

Office of the Director of Public Prosecutions

New South Wales



Annual Report 2004–2005

THE OFFICE

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

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

Functions

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

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

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

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

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

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

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

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

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

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.

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.

DIRECTOR'S CHAMBERS



Mr R J Debus MP
Attorney General
Level 36, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

2004–2005 Annual Report

Pursuant to section 34 of the Director of Public Prosecutions Act 1986 and in compliance with the Annual Reports (Departments) Act 1985 and the Public Finance and Audit Act 1983, I am pleased to forward to you, for laying before both Houses of Parliament, my Office's report and financial statements for the year ending 30 June 2005.

Yours faithfully

A handwritten signature in black ink, which appears to read 'N R Cowdery'. The signature is fluid and cursive.

N R Cowdery AM QC
Director of Public Prosecutions

28th October 2005

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Director's Overview



Director's Overview

I present this Office's 18th Annual Report (and my 11th). Throughout those years it has been interesting to compare with ours the issues of concern to my fellow Directors around Australia as expressed in their Annual Reports. It can be seen that the problems we have confronted are common to most jurisdictions and we can all learn from each other. In various ways and to various degrees we all face threats to our independence, occasional difficulties in dealing with the political branch of government, the maintenance of proper terms and conditions of service (for ourselves and our officers), the usually inadequate funding of our Offices, challenges posed by the plethora of legislation affecting the criminal law, by unceasing pronouncements from appellate courts and by the constant pressures upon staff to maintain professional standards.

I am pleased to report, once again, that my officers continue to serve the State in a highly professional manner and to give service very often above and beyond the call of duty and without adequate recompense or even acknowledgement by the community they serve.

This Report describes the work of the Office for the year, but it does so in dispassionate and objective terms. It cannot capture the atmosphere in which that work is done or the psychological

pressures that operate upon prosecutors at all levels, Witness Assistance Service officers and all support staff. To do that, you need to be there.

In a new bid to enable our scarce resources to better meet our work demands, this year saw the development of the indictable Criminal Case Processing (CCP) initiative, the single most significant broad-ranging development within the Office (and the criminal justice system) this year. It will be implemented, administratively, in the next financial year and its aim is to substantially reduce, with the cooperation of police, the courts, the Legal Aid Commission and the private profession, the number of late pleas of guilty particularly in the District Court. Matters in which an accused person is to plead guilty should be identified earlier and processed in a manner that requires less expenditure of resources than is required for a contested trial. I congratulate Claire Giroto, Deputy Solicitor for Public Prosecutions (Operations), for her industry and application to this initiative and all those who have assisted her. We are hopeful of significant improvements for the benefit of all involved and for important financial savings to the system. I shall report on progress next year.

In the corporate services area we have already made successful reforms, as acknowledged by the Department of Commerce. The financial management system is being upgraded to a web-based system, providing managers with easier access to financial information. The flex leave system has been computerised. The Office's motor vehicle fleet has been standardised. A pilot program of the Activity Based Costing system has been successfully concluded and when it is fully implemented it will enable quicker access to accurate information about the time and cost of critical tasks in the prosecution process and the provision of that information to our funders.

I believe that we have had a successful year. With this Report, you may be the judge.

Prosecution Guidelines

No new Prosecution Guidelines were furnished this year.

Independence and Accountability

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

The Executive Board, which I chair, continues its work. Minutes of its meetings are provided to the Attorney General and to the Treasurer.

Senior Staff

Mr G E Smith SC, Deputy Director, was appointed Senior Counsel on 29 September.

Mr L M B Lamprati SC continued in office as Deputy Director.

Mr S C Kavanagh was appointed Solicitor for Public Prosecutions on 17 June 2004.

Ms C Giroto was appointed Deputy Solicitor for Public Prosecutions (Operations) on 30 August.

Mr J Hughes was appointed Assistant Solicitor for Public Prosecutions (Sydney West) on 6 December.

Crown Prosecutors

Mr B J Knox SC, Deputy Senior Crown Prosecutor, was appointed a Judge of the District Court on 14 February.

Mr G B Lerve, Crown Prosecutor, was appointed a Magistrate of the Local Court on 16 February.

Ms E A Wilkins continued as Acting Deputy Senior Crown Prosecutor until 30 June.

Mr T W Thorpe, Crown Prosecutor, was appointed as Acting Deputy Senior Crown Prosecutor on 24 January.

Ms M M Cinque and Messrs H Baker, B H Hughes and T W Hardman were appointed as Acting Crown Prosecutors on 24 January.

Ms K N Shead, Trial Advocate, was appointed as a Crown Prosecutor on 21 April.

Ms J E Cash and Mr J D Favretto, Acting Crown Prosecutors, were appointed as Crown Prosecutors on 26 May.

Ms G M O'Rourke and Messrs G C Corr, T M Macintosh, P G Aitken and M G O'Brien continued as Acting Crown Prosecutors.

The Annual Crown Prosecutors' Conference was held at Lake Macquarie in March.

The NSW Bar Association's Continuing Professional Development program applies to Crown Prosecutors (all of whom are Barristers) and complementary CPD educational sessions were held in house throughout the year.

Travel

- The Deputy Directors and I, often accompanied by senior members of the Solicitor's office, continued to visit regional offices, at times delivering papers in MCLE sessions there and in head office and otherwise discussing developments of general application.
- I have participated in various NSW and interstate conferences and meetings on a range of matters connected with the criminal law and the operations of the Office.
- The Conference of Australian Directors of Public Prosecutions (CADs) met in Perth in November and Hobart in March.
- In August I attended (on leave) and addressed a meeting of prosecutors and others in Colombo, Sri Lanka.
- In September I attended the 9th Annual Conference and General Meeting of the International Association of Prosecutors (IAP – of which I am still President) in Seoul, Korea.
- In September I also attended and addressed the annual Pacific Islands Law Officers' Meeting (PILOM) in Nuku'alofa, Tonga.
- In October I attended (on a weekend) and addressed the annual South Australian Law Society Criminal Law Conference in Adelaide.
- In October I attended (on leave) the annual conference of the International Bar Association (IBA) in Auckland, New Zealand. (I am Vice-Chair of the IBA's Human Rights Institute.)
- In December I attended (on leave) and addressed a regional conference on measures against corruption held in Jakarta, Indonesia.
- In March I attended (on leave) in Auckland, New Zealand, a roundtable discussion sponsored by Amnesty International on legal responses to the threat of terrorism.
- In March I also attended and addressed the biennial conference of LAWASIA on the Gold Coast, Queensland.
- In April I attended and presided over the half-year meeting of the Executive Committee of the IAP in Ljubljana, Slovenia. That was preceded by an official visit to Vilnius, Lithuania to meet with prosecutors there and was followed by an official visit to Belgrade, Serbia to hold similar meetings and to address a workshop of Serbian prosecutors.
- In May I attended (on leave) and addressed two seminars in Suva and Nadi, Fiji on the role of lawyers in criminal practice.
- In June I attended (on leave) and addressed a function in The Hague, The Netherlands, for the IAP; then attended an IBA Transnational Crime Conference in Milan, Italy; then attended and addressed the annual conference of the International Society for the Reform of Criminal Law in Edinburgh, Scotland.

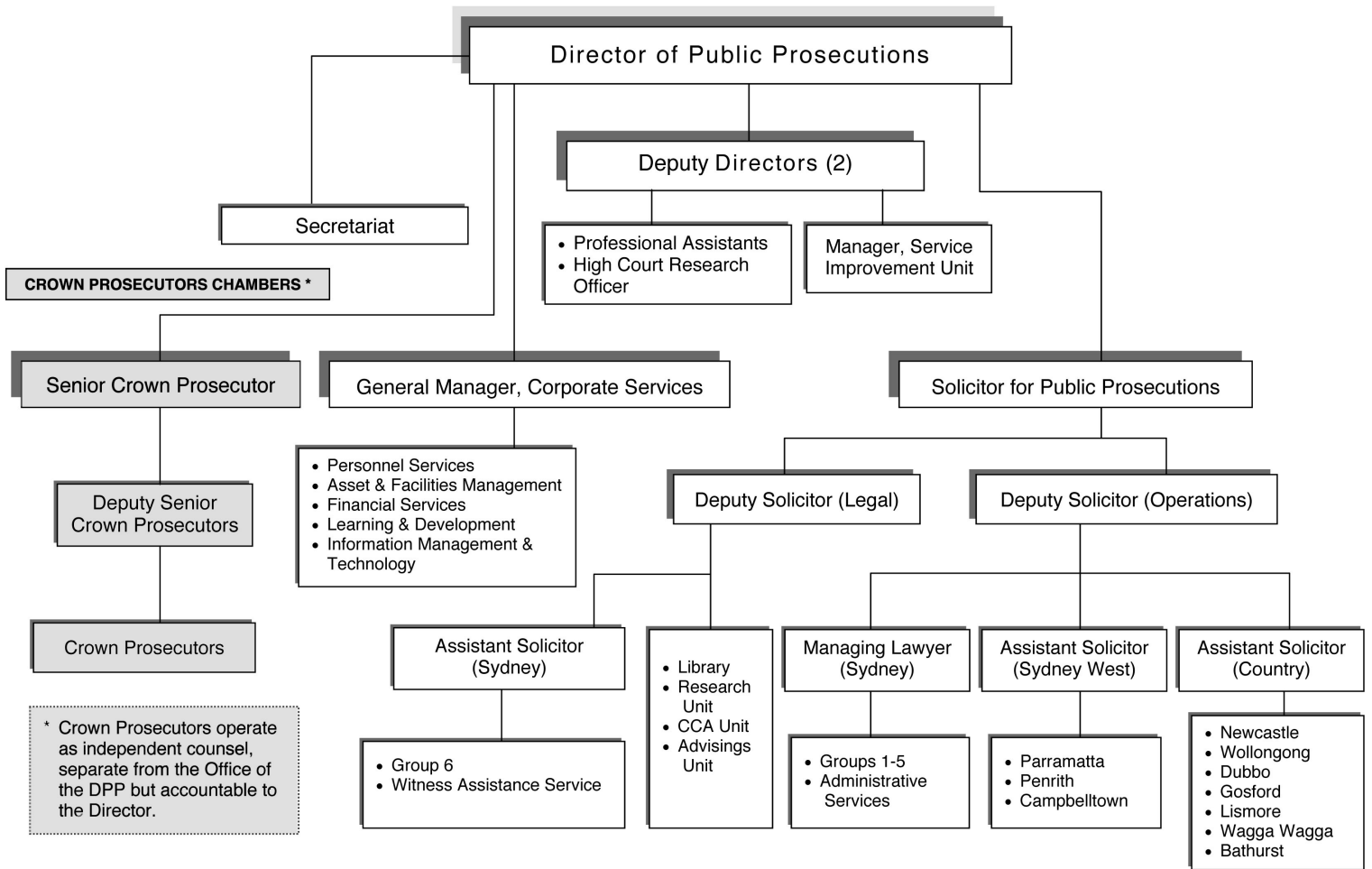
The Office has hosted many groups of visiting prosecutors and judges from other countries during the year. Many ODPP lawyers and Crown Prosecutors have been assisted by sponsorship to attend local, interstate and international conferences during the year. It is essential that we maintain appropriate contact with our colleagues elsewhere and with developments in criminal law and practice throughout the world. The efficient and effective conduct of the criminal justice system in NSW requires that we continually seek out and apply in our system best international practice against the threat of crime. We remain a leader in the field.

Management and Organisation

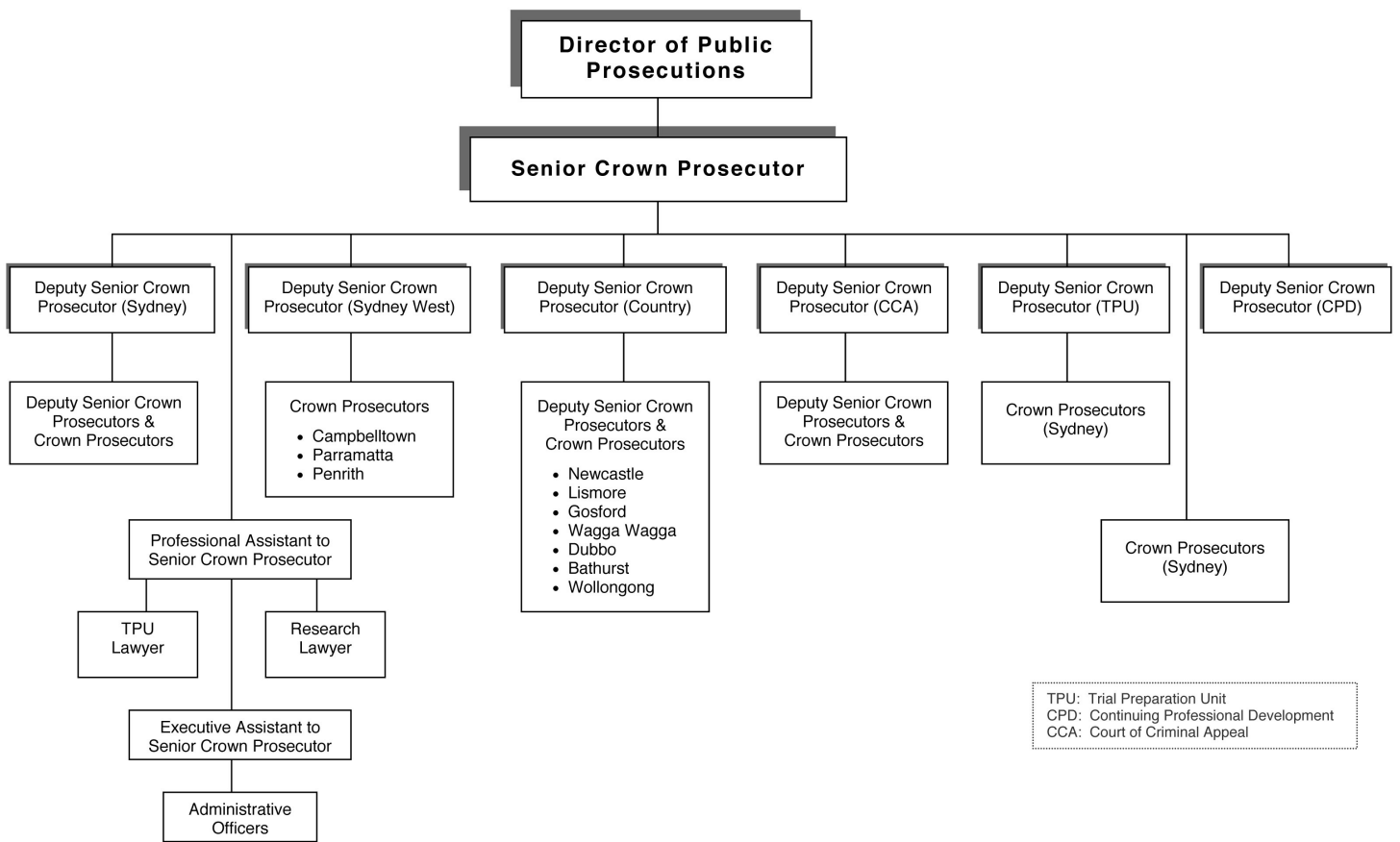


Organisational Structure

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



CROWN PROSECUTORS CHAMBERS Organisational Chart



Management Structure

Nicholas Cowdery AM QC BA LLB

Director of Public Prosecutions

Appointed Director of Public Prosecutions in 1994. He was admitted as a barrister in NSW in 1971 and practised as a Public Defender in Papua New Guinea from 1971 to 1975 when he commenced private practice at the Sydney bar. He took silk in 1987 and practised in many

Australian jurisdictions. He was an Associate (Acting) Judge of the District Court of New South Wales for periods in 1988, 1989 and 1990. He is President of the International Association of Prosecutors.

Greg Smith SC LLB

Deputy Director of Public Prosecutions

Practised as a Solicitor from admission in 1973 in two city firms and later at the Commonwealth Deputy Crown Solicitor's Office, Sydney from 1975 to 1984, mainly in the Prosecutions Section including a period as Instructing Solicitor to Stewart Royal Commission into Drug Trafficking. On establishment of the Commonwealth DPP Sydney office, acted as Senior Assistant DPP 1984–1985. Appointed as

Senior Advisor (Legal) to National Crime Authority, Sydney, 1985–1987. Admitted to the Bar in 1987. Appointed a NSW Crown Prosecutor in 1987 and Deputy Senior Crown Prosecutor in January 1998. Seconded to the ICAC as Counsel Assisting 1992–1993. Appointed as Deputy Director of Public Prosecutions in April 2002.

