff, a member of the Hells Angels Motorcycle Club, applied to the High Court of Australia for a declaration that the Act was invalid on the basis that it conferred functions upon eligible judges and upon the Supreme Court which undermined the institutional integrity of that Court in a way inconsistent with the national integrated judicial system for which Chapter III of the Constitution of the Commonwealth provides.

By majority, the High Court held that s 13(2) of the Act, which permitted an eligible judge to make a declaration under Part 2 without providing any grounds or reasons for doing so, was for that reason incompatible with the institutional integrity of the Supreme Court, and invalid. The effect of the invalidity of s 13(2) could not be avoided by severance, and accordingly the entire Act was declared invalid.

Court of Criminal Appeal

Blackwell v Regina [2011] NSWCCA 93

15 April 2011

On 13 October 2007 the Appellant allegedly struck the victim in the face with a glass causing the loss of the victim's eye.

On 18 December 2008 the Appellant was found guilty by a jury of "Maliciously inflict grievous bodily harm with intent to do grievous bodily harm" contrary to s 33(1)(b) of the

Crimes Act 1900. At the trial the Crown also purported to rely upon an alternative count of "Maliciously inflict grievous bodily harm" contrary to s 35(1)(b) of the *Crimes Act 1900*, on the basis that s 35 was a statutory alternative to a count under s 33.

On appeal to the CCA against his conviction the accused alleged, inter alia, that there had been a miscarriage of justice in that the alternative count under s 35 was expressed in terms that did not reflect the elements of that offence at the time of its alleged commission.

The CCA allowed the appeal on this ground, and directed that there be a new trial.

The CCA made the following observations in its judgment:

As and from 27 September 2007 the former s 35(1)(b) of the *Crimes Act* ("Maliciously inflict grievous bodily harm") was repealed, and replaced by the new s 35(2) ("Recklessly cause grievous bodily harm"). Accordingly it was the new form of s 35(2) that should have been left to the jury as an alternative to the offence under s 33. However the directions to the jury were given under the erroneous assumption that a verdict for the former s 35(1)(b) offence of "Maliciously inflict grievous bodily harm" was available.

Pursuant to that erroneous assumption, the trial judge directed the jury that the term "maliciously" in the charges under both s 33 and s 35 meant "intending to cause some physical injury". That was one of the mental states that fell within the definition of the term "maliciously" in s 5 of the *Crimes Act*. 'Recklessness' was another mental state which fell within the statutory meaning of 'maliciously'. In *R v Coleman* (1990) 47 A Crim R 306 Hunt J said in relation to the term "reckless" in the definition of "malicious" in s 5 that "...in statutory offences other than murder, the degree of recklessness required in order to establish that an act was done maliciously was a realisation on the part of the accused that the particular kind of harm in fact done (that is, some physical harm – but not necessarily the degree of harm in fact so done) might be inflicted (that is, may possibly be inflicted) yet he went ahead and acted."

However in relation to the new offence under s 35(2) of "Recklessly cause grievous bodily harm" there was no definitional construct which governed its meaning. There was a requirement of 'recklessness' which meant there must be a foresight of the possibility of something. The terms of the offence required that the recklessness must cause grievous bodily harm, and there was no basis upon which that term could be read down to mean 'some physical injury'. There was a difference of substance between an intention to inflict some physical injury (the former s 35(1)(b)) and recklessness as to

Appendix 9: Significant Judicial Decisions (continued)

whether grievous bodily harm would be inflicted (the new s 35(2)).

Accordingly the jury should have been directed that if the appellant was to be found guilty of the alternative count, they had to be satisfied that he realised that by thrusting the glass into the victim's face it was possible that grievous bodily harm, that is really serious injury, would be inflicted and yet went ahead and acted.

The CCA held that even though the appellant was convicted of the offence alleged under s 33, the leaving of the wrong alternative count to the jury amounted to a denial of procedural fairness of a significant kind, and therefore a miscarriage of justice.

R v Lane [2011] NSWCCA 157

Keli Lane was charged with the murder of her baby daughter as well as three counts of perjury. She pleaded not guilty and a trial before a jury and his Honour Justice Whealy followed. During the course of the trial his Honour made a number of interlocutory rulings with respect to evidence and other matters. One of the rulings (*R v Keli Lane [No 13]* [2010] NSWSC 1540, 3 November 2010) concerned evidence tendered by the Crown of three statements made by the respondent that the Crown contended to be lies, and lies that the respondent had told because she was conscious that she was guilty of the offence of murder. Although there was no issue that the evidence of the statements said to have been made by the respondent was admissible, and relevant to the assessment of the general credibility of the respondent, Whealy J refused to allow the Crown to rely upon the statements as evidence indicating consciousness of guilt. His Honour said that the account that the respondent gave the baby to the natural father was "not merely peripheral to, or simply part of" the defence case, but was the defence case. He therefore held that a jury could only determine that the Andrew Morris/Andrew Norris story was a lie if they were to accept the entirety of the Crown's circumstantial case.

The Director of Public Prosecutions appealed during the course of the trial to the Court of Criminal Appeal against that ruling refusing to allow the Crown to rely upon the statements as evidence indicating consciousness of guilt. That appeal was pursuant to section 5F(3A) of the **Criminal Appeal Act 1912** which provides that: "*The Attorney General or the Director of Public Prosecutions may appeal to the Court of Criminal Appeal against any decision or ruling on the admissibility of evidence, but only if the decision or ruling eliminates or substantially weakens the prosecution's case.*" The matter was listed speedily before the Court of Criminal Appeal as the Crown case in the trial was nearing completion at the time of the hearing before the CCA. There was no contest at the hearing of the appeal that the ruling made by his Honour "*substantially weakened the Crown case*" within the terms of section 5F(3A).

The Court of Criminal Appeal found (per Simpson J at [71]) that

"There was a considerable circumstantial case upon which the Crown relied to demonstrate that each of the respondent's accounts of what she had done with Tegan was a lie. This was not, as was suggested, co-extensive with the circumstantial case of murder that the Crown sought to make. That is not to say that there were not common elements, or that the circumstantial case to prove lies was entirely quarantined from the circumstantial case on murder. It was therefore not correct to say that the jury could only find the Andrew Morris/Andrew Norris story to be a lie if they accepted the entirety of the Crown case. It was for the jury to determine whether or not any of the statements was false, and if so whether it was deliberately false; and, finally, whether any statement found to be false was made out of consciousness of guilt of the crime of murder."

The Court also (per Simpson J at [75]) found that it was an error for his Honour to say that the suggested modes of proof: "*... by no means answers the description of immediate pieces of independent evidence capable of demonstrating, in a straightforward and simple manner, that the defence case is a lie.*"

The Court stated (at [75]) that

"There is no requirement that evidence of a lie demonstrate "in a straightforward and simple manner" that a statement is a lie; there will be occasions where evidence in a Crown case is complex and difficult to follow, but is nevertheless admissible."

Court of Appeal

Roads and Traffic Authority of NSW v Higginson [2011] NSWCA 151

20 June 2011

On 8 June 2010, following a conviction in the Local Court for "Negligent Driving Causing Grievous Bodily Harm", the respondent was ordered to perform 100 hours of community service and disqualified from holding a driver's licence for a period of 12 months from that date. Pursuant to s 188(2)(d) (ii) of the *Road Transport (General) Act 2005*, 12 months was the minimum disqualification period permitted to be imposed.

On 16 June 2010 the Respondent lodged an appeal to the District Court against his sentence, with the consequence that both the community service order and the order for disqualification were stayed from that date until the appeal was determined, subject to any further order of the appeal court (pursuant to s 63 of the *Crimes (Appeal and Review) Act 2001*).

Appendix 9: Significant Judicial Decisions (continued)

On 26 July 2010 the District Court determined the appeal by ordering that the community service order be quashed and replaced by a good behaviour bond for a period of 12 months pursuant to s 9 of the *Crimes (Sentencing Procedure) Act 1999*. In addition the court confirmed the 12 month disqualification period, but ordered that it was to date from 8 June 2010 and expire on 7 June 2011, thus including the 40 days when the disqualification was stayed.

The Roads and Traffic Authority (RTA) sought to have the proceedings re-opened before the District Court pursuant to s 43 of the *Crimes (Appeal and Review) Act*, contending that the disqualification period ordered was in breach of s 189(6) of the *Road Transport (General) Act 2005*, which stipulates that any period for which a stay of the operation of a disqualification period is in force under s 63 of the *Crimes (Appeal and Review) Act* is not to be taken into account when calculating the length of a period of disqualification. The RTA did not however identify the specification of an end date for the disqualification period as an error. The District Court declined to alter the orders made.

The RTA then commenced the instant proceedings in the Court of Appeal seeking judicial review of the orders made by the District Court in relation to the period of disqualification.

The Court of Appeal firstly determined that, despite not being a party to the proceedings before the District Court, the RTA had standing to invoke the supervisory jurisdiction of the Court of Appeal in the public interest as it had responsibility for the administration of the order and there was doubt as to its proper effect.

In relation to the substance of the application the Court of Appeal held that, while it was open to the District Court to backdate the commencement of the disqualification period (pursuant to s 68(1) of the *Crimes (Appeal and Review) Act*), the District Court exceeded its jurisdiction in purporting to order an expiry date for the disqualification period which was inconsistent with the minimum 12 month disqualification period mandated by statute. By confirming the period of the disqualification from 8 June 2010 and identifying 7 June 2011 as the date it was to end, the District Court effectively reduced the period of disqualification by the 40 days during which the operation of the disqualification was stayed. The disqualification period effectively imposed therefore was not one permitted by law in that it was less than 12 months, and its imposition constituted jurisdictional error.

Accordingly the Court of Appeal set aside that part of the order of the District Court which specified that the disqualification period expired on 7 June 2011.

Supreme Court of NSW

DPP v Strang [2011] NSWSC 259

8 April 2011

The defendant was observed in a Best & Less store, despite having previously been served with a notice issued by Best & Less Pty Ltd banning him from entering any of the company's stores (as a result of an earlier incident). He was charged with "Enter inclosed lands without lawful excuse" pursuant to s 4(1)(b) of the *Inclosed Lands Protection Act 1901*. A Local Court Magistrate dismissed the charge on the basis that the Best & Less store was incapable of constituting "inclosed lands" within the meaning of the legislation because there was an implied general invitation to the public to attend those premises.

An appeal to the Supreme Court against the dismissal of the charge was allowed, and the matter remitted to the Local Court for re-hearing. After a detailed analysis of the history of the legislation the Supreme Court held that the premises, as revealed by the evidence, did fall within the definition of "inclosed lands". The issue of whether members of the public were allowed access to the premises did not, contrary to the Magistrate's findings; bear upon the question of the status of the premises as "inclosed lands". Specifically, the Magistrate fell into error in eliding the question of whether the premises were capable of falling within the definition of the term 'inclosed lands' with the separate question of whether persons who may have access have a lawful excuse for doing so.

DPP v Fungavaka [2010] NSWSC 917

26 August 2010

On 14 April 2009 the respondent was charged with common assault in that he allegedly punched a 14 year old youth. The charge was listed for hearing on 16 June 2009.

Pursuant to s 183(3) of the *Criminal Procedure Act* (the Act) the prosecution was required to serve the brief of evidence no later than 14 days before the hearing date. Pursuant to s 188(1) of the Act the court was obliged to refuse to admit evidence if particular provisions including s 183(3) had not been complied with, however pursuant to s 188(2) the court was permitted to dispense with the requirements of subsection (1) on such conditions as appeared just and reasonable, and under s 187(4) was permitted to grant 1 or more adjournments if the copy of the brief had not been served as required and the court considered it just and reasonable to do so.

Appendix 9: Significant Judicial Decisions (continued)

On 16 June 2009 the Local Court was informed that the respondent had not been served with the brief until 12 June 2009. He was unrepresented, but had taken steps to apply for legal aid. The reason for the late service was that the brief had been misplaced by the police brief handling section. When the police officer in charge was informed of that on 12 June 2009 he made a further copy of his own brief and served it that day.

The police prosecutor sought an adjournment and an extension of time for service of the brief. When it appeared that the magistrate might not grant that application the prosecutor also sought a dispensation under s 188(2) of the relevant requirements. The Magistrate refused both applications and dismissed the charge, stating that in his view no adequate reason had been given for the failure to serve the brief within the statutory period.

Subsequently the DPP took over the conduct of the prosecution and instituted an application to the Supreme Court for judicial review of the Magistrate's orders.

The Supreme Court quashed the Magistrate's orders refusing the adjournment and dismissing the proceedings, and remitted the matter to the Local Court to be dealt with according to law.

The Supreme Court held that the Magistrate fell into error in that he based his decision solely on the failure of police to serve the brief on time, and did not have appropriate regard for the competing policy considerations, including the legitimate public interest in the conviction of those guilty of crime, the seriousness of the offence and the issue of the prejudice to the prosecution and the respondent caused by his determination. In all the circumstances the grant of an adjournment under s 187(4) was the only course reasonably available to the magistrate.

APPENDIX 10: 2010-2011 EEO ACHIEVEMENTS

The Office continues to encourage staff to complete the EEO Survey. In this last year we maintained a 89% response rate. This was achieved by promoting the completion of survey during staff inductions.

Materials provided to new staff in formal inductions include Fairways, a Department of Premier and Cabinet information flyer, an extract from the Office Grievances handling procedures and an interactive activity to promote Dignity in the Workplace.

The Office has launched a targeted Indigenous Legal Development Programme placement. This role was filled successfully when one Indigenous graduate joined the Office this year. The Office also advertised our large recruitment campaigns in the Koori Mail (twice this year) in order to attract applications from experienced Indigenous lawyers.

To increase the number of young people employed with the Office, the Office implemented the Jump Start program with two 12 month placements being offered: one in Human Resources in Head Office and the other in Newcastle.

The EEO Survey was redrafted to be more specific and thus encourage staff with a disability who have yet to advise the Office to share this information.

During 2010-2011 the Office continued to provide flexible work practices. We focused on ensuring that staff were working reasonable hours, taking time off and reducing their flex balances. At the end of this year, the Office supported 15% of its workforce working part time. Of this, 46% of the part-time workforce is made up of lawyers and 5% are senior counsel.