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

Luigi Lamprati SC. LL.M

Deputy Director of Public Prosecutions

Admitted as Solicitor 1969. In private practice as a barrister from 1977 until 1988. Appointed Crown Prosecutor August 1988. In November 2000, appointed Acting Deputy Senior Crown Prosecutor. Deputy Senior Crown

Prosecutor in April 2002. SC in October 2003. Appointed Deputy Director of Public Prosecutions in December 2003.

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

Stephen Kavanagh LLB

Solicitor for Public Prosecutions

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

of the Director of Public Prosecutions in 1987, appointed as Managing Lawyer (Advisings Unit) in 1989 undertaking responsibility for a wide range of appellate litigation conducted by that Office in the Supreme Court and High Court.

Appointed as Solicitor for Public Prosecutions in June 2004.

Patrick McMahon Grad Certif in Management, AFAIM

General Manager, Corporate Services

Employed in the NSW Public Service since 1966 in a variety of administrative and management positions. Joined NSW Fisheries as Director, Corporate Services in 1992 and commenced with the Office

of the Director of Public Prosecutions as Change and Improvement Manager in 1996. Appointed as General Manager, Corporate Services in February 1999.

Responsible for personnel, learning and development, financial management, information management and technology, and asset management and procurement.

Crown Prosecutors Chambers

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

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

The Crown Prosecutors of New South Wales comprise one of the largest "floors" of barristers in the State. They are counsel who, as statutory office holders under the Crown Prosecutors Act 1986, specialise in the conduct of criminal trials by jury or judge alone in the Supreme and District Courts, as well as in criminal appeals. The vast bulk of criminal jury trials in this State are prosecuted by Crown Prosecutors. They also regularly provide advice to the

Director of Public Prosecutions on the continuation or termination of criminal proceedings. Occasionally they appear at coronial inquests, inquiries under s.474B of the Crimes Act 1900 and in unusually complex committal proceedings.

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

There are Crown Prosecutors located in Chambers in the City of Sydney, in Sydney West at Parramatta, Campbelltown and Penrith, and also at regional locations in

Newcastle, Wollongong, Lismore, Dubbo, Bathurst, Wagga Wagga and Gosford.

The Crown Prosecutors come under the administrative responsibility of the Director of Public Prosecutions, also an independent statutory officer. They are answerable by law to the Director for the performance of their duties and the Director may make arrangements for the disposition of their work.

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

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

Mark Tedeschi QC MA, LLB

Senior Crown Prosecutor

Previously a private barrister and a lecturer in law. He has been a Crown Prosecutor since 1983, a Queen's Counsel since 1988, and Senior Crown Prosecutor since 1997. He is the author of a book on international trade law and

of numerous articles on environmental law, social welfare law, business law, mental health law and criminal law. He is the President of the Australian Association of Crown Prosecutors.

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

Significant Committees

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

Executive Board

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

The Board meets bi-monthly and its role is to:

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

Management Committee

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

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

1. To report, discuss and resolve upon action on operational and management issues affecting the ODPP and Crown Prosecutors, including (but not limited to) workload and resource allocation.
2. To consider monthly financial reports and to initiate action where funding and expenditure issues are identified.
3. To discuss issues affecting major policy decisions and other matters requiring referral to the ODPP Executive Board.
4. To serve as a forum for discussion by senior management of any matter affecting the operations of the ODPP, including the activities, challenges and initiatives of the various areas within the Office.

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

Audit Committee

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

Service Improvement Unit as members. Representatives of the Audit Office of NSW and of the internal audit provider attend meetings by invitation.

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

Information Management and Technology Steering Committee

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

use of information and systems to support ODPP activities. The Committee consists of the Chief Information Officer (currently the Deputy Solicitor (Operations) as Chair; Solicitor for Public Prosecutions, General Manager Corporate Services, Deputy Solicitor (Legal), Assistant Solicitor (Country), a Deputy

Senior Crown Prosecutor; Manager Information Management & Technology Services, Managing Lawyer (Sydney) and the Assistant Manager (Information Management) as Executive Officer.

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

ODPP Internal Committees/Steering Groups

Committee/Steering Group	ODPP Representative	
Executive Board	Nicholas Cowdery AM QC (Chair) Greg Smith SC Luigi Lamprati SC Mark Tedeschi QC	Patrick McMahon John Hunter (External representative) Dr. Sandra Egger (External representative) Stephen Kavanagh
Management Committee	Nicholas Cowdery AM QC (Chair) Greg Smith SC Luigi Lamprati SC Mark Tedeschi QC Patrick McMahon	Stephen Kavanagh Robyn Gray Philip Dart Graham Bailey Claire Giroto
Internal Audit Committee	Greg Smith SC (Chair) Luigi Lamprati SC Mark Tedeschi QC Stephen Kavanagh Patrick McMahon Jeff Shaw	
Information Management & Technology Steering Committee	Patrick McMahon Stephen Kavanagh Claire Giroto Robyn Gray Graham Bailey	Patrick Power SC Hop Nguyen Diane Harris
Crown Prosecutors Management Committee	Mark Tedeschi QC (Chair) David Frearson SC Tim Hoyle SC Paul Conlon SC	Peter Barnett Patrick Power SC Daniel Howard SC Deborah Carney
Representatives	Level 9: Terrance Thorpe (alt. Richard Herps) Level 8, Castlereagh St: David Arnott (alt. Wayne Roser) Pitt St: Patrick Barrett (alt. Luigi Lungo) Sydney West: Keith Alder (alt. David Degnan) Country: Paul Cattini (alt. Nick Harrison) Treasurer: Mark Hobart	
Occupational Health & Safety Committee	Sydney Office Helen Langley Jenny Wells Andrew Dziedzic Employer Representatives Tonia Adamson Peter Bridge Gary Corkill Jim Hughes	Sydney West Peter Wood Michael Frost Fiona Horder Country Roger Hyman Vicki Taylor Sue Maxwell Patricia Collins
PSA/Management Joint Consultative Committee	Greg Smith SC Graham Bailey Gary Corkill David Curran	Andrew Dziedzic Claire Giroto Patrick McMahon

Report Against Corporate Plan



Key Result Area I: Just, independent and timely conduct of prosecutions

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
1.1 To provide a just and independent prosecution service	1.1.1 Continually review, evaluate and improve standards for criminal prosecutions 1.1.2 Improve the timeliness and quality of briefs through liaison with investigative agencies	Achievement of justice

Performance Indicator

- 1.1(a) Percentage of cases where costs are awarded due to the conduct of the prosecution
- 1.1(b) Proportion of matters returning a finding of guilt

Report:

- 1.1(a) In this reporting period, costs were awarded in 0.03% of the 17,000 cases dealt with due to the conduct of the prosecutions
- 1.1(b) 73.36% of all matters concluded in the District Court and 62% of all matters concluded in the Supreme Court resulted in findings of guilt, either by way of verdict following trial or by way of plea.

Key Result Area I: Just, independent and timely conduct of prosecutions (cont)

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
1.2 To uphold ethical standards	1.2.1 Develop and implement processes and programs to enhance understanding of, and adherence to, ethical standards	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

Report:

1.2(a) A program known as Introduction to the ODPP has been implemented, incorporating aspects of the Foundation Legal Skills program. The Program is aimed at all new staff. Through this program, an increasing number of people are exposed to the Code of Conduct and Privacy and Ethical Practices. Fifty staff participated in 2004-2005. All new appointees are given the Code of Conduct.

Key Result Area I: Just, independent and timely conduct of prosecutions (cont)

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
1.3 To provide timely prosecution services	1.3.1 Comply with relevant time standards	Speedy resolution of matters

Performance Indicator

- 1.3(a) Percentage of advisings completed in agreed time
- 1.3(b) Proportion of trials listed which were adjourned on the application of the Crown
- 1.3(c) Average number of days between arrest and committal for trial

Report:

- 1.3(a) 85% of advisings were completed within the agreed time.
- 1.3(b) The proportion of District Court and Supreme Court trials vacated in 2004-5 on the application of the Crown was 6.25% and 2.5% respectively.
- 1.3(c) The average number of days between arrest and committal for trial during 2004-05 was 216.

Key Result Area 2: Victim and witness services

Goal	Strategy	Outcome
2.1 To provide assistance and information to victims and witnesses	2.1.1 Deliver services to victims and witnesses, in accordance with ODPP Prosecution Guidelines.	Greater sense of inclusion in the prosecution process by victims and witnesses

Performance Indicator

2.1.(a) Level of victim and witness satisfaction (by survey)

Report:

2.1(a) The ODPP biennial survey of victims and witnesses was conducted in 2004–05 and revealed overall consistency in the levels of customer satisfaction. Details of the survey results have been included in the Customer Response report at Appendix 38 at page 100.

Key Result Area 3: Accountability and efficiency

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
3.1 To satisfy the accountability requirements of courts, Parliament and ODPP policies	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	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 (by audit)

Report:

- 3.1(a) The Annual Report: 2003–04 was completed and submitted to the Attorney General within statutory guidelines.
 The Government Energy Management Plan was completed and submitted to meet the deadline of 31 October 2004.
 The next biennial report on the Waste Reduction and Purchasing Plan is due by 31 August 2005
 The EEO Annual Report was submitted to ODEOPE on 26 November 2004.
 The annual financial statements 2004–05 were completed and submitted to the Auditor General within the set deadline of 10 August 2004.
 The annual FBT return for 2004/05 was submitted on 20 May 2005 before the set deadline of 21 May 2005 and quarterly payments made up to March 2005.
 The monthly BAS returns have been submitted up to June 2005 on 8 July 2005 before the set deadline of 21 July 2005.
- 3.1(b) The Internal Audit 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	Strategy	Outcome
3.2 To be efficient in the use of resources	3.2.1 Measure costs and time associated with prosecution functions undertaken	Value for money
	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	

Performance Indicator

- 3.2(a) Cost per matter disposed of
3.2(b) Expenditure within budget

Report:

- 3.2(a) This indicator is unable to be reported on at this stage. Activity Based Costing, which has commenced but is not yet fully operational, will enable such reporting to be included in the 2005-06 Annual Report.
- 3.2(b) The office operated within the allowable Controlled Net Cost of Service Limits for the financial year. Corporate services functions and processes have been further reviewed and efficiencies identified. The emphasis is on retaining the Internal Shared Services Unit model (in accordance with the Government strategy for corporate services reform). A detailed report on our achievements in corporate services reform was submitted to the Dept. of Commerce on 24 May 2005. Highlights include:
- Standardisation of the motor vehicle fleet
 - Online ordering of office supplies
 - Upgrading financial reporting to a web-based system
 - Upgrading computerised flexitime recording system
 - Revised procedures for recruitment advertising
 - Electronic information packages in the recruitment process

Monthly finance reports are submitted to the Executive Board and Management Committee.

Planning has commenced for the training of Crown Prosecutors to use the Integrated Document Management System, IDMS - this will occur in early 2005/06.

Key Result Area 3: Accountability and efficiency (continued)

The development of the core functions of the OPMS/ABC Project has been completed. Code for ABC/OPMS has been released into production and is awaiting activation. Final specifications for the additional reports to be determined by the business areas. Pilot implementation for selected users commenced in March 2005 and the system has met with a positive response from users.

IM&T Branch is planning for a production roll out of the ABC by September 2005. no formal training required - learning materials being developed by IM&T and L&D, and IM&T will conduct coaching as required.

The Information Security Management System (ISMS) commenced in September 2004 with the selection and approval of the panel contractor Information Systems Group (ISG) Consulting for risk assessment phase. The Information Asset Register, the risk analysis, and the risk treatment and implementation plans have been completed. The Business Continuity Plans (BCP) for critical business units have been developed and are currently being reviewed by the relevant Branches. SAI Global completed the pre-audit in preparation for certification of the ODPP ISMS. The scope of the certification is conformed to be IM&T Operations at Head Office 265 Castlereagh Street. IM&T Branch is now preparing for the full certification audit scheduled for next financial year.

The Attorney General's Department implemented the Courtlink System in the Supreme Court on 2 August 2004 and is developing an interim viewing platform (now scheduled to be in place by August), for information currently obtained by the ODPP from CourtNet (Supreme Court) System. Improved business procedures have been developed to exchange information with the Supreme Court Registry until the interim viewing platform is available.

Personnel Services has released KIOSK (Electronic Self Service) to enable staff and managers to access personnel information, including leave and payroll details and position history. Electronic Leave applications will be implemented in October 2005.

Motor Vehicle (Driver Safety) Policy approved and published in Sept. 2004. Motor Vehicle Policy revised Sept. 2004 and published on the DPP Net Nov. 2004.

Training sessions conducted in management of conduct and performance for 25 participants. Further sessions to be run following enhancements to the Improving Performance and Conduct Toolkit (by Personnel and Learning and Development). First session planned for 28-29 July 2005.

Key Result Area 4: Staff resourcing and development

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
4.1 To recruit and retain quality staff	4.1.1 Market career opportunities	High quality, committed staff
	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	

Performance Indicator

- 4.1(a) Percentage of staff turnover
- 4.1(b) Percentage of salary increments deferred

Report:

4.1(a) Staff turnover for the period 1 July 04 to 30 June 05 was 6% compared with 5.8% for 2003–04. (Total appointments – 125.2; total separations – 86). The Australian HR Benchmark 2001 is 15.16%.

Sixty staff participated in Recruitment and Selection workshops during 2004-05.

4.1(b) No salary increments were deferred during the year.

Key Result Area 4: Staff resourcing and development (continued)

Goal	Strategy	Outcome
4.2 To provide workplace support	4.2.1 Provide accommodation, equipment and facilities in accordance with Office standards	A safe, supportive, equitable and ethical work environment
	4.2.2 Develop and implement OH&S and workplace relations policies	

Performance Indicator

4.2(a) Average worker's compensation claims per capita

4.2(b) Average sick leave absences per capita

Report:

4.2(a) The Office's Workers Compensation Claims as at 30 June 2005 numbered seventeen (17), representing a total claim payments cost of \$31,102. This compares with twenty four (24) claims at 30 June 2004, representing a total claim payments cost of \$24,000.

4.2(b) Average sick leave from 1 July 2004 to 30 June 2005 was 6.00 days compared with 5.95 days in 2003-04. According to the Australian HR Benchmarking Report for 2001, the desired range is 6.35 days.

Managers have been advised that flex time and excessive Recreation Leave is being monitored and reports issued to ensure compliance with policy and award provisions.

Foundation Legal Skills has been changed to Introduction to the ODPP (Induction), which is pitched at all new staff. An increased number of staff are now exposed to EEO & OHS through this program. 50 participants in 2004/2005.

Quality of work life survey was conducted in April 2004. Approximately 320 surveys completed. Results were released to Executive and Senior Management in August 2004. Local action plans, and comments from Executive currently being developed.

Criminal Case Processing: Accommodation has been secured and fit outs completed at most locations. Remaining locations will be completed early in the 2005-06 financial year.

2004-2005 minor capital funding was fully expended.

Key Result Area 4: Staff resourcing and development (continued)

Goal	Strategy	Outcome
4.3 To enhance the skills and knowledge of our people	4.3.1 Implement training and development activities to address priority organisational and individual learning needs	Staff and Crown Prosecutors who are able to perform effectively in a changing and challenging environment
	4.3.2 Increase participation in learning and development activities	
	4.3.3 Increase use of the ODPP Performance Management system	

Performance Indicator

- 4.3(a) Percentage of priority learning needs implemented
- 4.3(b) Learning and development participation rate
- 4.3(c) Percentage of performance management plans completed

Report:

L&D plan for 2004/2005 addressed priority needs identified through from organisational priorities e.g. Mgt Development, Justice Sector initiatives e.g. CSA court, IM&T changes, individual L&D plans, and MCLE requirements.

- Solicitor's conference held on 1-2 July 2004 with 246 participants. 2005 Conference to be held on 1-2 September 2005.
- Workshops on Management Communication, Recruitment & Selection, Introduction to Advocacy, Introduction to ODPP, Technology Induction, SUN upgrade training, COPs warrant and ERIC Siphon, Cultural issues in Sex Assault matters, Interviewing Children, Child Sexual Assault overview, Sentencing, Time Management for Lawyers, Loss & Grief, Mental Illness, Upset Victims/Witnesses, Mentoring, Short Matters, Occupational Health & Safety Committee, Telephone Skills workshop and approximately 19 MCLE's have been conducted in 2004/05.
- EEO/Anti Discrimination and OHS workshops are running at all DPP sites May-Aug 05, to assist solicitors in meeting their practicing certificate requirement of training in these areas. Crown Prosecutors have a similar requirement and have also been invited.
- 9 Sexual Assault modules were developed in support of the Child Sexual Assault Jurisdiction pilot, and number of sex assault cases generally. Implementation by way of workshops, MCLE's and sessions in larger conferences. Staff are also attending relevant external activities. \$15k reimbursement received from Attorney General's Department for 2004/05.
- Management Capabilities finalised. The first module "Management Communication" was implemented with much success in May and June with 27 participants. The second module "Recruitment & Selection" commenced, with 60 participants at time of reporting. Performance and Conduct module conducted with 25 participants. The module is now being further developed and refined, with a pilot workshop occurring in July 2005.
- Group 2 Defensive Driver training occurred during November 2004-March 2005, which resulted in approximately 60 regional staff trained.
- ODPP induction process - i.e. first 6 weeks - is being reviewed, with a structured process, on line documents, and supervisor resources to be developed. 50 participants in Intro to DPP in 2004/05.

Key Result Area 4: Staff resourcing and development (continued)

- There have been 11 international delegations and visitors this financial year, from Korea, Vietnam, China and Japan.
- The Regional MCLE conference occurred 21-22 December 2004 at Terrigal, with 70 participants.
- A Managing Clerks/Manager Support Services conference was conducted in June 2005, with 21 participants.

Learning and Development participation rate (excluding Crown Prosecutors) year to date: 64% of staff have attended two (2) or more L&D activities.

Cumulative statistics - July 2004 - June 2005

Number of learning programs: 269

Number of studies assistance participants: 54

Total days study leave accessed: 95 days

Total study reimbursements: \$17,258.87

98% of Performance Management Workplans completed.

Key Result Area 5: Improvements in the criminal justice system

Goal	Strategy	Outcome
5.1 To improve the Criminal Justice system	5.1.1 Participate in inter-agency and external fora	A more effective and efficient criminal justice system
	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	

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

Report:

- 5.1(a) The average number of days from arrest to matter disposed of during 2004-5 was 545
- 5.1(b) During the past 12 months the Office has completed over 40 submissions on proposals for law reform in New South Wales on subjects which include the Uniform Evidence Acts, back-end home detention, the Mental Health Act, the suspended sentence provisions and other provisions in the Crimes (Sentencing Procedure) Act, the Confiscation of Proceeds of Crime Act, the Children (Criminal Proceedings) Act, the Judicial Officers Act, the Bail Act, expert witnesses, majority jury verdicts, the Drug Misuse and Trafficking Act, pre-trial rulings on evidence, the creation of additional offences of sexual intercourse with a child under 16 years, the creation of an offence of maliciously cause grievous bodily disease, discrimination in employment on the basis of criminal record, the Criminal Procedure Act, the Costs in Criminal Cases Act, legal fees, contempt by publication, fraud offences, the Criminal Appeal Act, the Crimes Act, reform of the law relating to killing of an unborn child, racial vilification laws, the Criminal Records Act and a proposed uniform scheme for spent convictions, the Workplace Surveillance Act and the Child Sexual Assault Jurisdiction Pilot. ODPP officers have also assisted interstate justice agencies on a wide range of legal and procedural reforms which are being considered in those States.

In addition, the Office has participated in numerous external committees and groups including court user groups, Bar Association and Law Society committees, court security committees, the Aboriginal Affairs Policy Justice Cluster Committee, the Sexual Assault Review Committee, the Child Sexual Assault Jurisdiction Interagency Project Team, the Local Court Rules Committee, the Merit Statewide Steering Group and the Victims of Crime Interagency Committee. For full details of all external committees in which the Office has participated see Appendix 37.

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 ODP.

Section 14

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

Section 15

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

Section 15A

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

Section 18

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

Section 19

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

Section 24

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

Section 25

Consultation with the Attorney General is provided for:

Section 26

The Attorney General may furnish guidelines to the Director.

Section 27

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

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

The Director shall include in the Annual Report information as to the notifications received by the Director from the Attorney General under this section during the period to which the report relates.

Section 29

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

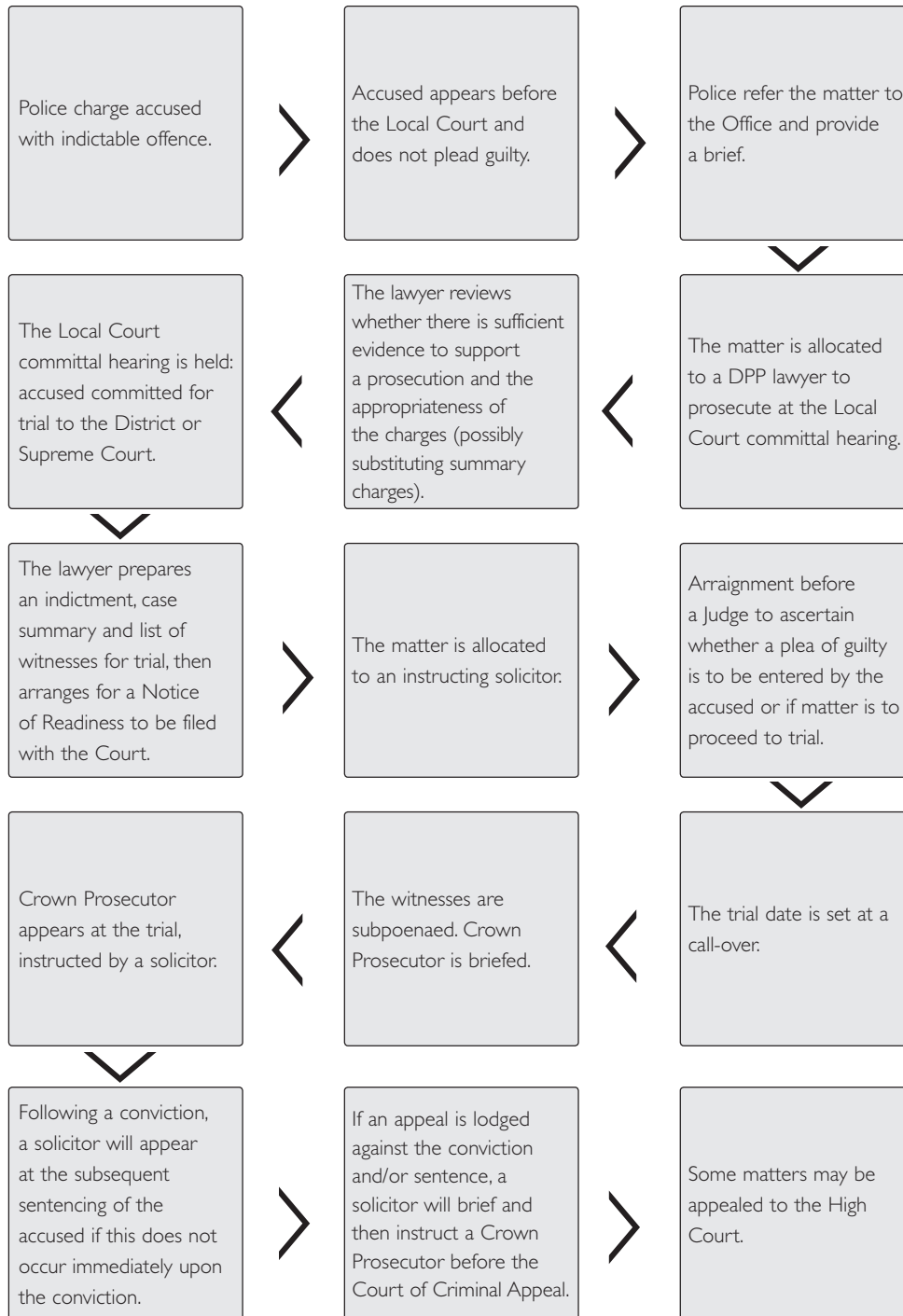
Section 33

The Director may delegate certain of his/her functions.

From Charge To Trial



An Outline of a Typical Defended Matter



Not all matters proceed all the way to trial:

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

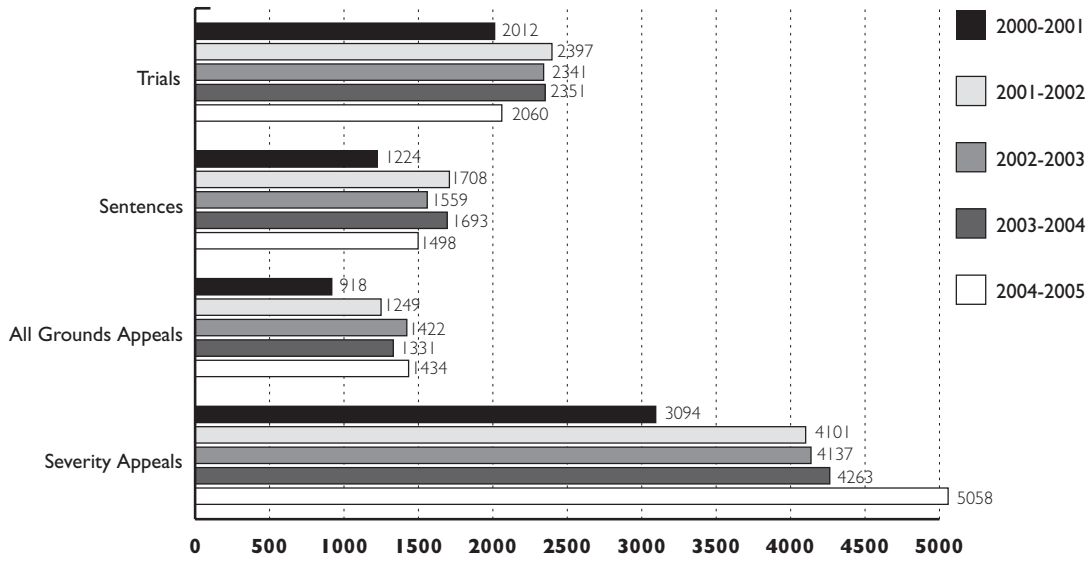
Appendices



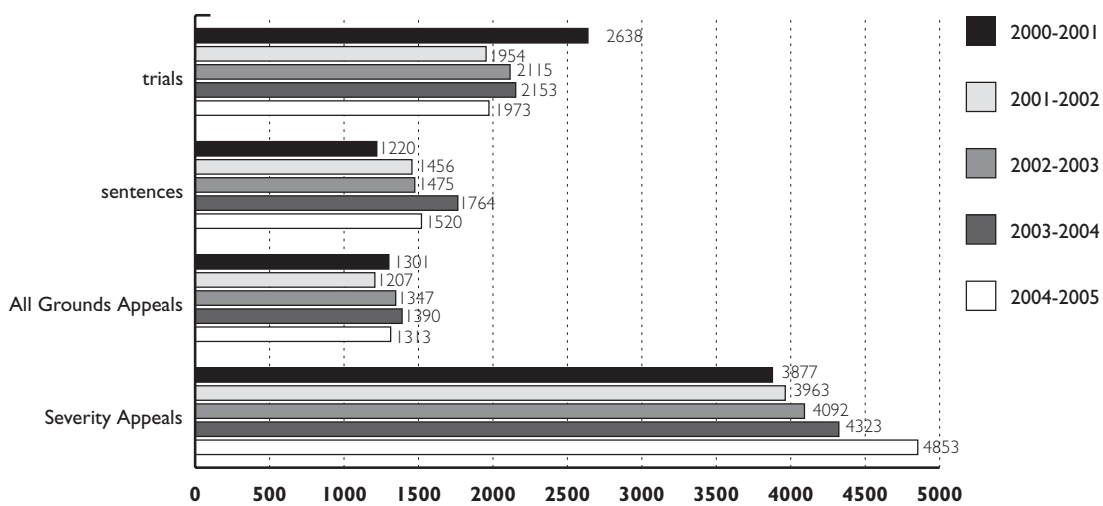
Appendix I

District Court – State Summary

District Court Matters Received – State



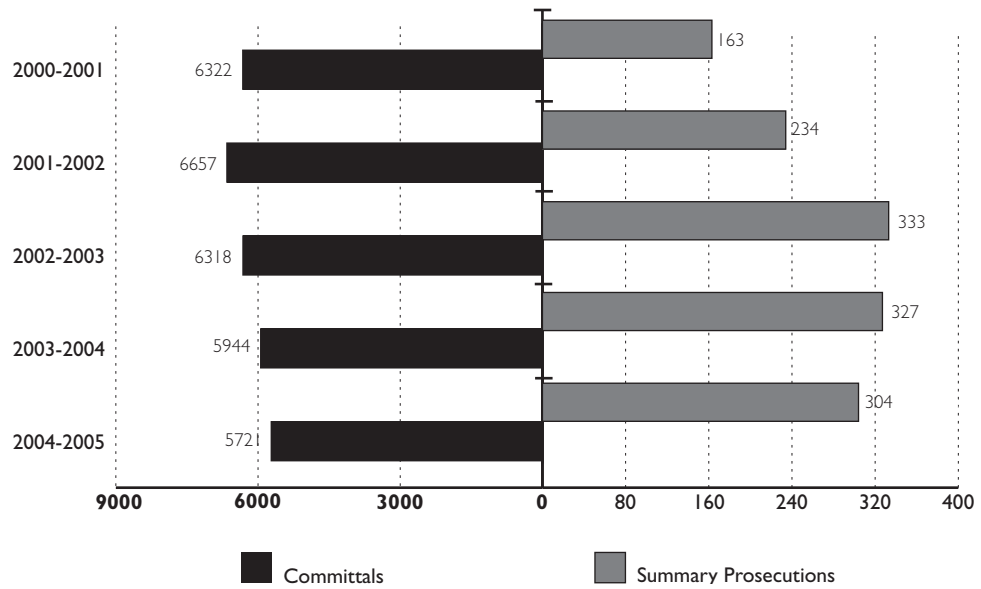
District Court Matters Completed – State