The Office continues to ensure that equity and diversity factors are considerations when all policies are reviewed and that all related decisions are equitable and non-discriminatory.

APPENDIX 11: EQUAL EMPLOYMENT OPPORTUNITIES STATISTICS

A. Trends in the Representation of EEO Groups						
EEO Group	% of Total Staff					
	Benchmark or Target	2007	2008	2009	2010	2011
Women	50%	60%	62%	62%	61%	60%
Aboriginal people and Torres Strait Islanders	2.6%	1.1%	0.7%	0.8%	0.7%	0.8%
People whose first language was not English	19%	16%	17%	16%	16%	16%
People with a disability	12%	5%	7%	5%	5%	5%
People with a disability requiring work-related adjustment	7%	1.7%	3.2%	2.2%	1.9%	1.8%

B. Trends in the Distribution of EEO Groups						
EEO Group	Distribution Index					
	Benchmark or Target	2007	2008	2009	2010	2011
Women	100	80	82	83	85	86
Aboriginal people and Torres Strait Islanders	100	n/a	n/a	n/a	n/a	n/a
People whose first language was not English	100	92	88	89	91	91
People with a disability	100	93	93	94	94	95
People with a disability requiring work-related adjustment	100	n/a	96	n/a	n/a	n/a

Notes:

1. Staff numbers used from the Workforce Profile.
2. Excludes casual staff.
3. 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.
4. The Distribution Index is not calculated where EEO group or non-EEO group numbers are less than 20.

APPENDIX 12: GOVERNMENT ENERGY MANAGEMENT PLAN (GEMP)

The Office of the Director of Public Prosecutions (ODPP) continued its commitment to sound energy management practices during the reporting year and achieved a good result in respect to energy management measures implemented in 2009 and reported in last year's Annual Report.

The Office implemented, in the Sydney Office refurbishment at 175 Liverpool Street, energy efficient technology and equipment and as a result of this technology, equipment and sound energy efficiency practices, received a 5 star NABERS tenancy rating following its June 2011 assessment.

The Office submitted its 2010 GEMP Report in October 2010 and will submit the 2011 Report in October 2011.

The ODPP has demonstrated its commitment to energy management by:

- installing energy efficient equipment, lighting and utilities.
- utilising energy more efficiently and eliminates wastage.
- buying energy at the most economical price purchasing in-contract Green Power.
- purchasing energy efficient star-rated equipment and providing training in its operation.
- making 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. This awareness is factored into the training in the use of the equipment.
- ensuring all major refurbishments improve the Office's energy management by implementing energy management methodology, i.e. lighting, etc. 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, and 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 energy star rating requirements and reduce equipment overall by consolidating copiers, printers, facsimile and scanning machines by purchasing and utilising Multi-Function Devices (MFD). The Office is currently undertaking a printer rationalisation project to reduce significantly the number of standalone printers throughout the Office by utilising the MFD's. Power, toner, paper and maintenance costs efficiencies will all be achieved.
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 the close of business.

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

Future Direction

As previously reported, the Office does not have a great deal of opportunity in this regard in that we utilise the basic power sources. It is however our intention to manage our energy use by buying appropriate in-contract sources of power, equipment, and implementing sound energy management practices. It is also our intention when the opportunity exists to provide quality energy efficient fit outs for our staff.

The ODPP is committed to assist the Government in attaining its energy management goals.

The assessment of the NABERS tenancy energy rating for the new Parramatta office will be undertaken after 12 months in occupation, i.e. February 2012. Similar technology was used at Parramatta as was used in the Sydney Office fitout and we can expect a similar 5 star rating when the assessment is undertaken.

APPENDIX 13: WASTE REDUCTION AND PURCHASING PLAN AND RECYCLING (WRAPP)

Introduction

The Office complies with the NSW Government Waste Reduction and Purchasing Policy (WRAPP). The Office's bi-annual WRAPP report to the Office of Environment and Heritage (OEH) is due on 31 August and information on recycling and waste is currently being collected and will cover the 12 month reporting period from 1 April 2010 to 31 March 2011. Because of the due date for the WRAPP to OEH, the performance of the Office in waste reduction and purchasing for the reporting period will therefore be detailed in the Office's next Annual Report covering the period July 2011 to June 2012.

The ODPP is committed to waste reduction in accordance with the Government's strategies and initiatives. Since the introduction of the waste reduction and procurement methodology, the ODPP has endeavored to implement effective waste reduction mechanisms wherever it is economically viable to do so. Recycling, reusing and buying products that have a recycled content or are low waste products are the basis to our thinking.

The ODPP's office profile remains as a Sydney office at 175 Liverpool Street, three greater Sydney offices at Parramatta, Penrith and Campbelltown and six Country Offices at Lismore, Newcastle, Gosford, Dubbo, Wollongong and Wagga.

Reduce Waste and Recycle

ODPP's regional offices generally only occupy a small portion of space within multi-tenanted buildings which reduces our recycling and waste reduction ability. This is the case for seven of the ten ODPP locations where the building lessors are not prepared to or are not committed to recycling and waste reduction and will not provide space for the storage and collection of recycled/co-mingled bins. Sydney, Parramatta and Lismore are the exception and statistical reporting is confined to these locations. Sydney and Parramatta separate paper, cardboard and co-mingled items. The Lismore office has a co-mingled collection system in place introduced in 2011. Equipment and furniture recycling is across all Offices as is the procurement of products with recycled content.

The Office has adopted already established Government strategies and piggy-backed on contracts or developed our own strategies or negotiated contracts to ensure where we can the reduction of waste and recycling within the Office. The Office continues to concentrate on the following wastes when implementing these strategies as we don't have many opportunities due to the business we are in:

- 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 and Co-mingled Waste.

The Office's commitment to waste reduction and recycling is reflected in the purchase of printed stock as follows:

1. Folders stock: the board used in file folders varies - Most is 40-60 percent recycled and has:

- environmental accreditation
- elemental chlorine free
- wood fibre from sustainable forests

All stock used has:

- environmental accreditation
- elemental chlorine free
- wood fibre from sustainable forests

2. Letterhead and With Compliments stock: 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

3. Business card stock: is not recycled, but has:

- environmental accreditation
- elemental chlorine free
- confirms to ISO 14001 International Standard

4. All envelope stocks are manufactured from predominantly recycled stock.

5. Brochure stock is recycled. It has the following credentials:

- 30 percent Recycled
- environmental accreditation
- elemental chlorine free
- wood fibre from sustainable forests

6. Where practical, soy based inks are used in preference to solvent based inks for printing.

7. A stringent recycling policy is in place for all paper waste.

The Office continues to apply the following strategies where the individual tenancy collection arrangements permit:

Paper Wastes Reduce the general consumption of paper by purchasing Multi Function Devices that offer multiple page and double-sided copying; ensuring clear and concise instructions and training in the use of copying machines and printers. Ensure multi-destination envelopes are available to staff for

Appendix 13: Waste Reduction and Purchasing Plan and Recycling (WRAPP) (continued)

use and re-use, avoiding the single-use envelope option. All suitable paper wastes are removed (where available) 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

Equipment Current strategies are to purchase multi function devices and combine the copy, printer, facsimile and scanning facilities. These machines are traded-in at the expiry of their serviceable life (5 years) and reused as re-engineered machines or stripped for the supply of parts. The ODPP has relocated these machines to low use ODPP chambers in Court Houses and managed the maintenance arrangements on an as-needs basis.

Furniture Furniture is re-used where possible or sold by auction or tender or transferred to other Government Departments. The closure of the Bathurst office saw available furniture reused where practicable and distributed to the Sydney and Regional offices or recycled.

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. The Parramatta office refurbished and occupied in January 2011 is the office most recently fitted-out with this technology. Photocopiers have power reduce buttons; air conditioning plant is fitted with timers to limit operation only to business hours. 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 Parramatta office fitout the action to place power points above desk-height and in easy reach so power points can be turned-off and eliminate power leakage even when the equipment is turned off. This action follows the success of this approach in the Sydney fitout.

Water Water efficient taps in bathrooms and kitchens and auto flushing systems in the men's toilets; 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 has identified standalone printing equipment that is to be removed and multi function devices will replace this equipment. The additional distance that staff will be required to walk to get access to these multi-function devices has been considered and deemed not an operational problem. Servicing, consumables and power cost savings will be achieved by the reduction of the standalone printers.

APPENDIX 14: CHIEF EXECUTIVE SERVICE AND SENIOR EXECUTIVE SERVICE

Number of CES/SES Positions	Total	Total	Total	Total	Total	Total	Total	Total
Level:	30 June 2004	30 June 2005	30 June 2006	30 June 2007	30 June 2008	30 June 2009	30 June 2010	30 June 2011
SES Level 1	3	3	3	2	3	3	3	3
SES Level 2	3	3	3	2	3	3	2	2
SES Level 3	-	-	-	-	-	-	-	-
SES Level 4	-	-	-	-	-	-	-	-
SES Level 5	-	-	-	-	-	-	-	-
SES Level 6	-	-	-	-	-	1	1	1
Statutory Appointments								
Under the DPP Act*	4	4	4	3	4	4	4	4
Number of positions filled by women	2	2	2	1	3	4	3	4

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

Staff Numbers	30 June 2004	30 June 2005	30 June 2006	30 June 2007	30 June 2008	30 June 2009	30 June 2010	30 June 2011
Statutory Appointed & SES	100	105	105	100	97	94	92	90
Lawyers	303	315	324	311	299	301	300	320
Administration & Clerical Staff	221	233	225	219	216	211	210	212
Total	624	653	654	630	612	606	602	622

Staff Profile used to prepare above statistics

Recruitment Statistics	2005/06	2006/07	2007/08	2008/09	2009/2010	2010/2011
Senior Executive Service	0	0	0	1	0	0
Statutory Appointed	0	0	0	0	0	0
Crown Prosecutors	2	2	1	0	2	0
Prosecution Officer (Lawyers)	17	25	19	28	18	32
Prosecution Officer (Admin)	73	41	45	48	35	50
Total	92	68	65	77	55	82

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

Appendix 14: Chief Executive Services and Senior Executive Service (continued)

Chief Executive Officer Statement of Performance

The Director of Public Prosecutions is a statutory appointment under Section 4 of the Director of Public Prosecutions Act 1986. The Director is responsible to Parliament and there is no annual performance review under the Public Sector Employment and Management Act 2002.

Nicholas Cowdery AM QC	
Period in position:	1 July 2010 – 18 March 2011
Position and level:	Director of Public Prosecutions
Remuneration:	\$390,550 pa (salary plus allowance as at 18 March 2011)

Ian D Temby AO QC	
Period in position:	19 March 2011 – 17 May 2011
Position and level:	Acting Director of Public Prosecutions
Remuneration:	Retained as private counsel

Luigi Maria Baliano Lamprati SC	
Period in position:	18 May 2011 – 30 June 2011
Position and level:	Acting Director of Public Prosecutions
Remuneration:	\$390,550 pa (salary plus allowance as at 30 June 2011)

Senior Executive Performance Statement

Nigel Hadgkiss	
Position Title:	Executive Director
SES Level:	6
Remuneration:	\$296,053 (Total Package)
Period in Position:	Appointed 29 October 2008 Contract expires 2012

Mr Hadgkiss achieved the performance criteria contained in his performance agreement. He provided high level advice to the Attorney General on management and strategic corporate services information.

As the ODPP's first Chief Audit Executive, Mr Hadgkiss was responsible for ensuring that the internal audit function adopted a risk based methodology for assessing and responding to audit issues. He discussed and negotiated internal audit results with senior management and made sure that the Internal Audit function was credible and accepted. During the year, he established the ODPP's Internal Audit Charter and Risk Register and instigated reviews of Procurement Practices and Payments and Banking Procedures.

APPENDIX 15: REPORT OF THE CHIEF INFORMATION OFFICER ON MAJOR IM&T PROJECTS DURING 2010/2011

Information Management and Technology Steering Committee

The IM&T Steering Committee (IM&TSC) is the management body convened to ensure and promote effective use and management of information and technology; to guide the selection, development and implementation of information and technology projects and to assure the strategic and cost effective use of information and systems to support ODPP activities. The Committee consists of the Chief Information Officer (currently the Deputy Solicitor (Operations)) as Chair; Executive Director; Solicitor for Public Prosecutions, Deputy Solicitor (Legal), Assistant Solicitor (Country), Assistant Solicitor (Operations), a Deputy Senior Crown Prosecutor, General Manager Corporate Services, and Manager Information Management & Technology.

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

Activity Based Costing (ABC)

Activity Based Costing for 100% of matters is a major project for the Office. The application was implemented in May 2011 and is systematically being rolled-out throughout the Office. From July 2011, 100% of matters will be costed. ABC Reporting will be developed with the continued involvement of the ABC Working Party and Senior Executive.

ICT Infrastructure Upgrades

All development work for the ODPP Web and Intranet has been completed but the implementation remains delayed owing to changes in resources and priorities.

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 has commenced operation in the Supreme and District and Local Courts. 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) to develop interface programs to exchange information electronically between JusticeLink and the CASES application in the ODPP and LANSW and also ATLAS in LANSW. The project is now expected to be completed in December 2011.

Security Certification

The Office's IM&T Information Security Management System for the activities of IM&T Branch of the ODPP has been re-certified.

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. The project is still under review with the expected completion date December 2011.

APPENDIX 16: GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP)

Period

1 July 2010 to 30 June 2011

Contact

Right to Information Officer

A/Deputy Solicitor (Legal)

Telephone (02) 9285 8669

Summary

The ODPP is an agency under the Government Information (Public Access) Act 2009 (GIPA Act). Pursuant to section 43 and clause 1 of Schedule 2 of the GIPA Act, information in respect of the ODPP's prosecuting functions is "excluded information".

In the period 1 July 2010 to 30 June 2011 the ODPP received 2 valid and 10 invalid applications under the GIPA Act for access to documents. The ODPP was consulted by 2 Agencies pursuant to section 30 of the Act.