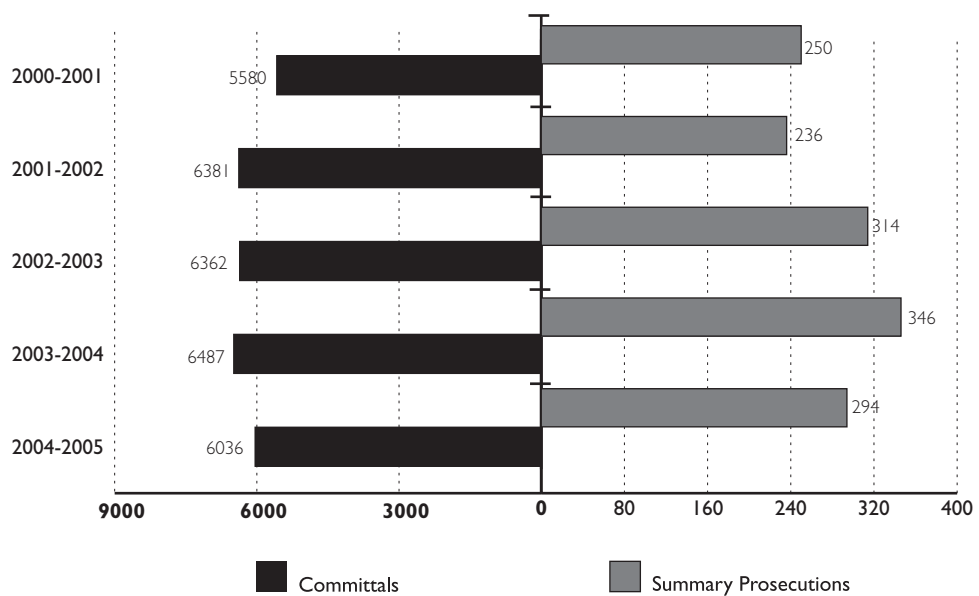
Appendix 2

Local Court – State Summary

Local Court Matters Received – State



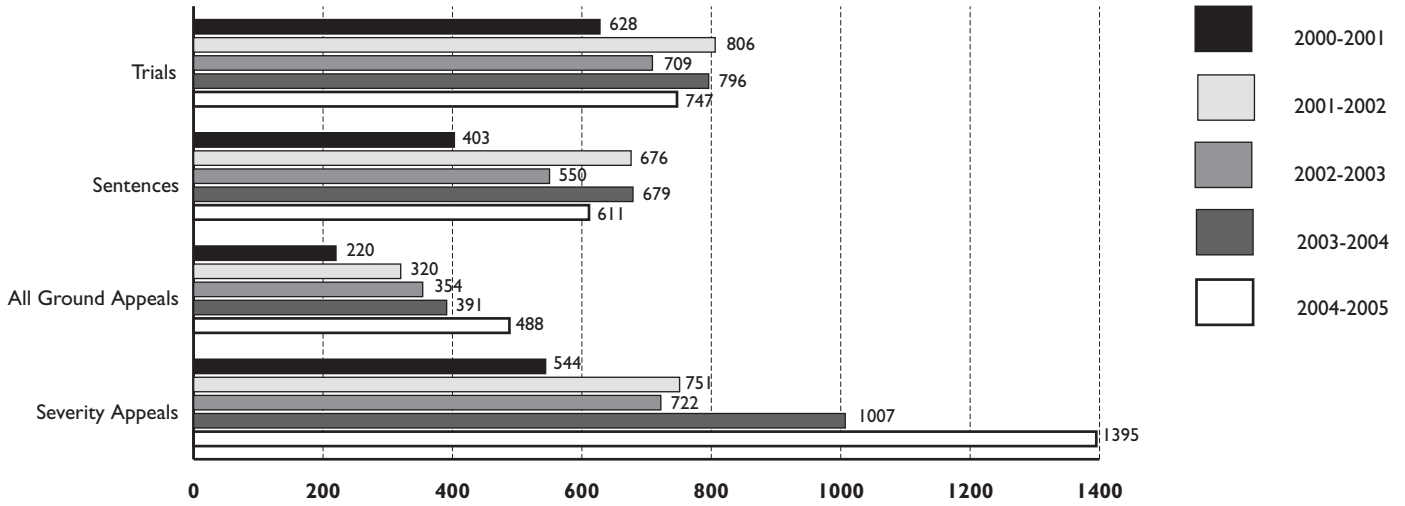
Local Court Matters Completed – State



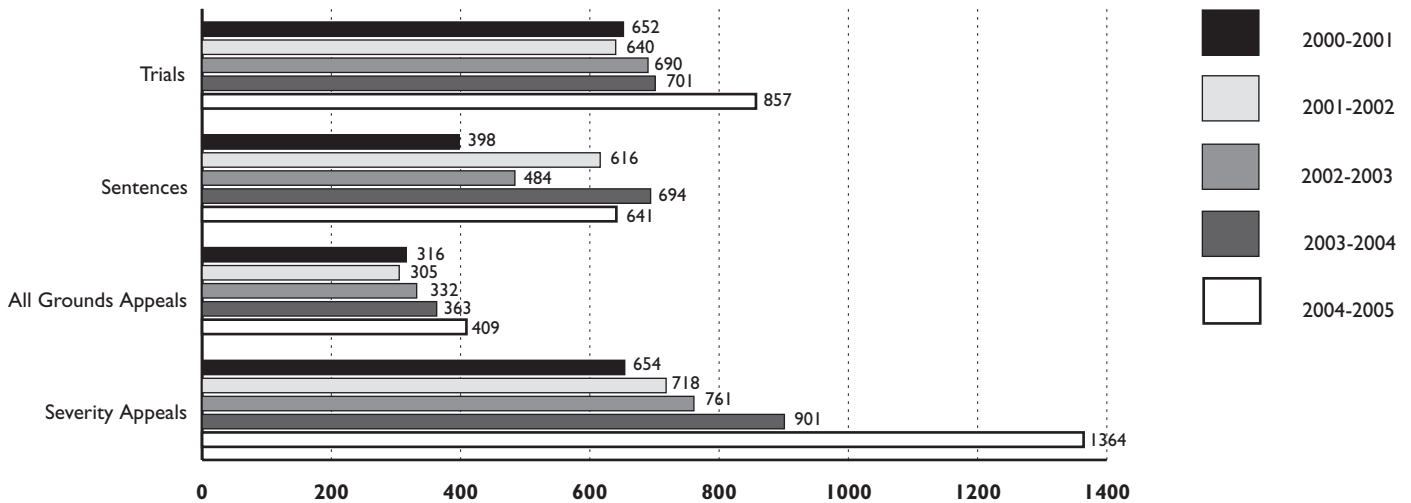
Appendix 3

District Court – Sydney Summary

District Court Matters Received – Sydney



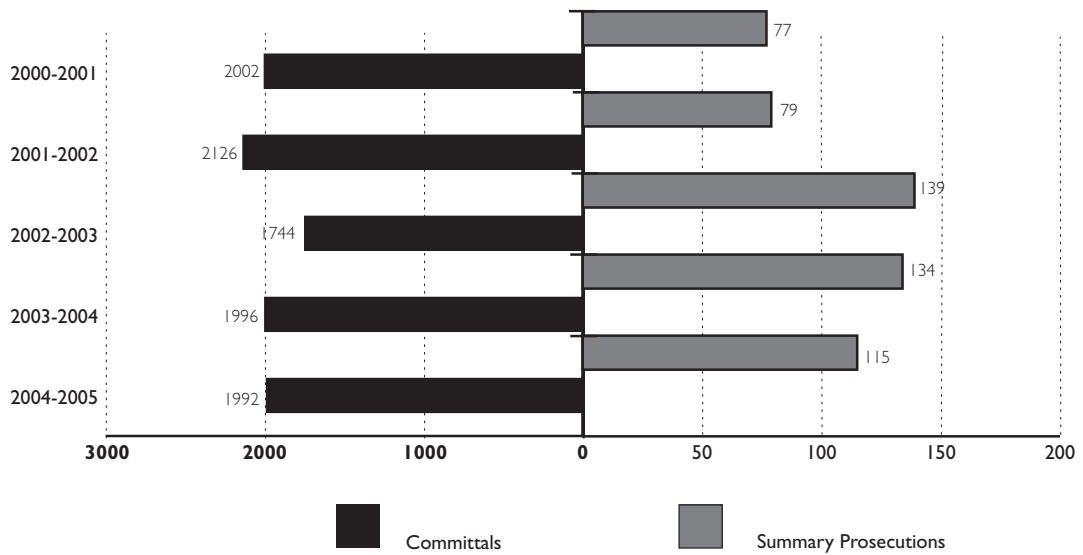
District Court Matters Completed – Sydney



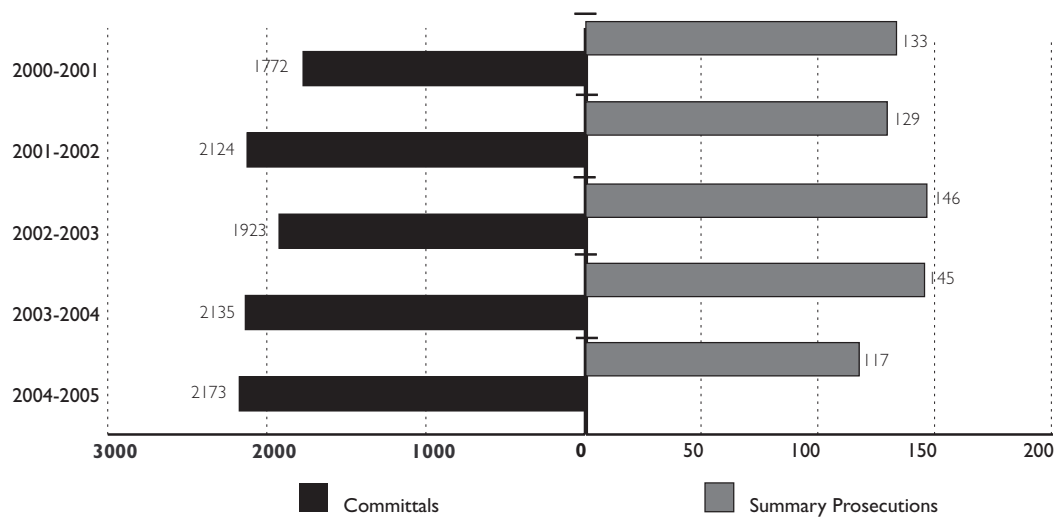
Appendix 4

Local Court – Sydney Summary

Local Court Matters Received – Sydney



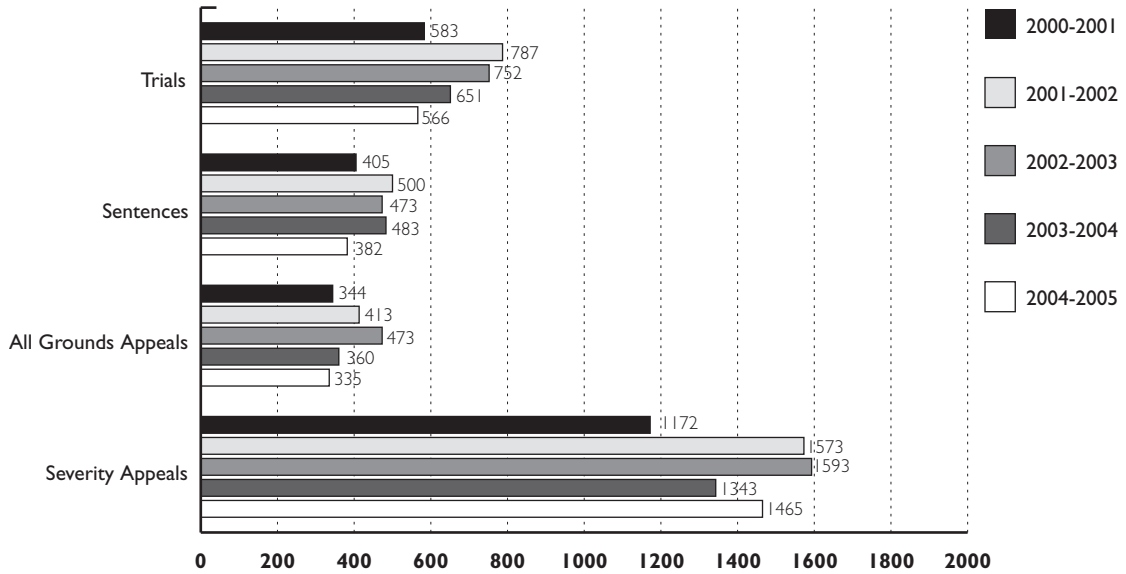
Local Court Matters Completed – Sydney



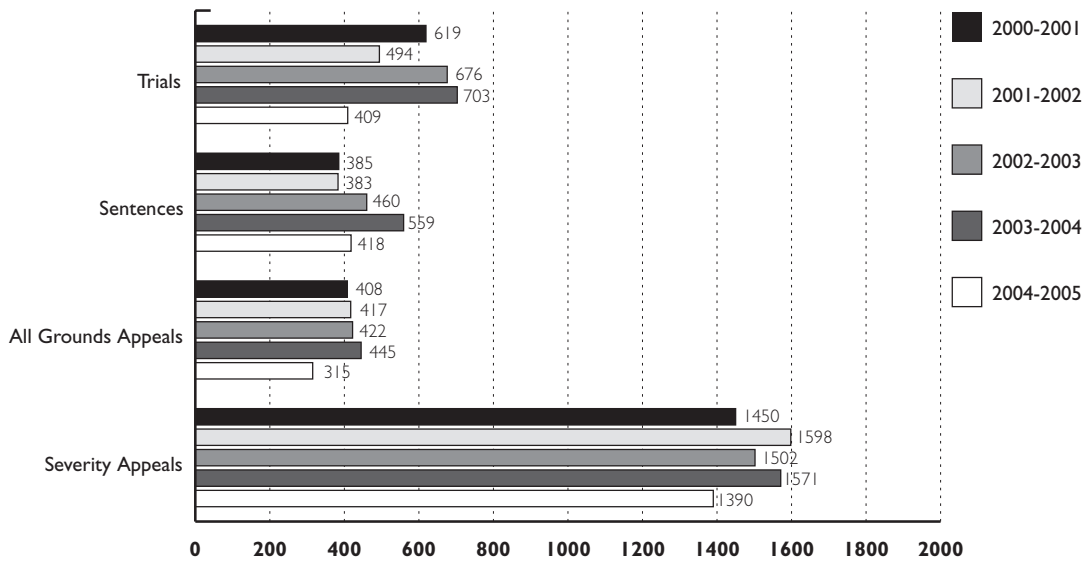
Appendix 5

District Court – Sydney West Summary

District Court Matters Received – Sydney West



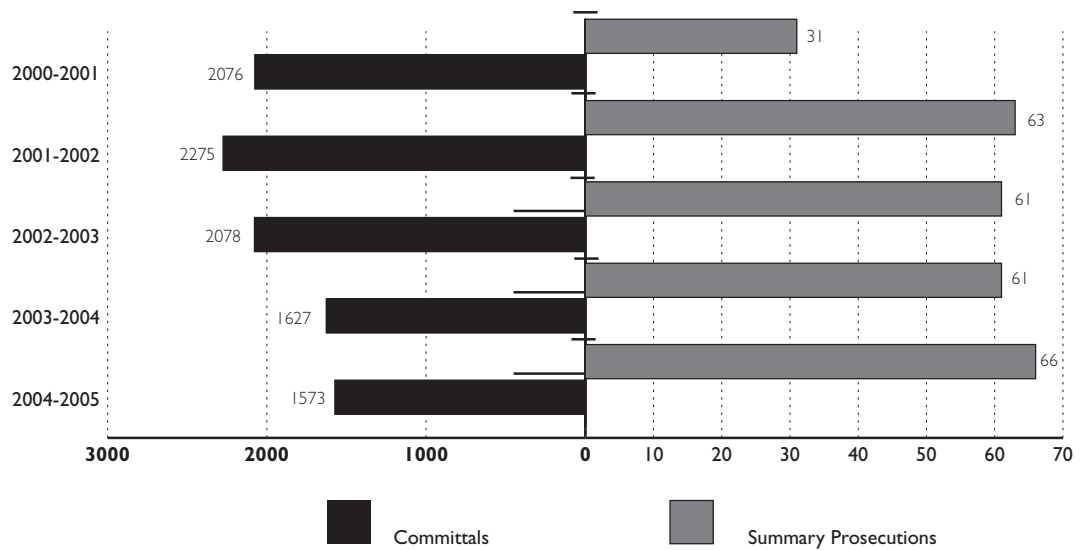
District Court Matters Completed – Sydney West