Pursuant to s7(3) of GIPA the ODPP is obliged to review its program for the release of government information. In the period 1 July 2010 to 20 June 2011 the Right to Information Officer commenced reviewing information held by the ODPP. Information released pursuant to this review appears in our publication guide.

Statistical information about access applications

Table A: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Media	0	0	0	0	0	0	0	0
Members of Parliament	0	0	0	0	0	0	0	0
Private sector business	0	0	0	0	0	0	0	0
Not for profit organisations or community groups	0	0	0	0	0	0	0	0
Members of the public (application by legal representative)	0	0	0	0	0	0	0	0
Members of the public (other)	1	1	0	0	0	0	0	0

Appendix 16: Government Information (Public Access) Act 1989 (NSW)(Continued)

Table B: Number of applications by type of application and outcome

	Access granted in full	Access granted in part	Access refused in full	Information not held	Information already available	Refuse to deal with application	Refuse to confirm/deny whether information is held	Application withdrawn
Personal information applications	1	0	0	0	0	0	0	0
Access applications (other than personal information applications)	0	1	0	1	0	0	0	0
Access applications that are partly personal information applications and partly other	0	0	0	0	0	0	0	0

Table C: Invalid applications

Reason for invalidity	No of applications
Application does not comply with formal requirements (section 41 of the Act)	3
Application is for excluded information of the agency (section 43 of the Act)	10
Application contravenes restraint order (section 110 of the Act)	0
Total number of invalid applications received	10
Invalid applications that subsequently became valid applications	0

Appendix 16: Government Information (Public Access) Act 1989 (NSW)(Continued)

Table D: Conclusive presumption of overriding public interest against disclosure: matters listed in Schedule 1 to Act

Reason for invalidity	Number of times consideration used*
Overriding secrecy laws	0
Cabinet information	0
Executive Council information	0
Contempt	0
Legal professional privilege	0
Excluded information	0
Documents affecting law enforcement and public safety	0
Transport safety	0
Adoption	0
Care and protection of children	0
Ministerial code of conduct	0
Aboriginal and environmental heritage	0

Table E: Other public interest considerations against disclosure: matters listed in table to Section 14 of Act successful

Responsible and effective government	0
Law enforcement and security	0
Individual rights, judicial processes and natural justice	0
Business interests of agencies and other persons	0
Environment, culture, economy and general matters	0
Secrecy provisions	0
Exempt documents under interstate Freedom of Information legislation	0

Appendix 16: Government Information (Public Access) Act 1989 (NSW)(Continued)

Table F: Timeliness

	Number of applications
Decided within the statutory timeframe (20 days plus any extensions)	2
Decided after 35 days (by agreement with applicant)	0
Not decided within time (deemed refusal)	0
Total	2

Table G: Number of applications reviewed under Part 5 of the Act (by type of review and outcome)

	Decision varied	Decision upheld	Total
Internal Review	0	0	0
Review by Information Commissioner	0	2	2
Internal review following recommendation under section 93 of Act	0	0	0
Review by ADT	0	0	0
Total	0	2	2

Table H: Applications for review under Part 5 of the Act (by type of applicant)

	Number of applications for review
Applications by access applicants	1
Applications by persons to whom information the subject of access application relates (see section 54 of the Act)	1

APPENDIX 17: RISK MANAGEMENT AND INSURANCE ACTIVITIES

Internal Audit and Risk Management Attestation for the 2010-2011 Financial Year for Office of Director of Public Prosecutions

I, Lloyd Babb SC, am of the opinion that the Office of the Director of Public Prosecutions has internal audit and risk management processes in place that are, in all material respects, compliant with the core requirements set out in Treasury Circular NSW TC 09/08 Internal Audit and Risk Management Policy. These processes provide a level of assurance that enables the senior management of the Office of the Director of Public Prosecutions to understand, manage and satisfactorily control risk exposures.

I, Lloyd Babb SC, am of the opinion that the Audit and Risk Committee for Office of Director of Public Prosecutions is constituted and operates in accordance with the independence and governance requirements of Treasury Circular NSW TC 09/08. The Chair and Members of the Audit and Risk Committee are:

Jon Isaacs	Independent Chair	(31 August 2009 – 31 August 2012)
Patricia Azarias	Independent Member I	(16 October 2009 – 16 October 2011)
Chris Maxwell	Non-independent Member I	(26 February 2010 – 26 February 2012)

Lloyd Babb SC
Director of Public Prosecutions
Date: 20 October 2011

Nominated Department Contact Officer
Nigel Hadgkiss
Executive Director
Level 19, 175 Liverpool St,
Sydney 2000

Risk Management

A number of internal audits were conducted through the year covering Procurement, Accounts Payable and Banking. The Office accepted the improvement recommendations made by the internal auditor.

Insurance Activities

Motor Vehicles:

During the 2010-2011 reporting period, the Office's Motor Vehicle claims as at 30 June 2011 numbered fourteen (14), representing an average net cost per vehicle of \$4,000 in claim payments. The number of claims reported for the full 2009-2010 reporting year was thirty (30) claims at an average net cost per vehicle of \$2,131. The 2010-2011 full year compared to the full year of 2009-2010 is showing a reduction in the number of claims but an increase in the net cost per vehicle due to the average cost of each claim being more expensive per vehicle.

Property:

In the 2010-2011 reporting period to 30 June 2011, the Office's Property Claims numbered - Nil.

Miscellaneous:

In the 2010-2011 reporting period to 30 June 2011, the Office's Miscellaneous Claims numbered - Nil.

APPENDIX 18: OCCUPATIONAL HEALTH AND SAFETY (OHS) PERFORMANCE

Over the period 2010/11, various aspects of the OHS Management Plan were completed. The action plan submitted to the ODPP Executive in 2010/11 is now a work in progress. 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.

In line with the Office Working Together targets, a significant amount of time and resources were directed towards the issues of psychological, occupational overuse and manual handling injuries. These three areas remain a high priority for the Office as they make up the majority of all work related injuries (excluding "Journey" injuries) for the past 5 year period. In the area of psychological injury, the Office, in consultation with external provider IAB, established draft Workplace Wellbeing Policy & Procedures and a Workplace Wellbeing Strategy 2011 to 2013. Consultation for the implementation of the Strategic Plan has commenced with relevant internal groups. These include the recently established ODPP Better Workplace Committee, ODPP OHS Committee, ODPP EAP Provider as well as other Agencies within the Justice portfolio. The Office has introduced new health promotion activities such as yoga classes, promotion of healthy lifestyle options and re-education of staff about the Employee Assistance Program. An increase in workplace wellbeing activities and services are planned for the next reporting period and this will be achieved through partnering with other Agencies in the Justice portfolio.

Similarly, the Office has continued to pursue practical and cost effective options to reduce the risk of Occupational Overuse and Manual Handling related injuries. Minimising the amount of keyboard work has focussed attention on voice recognition software (VRS) options for the Office. The technology has its limitation (including cost effectiveness), however, it is considered a sound injury prevention tool given the amount of keyboard work undertaken in this Office. A recommendation on its broader use across the office is expected in early 2011/12.

The Office has continued to experience difficulties with certain aspects of manual handling during 2010/11. The primary concern has been the transport of material to and from court. A number of strategies have been implemented over the past decade in an effort to control the risks involved. Modifications by suppliers to the equipment used have created new challenges and work is ongoing to meet those challenges. The lifting of material onto courthouse security scanners also remains a challenge for this office. Consultation with those responsible for court security is ongoing as we attempt to provide the safest possible options for ODPP staff.

More generally, the OHS Workplace Inspection review process received OHS Committee approval in 2010/11. Initial inspection results have proven to be useful in identifying risks, prioritising those risks, establishing a more effective course of action and monitoring the progress and resolution of recommended action. A significant action to note from 2010/11 was the work undertaken to secure the reception area at the Campbelltown Office. The details gathered from the workplace inspection demonstrated a high degree of personal risk to staff from the general public. The relevant Branch was consulted, a further assessment undertaken and resources allocated for modifications to be made.

Use of the ODPP Ergonomic Checklist established in 2009/10 increased significantly in 2010/11 resulting in greater acceptance and requests for aids such as document holders, headsets as well as general workspace safety. This document has increased the number of workplace assessments in 2010/11, due mainly to the opening of the new Parramatta Office and a more active engagement of new employees. These "one on one" workplace assessments continue to be an effective way to both address immediate and/or potential OHS issues and provide an opportunity to highlight the important role individuals have in establishing future OHS initiatives for the Office.

2011/12 will see a further increase in those OHS initiatives as the Workplace Wellbeing program unfolds.

APPENDIX 19: OVERVIEW OF THE WITNESS ASSISTANCE SERVICE (WAS)

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

In May 1996 the Witness Assistance Service introduced an electronic database which provided a State-wide case management and data collection system. In the 15 years since those figures have been available, over 37,000 victims of crime and vulnerable witnesses have been assisted by the Witness Assistance Service at the ODPP.

During 2010-2011 the WAS employee related funding continued to be administered by the NSW Department of Attorney General and Justice (DAGJ). Monthly reports on service outcomes are provided to DJAG in line with the Funding and Performance Accountability Framework for the Witness Assistance Service.

The WAS has 33 substantive positions State-wide, including 27 WAS Officers and three Senior WAS Officers. A combination of staff movements and illness during the year has meant some positions were vacant for periods of time.

The Witness Assistance Service in 2010-2011

As a frontline service, WAS provides a specialist service to victims of crime and vulnerable witnesses in certain prosecution matters. Essential to the effectiveness of WAS is the proactive model of service delivery that is strength-based and resilience focussed. While recognising the trauma experienced by victims of crime, WAS Officers continue to be inspired by the strength that victims display in surviving the criminal justice process.

The WAS utilises a case management model of service delivery in the provision of services to victims and witnesses. This means services provided vary depending on individual needs; the involvement of other services; and the progress of the matter through the legal process. More intensive services are generally provided for more vulnerable victims and witnesses and complex matters or those who, for various reasons, do not have support from other services or support groups.

The professional qualifications, training and experience of WAS Officers means that they have the skills to assess the special needs of victims and witnesses when coming to court to give evidence, and they liaise with solicitors and Crown Prosecutors to develop a case management plan to meet those needs.

Court Preparation and Court Support

An important aspect of service delivery for the Witness Assistance Service is court preparation. The aim of court preparation is to minimise potential stress and re-traumatisation for victims of crime and vulnerable witnesses during the court process and to enable them to give evidence to the best of their ability.

The WAS has developed a best practice model for witness preparation. In conducting witness preparation WAS Officers do not discuss evidence and do not coach or rehearse witnesses. WAS Officers are mindful not to contaminate evidence, especially in multiple victim matters, and they are aware of and adhere to the independent role of the ODPP and its disclosure policy.

WAS has developed a staged model of court preparation which has been adopted by other organisations. Court preparation commences from the initial contact with victims and witnesses, with more specific witness preparation taking place closer to court hearing dates. Court familiarisation is an integral part of court preparation. The most effective court preparation occurs where there is a multidisciplinary approach with WAS Officers working alongside prosecutors to ensure victims and witnesses are adequately prepared to give evidence, thereby assisting them to provide a truthful and accurate account of their testimony. WAS also has an important role in preparing families of deceased victims as to what to expect when they attend a hearing or trial.

During 2010-2011, as part of our ongoing commitment to best practice in witness preparation, the WAS conducted a number of education and training sessions, including orientation training for new WAS Officers, community education for external organisations and a conference paper for the Victims of Crime Conference held in Sydney in May 2011.

The WAS Officer role also includes co-ordinating court support and providing court support where necessary in ODPP prosecutions. Support at court is often provided by someone within the victim or witnesses support network, such as a family members, friends, a counsellor, a support group member or a volunteer court support worker. WAS Officers work closely with court support persons in helping them understand their role and their obligations. Where court support is provided by others, WAS Officers continue to liaise with the lawyers and police officers and make themselves available to provide debriefing or crisis intervention for the witness as required.

During 2010-2011 WAS developed an information package to assist court support persons better understand their role so they can be effective in the support they provide and do not compromise the prosecution process.

Appendix 19: Overview of the Witness Assistance Service (continued)

WAS Initiatives during 2010-2011:

- Development of a new information package on court support "Supporting Victims and Witnesses: Information for Court Support Persons";
- The Aboriginal WAS Officer position for Sydney and South Western NSW was relocated from Sydney to the Penrith Office;
- The Central West WAS position was based at the Penrith ODPP on a trial basis and an evaluation of this service delivery model was undertaken (see details below);
- Unallocated caseloads were introduced to the WAS database for registering new referrals and allocating priority matters;
- An intake/referral officer role was piloted at the Penrith and Dubbo ODPP Offices and a pilot relief position is planned (based in Sydney) for 2011-2012.

Regional Witness Assistance Services

The WAS is divided into four distinct areas: Sydney Head Office and three regional WAS areas of Sydney West, Northern NSW and South Western NSW. WAS Officers in the regions are supervised by Senior WAS Officers.

The Penrith, Parramatta and Dubbo Offices in particular have experienced staffing issues which have impacted on service delivery. Recent recruitment has generally addressed these issues.

Other factors impacting on regional areas during 2010-2011 have included:

- Relocation of the Parramatta ODPP;
- Court house renovations at Taree that resulted in trials being relocated to Port Macquarie;
- Trials for Penrith and Campbelltown being listed at the Sydney West Court in Parramatta;
- Penrith WAS expanded in number with the relocation to that Office of both the Central West position and Aboriginal WAS Officers;
- Increased circuit court sittings in some areas;
- Staff vacancies in external services in some areas; and
- An increased number of new referrals for Newcastle and Parramatta impacting on caseloads and the number of unallocated matters.

Evaluation of Central West Pilot

With the closure of the Bathurst ODPP Office, the Central West prosecution work was divided between the Dubbo and Penrith ODPP Offices. The Bathurst WAS position was initially transferred to Dubbo. However, after unsuccessful attempts to recruit the Central West WAS Officer position at Dubbo, the position was temporarily based at the Penrith ODPP Office from the 15 June 2010 as a pilot program.