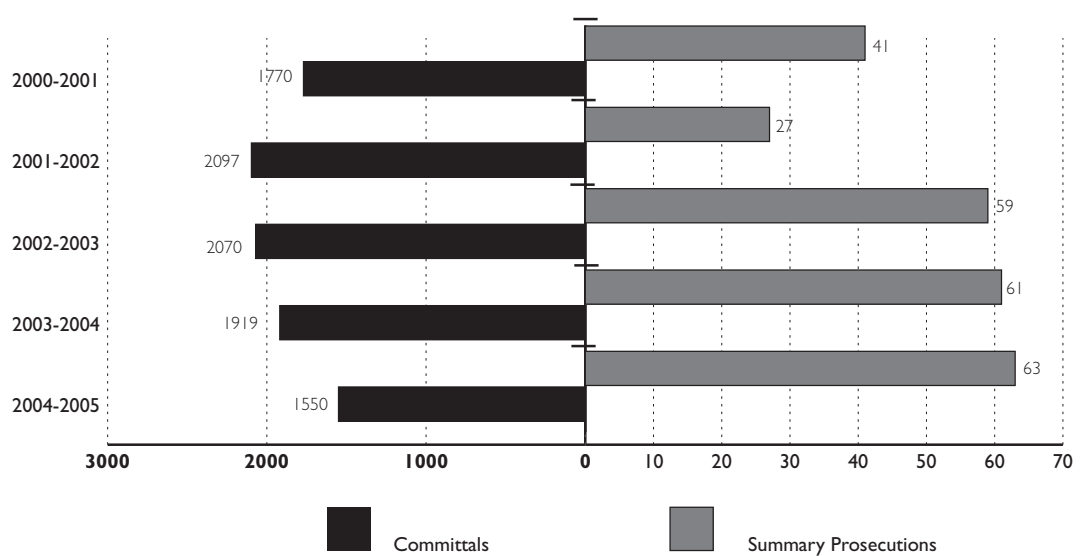
Appendix 6

Local Court – Sydney West Summary

Local Court Matters Received – Sydney West



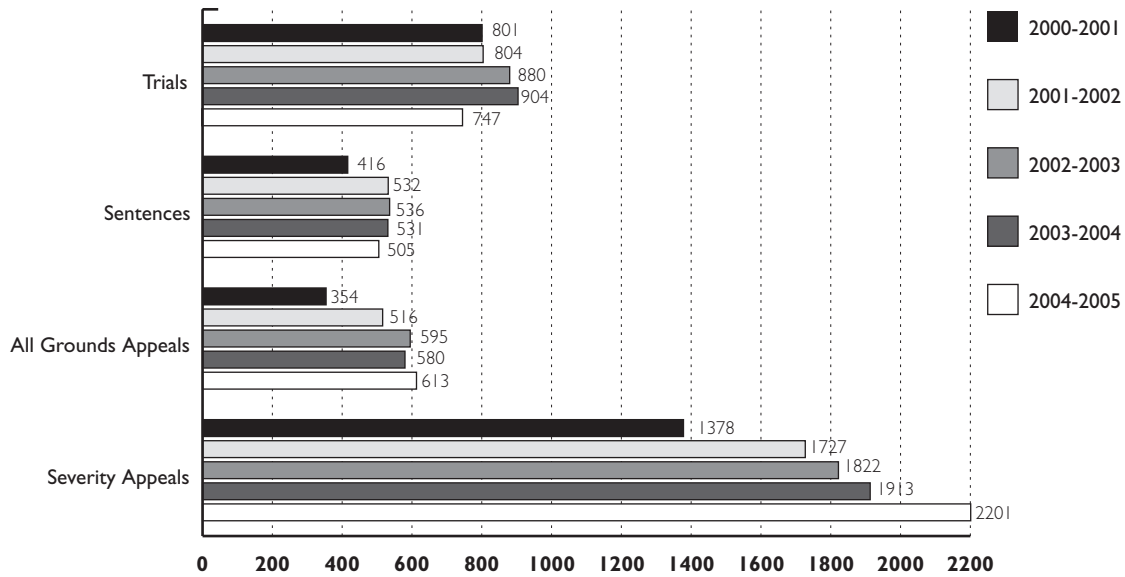
Local Court Matters Completed – Sydney West



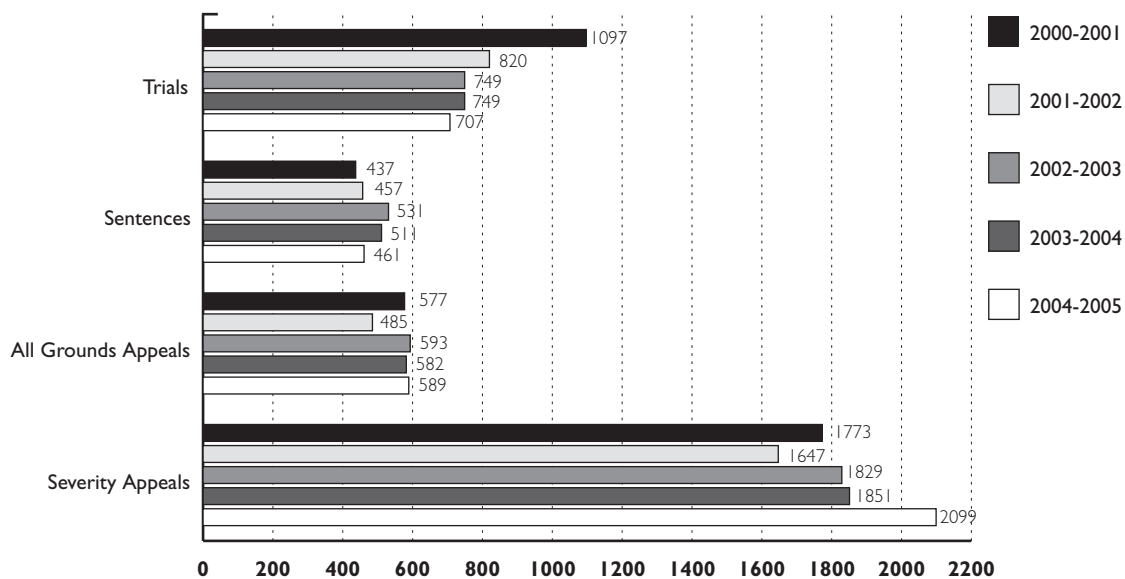
Appendix 7

District Court – Country Summary

District Court Matters Received – Country



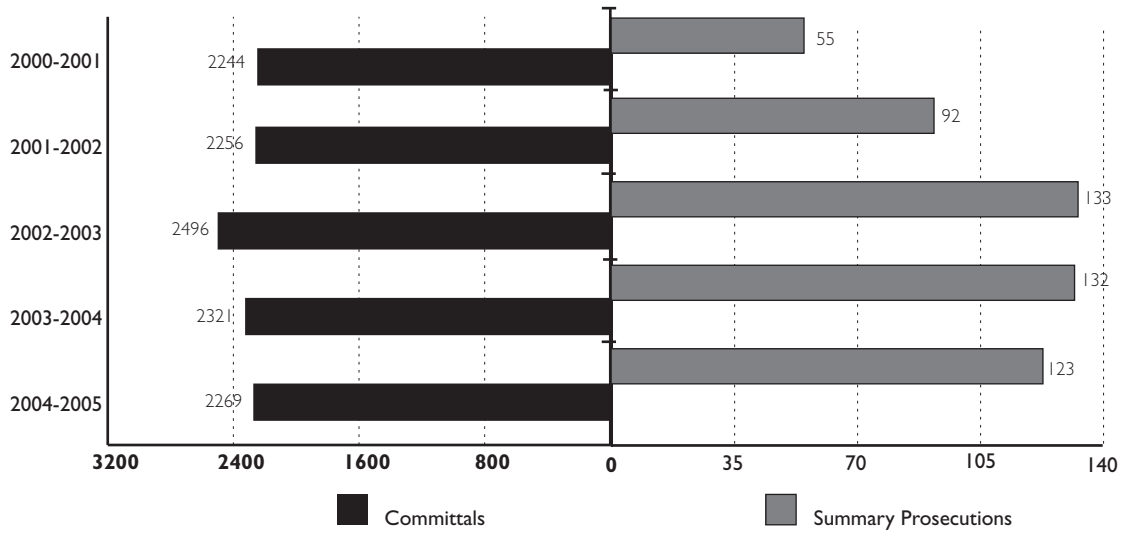
District Court Matters Completed – Country



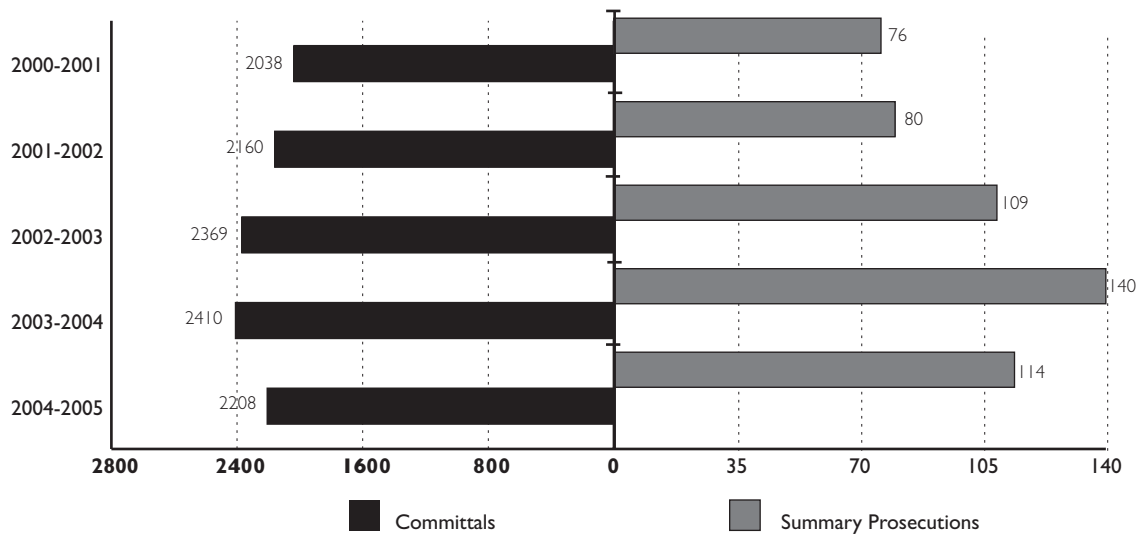
Appendix 8

Local Court – Country Summary

Local Court Matters Received – Country



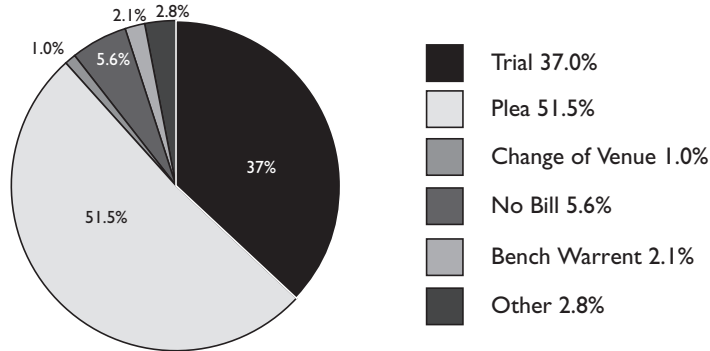
Local Court Matters Completed – Country



Appendix 9

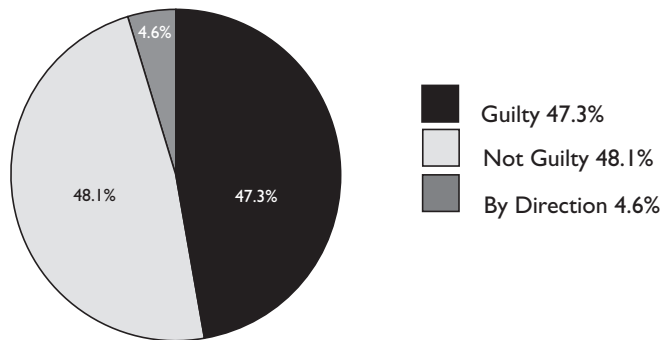
District Court – Trial Statistics

Disposal of Trials Listed

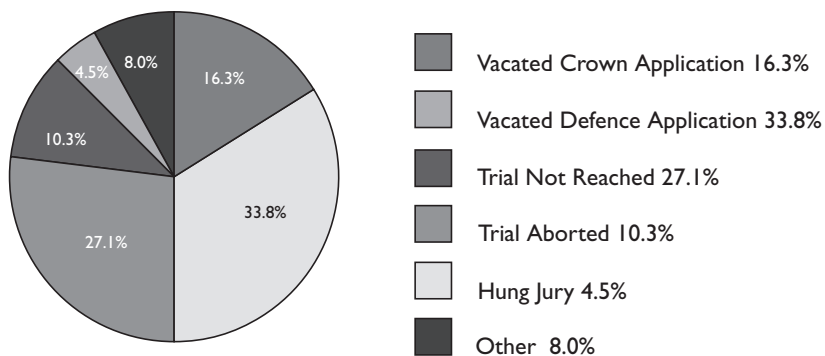


Trial Verdicts Comparison	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005
Guilty	43.7%	41.4%	53.2%	51.5%	47.3%
Not Guilty	46.7%	48.8%	41.4%	41.6%	48.1%
By Direction	9.5%	9.8%	5.4%	6.9%	4.6%

Trials Verdicts



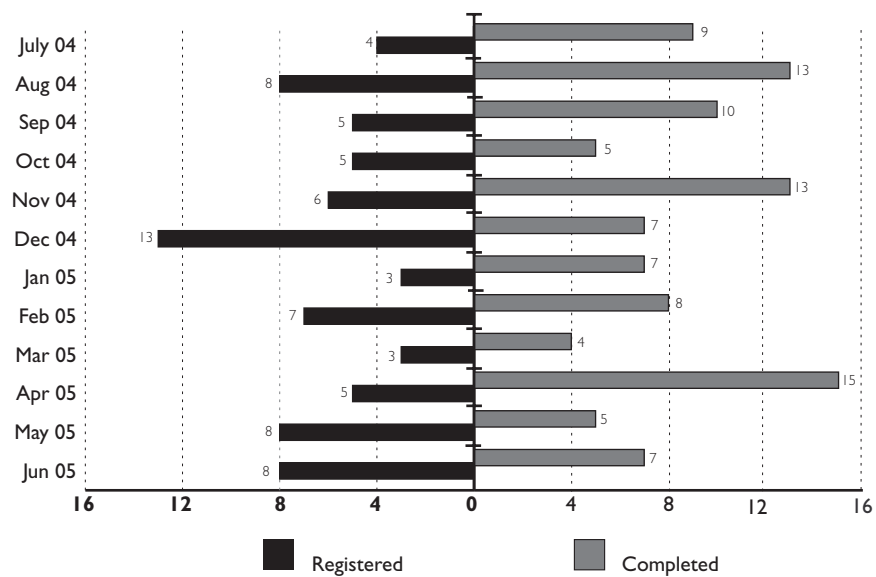
Trials Adjourned



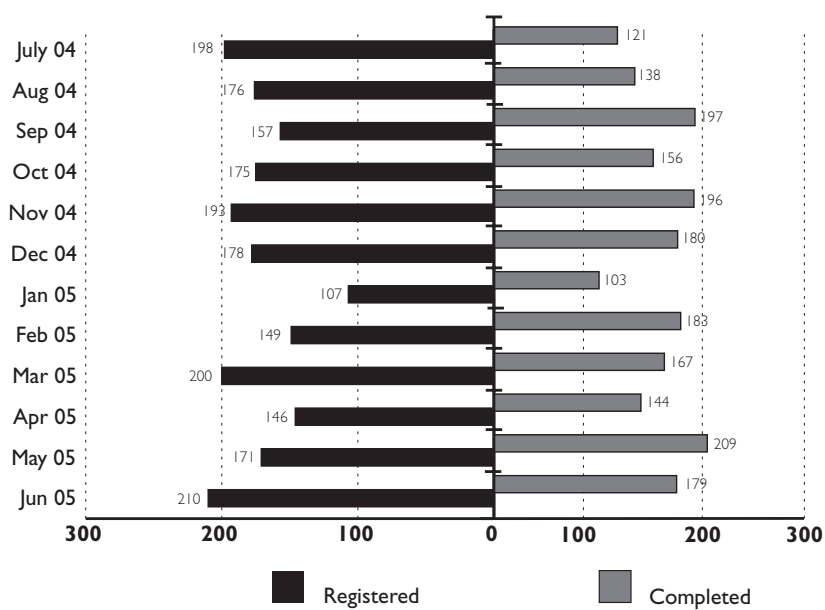
Appendix 10

Trials Registered and Completed

Supreme Court Trials Registered and Completed in 2004–2005



District Court Trials Registered and Completed in 2004–2005



Appendix I I

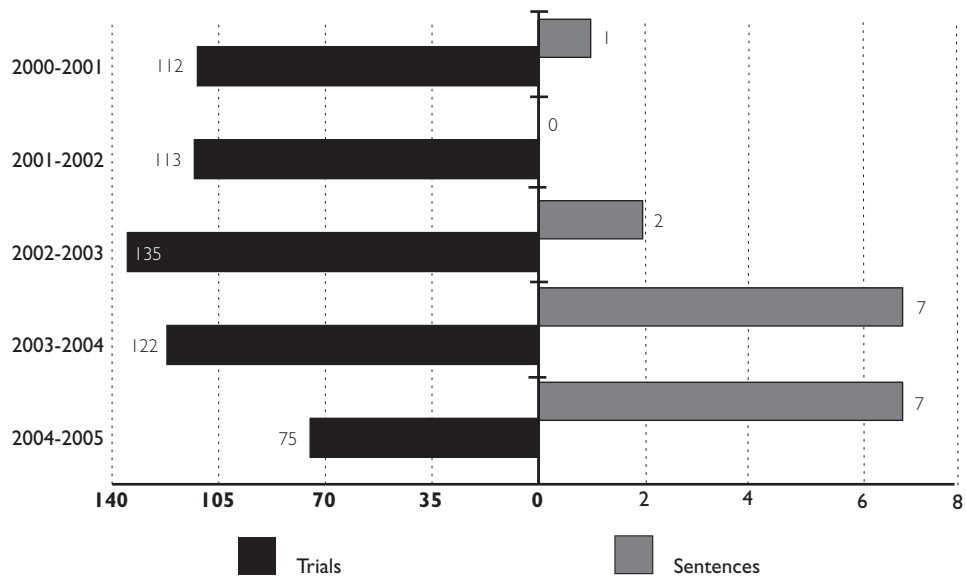
Local Court Committals – July 2004 to June 2005

Regional Office	Registrations	Disposals						On hand at End of June 2005	
		Committed for Trial	Committed for Sentence	Summarily Convicted	Discharged	Discont	Other		Total
Sydney Registrations	1911								
Group 1		169	137	82	13	30	54	485	191
Group 2		165	100	75	28	6	57	431	186
Group 3		158	127	102	27	25	46	485	197
Group 4		163	154	83	11	21	23	455	189
Group 5		0	4	0	0	0	5	9	2
Group 6		49	32	44	10	15	11	161	84
Admin Services		1	0	1	1	0	49	52	14
Sydney Miscellaneous		74	74	50	10	10	62	280	149
Sydney	1911	705	554	387	90	97	245	2078	1012
Parramatta	465	171	142	101	21	14	82	531	204
Penrith	524	149	95	83	29	29	110	495	242
Campbelltown	599	222	107	84	15	30	132	590	233
Sydney West	1588	542	344	268	65	173	324	1616	679
Newcastle	605	194	108	95	20	42	92	551	299
Lismore	391	125	62	78	12	53	48	378	197
Dubbo	252	54	29	48	8	29	38	206	80
Gosford	176	52	48	26	5	15	15	161	83
Wagga	222	90	28	36	4	39	25	222	55
Wollongong	458	149	120	77	14	90	41	491	151
Bathurst	118	32	55	27	4	17	28	163	31
Country	2222	696	450	387	67	285	287	2172	896
State Totals	5721	1943	1348	1042	222	455	856	5866	2587

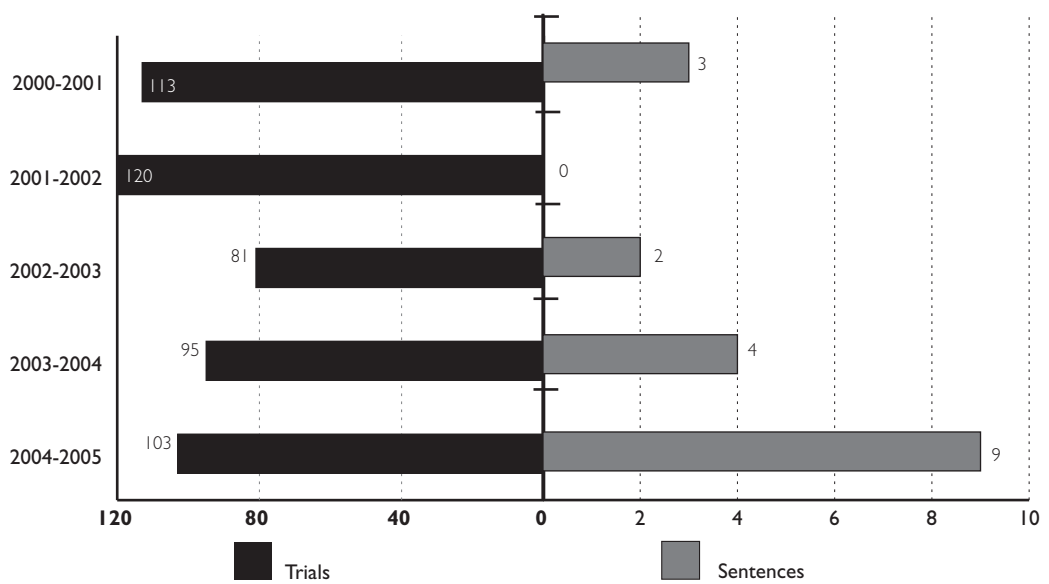
Appendix 12

Supreme Court – State Summary

Supreme Court Matters Received– State



Supreme Court Matters Completed – State



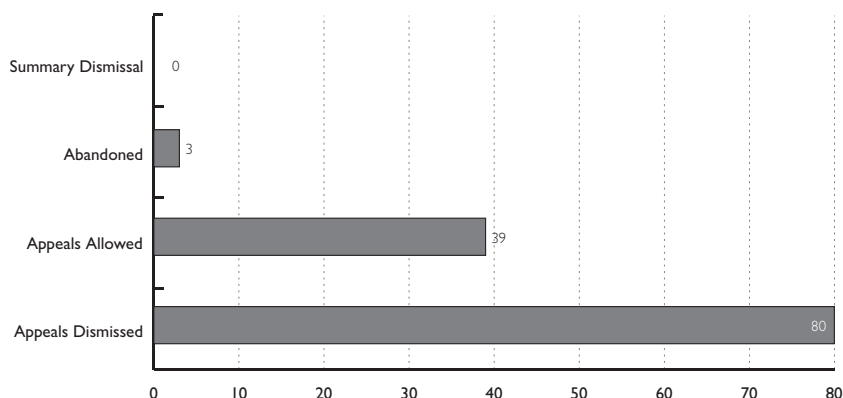
Appendix 13

Court of Criminal Appeal and High Court

Court of Criminal Appeal	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005
A. Appeals by Offenders finalised					
Conviction and sentence appeals	144	119	154	105	119
Sentence appeals	239	246	185	217	259
Summary dismissals	72	114	71	11	0
Appeals abandoned	169	212	149	7	6
TOTAL	624	691	559	340	384
	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005
B. Crown Inadequacy Appeals finalised					
Abandoned	8	14	16	19	24
Allowed	30	40	32	29	37
Dismissed	17	33	36	50	26
TOTAL	71	79	84	98	87
	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005
C. Appeals against interlocutory judgments or orders (s.5F appeals)					
	20	14	35	25	20
D. Stated cases from the District Court					
	6	2	1	4	3
E. Total of all appeals finalised					
	721	786	679	467	494

High Court matters finalised	2000–2001	2001–2002	2002–2003	2003–2004	2004–2005
Completed applications for special leave to appeal					
Applications by the offender	39	27	22	25	22
Applications by the Crown	1	0	0	1	1
Hearings conducted after grant of special leave to appeal					
Appeal by offenders	6	6	4	3	3
Appeal by the Crown	0	1	0	0	1

Conviction and Sentence appeals finalised in 2004–05 in Court of Criminal Appeal – Breakdown by numbers

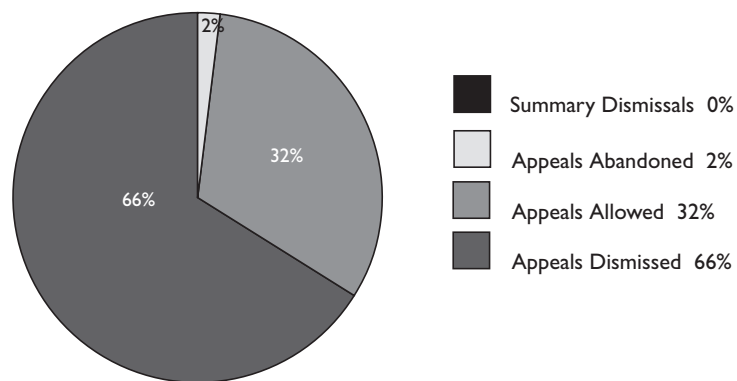


Appendix I3 Continued

Court of Criminal Appeal and High Court

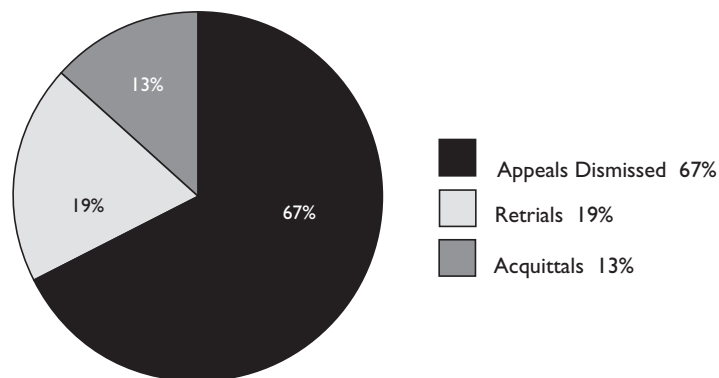
Conviction and sentence appeals finalised in 2004/05 in Court of Criminal Appeal

– Breakdown by percentage



Results of finalised conviction and sentence appeals in 2004/05 in Court of Criminal Appeal

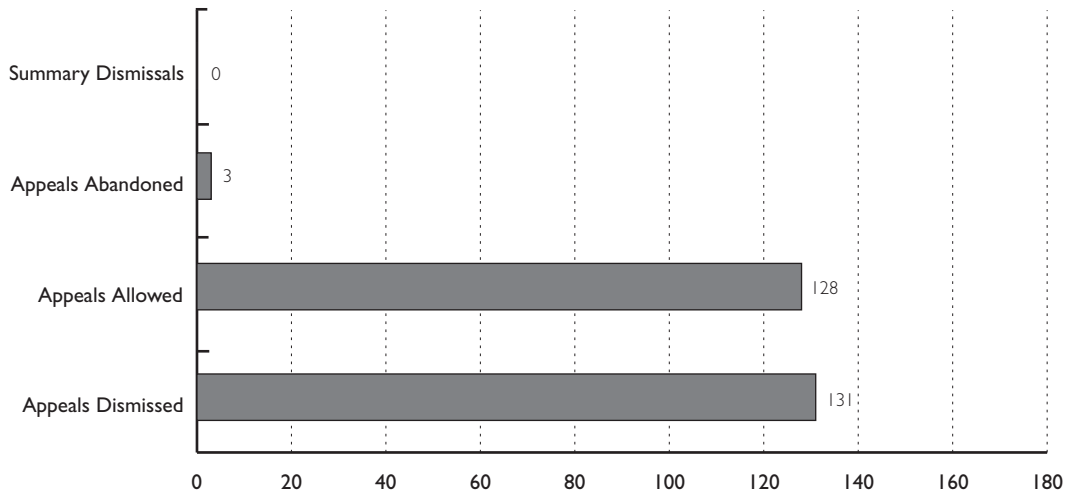
– Breakdown by percentage



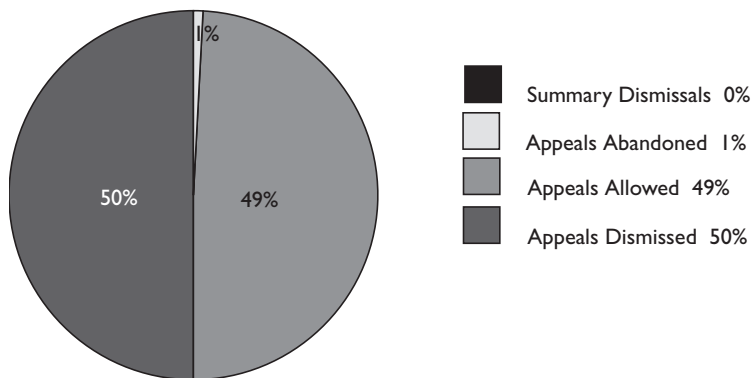
Appendix I3 Continued

Court of Criminal Appeal and High Court

Sentence appeals finalised in Court of Criminal Appeal in 2004/05
 – Breakdown by number



Sentence appeals finalised in 2004/05 in Court of Criminal Appeal –
 Breakdown by percentage



* A new system for lodging appeals in the CCA commenced on 1 July 2002. Caution should therefore be used when comparing figures for 2004–2005 with earlier years.

Appendix 14

Significant Legislative Changes

Criminal Procedure Amendment (Evidence) Act 2005 (No 15)

Assent and commencement
12/5/2005. Gaz 65, 3/6/2005 p 1911.

The Act amends the **Criminal Procedure Act 1986** in relation to the admission of a complainant's evidence in a criminal re-trial, where the accused was convicted of a sexual offence and has successfully appealed against that conviction. "Sexual offence" is defined in s 306A of the **Criminal Procedure Act 1986**.

The **Criminal Procedure Act** is amended by adding a new Division 3 called "Special provisions relating to retrials of sexual offence proceedings" into Chapter 6, Part 5 of the **Act**.

Section 306A defines the terms "accused person", "complainant", "original evidence" and "sexual offence" for the purposes of the new Division. "Complainant" is defined to mean any person against whom a sexual offence, with which the accused stands charged in the proceedings, is alleged to have been committed, and includes in relation to an offence under ss 91D, 91E or 91F of the **Crimes Act**, the person under the age of 18 years who is alleged to have participated in an act of child prostitution; and in relation to an offence under s 91G of the **Crimes Act**, the person under the age of 18 years who is alleged to have been used for pornographic purposes.

"Original evidence" of the complainant is defined in s 306B(2) as all evidence given by the complainant in the proceedings from which the conviction arose. "Sexual offence" is defined to mean either a "prescribed sexual offence" (defined in s 3 of the **Criminal Procedure Act**) or an offence against ss 73, 78A, 78B, 80D, 91A, 91B, 91D, 91E, 91F or 91G of the **Crimes Act**; or an offence that when committed was a sexual offence under

s 306A of the **Criminal Procedure Act**; or an offence that includes the commission of, or an intention to commit any of the above-mentioned offences; or an attempt, conspiracy or incitement to commit any such offence.

Under s 306B, if a person is convicted of a sexual offence, and a new trial is ordered on appeal, the Crown may tender as evidence in the new trial a record of the complainant's evidence given in the proceedings that gave rise to the conviction ("the record"). This includes the complainant's evidence given on examination in chief and any cross-examination or re-examination. The record is admissible in the new trial if the Crown gives notice to the court, and the accused person, of its intention to tender the record.

The hearsay rule under the **Evidence Act 1995** (NSW) does not prevent the admission of that evidence or its use to prove the existence of a fact that the complainant intended to assert by a representation made in the original evidence. The court hearing the new trial has no discretion to decline to admit the record if it is admissible under Division 3.

The court may direct that the record be altered or edited to remove any statements that would be inadmissible if the complainant's original evidence had been given orally in the new trial proceedings. The record may also be altered or edited by agreement between the Crown and the accused or the accused's counsel.

The new Division 3 applies to proceedings for new trials that were ordered before the Division commenced, including new trial proceedings that have been commenced or part heard matters.

Section 306C provides that where the record of the complainant's original

evidence is admitted in proceedings under Division 3, the complainant cannot be compelled to give any further evidence. However, under s 306D, the complainant may, with the court's leave elect to give further oral evidence. The court is to grant leave only if it is satisfied, on application by one of the parties, that it is necessary for the complainant to give further oral evidence either to (a) clarify any matters relating to the complainant's original evidence, or (b) canvas information or material that has become available since the original proceedings, or that (c) it is in the interests of justice to do so. The court is obliged to ensure that the complainant is questioned only in relation to matters that are relevant to the reasons for the court granting leave.

Section s 306E requires that the record of original evidence being tendered at the new trial must be the "best available record" of the original evidence and be "properly authenticated". "Best available record" of the complainant's evidence (or part thereof) is defined in s 306E(2) to mean (a) an audio visual recording of the evidence; or (b) if that is not available, an audio recording of the evidence; or (c) if neither are available, a transcript of the evidence.

If some or all of the complainant's evidence in the original proceedings was given by way of a recording, made by an investigating official under the **Evidence (Children) Act 1997**, the "best available record" of that evidence is the recording viewed or heard by the court in the original proceedings.

A complainant's record of evidence is "properly authenticated" for the purposes of s 306E if it has been authenticated either (a) by the court before which the evidence concerned was given; or (b) by the registrar or other proper officer of that court in accordance with any

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Significant Legislative Changes

directions of the court; or (c) by the person or body responsible for producing the record; or (d) in a manner prescribed by the regulations.

Under s 306F, the accused and his or her counsel, are not entitled to an audio visual recording or audio recording tendered or proposed to be tendered under Division 3. The accused, and his or her counsel, are however entitled to reasonable access to the recording to allow them to listen to it and, if the record is an audio visual recording, to view it.