The program was evaluated in terms of effectiveness and a report was released in December 2010.

The Central West WAS position presents many challenges regardless of whether it is based at Dubbo or Penrith. The effectiveness of the Central West WAS Officer position being based at Penrith was found to be contingent on the WAS Officer utilising a proactive model of service delivery and ensuring all best practice standards were met in terms of service provision and liaison.

Special Priority Groups and Vulnerable Witnesses

Sexual Assault and Domestic Violence Victims and Witnesses

During 2010-2011 WAS Officers assisted 318 victims in domestic-violence related matters. This represents a considerable increase on the 116 domestic violence victims identified in 2009-2010. This increase has been assisted by the fact that charges are now flagged regarding domestic violence which better places WAS to respond to the specific needs of this priority group.

Of the 2,327 new WAS referrals, 1,306 (56%) were victims or witnesses in sexual assault matters (child and adult). A challenge for WAS during 2010-2011 has been the number of historical child sexual assault prosecutions with a large number of victims and witnesses.

September 2010 saw the commencement of section 294D of the Criminal Procedure Act 1986 which extended to "sexual offence witnesses" the arrangements which apply to complainants giving evidence in prescribed sexual offence prosecutions. Sexual offence witnesses includes witnesses against whom an accused person is alleged to have committed a sexual offence. In line with this legislation, WAS expanded priority groups to include sexual offence witnesses.

Appendix 19: Overview of the Witness Assistance Service (continued)

The experience of WAS Officers anecdotally suggests that there is an increasing number of adult victims of sexual assault and sexual offence witnesses choosing to give evidence via closed circuit television (CCTV) and who would prefer to be able to have their recorded evidence utilised if there is a re-trial.

Children and young people as victims and witnesses

Children and young people as victims and witnesses in ODPP prosecutions are a priority for WAS service delivery. The WAS is committed to ensuring that children and young people who are victims or witnesses, are referred to appropriate counselling and support services and that the referrals are made in the best interests of the child.

The WAS aims to ensure that child witnesses receive specialist court preparation and court familiarisation suited to their individual developmental needs. WAS Officers also co-ordinate and provide court support for children or young people who are giving evidence via CCTV. The WAS will also assist the child's support person understand their role in supporting the child while giving evidence.

During 2010-2011 there were 739 new WAS registrations for children and young people under 18 years of age.

Of the total 739 registrations of children and young people under the age of 18 years, 600 (81%) were victims or witnesses in child sexual assault (CSA) matters, with 12 children under the age of 5 years; 108 children between the age of six and under 10 years; 383 children and young people aged between 10 and 16 years; and 85 children and young people 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.

Other types of matters involving children and young people registered with WAS during 2010-2011 included 42 child physical assault matters; 20 children and young people as victims or witnesses in adult physical assault matters (the majority being domestic-violence related); five in home invasion related matters; and 30 children in matters involving death such as homicide and dangerous driving.

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. The position covering Sydney Metropolitan and South Western region was filled in August 2010 and is currently based at Penrith. Each Aboriginal WAS Officer covers approximately a

third of the State, the distance covered by the Officers being extremely challenging.

The generalist WAS Officers also assist Aboriginal victims and witnesses where appropriate or where the Aboriginal WAS Officers are unable to assist. WAS Officers have had relevant cultural competency training in responding to child sexual assault in Aboriginal communities through the Education Centre Against Violence as well as other cultural awareness training sessions.

Of the Aboriginal victims and witnesses receiving a service, 31% were in child sexual assault matters; 8% in historical child sexual assault matters; 14% in adult sexual assault matters; 29% in physical assault matters (generally domestic and family violence related matters); and 7% in homicide matters. Of significance is the very high increase in domestic and family violence related matters from the previous year reflecting the State-wide trend.

Supervision, Training and Professional Development

Clinical supervision is provided for regional WAS Officers by Senior WAS Officers based at Parramatta, Newcastle and Wollongong. In the absence of a Senior WAS Officer based in Sydney, WAS Officers currently received external clinical supervision for two hours per month as a group supervision session.

In December 2010 the annual WAS Statewide Conference was integrated with the ODPP Solicitor Professional Development and Training Day. This proved to be very successful, providing WAS Officers with the opportunity to gain training alongside their legal colleagues, to network and build working partnerships.

WAS has participated in a number of conferences and forums:

- the National WAS Conference hosted by the Victorian Office of Public Prosecutions in Melbourne on the 23-25 March 2011. Six NSW WAS staff attended with a paper presented by Amy Watts on the "Sexual Assault Communications Privilege and NSW Pro Bono Pilot Scheme".
- five WAS Officers attended the Victims of Crime National Conference in Sydney on the 18-19 May 2011. Two WAS Officers presented a workshop on "Best Practice in Witness Preparation".
- a two-week orientation training program was conducted for new WAS Officers commencing duties in June 2010. Different groups within the ODPP and a range of external agencies contributed to the comprehensive training program.

Appendix 19: Overview of the Witness Assistance Service (continued)

- WAS provided a presentation on "Protection for Child Witness in CSA Matters" to the Child and Adolescent Sexual Assault Counselling Services CASAC Inc Statwide Forum on "Current Issues in Child Sexual Abuse Work", held on the 9 September 2010.
- sessions were presented for the Education Centre Against Violence Specialist Sexual Assault Training in August 2010 and March 2011.
- workshops facilitated by the Education Centre Against Violence in various rural locations on "Strong Aboriginal Women and The Law" were assisted by WAS Officer presentations at locations including Mt Druitt, Tabulam, Tweed Heads, Condobolin and Albury.
- "Best Practice in Court Preparation" training was provided by WAS for a number of services, such as the NSW Health Sexual Assault Services in the Central West, Far West and Hunter region. This was co-ordinated by Senior WAS officers.
- the WAS Manager was invited to be a member of the tender selection panel for Victims Services' new DVD project.
- the WAS Manager and Sexual Assault Liaison Officer attend a meeting with Education Centre Against Violence (ECAV) staff and the Co-ordinator NSW Health Interpreting Services re interpreter issues and training needs for interpreters in sexual assault and personal violence matters.
- feedback was provided to ECAV on two draft documents: information for SAS workers on Sexual Assault Communications Privilege and information for adult survivors of CSA.
- liaison with relevant bodies regarding alternate court exits and access to court for court familiarisation.
- WAS continued to assist with the Victim Impact Statement research being conducted by a Sydney University Masters student.

Interagency Committees, Liaison and Consultations

WAS Officers liaised regularly with both government and non-government agencies.

During 2010-2011 the WAS represented the ODPP on a number of interagency committees, forums, reference and working groups and consultations related to victims and witness issues.

Throughout the year interagency liaison meetings were held in various locations with a wide variety of victim, court and education groups including Victims Services, the Education Centre Against Violence, the Homicide Victims Support Group and Mission Australia Court Support Service.

WAS Contribution to Policy Development, Legislative Reform, Research and Resources

Some of this work has already been mentioned under other headings; some of the work not yet mentioned includes:

- WAS provided feedback to Victims Services regarding projects and publications such as a draft media guide for victims of crime, Better Court Support Project Plan, Justice Journey Publications.

APPENDIX 20: OVERSEAS TRAVEL INFORMATION

Staff Member	Date, Place and Travel Details	Reason for Travel and Expenses (\$AUD)	Total Cost
N Cowdery AM QC	4 - 9 September 2010 The Hague	IAP Conference Sustenance \$332.25, Airfare \$4,174.40, Accommodation \$1,863.70, Registration \$1,359.12, Internet Connection \$127.41	\$7,856.88
N Cowdery AM QC	18 - 22 October 2010 London	Senior Officials of Commonwealth Law Ministries (SOLM) Sustenance \$925.93, Airfare \$4445.80	\$5,371.73
T Adamson	29 November - 05 December 2010 New Zealand	ANZOG Work-Based Project 09 Accommodation \$571.52, Taxi Fare and Departure Tax \$65.47, Airfare \$411.89	\$1,048.88
TOTAL			\$14,277.49

APPENDIX 21: CONSULTANTS

- (a) Consultancies each engagement costing more than \$50,000
Engagements costing \$50,000 or greater: Nil
- (b) Consultancies each engagement costing less than \$50,000

CATEGORIES	TOTAL No. OF ENGAGEMENTS	COST Exc. GST
Management Services	One	\$14,500
Internal Audit Services	Two	\$34,580
Organisational Review	One	\$23,850
Total consultancies each engagement costing less than \$50,000		\$72,930

APPENDIX 22: ETHNIC AFFAIRS PRIORITY STATEMENT

The ODPP continues to meet its commitment to the Community and Ethnic Affairs Priority Statement. All staff endeavour 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 implemented in 2008 with the Community Relations Commission and the Department of Attorney General and Justice. All witnesses, victims and accused are entitled to access free interpreter services and the Office consistently ensures these entitlements are met.

Witness Assistance Service

The ODPP Witness Assistance Service (the WAS) prioritises service delivery to sexual assault complainants, family of homicide victims, domestic violence victims, children, the elderly and other vulnerable witnesses and special needs groups. Within this group there are many 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 these victims and witnesses when attending conferences with a lawyer and giving evidence at court.

While some victims and witnesses who have cultural and language difficulties can often communicate effectively day to day, it is within the context of the criminal justice system and the stress and anxiety that can result from their interaction with the system, that the need to employ interpreters is necessary. WAS, by utilising the interpreter services for both face-to-face and telephone contacts with victims and witnesses, assist the victim or witness to be more comfortable by communicating using the primary language spoken. Victims can utilise both interpreters and translation services as required when writing their victims impact statements.

Interagency Groups

The ODPP regularly participates in interagency meetings and forums which address issues for victims of crime and vulnerable witnesses. The ODPP participates in a number of committees and consultation processes with representatives of ethnic communities and where the issues of cultural and linguistic diversity are involved. This year the Office has been assisting the Department of Attorney General and Justice Victims Services in the finalising of the tender for a court preparation DVD. This DVD will address (among other issues) the barriers faced by people who experience cultural or language barriers.

Training

All training programs conducted by the ODPP for its staff have components in relation 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. At the Solicitor's Training and Development Day in December 2010, the Office hosted a session on Cross Cultural Communication in African Communities. This was conducted by the African Community Liaison Officer from the (then) Department of Justice & Attorney General.

International Delegations

The ODPP has hosted official international delegations from Singapore and justice agencies from Germany, Denmark and Scotland in the last year.

APPENDIX 23: SOME CASES DEALT WITH DURING THE YEAR

R v Simon

Aggravated sexual assault; detain for advantage; armed robbery and aggravated break and enter

At about 6.00 am on Saturday 31 October 2009, Edward Roy followed the 22 year old female victim (a complete stranger) on foot and by train to her home. After she had finished work at an inner city hotel in the early hours of the morning of 31 October 2009, CCTV cameras from various businesses recorded her walking to Museum Railway Station. CCTV cameras also recorded footage of Simon at a number of points along the victim's journey until she alighted at her station where Simon also got off.

Simon broke into the victim's ground floor unit some time after her sister left for work at about 8.00am. At about 10.30 am the offender entered the victim's bedroom where she was sleeping. He was armed with a knife. He covered the victim's mouth with one hand, put the knife to her throat with his other hand and threatened her with the words, "Don't scream or I'll slit your throat". Against the backdrop of this threat of death the offender sexually assaulted the complainant over several hours.

The offender also robbed the victim of her mobile phone and various cash cards. He forced her to tell him the PIN for one of the cards. He then tied her up with packing tape before he escaped. Soon after he withdrew cash from the victim's bank account using a nearby ATM.

Within minutes the victim bit through the packing tape bindings on her wrists, was able to loosen the tape on her feet to go next door to a neighbour, from where she reported the incident to the police. At about the same time, images of the offender were captured on CCTV camera at a mixed business where the offender purchased a bottle of drink before he threw certain items, including a condom he used during the sexual assault, on to nearby railway tracks.

The offender was arrested at his home on 10 November 2009. A forensic procedure was carried out and a buccal swab was obtained. A search warrant was carried out and a number of items were seized including the jacket shown on CCTV camera footage worn by the offender on the day of the offence, and green underpants also worn by him on the day of the offence.

Subsequent forensic examinations identified the DNA profile of the offender on swabs taken from the victim and the DNA profile of the victim on the offender's underpants. The DNA profile of the victim and the offender were identified on the packing tape used to bind the victim and the condom discarded by the offender.

The offender went to trial on 13 December 2010 at Sydney District Court before HH Judge Hosking SC in respect to 17 offences. He pleaded guilty on the first day of the trial to two charges relating to the unauthorised use of the victim's cash card. He pleaded not guilty to the other 15 offences.

Although the victim was entitled to use CCTV to give her evidence from a remote location at the court, she chose to give her evidence from the witness box. The offender gave evidence to the effect that he and the victim had engaged in consensual sexual intercourse at her instigation.

On 23 December 2010, the jury returned verdicts of guilty on all counts. On 10 March 2011, the offender was sentenced to 22 years imprisonment with a non parole period of 17 ½ years. He will be eligible for parole on 13 May 2029.

His Honour Judge Hosking SC commended the police investigators for the outstanding calibre of their investigation. He also commended the courage and fortitude of the victim in giving evidence of her horrific ordeal.

R v Hamzy

Commercial drug supply and kidnaps in other Australian States

Mr Hamzy is serving a sentence for murder in a NSW prison which does not finish until 2023. However, despite his incarceration, in 2008 Mr Hamzy was continuing to run his national illicit drug 'empire' from his NSW prison cell largely by means of a contraband mobile phone. Police had the contraband mobile phone subject to a telephone intercept and intercepted over 14,000 telephone calls.

Largely from this telephone intercept material it was established that between 1 May 2008 and 11 May 2008 Mr Hamzy was directing the supply of prohibited drugs within Australia. Mr Hamzy was part of an extensive criminal group involving at least thirteen other associates. Each associate played a role in establishing connections, sourcing and distributing prohibited drugs, disbursing the proceeds from the sale of the prohibited drugs and collecting outstanding debts.