Under s 306G, any exhibits tendered and admitted in the original proceedings on the basis of the complainant's evidence are also admissible in the new trial, as if the original evidence of the complainant had been given orally before the court hearing the new trial proceedings.

The **Criminal Procedure Amendment (Evidence) Act 2005** also amends the **Criminal Procedure Regulation 2000** by adding new clauses 14A and 14B. These new clauses concern a notice of intention to tender a record of the complainant's original evidence in a new trial of a sexual assault matter and the procedure for obtaining access to a record of the complainant's original evidence.

Law Enforcement (Powers and Responsibilities) Amendment (In-Car Video Systems) Act 2004 (No 104)

Assent 15/12/2004. Commencement 23/12/2004. Gaz 200, 17/12/2004 p 9308.

This Act amends the **Law Enforcement Powers and Responsibilities Act 2002** by inserting a new Part 8A to allow for the use of in-car video recording (ICV) equipment by police. The Act requires use of this equipment when police are pursuing or following a vehicle with the intention of stopping or detaining it. The technology consists of two video cameras, a recorder, a monitor, a wireless

microphone and control mechanisms that allow an audio and video recording to be made. The equipment enables a police officer's conversation with the driver or an occupant of a vehicle that has been stopped or detained to be recorded.

Police officers using highway patrol vehicles fitted with ICV equipment must record any situation where their vehicle is pursuing or following another vehicle with the intention of stopping or detaining it. This includes traffic stops, intercepting a vehicle escaping from the scene of a crime, where a vehicle has been pulled over and police are investigating an offence (though not necessarily traffic related) and random breath testing stops.

The Act allows for the recording of a conversation which is incidental to the recording of a "primary conversation" or that is inadvertently or unexpectedly recorded in the course of recording the "primary conversation".

A failure to operate the equipment or to record a conversation as required does not affect the admissibility of evidence concerning the police activities to which the failure related, nor does it result in any such evidence being evidence improperly or unlawfully obtained, subject to other rules as to the admissibility of evidence.

An officer is statutorily obliged, as soon as practicable, to inform the person who has been stopped or detained before recording or as soon as practicable thereafter that a recording of the conversation has commenced. The recording of the conversation does not require the person's consent.

Once a person has been arrested, a conversation between an officer and the person arrested must not be recorded. This requirement does not apply to recording a conversation inadvertently or unexpectedly or during the period between the person's arrest and the first

reasonably practicable opportunity to discontinue recording of the conversation, which is intended to ensure police safety. This exclusionary provision only applies to the recording of the sounds of a conversation and makes it possible for police to record visual images without sound. The Act explicitly provides that the **authorised recording of conversation does not constitute use of a "listening device"** for the purposes of the **Listening Devices Act 1984**.

The Commissioner of Police is obliged to **ensure** that recordings made under Part 8A are kept for at least two years. A person who has been recorded by police using ICV equipment can view the recordings at a police station. For the reason that an ICV recording constitutes personal information about another person, unauthorised disclosure of this information is an offence under provisions of the **Privacy and Personal Information Protection Act 1998**.

Crimes Amendment (Grievous Bodily Harm) Act 2005 (No 14)

Assent and commencement 12/5/2005. Gaz 65, 3/6/2005 p 1911.

This Act amends the **Crimes Act 1900** to ensure that offences under the Act relating to the infliction of grievous bodily harm extend to the destruction by a person of the foetus of a pregnant woman (other than in the course of a medical procedure). The offences so extended include the following —

- s 33 intentional infliction of grievous bodily harm on a person
- s 35 malicious infliction of grievous bodily harm on a person
- s 52A dangerous driving causing grievous bodily harm
- s 54 negligently causing grievous bodily harm

Appendix I4 Continued

Significant Legislative Changes

The amendment codifies the decision of **R v King** [2003] NSWCCA 399 in which the court held, among other things, that the death of a foetus is capable of constituting grievous bodily harm to a pregnant mother under s 33 of the **Crimes Act**, as the foetus, because of its physical connection with its mother, is properly regarded as part of the mother's person. The amendment does not affect the current law concerning the lawful termination of pregnancies.

In the Crimes Act 1900, the definition of "grievous bodily harm" in s 4 is replaced with a new definition which states that "**grievous bodily harm**" includes (a) destruction other than in the course of a medical procedure of the foetus of a pregnant woman, whether or not the woman suffers any other harm, and (b) any permanent or serious disfiguring of the person."

Appendix 15

Significant Judicial Decisions

High Court of Australia

Subramaniam v The Queen **(2004) 211 ALR 1**

In August 1995, a car owned by Leigh Johnson, a Sydney solicitor, failed to stop at a red light on Crown Street, Surry Hills. The driver could not be identified from the red-light camera photograph and Ms Johnson contested the charge. In February 1996, her employee, Ms Subramaniam, made a statutory declaration that she had been driving the car at the time. The prosecutor, however, refused to discontinue the case and send an infringement notice to Ms Subramaniam. Ms Johnson was convicted in absentia in the Local Court but successfully appealed to the District Court. In December 1996, Ms Subramaniam was charged with knowingly making a false statutory declaration and with giving false evidence to the District Court. She was committed to stand trial.

At the first trial in August 1999, the jury failed to reach a verdict. Ms Subramaniam's mental health had begun to deteriorate and she applied for a permanent stay of proceedings. The District Court refused the application and an appeal to the NSW Court of Criminal Appeal, against the refusal, was dismissed. In March 2001, the District Court directed that a hearing be conducted to determine whether Ms Subramaniam was fit to stand trial. In September 2001, the Mental Health Review Tribunal found that she was unfit to stand trial. The NSW Attorney-General, in accordance with s 19 of the **Mental Health (Criminal Procedure) Act 1990**, then directed that a special hearing be conducted into the charges.

Ms Subramaniam unsuccessfully applied to the District Court for a permanent stay of proceedings. A special hearing before a jury of 12 went ahead. A special hearing

is similar to a criminal trial, with some additional requirements. Among these, s 21(4) of the **Mental Health (Criminal Procedure) Act** specifies that the judge must from the outset explain to the jury that the accused is unfit to be tried under normal procedures, the meaning of "unfitness to be tried", the purpose of the special hearing, the verdicts available and the legal and practical consequences of those verdicts. Ms Subramaniam was found not guilty of giving false evidence but guilty of making the false statutory declaration. The NSW Court of Criminal Appeal dismissed an appeal.

Ms Subramaniam then appealed to the High Court of Australia submitting, inter alia, that the special hearing miscarried because the judge failed to comply with the requirements of s 21(4) of the **Mental Health (Criminal Procedure) Act**. The issues before the High Court were (a) whether the NSW Court of Criminal Appeal erred in not setting aside the trial judge's refusal to grant a stay (b) whether the special hearing miscarried due to the trial judge's failure to comply with the requirements of s 21(4) **Mental Health (Criminal Procedure) Act 1990 (NSW)** (c) whether the Crown's failure to adduce medical evidence of Ms Subramaniam's mental unfitness affected the jury's understanding of the appellant's mental unfitness and the consequences that it would have on her ability to participate in her trial.

The High Court allowed the appeal, holding that the judge's introductory remarks fell short of what was required. The mandatory nature of s 21(4) was not satisfied by the judge's other remarks during the trial, his summing-up, his answer to a question from the jury, or counsel's submissions. Such a departure from s 21(4) constituted a miscarriage

of justice which required the conviction to be quashed. The court ordered a new trial, observing that it was for the Director of Public Prosecutions to decide whether to proceed. The court also held that the instances where a permanent stay of proceedings in a special hearing should be granted, because of the possibility of an accused person's mental health continuing to deteriorate, and any potential that the trial might have for its aggravation, would be rare. This is because the **Mental Health (Criminal Procedure) Act 1990 (NSW)** assumes, as the basis for its application, that the accused suffers from a mental infirmity and all that it involves. It was further decided that the **Mental Health (Criminal Procedure) Act 1990 (NSW)** does not require the Crown to present medical evidence of an accused person's mental unfitness in a special hearing nor does it require the trial judge to make a direction to the jury about an accused's unfitness, and how it may have affected the accused adversely during the hearing.

R v Strong [2005] HCA 30

Strong pleaded guilty to offences of intimidation with intent to cause fear of physical or mental harm and stalking with the same intent. Offences of offensive language and having custody of a knife in a public place were taken into account on a Form 1. Strong was sentenced to eight years imprisonment with a non-parole period of six years. He was also pronounced to be an habitual criminal under the Habitual Criminals Act 1957 and consequently further sentenced to the maximum 14 years under that Act, to be served concurrently with the other sentences.

Strong appealed to the NSW Court of Criminal Appeal submitting, inter alia,

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Significant Judicial Decisions

that the sentencing judge erred in the exercise of his discretion to make a pronouncement and in passing sentence under the Habitual Criminals Act, by failing to take into account Strong's subjective circumstances; that the sentence passed under the Habitual Criminals Act was excessive; and that on the basis of fresh evidence that related to Strong's mental disorder and was not available to the sentencing judge, the habitual criminal pronouncement and the consequent sentences were not warranted in law. The CCA upheld Strong's appeal against the primary sentences and re-sentenced him to seven years imprisonment with a non-parole period of five years; dismissed his appeal against the habitual criminal pronouncement; but allowed his appeal against the further sentence under the Habitual Criminals Act and re-sentenced him to eight years imprisonment under that Act. The majority of the CCA found that the sentencing judge was exercising discretionary powers in pronouncing and sentencing pursuant to the Habitual Criminals Act, and in accordance with *House v The King* (1936) 55 CLR 499, the CCA would not interfere with the judge's exercise of discretion unless it had plainly miscarried. The CCA held that the sentencing judge correctly decided that the Act having been invoked, the statutory pre-conditions had been established and it was appropriate to pronounce and sentence accordingly.

Strong appealed to the High Court, the issue being whether the CCA erred in approaching the appeal against the pronouncement and sentence under the Habitual Criminals Act upon the basis that the CCA was constrained by the primary judge's decision, or whether the CCA, having upheld the appeal against sentence for the primary offences, was obliged to consider afresh both the pronouncement

and sentence under the Habitual Criminals Act.

Gleeson CJ held that Strong's appeal should be dismissed. His Honour held that once the CCA decided to intervene and re-sentence for the primary offences, it was entitled and obliged to reconsider for itself both elements of the decision under the Habitual Criminals Act, that is, the pronouncement and the resulting further sentence. The CCA's refusal to set aside the pronouncement was not merely the result of appellate restraint in interfering with a discretionary judgment, but was the result of the CCA's own judgment, formed after hearing and taking into account fresh evidence, that the protection of the public required the pronouncement.

Callinan and Heydon JJ agreed that Strong's appeal should be dismissed. Their Honours held that it was unnecessary to consider the correct construction of the Act, that is, whether once the CCA set aside the sentences for the primary offences, it was required to reconsider afresh the pronouncement and sentence under the Act without having to identify error in the sentencing judge's discretion on the subject. This point was not argued in the CCA. Their Honours said that it is unfair for appellants to criticise courts for having failed to deal with issues they were not asked to address, and subject to the need to prevent possible miscarriages of justice in criminal cases, appellants who make such criticisms face serious obstacles in having those criticisms accepted. Even if the Habitual Criminals Act was to be construed as contended by Strong, there was no chance that the outcome in this case would have been different. There was no risk of a miscarriage of justice.

NSW Court of Criminal Appeal

Application by Attorney General under s 37 Crimes (Sentencing Procedure) Act for a guideline judgment concerning a high range prescribed concentration of alcohol offence under s 9(4) Road Transport (Safety and Traffic Management) Act 1999 (No 3 of 2002) (2004) 147 A Crim R 546

The NSW Attorney General applied, under s 37A of the **Crimes (Sentencing Procedure) Act 1999**, for the issue of a guideline judgment by the NSW Court of Criminal Appeal for the offence of driving with a high range prescribed concentration of alcohol under s 9(4) of the **Road Transport (Safety and Traffic Management) Act 1999**. A "high range prescribed concentration of alcohol" is defined in the dictionary to the **Road Transport (Safety and Traffic Management) Act 1999** as "a concentration of 0.15 grams or more of alcohol in 100 millilitres of blood."

The maximum penalty for a first offence is 30 penalty units or imprisonment for 18 months or both and, for a second or subsequent offence, 50 penalty units or imprisonment for two years or both. A penalty unit under s 17 of the **Crimes (Sentencing Procedure) Act 1999** is \$110.

Before issuing the guideline judgment, the court examined whether a guideline judgment was warranted in this case. However the fact that high range pca offences are so commonly occurring in the community, suggested that such guideline was warranted. An aggravated form of a high range PCA offence carries the highest maximum sentence for any offence under NSW road traffic legislation. The maximum penalty indicates how parliament regards the offence and it

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Significant Judicial Decisions

therefore represents the public's view of the seriousness of the crime: H (1980) 3 A Crim R 53. After deciding on the need to publish a guideline judgment, the court considered the appropriate content of the guideline including examining issues of moral responsibility and the nature of licence disqualification. The NSW CCA also took account of the factors of (a) prior good character (b) involvement in a driver education program (c) the disqualification period (d) orders under s 10 of the **Crimes (Sentencing Procedure) Act 1999** and (e) the ordinary case involving a high range pca offence to be used as a model by other courts when sentencing for the offence.

The guideline issued by the court is set out in the judgment of Howie J at [146] as follows —

“(1) An ordinary case of the offence

of high range PCA is one where:

- (i) the offender drove to avoid personal inconvenience or because the offender did not believe that he or she was sufficiently affected by alcohol;
- (ii) the offender was detected by a random breath test;
- (iii) the offender has prior good character;
- (iv) the offender has nil, or a minor, traffic record;
- (v) the offender's licence was suspended on detection;
- (vi) the offender pleaded guilty;
- (vii) there is little or no risk of re-offending;
- (viii) the offender would be significantly inconvenienced by loss of licence.

(2) In an ordinary case of an offence of high range PCA:

- (i) an order under s 10 of the **Sentencing Act** will rarely be appropriate;

- (ii) a conviction cannot be avoided only because the offender has attended, or will attend, a driver's education or awareness course;
- (iii) the automatic disqualification period will be appropriate unless there is a good reason to reduce the period of disqualification;
- (iv) a good reason under (iii) may include (a) the nature of the offender's employment; (b) the absence of any viable alternative transport; (c) sickness or infirmity of the offender or another person.

(3) In an ordinary case of a second or subsequent high range PCA offence:

- (i) an order under s 9 of the Sentencing Act will rarely be appropriate;
- (ii) an order under s 10 of the Sentencing Act would very rarely be appropriate;
- (iii) where the prior offence was a high range PCA, any sentence of less severity than a community service order would generally be inappropriate.

(4) The moral culpability of a high range PCA offender is increased by:

- (i) the degree of intoxication above 0.15;
- (ii) erratic or aggressive driving;
- (iii) a collision between the vehicle and any other object;
- (iv) competitive driving or showing off;
- (v) the length of the journey at which others are exposed to risk;
- (vi) the number of persons actually put at risk by the driving.

(5) In a case where the moral culpability of a high range PCA offender is increased:

- (i) an order under s 9 or s 10 of the **Crimes (Sentencing**

Procedure) Act would very rarely be appropriate;

- (ii) where a number of factors of aggravation are present to a significant degree, a sentence of any less severity than imprisonment of some kind, including a suspended sentence, would generally be inappropriate.
- (6) In a case where the moral culpability of the offender of a second or subsequent high range PCA offence is increased
 - (i) a sentence of any less severity than imprisonment of some kind would generally be inappropriate;
 - (ii) where any number of aggravating factors are present to a significant degree or where the prior offence is a high range PCA offence, a sentence of less severity than full-time imprisonment would generally be inappropriate.”

R v Halmi [2005] NSWCCA 2

Nicolai Halmi was convicted, by a jury, of one count of supplying a commercial quantity of a prohibited drug (heroin) under s 25(2) of the **Drug Misuse and Trafficking Act 1986**. The Crown case was that Mr Halmi and a co-offender had supplied five blocks of heroin weighing 1.7 kgs to two others. Mr Halmi's fingerprints were found on the wrapping of two of the five blocks. A sentence of seven years was imposed with a non-parole period of five years, three months.

A difficulty with the prosecution of Mr Halmi was that he was arraigned, on an indictment signed by a barrister from the private bar who had been briefed by the Director of Public Prosecutions to prosecute the matter. The signing of an indictment by a barrister in private practice is contrary to s 126 of the **Criminal Procedure Act. Section 126**

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Significant Judicial Decisions

requires an indictment to be signed by, inter alia, a Crown Prosecutor; that is a barrister who holds the statutory appointment of a Crown Prosecutor as provided by the **Crown Prosecutors Act 1986**.