Between 8 May 2008 and 14 June 2008, Mr Hamzy directed the supply of a large commercial quantity of methylamphetamine, being 2.24 kilograms. The supply took place over five separate occasions. On each occasion, Mr Hamzy arranged for a quantity of methylamphetamine to be sourced in Sydney, to be transported to Melbourne and sold for profit. The approximate street value of the quantity of drugs supplied was \$560,000.

Between 11 May 2008 and 1 June 2008, Mr Hamzy also directed the supply of 2,500 ecstasy tablets, 17 kilograms of cannabis and 56 grams of cocaine. Arising out of the same

Appendix 23: Some Cases dealt with during the year (continued)

telephone intercept it was also established that Mr Hamzy orchestrated a kidnap and drive by shooting in Victoria, and an aggravated kidnap in South Australia, all during 2008.

The kidnaps were established by the telephone intercept material even though the two victims did not provide statements to police of what happened to them. The telephone intercepts revealed that Mr Hamzy organised for NSW criminal associates of his to travel to Victoria and South Australia and carry out the kidnaps. The telephone intercepts revealed how Mr Hamzy 'micro-managed' all aspects of these crimes including directly negotiating by phone with the kidnap victims in order to obtain by force ten of thousands of dollars allegedly owed by the victims.

Both South Australian and Victorian police significantly assisted NSW police in these investigations. South Australian police actually intervened during the South Australian kidnap and covertly rescued the kidnap victim by raiding his house and arresting him for an unrelated matter, and letting the kidnapers go in order to further track their inculpatory phone conversations.

Mr Hamzy was liable for these offences in other Australian States that he arranged from his prison cell, via common law principles of criminal complicity, and the operation of the extra-territorial provisions of the NSW Crimes Act designed to facilitate the prosecution of crime that crosses the State's borders.

On 27 July 2011, Mr Hamzy pleaded guilty to the charge of Supplying a Large Commercial Quantity of Methylamphetamine and the Aggravated Kidnapping. The offences of supplying ecstasy tablets, cannabis and cocaine will be taken into account when sentenced on these main offences.

In addition to these drug and kidnapping offences, the court will also take into account the offence of recruiting persons to inflict grievous bodily harm. This offence occurred between 3 May 2008 and 5 May 2008, when a number of intercepted calls revealed that Mr Hamzy was attempting to recruit a number of associates to shoot his brother Haysam Hamzy in the legs. Mr Hamzy requested his brother be shot as he believed that his brother was conducting unauthorised drug supplies to various persons without Bassam's knowledge. The associates never carried out Mr Hamzy's request.

Mr Hamzy's sentence is set in the District Court for later in 2011. Those who are alleged to have carried out the crimes that Mr Hamzy was orchestrating from his prison cell have been charged and the DPP continues to work on those matters.

R v Golossian & Psychogios Sexual intercourse without consent

In early 2001 the first complainant was introduced to Tony Golossian. He persuaded her that she had been cursed. Unless broken, this curse would lead to the death of each of her family members, before she would finally succumb to a terminal disease. Golossian persuaded the first complainant to participate in a series of 'prayer sessions', where he would attempt to break this curse. Over a four and a half year period (January 2001 to June 2005) the first complainant went to several motels for these prayer sessions during which she was sexually assaulted by Golossian. At some point during this period, the Arthur Psychogios was introduced as the 'angel's helper', capable of breaking this curse. The Arthur Psychogios then proceeded to sexually assault the first complainant, over a number of years.

In 2008 Arthur Psychogios and his wife, Frances Psychogios persuaded the second complainant that she too was cursed. The pair recommended the services of Golossian. The second complainant attended three 'prayer sessions' with the Golossian and Frances Psychogios, during which she was sexually assaulted by Golossian.

Throughout the period that each complainant attended the prayer sessions, they (and their partners) received countless telephone calls. The callers used disguised demonic sounding voices and identified themselves as kings, angels, evil and similar. The callers issued threats against the health and well-being of the complainants and their families unless the complainants continued to attend the sessions.

On 20 September 2010 the three were arraigned on an Indictment containing 42 counts (many being in the alternative). On 15 December 2010 the jury returned verdicts of guilty against each of the accused on each of the principal counts.

On 6 May 2011 each of the mean were sentenced. Golossian was sentenced an overall term of imprisonment of 20 years, with a non parole period of 15 years. Arthur Psychogios was sentenced to an overall term of imprisonment of 16 years, with a non parole period of 12 years. Psychogios was sentenced to an overall term of imprisonment of 9 years, with a non parole period of 5 years.

Appendix 23: Some Cases dealt with during the year (continued)

COURT OF CRIMINAL APPEAL

Song v Ying [2010] NSWCA 237

Privilege against incrimination and compellability of witnesses

Appeal dismissed.

Mr Ying had brought proceedings in the Supreme Court against both Mr Song and the company Budget Scaffold Supplies Pty Limited (BSS), seeking declarations and consequential orders in relation to an alleged agreement for the sale of shares and an alleged loan agreement.

In those proceedings, Mr Song wished to give evidence in chief to the effect that certain loans and directorships had been recorded to give the false impression that Mr Ying had more assets and business interests in Australia than he actually did, so as to favourably influence the Department of Immigration in their consideration of Mr Ying's application for permanent residency. However, this evidence would incriminate Mr Song, as he had signed a statutory declaration in relation to those matters.

For that reason, Mr Song applied for a certificate under s 128 of the Evidence Act 1995. Section 128 provides that where a witness objects to giving evidence that would incriminate himself or herself, and the court nonetheless requires the witness to give that evidence, a certificate is to be issued. The effect of a certificate issued under s 128 is that the evidence to which it relates cannot be used against the witness in further court proceedings in NSW.

Mr Song's application was dismissed by Justice Ward, and Mr Song appealed in relation to that decision. The Court of Appeal upheld Justice Ward's decision and dismissed the appeal, and held:

(1) A party's evidence given in chief, in response to questions from that party's own legal representative, is given at the choice of that party and is not evidence which that party is compelled to give. This is because a party can instruct their own representative to withdraw a question, and could not be compelled to answer unless it was pressed by another party or the judge (in which case s 128 would apply): at [26].

(2) In all other instances, witnesses are compellable to give evidence. It is this compellability that gives rise to the use of the word "objects" in s 128: at [27].

(3) Where a party wishes to give evidence in chief, in response to questions from that party's own legal representative, but only under the protection of a s 128 certificate, that party does not "object" to giving that evidence within the meaning of s 128 because there is no element of compulsion: at [28].

(4) A party may call a witness to give evidence in support of that party's case, being evidence which would incriminate that witness. That witness may still "object" and seek a certificate under s 128 in relation to that evidence, even if that witness wishes to give the evidence to support that party. This is because the witness cannot instruct that party's legal representative as to what questions are to be asked, and is compellable at the instance of that party: at [29].

(5) Similarly, a s 128 certificate could be sought by a witness called by the prosecution in a criminal matter: at [30].

R v NJK [2011] NSWCCA 151

Aggravated indecent assault of child under 10 and use child for pornographic purposes

Crown appeal dismissed.

The respondent, NJK, was playing with a new digital camera in the master bedroom of the family home that he shared with his wife, his two stepdaughters (five year old twins) and his younger, natural son. One of his stepdaughters, who was developmentally delayed, came into the room wearing her school uniform and no underwear, as she had wet herself (which was apparently not uncommon). The respondent took a photograph of the victim with her bottom exposed. He then separated her bottom cheeks with his fingers and exposed her anus and vagina and took another photograph. The respondent deleted the two photographs from the camera shortly after this.

The respondent's wife, who was the victim's natural mother sought to retrieve certain deleted photographs for an unrelated purpose and she and the respondent purchased a recovery program. While using the recovery program, the victim's mother found the two photographs of the victim, as they were present on the memory card of the digital camera.

The victim's mother confronted the respondent and he admitted taking the photographs and attended the police station the following day where he made admissions to taking the photographs of the victim.

The respondent pleaded guilty to one count of use child under 14 years for pornographic purposes and one count of aggravated indecent assault of a child under 10 years, which has a standard non-parole period of eight years. The respondent was sentenced in the Port Macquarie District Court.

Appendix 23: Some Cases dealt with during the year (continued)

The Crown appealed to the CCA against the sentencing judge's imposition of a 22.5 month suspended sentence for the offences.

The Crown acknowledged the settled legal principle that the standard non-parole period did not apply because of the respondent's plea of guilty, but was a guide to be taken into account as a "reference point" in sentencing. However, the Crown argued that the sentencing judge could not have followed this legal principle, as demonstrated by the discrepancy between the sentence actually passed and the standard non-parole period.

The CCA held that the sentencing judge had correctly given weight to the standard non-parole period, together with the maximum penalty, the aggravating and mitigating factors and the very strong subjective case put forward by the respondent.

The CCA also rejected the argument raised by the Crown that the sentencing judge had erred in finding that the objective seriousness of the aggravated indecent assault offence was midway between the bottom and the middle level of seriousness for offences of that kind. The CCA held that the assessment of the objective seriousness of an offence was a discretionary matter for the sentencing judge and the finding made was open to the sentencing judge.

The Crown also argued that in deciding to suspend the sentence, the sentencing judge had attached too much importance to the fact that the respondent continued to pay the mortgage on the family home in which the victim lived. The CCA rejected this argument and held that the sentencing judge did not err in balancing the requirement that the sentence give effect to the principle of general deterrence against the benefit for the victim and her family, the extra curial losses which the respondent had suffered (losing his marriage and no longer living in the family home), and the detrimental effect to his rehabilitation that would result if he was incarcerated.

Contrary to the Crown's submissions, the CCA held that there was no error in the sentencing judge's order suspending the sentence and the sentence was not manifestly inadequate. It was open to the sentencing judge to impose the sentence of 22.5 months, which was in range (albeit at the bottom of the range) and to suspend the sentence. The sentencing judge's decision to suspend the sentence was within the proper exercise of His Honour's discretion and it was open to His Honour in the circumstances found by His Honour, which included the factual circumstances and objective seriousness of the offences, the respondent's subjective circumstances and his dedicated pursuit of rehabilitation. In the circumstances, general deterrence did not require a period of actual custody.

JSM v R [2010] NSWCCA 255

Charge negotiations – indictment presented out of time

On 27 July 2007 the accused was charged with solicitor to murder, make false accusation, two counts of supplying a prohibited drug, two counts of possessing a firearm and with possessing ammunition. The matter came before the Local Court in February 2008 where an adjournment was sought by the DPP and granted. The purpose of the adjournment was for negotiations to take place between the DPP and the accused's legal representatives. Negotiations commenced.

In April 2009 it was indicated to the accused by a solicitor with the DPP that he would need to provide an induced statement in order for negotiations to continue. That was done. On 11 May 2009 an order to waive the committal proceedings was made and the proceedings were adjourned to the District Court for arraignment on 12 June 2009. By this stage a Crown Prosecutor had been appointed and they commenced negotiations with the accused's defence counsel. The matter was adjourned to 24 July 2009. During this time the accused's solicitor wrote a letter to the Crown Prosecutor with a plea offer.

Negotiations continued and the Crown was granted an extension to 4 September 2009 to file an indictment listing the charges. However by 4 September 2009 no indictment had yet been filed with the court. On 15 September 2009 the DPP solicitor wrote to the accused's solicitor advising that the Deputy Director was considering the matter. On 21 October 2009 the Crown Prosecutor responded to the accused's solicitor's letter with a counter offer. By letter of 3 November 2009 the accused's solicitor indicated that the accused accepted this offer. The issue of whether an indemnity would be granted to the accused was referred to the Attorney-General and this application was rejected. The accused however was still prepared to give evidence against the co-accused. The accused's counsel subsequently became aware that the offer made on 21 October 2009 was not going to be proceeded with. The accused's solicitor then wrote to the DPP solicitor on 6 May 2010 raising concerns with what had occurred and indicating that the DPP was bound by the offer made. The DPP responded in writing on 10 May 2010 indicating that he considered that there had been "no charge negotiation by which either your client is or I am bound ...". The accused was subsequently arraigned in the District Court on an indictment which contained charges beyond those in the Crown Prosecutor's letter of 21 October 2009.

As a result, a stay of proceedings was sought on behalf of the accused. It was argued that due to the accused having made an induced statement, agreed facts having been prepared,

Appendix 23: Some Cases dealt with during the year (continued)

and psychological reports having been served on the Crown, that the applicant would suffer such a severe detriment warranting a stay of proceedings. This application was refused (**R v M** [2010] NSWDC 200). The accused then appealed to the New South Wales Court of Criminal Appeal against the interlocutory orders made by the District Court judge pursuant to s 5F(3) of the **Criminal Appeal Act 1912**.

One of the issues that arose for consideration in the District Court and on the appeal was the effect of s 129 of the **Criminal Procedure Act 1986**. Pursuant to s 129(2) an indictment is to be presented within four weeks of the committal. However s 129(3)(b) provides that this time limit can be extended by the court. That is what occurred in the present case where an extension was given until 4 September 2009. However no indictment had been presented by this time and no further extension sought. The accused therefore argued that an indictment could not now be presented. The question to be determined “was whether or not it was in the interests of justice to allow the trial to proceed ...”. That was to be answered by considering a number of matters including “any prejudice occasioned to him together with considerations arising from any agreement entered into ...”.

McClellan CJ at CL (with whom Hoeben and Johnson JJ agreed) held that despite the indictment not being filed in accordance with the order made, the District Court can still proceed with the trial pursuant to s 129(4) of the **Criminal Procedure Act 1986** which allows a court to proceed with a trial despite the indictment being presented out of time. In dismissing the accused’s appeal, McClellan CJ at CL concluded the District Court judge did consider whether an abuse of process would occur if the prosecution was allowed to proceed and that no error had been demonstrated by His Honour finding that no abuse of process would occur.

R v XY [2010] NSWCCA 181

Sexual intercourse with a child under ten years – whether evidence of complaint was “fresh in the memory”

The accused is the complainant’s step-brother. On 26 June 2009 the complainant participated in a recorded interview with police in which he disclosed sexual offences committed by the accused. The accused was then charged with four counts of sexual intercourse with a child under the age of ten years. The matter was listed for trial in the District Court on 3 May 2010. A voir dire was held at the commencement of the trial in which the trial judge ruled that evidence sought to be adduced by the Crown regarding evidence of complaint made by the complainant to a friend and his parents was inadmissible as the offences were not “fresh in the memory” of the complainant at the time of him telling his friend and

parents. As a result of this ruling the DPP appealed to the New South Wales Court of Criminal Appeal pursuant to s 5F(3A) of the **Criminal Appeal Act 1912** against the ruling.

Section 66 of the **Evidence Act 1995** provides an exception to the hearsay rule where “the occurrence of the asserted fact was fresh in the memory of the person who made the representation”. Section 66(2) as it originally stood, was considered by the High Court in **Graham v The Queen** (1998) 195 CLR 606 in which it held that evidence of complaint made six years after the alleged sexual abuse was not “fresh in the memory”. In that case it was held that the word “fresh” meant “recent” or “immediate” and the focus was on “the temporal relationship between ‘the occurrence of the asserted fact’ and the time of making the representation” (at 608).

As a result of an Australian Law Reform Commission report into the operation of the **Evidence Act 1995** and in response to the High Court in **Graham**, s 66(2A) was inserted on 1 January 2009 by the **Evidence Amendment Act 2007**. This provided that in determining whether the occurrence of the asserted fact was “fresh in the memory” all matters considered relevant by the court may be taken into account, including “the nature of the event concerned”, “the age and health of the person”, and “the period of time between the occurrence of the asserted facts and the making of the representation”.

The Court of Criminal Appeal held at [79] that the phrase “fresh in the memory”, no longer means “recent” or “immediate” and is to be interpreted more widely than it was in **Graham**. The temporal relationship, whilst relevant, is no longer determinative. The “nature of the event concerned” is now an important factor for consideration.

In the present case, the trial judge applied s 66(2A) of the **Evidence Act 1995** in determining the admissibility of the complaint evidence. Whilst His Honour’s reasons were not clear, it appears His Honour’s concerns were with the “inexactness” of the complainant’s evidence regarding the dates of the offences and the period over which they occurred. This resulted in His Honour not being sure whether the occurrences of the incidents were “fresh in the memory” and therefore rejecting the evidence.

In finding that the trial judge erred in His Honour’s approach, the court held that any alleged inconsistencies between the complainant’s statement to police and his representation to his friend was not relevant in determining the question of admissibility under s 66(2). That is a matter for the jury. What is required to be “fresh in the memory” is “the occurrence of the asserted fact”.

Appendix 23: Some Cases dealt with during the year (continued)

In relation to the complaint to his parents, separate reasons were not given by the trial judge for rejecting this evidence. The evidence of complaint made to the complainant's friend approximately two years after the last date on the indictment, and to the complainant's parents, approximately three years and nine months after the last date on the indictment, was still "fresh in the memory" pursuant to s 66(2A) of the **Evidence Act 1995**. The court concluded that the evidence of complaint to the complainant's friend and to his parents was admissible pursuant to s 66(2) of the **Evidence Act 1995**. The matter was then remitted to the District Court for trial.

APPENDIX 24: CREDIT CARD CERTIFICATION

During the 2010/11 financial year, credit card use within ODPP was in accordance with Premier's Memoranda, Treasurer's Directions and award conditions for travel related expenses.

Credit card use

Credit card use within ODPP is largely limited to:

- claimable work related travel expenses
- expenditure for minor purchases, where the use of credit cards is a more efficient means of payment.

Monitoring credit card use

The following measures and practices are used for providing guidelines and monitoring the efficient use of credit cards within ODPP.

Officers are issued with a credit card monthly statement to verify and certify that all expenses were incurred for official purposes. Acquittals are examined and authorised by officers with appropriate financial delegation.

A review of usage levels and appropriateness of credit card limits is conducted at least annually.

A half-yearly report is submitted to Treasury certifying that credit card use in ODPP is within guidelines.

APPENDIX 25: 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.

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.

In 2010-2011, the Office achieved:

- Witness Assistance Services for 152 victims with specific disabilities. Witness Assistance Services liaise closely with ODPP staff and external interagency parties such as Courts, Diversity Services with Department of Attorney General and Justice, and Intellectual Disability Rights Service Criminal Justice Support Network, to enable people with disabilities to participate in the criminal justice system and to give their evidence to the best of their ability.
- a new fit out at Parramatta to house the staff of that regional office. The Parramatta office of the ODPP was designed and constructed to be compliant with parts 1 and 4 of Australian Standard 1428 "Design for Access and Mobility" 2009 (AS1428 pt 1 +pt4, 2009).
- emergency procedures continued to be reviewed regularly and modified during the reporting period to provide for safe evacuation of persons with a disability. Emergency teams in the Office have been trained in these reviewed procedures.
- facilities and furniture are modified as required to accommodate the needs of staff who have a disability or require some type of modification to accommodate reasonable adjustment to enable them to work comfortably. This included the installation of remote operation at one of the Office's security system code pads for a severely sight impaired officer.
- 1.8% of staff promotions were represented by staff with a disability, 5% of new starters disclosed that they had a disability.
- the Office promoted the disclosure of disability during inductions throughout 2010/2011 and will continue to promote disclosure and awareness in 2011/2012.
- 3.73% of higher duties opportunities in 2011/2012 were undertaken by staff with a disability.
- total representation of staff employed during the 2011/2012 year with a disability within the Office was 5.2% (based on staff who have responded to the EEO Data Questionnaire).
- 75 staff attended a Mental Health Criminal Procedure MCLE.

APPENDIX 26: 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 Keith Adler
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)
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	Johanna Pheils
Criminal Listing Review Committee (reviewing listings in the District Court)	Claire Giroto
DNA Review Panel	Nicholas Cowdery AM QC
Forensic Interagency Illicit Drug Analysis Working Group	Wendy Carr Sashi Govind
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
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
Justice Sector Disability Action Plan Senior Officers Group	Lee Purches Katarina Golik

Appendix 26: ODPP Representatives on External Committees/Steering Groups (continued)

Committee/Steering Group	ODPP Representative
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	Johanna Pheils
Magistrates Early Referral Into Treatment (MERIT) – Statewide Steering Group	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 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	Lisa Viney
Police–ODPP Prosecution Liaison Standing Committee	Graham Bailey Claire Giroto Stephen Kavanagh Johanna Pheils Sashi Govind Wendy Carr
Professional Standards Liaison Group	Lisa Viney
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	Julie Lannen Lee Purches Amy Watts Kara Shead Sarah Huggett Marianne Carey
Standing Inter-agency Advisory Committee on Court Security	Stephen Kavanagh Claire Giroto

Appendix 26: ODPP Representatives on External Committees/Steering Groups (continued)

Committee/Steering Group	ODPP Representative
Supreme Court, Darlinghurst Court Complex Renovation Users Committee	Patrick Barrett
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
Victims of Crime Advisory Group	Amy Watts

APPENDIX 27: STAFF AWARDS

- 74 staff received 10 year service awards during the reporting period.
- 112 staff received 20 year service awards during the reporting period.
- Peter Bridge, Manager Assets & Facilities and all Parramatta ODPP staff have been nominated for Director's Service Excellence Awards.

APPENDIX 28: CONSUMER RESPONSE

The Office undertakes a Witness Satisfaction Survey biennially as the main qualitative measure of its service. A survey was conducted in 2011 and the results are shown below.

The table below shows the percentage of respondents who rated the service as 'good' or 'very good' in the surveys conducted by the Office since 1994.

Region	1994	1996	1998	2000	2002	2004	2006	2009	2011
Sydney	42%	53%	39%	50%	60%	51%	62%	68.5%	85%
Sydney West	50%	40%	47%	57.5%	88.8%	62%	68%	82%	74%
Country	32%	52%	45%	56.9%	58.9%	65%	69%	66.6%	70%
State Average	41%	48%	44%	55.2%	60.8%	59.1%	66%	72.4%	76%

The Office undertakes a Witness Satisfaction Survey biennially as the main qualitative measure of its service. A survey was conducted in 2011 and the results are shown below.

The survey further revealed that witnesses with WAS contact expressed greater satisfaction with ODPP services. (See Appendix 4).

Comments regarding higher satisfaction ratings included good communication about the case, its progress and court processes. The survey also revealed that the level of professionalism and emotional support received from the Office were significant factors in relation to satisfaction with the service.

Dissatisfaction with the service included comments regarding frustration with a lack of communication about progress of cases, court delays and general discontent about court decisions.

Overall the survey results showed that ODPP staff have been successful in assisting the majority of respondents through a traumatic experience in the Criminal Justice System.

ACRONYMS

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

AUDITED FINANCIAL STATEMENTS 2010/11

Office of the Director of Public Prosecutions
Statement by Director for the year ended 30 June 2011

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.



Lloyd Babb SC
Director of Public Prosecutions

Sydney
18 October 2011



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 2011, the statement of comprehensive income, statement of changes in equity and statement of cash flows, service group statements and a summary of compliance with financial directives for the year then ended, notes comprising a summary of significant accounting policies and other explanatory information.

Opinion

In my opinion, the financial statements:

- give a true and fair view of the financial position of the Office as at 30 June 2011, and of its financial performance for the year then ended in accordance with Australian Accounting Standards
- 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, and the PF&A Act and for such internal control as the Director determines is necessary to enable the preparation of the financial statements that are free from material misstatement, whether due to fraud or error.

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. Those standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about 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 control relevant to the entity'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 entity's internal control. 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 that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does *not* provide assurance:

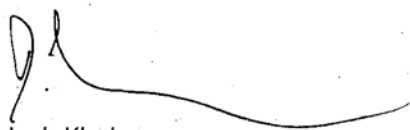
- about the future viability of the Office
- that it has carried out its activities effectively, efficiently and economically
- about the effectiveness of its internal control
- about the assumptions used in formulating the budget figures disclosed in the financial statements
- about the security and controls over the electronic publication of the audited financial statements on any website where they may be presented
- about any other information which may have been hyperlinked to/from the financial statements.

Independence

In conducting my audit, I have complied with the independence requirements of the Australian Auditing Standards and other relevant ethical pronouncements. 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.

Yours sincerely



Jack Kheir
Director, Financial Audit Services

18 October 2011
SYDNEY

Office of the Director of Public Prosecutions
Statement of comprehensive income for the year ended 30 June 2011

		Actual	Budget	Actual
		2011	2011	2010
	Notes	\$'000	\$'000	\$'000
Expenses excluding losses				
Operating expenses				
Employee related	2(a)	83,686	81,681	80,092
Other operating expenses	2(b)	15,638	13,826	14,024
Depreciation and amortisation	2(c)	4,055	3,374	3,025
Other expenses	2(d)	<u>2,756</u>	<u>3,601</u>	<u>2,908</u>
Total expenses excluding losses		<u>106,135</u>	<u>102,482</u>	<u>100,049</u>
Revenue				
Sale of goods and services	3(a)	55	81	31
Investment revenue	3(b)	182	165	132
Grants and contributions	3(c)	2,820	2,837	3,823
Other revenue	3(d)	<u>91</u>	<u>28</u>	<u>230</u>
Total revenue		<u>3,148</u>	<u>3,111</u>	<u>4,216</u>
Gain / (loss) on disposal	4	<u>8</u>	<u>5</u>	<u>43</u>
Net Cost of Services	16,18	<u>102,979</u>	<u>99,366</u>	<u>95,790</u>
Government contributions				
Recurrent appropriations	5	90,794	88,459	84,474
Capital appropriation	5	1,548	1,548	8,539
Acceptance by the Crown Entity of employee benefits and other liabilities	6	<u>6,923</u>	<u>7,533</u>	<u>7,111</u>
Total government contributions		<u>99,265</u>	<u>97,540</u>	<u>100,124</u>
SURPLUS / (DEFICIT) FOR THE YEAR		<u>(3,714)</u>	<u>(1,826)</u>	<u>4,334</u>
Other comprehensive income				
Net increase / (decrease) in property, plant and equipment asset revaluation reserve		<u>(356)</u>	<u>-</u>	<u>-</u>
Other comprehensive income for the year		<u>(356)</u>	<u>-</u>	<u>-</u>
TOTAL COMPREHENSIVE INCOME FOR THE YEAR		<u>(4,070)</u>	<u>(1,826)</u>	<u>4,334</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 2011

		Actual	Budget	Actual
		2011	2011	2010
	Notes	\$'000	\$'000	\$'000
ASSETS				
Current assets				
Cash and cash equivalents	8	5,556	4,601	4,673
Receivables	9	<u>777</u>	<u>673</u>	<u>923</u>
Total current assets		<u>6,333</u>	<u>5,274</u>	<u>5,596</u>
Non-current assets				
Plant and equipment	10	13,738	14,842	16,622
Intangible assets	11	<u>493</u>	<u>431</u>	<u>477</u>
Total non-current assets		<u>14,231</u>	<u>15,273</u>	<u>17,099</u>
Total assets		<u>20,564</u>	<u>20,547</u>	<u>22,695</u>
LIABILITIES				
Current liabilities				
Payables	12	3,785	3,195	3,505
Provisions	13	8,776	7,750	7,713
Other	14	<u>574</u>	<u>189</u>	<u>239</u>
Total current liabilities		<u>13,135</u>	<u>11,134</u>	<u>11,457</u>
Non-current liabilities				
Provisions	13	2,305	2,045	2,044
Other	14	<u>-</u>	<u>-</u>	<u>-</u>
Total non-current liabilities		<u>2,305</u>	<u>2,045</u>	<u>2,044</u>
Total liabilities		<u>15,440</u>	<u>13,179</u>	<u>13,501</u>
Net assets		<u>5,124</u>	<u>7,368</u>	<u>9,194</u>
EQUITY				
Reserves		-	356	356
Accumulated funds		<u>5,124</u>	<u>7,012</u>	<u>8,838</u>
Total equity		<u>5,124</u>	<u>7,368</u>	<u>9,194</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 2011

	Accumulated Funds \$'000	Assets Revaluation Surplus \$'000	Total \$'000
Balance at 1 July 2010	<u>8,838</u>	<u>356</u>	<u>9,194</u>
Surplus / (deficit) for the year	<u>(3,714)</u>	<u>-</u>	<u>(3,714)</u>
Other comprehensive income:			
Net increase/(decrease) in property, plant and equipment	<u>-</u>	<u>(356)</u>	<u>(356)</u>
Total comprehensive income for the year	<u>(3,714)</u>	<u>(356)</u>	<u>(4,070)</u>
Balance at 30 June 2011	<u>5,124</u>	<u>-</u>	<u>5,124</u>
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>

Office of the Director of Public Prosecutions
Statement of cash flows for the year ended 30 June 2011

	Actual	Budget	Actual
	2011	2011	2010
Notes	\$'000	\$'000	\$'000
CASH FLOWS FROM OPERATING ACTIVITIES			
Payments			
Employee related	(76,121)	(74,420)	(72,123)
Other	<u>(19,357)</u>	<u>(19,087)</u>	<u>(18,502)</u>
Total payments	<u>(95,478)</u>	<u>(93,507)</u>	<u>(90,625)</u>
Receipts			
Sale of goods and services	55	81	31
Interest received	165	165	135
Other	<u>4,775</u>	<u>4,725</u>	<u>6,668</u>
Total receipts	<u>4,995</u>	<u>4,971</u>	<u>6,834</u>
Cash flows from government			
Recurrent appropriation	91,368	88,459	84,713
Capital appropriation	1,548	1,548	8,539
Cash transfers to the Consolidated Fund	<u>-</u>	<u>-</u>	<u>(1)</u>
Net Cash Flows From Government	<u>92,916</u>	<u>90,007</u>	<u>93,251</u>
NET CASH FLOWS FROM OPERATING ACTIVITIES	<u>2,433</u>	<u>1,471</u>	<u>9,460</u>
18			
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from sale of plant and equipment	9	5	41
Purchases of plant and equipment	(1,559)	(1,498)	(8,541)
Other	<u>-</u>	<u>(50)</u>	<u>-</u>
NET CASH FLOWS FROM INVESTING ACTIVITIES	<u>(1,550)</u>	<u>(1,543)</u>	<u>(8,500)</u>
NET INCREASE (DECREASE) IN CASH			
	883	(72)	960
Opening cash and cash equivalents	<u>4,673</u>	<u>4,673</u>	<u>3,713</u>
CLOSING CASH AND CASH EQUIVALENTS	<u>5,556</u>	<u>4,601</u>	<u>4,673</u>
8			

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 2011

	Prosecutions *		Victim and Witness Assistance *		Not Attributable		Total	
	2011	2010	2011	2010	2011	2010	2011	2010
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
OFFICE'S EXPENSES AND INCOME								
Expenses excluding losses								
Operating expenses								
• Employee related	80,808	77,531	2,878	2,561	-	-	83,686	80,092
• Other operating expenses	15,101	13,551	537	473	-	-	15,638	14,024
Depreciation and amortisation	3,907	2,897	148	128	-	-	4,055	3,025
Other expenses	-	-	2,756	2,908	-	-	2,756	2,908
Total expenses excluding losses	99,816	93,979	6,319	6,070	-	-	106,135	100,049
Revenue								
Sale of goods and services	55	31	-	-	-	-	55	31
Investment revenue	176	128	6	4	-	-	182	132
Grants and contributions	107	1,486	2,713	2,337	-	-	2,820	3,823
Other revenue	88	223	3	7	-	-	91	230
Total revenue	426	1,868	2,722	2,348	-	-	3,148	4,216
Gain / (loss) on disposal	8	41	-	2	-	-	8	43
Net Cost of Services	99,382	92,070	3,597	3,720	-	-	102,979	95,790
Government contributions **	-	-	-	-	99,265	100,124	99,265	100,124
SURPLUS / (DEFICIT) FOR THE YEAR	(99,382)	(92,070)	(3,597)	(3,720)	99,265	100,124	(3,714)	4,334
Other Comprehensive Income								
Net increase / (decrease) in property, plant and equipment asset revaluation reserve	(356)	-	-	-	-	-	(356)	-
Other Comprehensive Income	(356)	-	-	-	-	-	(356)	-
TOTAL COMPREHENSIVE INCOME	(99,738)	(92,070)	(3,597)	(3,720)	99,265	100,124	(4,070)	4,334

* 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.

Office of the Director of Public Prosecutions

Service group statements for the year ended 30 June 2011

OFFICE'S ASSETS & LIABILITIES	Prosecutions *		Victim and Witness Assistance *		Not Attributable		Total	
	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000	2011 \$'000	2010 \$'000
Current Assets								
Cash and cash equivalents	5,323	4,464	233	209	-	-	5,556	4,673
Receivables	765	901	12	22	-	-	777	923
Total current assets	6,088	5,365	245	231	-	-	6,333	5,596
Non-current Assets								
Plant and equipment	13,041	15,857	697	765	-	-	13,738	16,622
Intangibles	468	455	25	22	-	-	493	477
Total non-current assets	13,509	16,312	722	787	-	-	14,231	17,099
TOTAL ASSETS	19,597	21,677	967	1,018	-	-	20,564	22,695
Current liabilities								
Payables	3,440	3,171	345	334	-	-	3,785	3,505
Provisions	8,496	7,481	280	232	-	-	8,776	7,713
Other	161	-	413	239	-	-	574	239
Total current liabilities	12,097	10,652	1,038	805	-	-	13,135	11,457
Non-current liabilities								
Provisions	2,226	1,978	79	66	-	-	2,305	2,044
Total non-current liabilities	2,226	1,978	79	66	-	-	2,305	2,044
TOTAL LIABILITIES	14,323	12,630	1,117	871	-	-	15,440	13,501
NET ASSETS	5,274	9,047	(150)	147	-	-	5,124	9,194

* 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 2011

	2011			2010		
	Recurrent Appropriation \$'000	Expenditure / Net Claim on Consolidated Fund \$'000	Capital Appropriation \$'000	Expenditure / Net Claim on Consolidated Fund \$'000	Capital Appropriation \$'000	Expenditure / Net Claim on Consolidated Fund \$'000
ORIGINAL BUDGET APPROPRIATION / EXPENDITURE						
• Appropriation Act	88,459	87,485	1,548	85,003	10,713	8,539
	88,459	87,485	1,548	85,003	10,713	8,539
OTHER APPROPRIATIONS / EXPENDITURE						
• Treasurer's Advance	3,470	3,309	-	122	-	-
	3,470	3,309	-	122	-	-
Total Appropriations / Expenditure / Net Claim on Consolidated Fund (includes transfer payments)	91,929	90,794	1,548	85,125	10,713	8,539
Amount draw down against Appropriation		91,368	1,548			8,539
Liability to Consolidated Fund *		574	-	239	-	-

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".

Office of the Director of Public Prosecutions**Notes to the financial statements for the year ended 30 June 2011****Index to the notes to the 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 2011

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 2011 have been authorised for issue by the Director on 18 October 2011.

(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 2011

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 2011

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 2011 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 2011

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 2011

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 2011 and at 30 June 2010. 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 5.68% 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 2011

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 5.68% , 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).

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

1 Summary of Significant Accounting Policies (cont'd)

(j) *Equity and reserves*

(i) Asset Revaluation reserve

The asset revaluation reserve is used to record increments and decrements on the revaluation of non-current assets. This accords with the agency's policy on the revaluation of property, plant and equipment as discussed in 1(g)(iii)

(ii) Accumulated Funds

The category accumulated funds includes all current and prior period retained funds.

(k) *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.

(l) *Lease incentive*

Lease incentives payable under operating leases are recognised initially as liabilities. The incentive is subsequently amortised over the lease term, as a reduction of rental expenses. The straight-line method is adopted for reduction of rental expense.

(m) *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.

(n) *New Australian Accounting Standards issued but not effective*

AASB 9 and AASB 2009-11 regarding financial instruments. This Standard applies to annual reporting periods beginning on or after 1 January 2013

AASB 124 and AASB 2009-12 regarding related party transactions. This Standard applies to annual reporting periods beginning on or after 1 January 2011

AASB 2009-14 regarding prepayments of a minimum funding requirement. This Standard applies to annual reporting periods beginning on or after 1 January 2011

AASB 2010-4 regarding annual improvements projects. This Standard applies to annual reporting periods beginning on or after 1 January 2011

AASB 1053 and AASB 2010-2 regarding differential reporting. This Standard applies to annual reporting periods beginning on or after 1 July 2013

AASB2010-2 regarding reduced disclosure requirements. This Standard applies to annual reporting periods beginning on or after 1 July 2013

AASB 2010-6 regarding disclosures on transfers of financial assets. This standard applies to annual reporting periods beginning on or after 1 July 2011

AASB 2010-5 regarding editorial amendments. This Standard applies to annual reporting periods beginning on or after 1 January 2011

While the impact of these standards in the period of initial application has not been specifically quantified, they are not expected to materially impact the financial statements.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

2 Expenses Excluding Losses

	2011 \$'000	2010 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)*	67,687	64,559
Superannuation - defined benefit plans	3,174	3,528
Superannuation - defined contribution plans	4,423	3,725
Long service leave	3,582	3,382
Workers' compensation insurance	353	298
Payroll tax and fringe benefit tax	4,435	4,408
On-cost on long service leave	17	117
Temporary staff	15	75
	<u>83,686</u>	<u>80,092</u>

* The 2009/10 audit included a review of the salary entitlements for a selected range of employees. As a consequence of that audit, the recovery of a motor vehicle benefit was made in the 2010/11 financial year from a former employee for the total amount of \$202,071 of which \$187,956 related to prior years. The decision to recover the amount and the quantum recovered are disputed by the former employee.

	2011 \$'000	2010 \$'000
(b) Other operating expenses include the following:		
Auditor's remuneration - audit or review of the financial statements	48	35
Cleaning	287	274
Consultancy costs	73	32
Insurance	293	252
Motor vehicle expenses	322	288
Operating lease rental expense - minimum lease payments	7,291	6,605
Telephone	599	780
Printing	80	102
Stores and equipment	480	474
Training	143	57
Travel**	983	1,048
Other expenses	1,010	884
Outgoings	437	319
Books	133	110
Fees - private barristers	1,533	786
Fees - practising certificates	273	254
Fees - security	164	158
Gas and electricity	345	282
Postage	133	113
Courier	12	15
Repairs and routine maintenance *	999	1,156
	<u>15,638</u>	<u>14,024</u>

* Reconciliation - Total maintenance

Maintenance expense - contracted labour and other (non-employee related), as above	999	1,156
Employee related maintenance expense included in Note 2(a)	16	15
Total maintenance expenses included in Note 2(a) + 2(b)	<u>1,015</u>	<u>1,171</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 2011

2 Expenses Excluding Losses (cont'd)

	2011 \$'000	2010 \$'000
(c) Depreciation and amortisation expense		
Depreciation		
Plant and Equipment	1,938	1,295
Computer equipment	792	1,116
Library collection*	<u>1,142</u>	<u>253</u>
Total Depreciation	<u>3,872</u>	<u>2,664</u>
Amortisation		
Intangible assets	<u>183</u>	<u>361</u>
	<u>4,055</u>	<u>3,025</u>

* Depreciation of Library collection included \$904,138 valuation decrement.

	2011 \$'000	2010 \$'000
(d) Other expenses		
Allowances to witness	2,659	2,878
Ex-gratia payments	74	-
Living expenses of non Australian citizens defendants	<u>23</u>	<u>30</u>
	<u>2,756</u>	<u>2,908</u>

3 Revenue

	2011 \$'000	2010 \$'000
(a) Sale of goods and services		
Rendering of services	2	3
Commissions - miscellaneous deductions	2	2
Cost awarded	38	15
Appearance fees	13	5
On-cost - Officers on loan	<u>-</u>	<u>6</u>
	<u>55</u>	<u>31</u>
	2011 \$'000	2010 \$'000

(b) Investment revenue

Interest revenue from financial assets not at fair value through profit or loss	<u>182</u>	<u>132</u>
	<u>182</u>	<u>132</u>
	2011 \$'000	2010 \$'000

(c) Grants and contributions

Contribution from Budget Dependant agencies	<u>2,820</u>	<u>3,823</u>
	<u>2,820</u>	<u>3,823</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

3 Revenue (cont'd)

	2011 \$'000	2010 \$'000
(d) Other revenue		
Lease incentives	-	90
Other revenue	<u>91</u>	<u>140</u>
	<u>91</u>	<u>230</u>

4 Gain / (Loss) on Disposal

	2011 \$'000	2010 \$'000
Gain / (loss) on disposal of computer equipment		
Proceeds from disposal	9	48
Written down value of assets disposed	<u>(1)</u>	<u>(5)</u>
Net gain / (loss) on disposal of office equipment	<u>8</u>	<u>43</u>

5 Appropriations

	2011 \$'000	2010 \$'000
Recurrent appropriations		
Total recurrent drawdowns from NSW Treasury (per Summary of compliance)	91,368	84,713
Less: Liability to Consolidated Fund (per Summary of compliance)	<u>574</u>	<u>239</u>
	<u>90,794</u>	<u>84,474</u>
Comprising:		
Recurrent appropriations (per Statement of comprehensive income)	<u>90,794</u>	<u>84,474</u>
	<u>90,794</u>	<u>84,474</u>
	2011 \$'000	2010 \$'000
Capital appropriations		
Total capital drawdowns from NSW Treasury (per Summary of compliance)	1,548	8,539
Less: Liability to Consolidated Fund (per Summary of compliance)	<u>-</u>	<u>-</u>
	<u>1,548</u>	<u>8,539</u>
Comprising:		
Capital appropriations (per Statement of comprehensive income)	<u>1,548</u>	<u>8,539</u>
	<u>1,548</u>	<u>8,539</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

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:

	2011 \$'000	2010 \$'000
Superannuation - defined benefit	3,174	3,528
Long service leave	3,582	3,382
Payroll tax on defined benefit superannuation	<u>167</u>	<u>201</u>
	<u>6,923</u>	<u>7,111</u>

7 Service Groups of the Office

(a) 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) 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

	2011 \$'000	2010 \$'000
Cash at bank and on hand	5,513	4,612
Permanent witness advance	<u>43</u>	<u>61</u>
	<u>5,556</u>	<u>4,673</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 2011:

- Tape negotiation authority of \$3,000,000 (30 June 2010:\$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(30 June 2010:\$158,600), which is the total credit limit for all credit cards issued.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

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

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:

	2011 \$'000	2010 \$'000
Cash and cash equivalents (per statement of financial position)	<u>5,556</u>	<u>4,673</u>
Closing cash and cash equivalents (per statement of cash flows)	<u>5,556</u>	<u>4,673</u>

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

9 Current Assets - Receivables

	2011 \$'000	2010 \$'000
Rendering of services	1	28
Goods and Services Tax recoverable from ATO	210	243
Prepayments	464	572
Interest	89	71
Advances	<u>13</u>	<u>9</u>
	<u>777</u>	<u>923</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 2010 - fair value	
Gross carrying amount	34,689
Accumulated depreciation	<u>(18,067)</u>
Net carrying amount	<u>16,622</u>
At 30 June 2011 - fair value	
Gross carrying amount	33,136
Accumulated depreciation	<u>(19,398)</u>
Net carrying amount	<u>13,738</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 2011

Net carrying amount at start of year	16,622
Additions	1,344
Disposals	(1)
Net revaluation increment less revaluation decrements	(1,260)
Depreciation expense	<u>(2,967)</u>
Net carrying amount at end of year	<u>13,738</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

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

	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 previous 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>

11 Non-Current Assets - Intangible

	Software and Others \$'000
At 1 July 2010	
Cost (gross carrying amount)	9,946
Accumulated amortisation	<u>(9,469)</u>
Net carrying amount	<u>477</u>
At 30 June 2011	
Cost (gross carrying amount)	10,144
Accumulated amortisation	<u>(9,651)</u>
Net carrying amount	<u>493</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 2011

Net carrying amount at start of year	477
Additions	199
Amortisation (recognised in "depreciation and amortisation")	<u>(183)</u>
Net carrying amount at end of year	<u>493</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

11 Non-Current Assets - Intangible (cont'd)

	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>

12 Current Liabilities - Payables

	2011 \$'000	2010 \$'000
Payables		
Accrued salaries, wages and on-costs	1,735	2,039
Creditors	1,427	930
Accruals	<u>623</u>	<u>536</u>
	<u>3,785</u>	<u>3,505</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

	2011 \$'000	2010 \$'000
Current		
Employee benefits and related on-costs		
Recreation leave	5,618	5,359
On-cost on recreation leave and long service leave	1,410	1,152
Payroll tax on-cost for recreation leave and long service leave	<u>1,571</u>	<u>1,202</u>
	<u>8,599</u>	<u>7,713</u>
Other provisions		
Restoration costs	77	-
Rent adjustment reserve	77	-
Lease incentive	<u>23</u>	-
	<u>177</u>	-
Total provisions - Current	<u>8,776</u>	<u>7,713</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

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

	2011 \$'000	2010 \$'000
Non-current		
Employee benefits and related on-costs		
On-cost on long service leave	59	61
Payroll tax on-cost for long service leave	<u>66</u>	<u>63</u>
	125	124
Other provisions		
Restoration costs	1,744	1,790
Rent adjustment reserve	118	130
Lease incentive	<u>318</u>	<u>-</u>
	<u>2,180</u>	<u>1,920</u>
Total provisions - Non-current	<u>2,305</u>	<u>2,044</u>
Aggregate employee benefits and related on-costs		
Provisions - current	7,865	7,713
Provisions - non-current	125	124
Accrued salaries, wages and on-costs (Note 12)	<u>2,333</u>	<u>2,039</u>
	<u>10,323</u>	<u>9,876</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:

	Lease incentive \$'000	Restoration costs \$'000	Rent adjustment reserve \$'000	Total \$'000
2011				
Carrying amount at the beginning of financial year	-	1,790	130	1,920
Additional provisions recognised	351	46	65	462
Amounts used	<u>(10)</u>	<u>(15)</u>	<u>-</u>	<u>(25)</u>
Carrying amount at end of financial year	<u>341</u>	<u>1,821</u>	<u>195</u>	<u>2,357</u>

14 Current / Non-Current Liabilities - Other

	2011 \$'000	2010 \$'000
Current		
Liability to consolidated fund	<u>574</u>	<u>239</u>
	<u>574</u>	<u>239</u>

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

15 Commitments for Expenditure

2011	2010
\$'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
Total (including GST)	-	87

The total "capital commitments" above includes input tax credit of \$0.0 M (30 June 2010 : \$0.008 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	69	35
Total (including GST)	69	35

The total "other expenditure commitments" above includes input tax credit of \$0.006 M (30 June 2010 : \$0.003 M) recoverable from Australian Taxation Office.

2011	2010
\$'000	\$'000

(c) Operating lease commitments

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

Not later than one year	8,349	6,974
Later than one year and not later than five years	23,463	23,043
Later than five years	9,639	1,619
Total (including GST)	41,451	31,636

The total "operating lease commitments" above includes input tax credit of \$3.768 M (30 June 2010: \$2,876M) recoverable from Australian Taxation Office.

Non-cancellable leases relate to commitments for accommodation for ten 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**

During the 2010/11 financial year the Office was funded by Treasury with supplementary amounts that enabled the Office to spend over and above the original budget. After receiving additional funding, the adjusted net cost of services (NCOS) budget was \$102.8M and the Office maintained actual NCOS at \$102.9M with a variance of \$0.1M.

Actual NCOS was \$3.613M higher than the original Treasury budget. The variance of \$3.613M is explained as follows:

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

16 Budget Review (cont'd)

Over budget expenditure: \$5.365M

\$1.414M - Criminal Case Conferencing Trial. Funded by Treasury but not included in original budget.

\$1.500M – Supplementary funding received from Treasury not included in original budget and spent on additional solicitors.

\$0.462M - staff redundancy payments owing to certain positions no longer required by the Office. \$0.308M funded by Treasurers Advance.

\$0.087M – spent on the Toronto Drug Court. \$0.248M supplementary funding received from Treasury not included in the original budget.

\$0.878M - increased private barrister expenditure owing to insufficient number of Crown Prosecutors to meet court demand

\$0.208M – increased accommodation expenses due to the new Parramatta Office and Campbelltown Office arrears and increased rental rates.

\$0.680M - increased depreciation expenses mainly due to Library revaluation.

\$0.136M - increased leave liability resulting from 2.5% award increase effective from July 2011.

Under budget expenditure: \$1.712M

\$0.845M - reduced number and amount of witness claims.

\$0.679M – reduced crown accepted Superannuation due to Treasury revised calculation.

\$0.188M – Motor vehicle recoveries relating to prior year.

Increased Revenue \$0.037M

Increased revenue of \$0.107M for the Drug Court and \$0.054M for other revenue. Reduced by \$0.124M for unclaimed witness assistance service funding.

Gain on sale of assets: \$0.003M

\$0.003M - Disposal of office equipment

Assets and liabilities

Non-current assets are \$1.042M lower than budget. Due to the Library revaluation decrement \$1.260M and decreased depreciation \$0.218M

The current assets increased by \$1.059M. \$0.104M in receivables and \$0.955M in cash balance.

Non-current liabilities increased by \$0.260M. Mainly due to increased lease incentives for Parramatta accommodation that were not known at budget preparation.

The current liabilities increased by \$2.001M. Increases in payables \$0.590M mainly due to timing in cash payments, provisions \$1.026M for employee related entitlements and liability to consolidated fund \$0.385M.

Cash flows

Net cash flow from operating activities was \$0.962M higher than budget due to \$0.388M timing in the paying of creditors and \$0.574M unspent witness expense funds.

Net cash flow from investing activities was \$0.007M higher than budget due to increased expenditure in capital works paid from ODPP funds.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

17 Contingent Liabilities and Contingent Assets

Contingent liabilities

The Office was not aware of any contingent asset or liability as at 30 June 2011 (nil in 2010) that may materially affect the future results of the Office.

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

	2011 \$'000	2010 \$'000
Net cash flow from operating activities	2,433	9,460
Cash flows from Government / Appropriations	(92,342)	(93,013)
Acceptance by the Crown Entity of employee benefits and other liabilities	(6,923)	(7,111)
Depreciation and amortisation	(4,055)	(3,025)
Decrease / (increase) in provisions	(1,324)	(187)
Increase / (decrease) in prepayments and other assets	(146)	(903)
Decrease / (Increase) in creditors	(280)	(796)
Decrease / (increase) in other liabilities	(335)	(148)
Increase/(decrease) in Assets	(7)	(67)
Net cost of services	<u>(102,979)</u>	<u>(95,790)</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 2011 \$'000	Carrying Amount 2010 \$'000
Class:				
Cash and cash equivalents	8	N/A	5,556	4,673
Receivables ¹	9	Receivables measured at cost	103	108
Financial Liabilities	Note	Category	Carrying Amount 2011 \$'000	Carrying Amount 2010 \$'000
Class:				
Payables ²	12	Financial liabilities measured at cost	3,455	2,272

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 2011

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 (2011: \$nil; 2010: \$nil) 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 2010: \$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.

Office of the Director of Public Prosecutions

Notes to the financial statements for the year ended 30 June 2011

19 Financial Instruments (cont'd)

Other price risk

The Office has no direct equity investments.

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 2010 to 30 June 2011

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	948,508	21,793	-	-	-
December	84,455	47,624	-	-	-
March	944,549	1,588	-	-	-
June	1,426,597	-	-	-	-

Accounts paid on time within each quarter

Quarter	Total Accounts Paid on Time			Total Amount paid
	Target %	Actual %	\$	\$
September	98%	97%	12,026,651	13,624,285
December	98%	99%	13,349,673	13,500,585
March	98%	99%	12,885,921	13,025,829
June	98%	97%	14,055,482	14,462,122

There were no instances where interest was payable under Clause 2AB of Public Finance and Audit Regulation 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	16	Management Structure	12
Acronyms.....	108	Occupational Health and Safety	87
Aims and Objective.....	3	Office Hours and Locations.....	Inside back cover
Annual Report Cost	143	Organisation Structure	10,11
Appendices 1–29	30-107	Overseas Travel	92
Assets.....	122	Recycling	77
Attorney General's use of powers under s27 of DPP Act	7	Report Against Corporate Plan	16-27
Cases Dealt with During the Year	95	Risk Management and Insurance	86
CEO's Statement of Performance	79	Role of the Office	3
Charter – The Office	Inside front cover	SES Numbers	79
Chief Executive Service and Senior Executive Service	79	Significant Committees	15
Chief Information Officer Report	81	Staff Numbers	79
Compliance Index	143	Statement by Director (Financial Statements)	110
Consultants	93	Statistics – Court	31-42
Consumer Response	107	Summary of Affairs	82
Contents	5	Summary of Significant Accounting Policies	121
Corporate Goals	16-27	Systems Reviews and Program Evaluations	86
Credit Card Certification.....	101	Waste Reduction and Purchasing Plan	77
Director's Overview	6	Witness Assistance Service Report	88
Disability Action Plan	102		
DPP Act – Important Provisions	28		
EEO Annual Report	75		
EEO Achievements	74		
EEO Statistics	75		
Ethnic Affairs Priority Statement	94		
External Inter-Agency Committees/Steering Groups	103		
Financial Statements	109		
Government Energy Management Plan	76		
Government Information (Public Access) Act 1989 (NSW)....	82		
Hours of Business	Inside back cover		
Independence and Accountability	9		
Independent Audit Report	111		
Internal Audit	86		
Judicial Decisions – Significant	70-73		
Legislative Changes – Significant	65-69		
Liabilities	125		

COMPLIANCE INDEX

Budgets	
Detailed Budget for the year reported on	113
Particulars of material adjustments to detailed budget for the year reported on	113
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	12
Organisational chart indicating functional responsibilities	10,11
Summary Review of Operations	
Narrative summary of significant operations	7
Program/operation information	7
Monetary amount of recreation leave and long service leave entitlements	125, 126, 134, 135
Legal Change	
Change in acts and subordinate legislation	65
Significant judicial decisions	70
Management and activities	
Nature and range of activities	12
Measures and indicators of performance	16-27
Internal and external performance of review conducted	86
Benefits from management and strategy reviews	86, 93
Management improvement plans and achievements	16-27, 74
Major problems and issues	89, 90
Human Resources	
Number of employees by category and comparison to prior three years	79
Personnel policies and practices	74, 87
Overseas visits with the main purposes highlighted	92
Consultants	
Name of consultant	93
Title of project	93
Equal Employment Opportunity	
Achievements and strategies	74
Statistical information as prescribed by the Treasurer	75
Consumer Response	
Extent and main feature of complaints	53-60, 107
Services improved/changed in response to complaints/suggestions	107
Late payment of accounts	
Reasons for late payments	141
Interest paid due to late payments	141
Payments of Accounts	
Performance	141
Report on Risk Management and Insurance Activities	86
Chief and Senior Executive Officers	
Total number of executive positions at each level of current and prior reporting years	79
Number of female executive officers for current and prior reporting years	79
For each executive officer of, or above level 5:	
Name and position and level	79
Period in position	79
Statement of performance	80
Information on Chief Executive Officer not holding an executive position	80
Identification of Audited Financial Information	109
Inclusion of Financial Statements as part of Annual Report	109
Financial Statement Format	109
Audit Opinion	111
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	\$13,326.50 incl.GST
Inclusion of other Reports and Information	
Government Information (Public Access) Act 1989 (NSW)	82
Performance of waste reduction, purchasing and recycling activities	77
Program evaluation results	86
Government Energy Management Plan	76
Government's Action Plan for Women (Witness Assistance Service Report)	74, 75

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Note: Each Office is open Monday to Friday (excluding Public Holidays) **from 9.00 a.m. to 5.00 p.m.** Appointments may be arranged outside these hours if necessary.



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS
NEW SOUTH WALES