In an appeal by Mr Halmi against his conviction, the court was required to determine (a) whether a failure to comply with the requirements of s 126 of the **Criminal Procedure Act** made the indictment invalid and (b) whether the offender's trial and conviction were nullities because they proceeded on an invalid indictment.

The court allowed the appeal and set aside the guilty verdict and the conviction and sentence. The principal rulings of the court were that (a) an indictment is invalid where it is signed by a person who is not authorised to sign an indictment under s 126 of the **Criminal Procedure Act**; (b) where an accused is arraigned on an invalid indictment, the trial is a nullity and (c) the requirement, under s 20 of the **Criminal Procedure Act**, that an accused consent to the substitution of an indictment cannot be met by an accused's failure to object to the indictment when it is presented in court.

R v Iby [2005] NSWCCA 178

David Iby drove a stolen car erratically and at high speed when he collided with a vehicle travelling in the same direction. Mr Iby's car then crossed to the wrong side of the road and collided head on with a car driven by a woman who was 38 weeks pregnant. The woman was taken to hospital, an emergency caesarean was performed and a baby boy delivered. After delivery, the baby had a heartbeat and breathed with the aid of a respirator. Tests revealed little or no electrical activity in the baby's brain about an hour after delivery. The infant was pronounced dead

two hours later.

Mr Iby was convicted, after a trial by a judge sitting alone, of one count of manslaughter under s 18(1)(b) of the **Crimes Act**. He had pleaded guilty to two counts of aggravated dangerous driving occasioning grievous bodily harm under s 52A(4) **Crimes Act** and one count of taking a conveyance without the owner's consent under ss 154A(1)(b) and 117 of the **Crimes Act**.

A total sentence of ten years, with a seven year non parole period and a five year driving disqualification was imposed.

Mr Iby appealed against his conviction submitting that (a) the baby was not born alive and therefore could not be the subject of a manslaughter charge; and (b) that the common law "born alive" rule should be adapted to be consistent with the definition of "death" in s 33 of the **Human Tissue Act 1983**.

The court dismissed the appeal and made the following findings —

(1)(a) Where a criminal offence involves an element of killing or death of a newborn, the common law says that the element cannot be established unless the baby was born alive. The common law born alive rule requires that to be born alive, the baby must have left the mother's body and been alive at or after birth. A baby has an existence separate from and independent of its mother when it is fully extruded from the mother's body and is living by virtue of the functioning of its own organs: **R v Hutty [1953] VLR 338 at 229**; **R v F (1996) 40 NSWLR 245 at 247-8**. The court found that there is no single test of what constitutes life, and whether the born alive rule has been satisfied is an issue of fact for the tribunal of fact.

(1)(b) Evidence that a child breathed independently of its mother, whether or not the breathing was assisted by mechanical ventilation, is evidence that a child was born alive. However, evidence of breathing is not necessary to establish life after birth. The application of s 20 of the **Crimes Act**, which provides that a child is taken to have been born alive if "it has breathed and has been wholly born into the world", is confined to a trial for murder of the child. There is no warrant for applying that modification of the common law to other offences.

(1)(c) A review of the authorities on the born alive rule by the NSWCCA showed that the trial judge was correct to hold that the evidence of heartbeat was sufficient to satisfy the common law born alive rule.

(1)(d) The court found that any sign of life after delivery is sufficient to indicate that the child was born alive. The born alive rule can be traced back to the 17th century and was a product of the primitive state of medical knowledge and technology and the prevailing high rate of infant mortality. A strong case exists for completely abandoning the born alive rule. Given the current state of medical technology, and the extremely low rate of stillbirths in Australia, if the born alive rule is to survive at all, it should continue to be applied so that any sign of life after delivery is sufficient.

(2) Mr Iby argued that s 33 of the **Human Tissue Act 1983** altered the common law by introducing a definition of death "for the purposes of the law of New South Wales". He also argued that the common law should be adapted so that its definition of life was consistent

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Significant Judicial Decisions

with the statutory definition of “death”. He submitted that it would be anomalous if a person could be classified as “dead” for virtually all purposes of the law of NSW, but also classified as “alive” for the purposes of the common law born alive rule.

The court found that the **Human Tissue Act 1983** does not indicate a legislative intention to alter the concept of “life” for the purposes of the law, specifically the born alive rule. The born alive rule is concerned with identification of life after the infant has been completely separated from its mother’s body, and adopts an artificial and non-scientific standard of when life begins. It is not the reciprocal of “death” as defined by the **Human Tissue Act 1983**.

R v Folbigg [2005] NSWCCA 23

Kathleen Folbigg was convicted of four counts of murder and one count of maliciously inflict grievous bodily harm. She had four children, each of whom died in infancy suddenly and unexpectedly. The Crown case was that she had smothered all four children causing their suffocation. A sentence of 40 years imprisonment, with a non-parole period of 30 years was imposed.

At trial, the Crown submitted that the matters should be tried jointly as it would be unjustly artificial to deal separately with each case. The Crown case relied both on coincidence and tendency evidence and the contents of Folbigg’s diaries. Evidence was presented from a number of expert witnesses that they were not aware of any previous recorded case in which three or more infants in one family had died suddenly and for reasons not able to be explained by proper professional diagnosis.

On appeal, Folbigg submitted that the trial had miscarried because the five charges were heard jointly and as a result of the evidence of the expert witnesses. It was further submitted that the trial judge’s directions on tendency and coincidence evidence were erroneous and that the verdicts were unreasonable. Folbigg also submitted that the sentence imposed was manifestly excessive.

The sentence appeal was allowed on the grounds that the sentence was manifestly excessive and a lesser sentence of 30 years imprisonment, with a 25 year non-parole period was imposed. The court found that, although some measure of cumulation of the sentences was warranted, the cumulations in the appellant’s case were so crushingly discouraging as to put at risk any incentive for her to apply herself to rehabilitation.

The appeal against conviction was dismissed. The court held that no miscarriage of justice was caused by the hearing of all five charges in one trial. The court found that the five events were substantially and relevantly similar and the circumstances in which they occurred were substantially similar and were thus “related events” in the sense established by s 98 of the **Evidence Act**. The evidence was also found to satisfy the requirement in s 101 of the **Evidence Act** in that its probative value substantially outweighed its prejudicial effect.

The court further held that no miscarriage had been caused by the evidence given by the expert witnesses. The evidence was relevant in the sense contemplated by s 55 of the **Evidence Act** as the Crown case was a circumstantial one. There were three circumstances which the evidence could rationally affect: that it was not a reasonable possibility that there was, in any individual case, some other natural cause of death; that, absent a natural

cause of death in any one of the four successive infant deaths in a single family, the only inference rationally available was that the deaths had been caused in some unnatural way; and that the only rational inference as to the nature of the unnatural cause was that each of the children had been suffocated by somebody. There was no danger that the jury would misuse the evidence by reversing the onus of proof as the trial judge gave clear and correct directions, both written and oral, that it was the burden of the Crown to prove its case.

The trial judge’s directions in relation to tendency and coincidence evidence were found not to have been erroneous. Although the trial judge did not tell the jury in terms that the legitimate use of tendency evidence is to help show that what happened was not an accident, or to help show what was the intention with which the accused did the act which she was proved to have done, it had been made quite clear to the jury that this was the whole point of both the tendency and the coincidence evidence. That is, that each death was not an accident, and that if the jury was satisfied that the appellant had in fact caused a particular death, then it had been accompanied by the intent appropriate to the crime of murder.

The court held that the verdicts were not unreasonable. It was held that it was amply open to the jury, which saw and heard the witnesses, to reject the defence hypothesis that each of the five relevant events could be explained away as having derived from identified natural causes.

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Significant Judicial Decisions

NSW Court of Appeal

John Fairfax Publications Pty Ltd & 2 Ors v Ryde Local Court & 3 Ors [2005] NSWCA 101

11 April 2005

On 19 September 2004 a telephone interim Apprehended Violence Order (AVO) was obtained against the 4th Opponent, a Magistrate. The order was later made final by consent. The AVO application was initially returnable before the Local Court, in conjunction with criminal assault proceedings, on 24 September 2004. On that day the interim AVO was continued and both proceedings adjourned. The Claimants (who were print and television media organizations) applied to the Local Court for an order that they be granted access to the originating documentation for both sets of proceedings. The application was dismissed by Syme LCM on 1 October 2004, on the basis that it had not been demonstrated that it was necessary in the interests of justice for the public to have access to the documents.

The assault and AVO proceedings were then listed for hearing before McIntosh LCM on 8 October 2004. On that date the assault proceedings were withdrawn and an application made for the interim AVO to be made final, and to extend to other persons, one of whom was below the age of 16 years. McIntosh LCM closed the court during these proceedings pursuant to s 562NA of the **Crimes Act 1900**.

The Claimants then commenced proceedings in the Court of Appeal, seeking to challenge the decision of Syme LCM denying access to the court documents, and the decision of McIntosh LCM to close the court during the hearing of 8 October 2004. As the Claimants raised constitutional issues

alleging violation of the implied freedom of political communication, the Attorney General intervened in the proceedings.

In dismissing the Claimant's summons the Court of Appeal held that:

- Neither the Complainants, nor the public at large, had a right of access to the documents filed in the proceedings and held as part of the court record. The "principle of open justice" is a principle and not a free standing right. It is not engaged at the time of the filing of proceedings, and only applies when relevant material is used in court.
- The Local Court had no express or implied power to grant access to non-parties to court documents filed in proceedings under Part 15A of the **Crimes Act** (which includes AVO proceedings).
- Nevertheless, even assuming that such a power did exist, the granting of access to the Claimants to the fact of the complaint, the fact of the consent and the terms of the order fully and completely served the purposes of the principle of open justice. In determining this issue, Syme LCM was entitled to give weight to the private rights of the 4th Opponent.
- McIntosh LCM did not err in his application of s 562NA of the **Crimes Act** to the proceedings before him.

DPP v Marmara & 1 Or [2004] NSWCA 478

16 December 2004

Raymond Marmara was indicted in April 2002 on a charge of Malicious wounding with intent to do grievous bodily harm. Prior to arraignment the Attorney General determined in terms of s 8(1) of the **Mental Health (Criminal Procedure) Act 1990** (the Act) that an inquiry should be conducted into Marmara's fitness to be tried. In December 2002 a District

Court jury found Marmara unfit to be tried, and Taylor DCJ pursuant to s 14(a) of the Act referred the matter to the Mental Health Review Tribunal. The Tribunal determined pursuant to s 16(1) of the Act that Marmara on the balance of probabilities would become fit to be tried for the offences within 12 months, and that he was suffering from a mental illness. The Tribunal notified the District Court of its determination, and Taylor DCJ subsequently granted Marmara conditional bail. After 12 months had expired Taylor DCJ sought that the Tribunal reassess Marmara's fitness to be tried. The Tribunal responded that it had no jurisdiction to do so.

The matter was then set down for a further fitness inquiry in the District Court pursuant to a further determination by the Attorney General under s 8(1) of the Act. Thereafter Marmara was assessed by 2 independent psychiatrists, each of whom concluded that he was unfit to stand trial.

Dodd DCJ however refused to conduct a further inquiry, finding that the Attorney General's determination under s 8(1) was not made in good faith, in that pursuant to s 15 of the Act Marmara was presumed to remain unfit to be tried, and there was currently no evidentiary basis on which he could be found fit to be tried. However without a further determination as to Marmara's fitness to be tried the DPP was unable to take proceedings further, and without further proceedings being taken Marmara remained on bail with no prospect of either a trial or the Attorney General directing his release. The DPP then commenced proceedings in the Court of Appeal seeking a declaration that Dodd DCJ had erred in refusing to conduct a further inquiry.

In granting the DPP's application the Court of Appeal referred to the regime

Appendix 15 Continued

Significant Judicial Decisions

created by the Act, and noted that the current situation was not expressly provided for. The Court further held that Dodd DCJ had erred in failing to take into account the finding of the Tribunal to the effect that Marmara was likely to become fit to be tried within 12 months. The Court held that in the circumstances it was plain that the determination of the Attorney General was an attempt to bring resolution to the proceedings, and that there was a sound basis for the determination, namely the finding of the Tribunal. Accordingly Dodd DCJ had erred in finding that the determination was not made in good faith.

Hodgson JA noted that an object of the Act was to have a decision made which would place a limit on the period for which a person could be detained. If, as occurred in the present case, a person is found unfit to be tried, and the Tribunal determines on the balance of probabilities that the person will become fit within 12 months, then the only route towards fulfilment of that object of the Act is for a further fitness inquiry to be held.

NSW Supreme Court

Hanna v DPP [2005] NSWSC 134

24 February 2005

On 9 October 2001 2 informations for alleged offences under the **Migration Act 1958 (Cth)** were laid against the Plaintiff by an officer of the Department of Immigration and Multicultural Affairs (DIMA). The Plaintiff entered pleas of not guilty to both matters, and a hearing proceeded in the Local Court on 20 and 21 May 2002. On 2 September 2002 the Plaintiff was convicted of 1 of these offences and fined \$2500. The Plaintiff appealed his conviction to the District Court, but the appeal was dismissed. Then on 24 February 2003 the Plaintiff laid a total of 63 informations against 5 defendants, including the DIMA officer

who had commenced the proceedings against him and 4 witnesses who had given evidence in those proceedings. The informations alleged a variety of indictable offences including perjury and perverting the course of justice.

Eventually the matters were listed for committal hearing in the Local Court on 3 August 2004. Prior to that date the legal representatives acting for each of the 5 defendants wrote to the NSW DPP requesting that the DPP take over and terminate the prosecutions. Copies of the briefs of evidence which had been served on the defendants by the Appellant were supplied to the DPP for that purpose. On 29 July 2004 the Director wrote a letter to the Local Court Registrar seeking that the matters be stood over while the Director considered the defendants' application. However on 30 July 2004 the Director again wrote to the Registrar to indicate that he had taken over each of the 63 prosecutions pursuant to s 9(1) of the **Director of Public Prosecutions Act**, and declined to proceed further with them pursuant to s 9(4)(b) of the **Director of Public Prosecutions Act**. On 3 August 2004 the Local Court was informed that the Director had taken over and declined to proceed with the informations because in each case the evidence was insufficient to establish a prima facie case.

On 10 August 2004 the Plaintiff commenced proceedings by way of summons in the Supreme Court seeking judicial review of the DPP's decisions to take over and decline to proceed further with the prosecutions. The DPP then applied for an order that the Plaintiff's summons be summarily dismissed. James J held, applying **Barton v The Queen** (1980) 147 CLR 75 and **Maxwell v The Queen** (1995) 184 CLR 501 that the powers of the DPP pursuant to s 9(1) and 9(4)(b) of the **Director of Public Prosecutions Act** which had been exercised in the present case were each powers falling

within the discretionary powers of the DPP as a prosecuting authority, and were accordingly insusceptible of judicial review by the courts. The Plaintiff's summons was accordingly dismissed.

DPP v Gribble [2004] NSWSC 926

8 October 2004

Two police officers driving along a busy city street at about 10pm at night came across the Defendant wearing dark clothing and standing in the middle of the road. The defendant refused to obey a police direction to move off the road, and resisted the efforts of police to move him to the footpath. Once the defendant had been moved to the footpath one officer restrained him from going back onto the road, while the other officer called for assistance. During this procedure the defendant punched the first officer. He was arrested and charged with resisting and assaulting police in the execution of their duty. The charges were dismissed by a Local Court Magistrate on the basis that the officers had no power to restrain the defendant on the side of the road, and accordingly were not acting in the execution of their duty at the time of the alleged offences.

On appeal to the Supreme Court Barr J held that the legislative history and the current section 6 of the **Police Act** extended the duty of a police officer beyond the prevention and investigation of crimes, so as to include actions reasonably necessary for the protection of persons from injury or death and property from damage, regardless of whether the need for those services arose from any criminal act. Accordingly, the officers in laying hands on the Defendant were acting in the execution of their duty to protect the defendant and others from the danger which he was presenting. The Magistrate erred in finding to the contrary, and the appeal was accordingly allowed.

Appendix 16

Publications of the ODPP (NSW)

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

Corporate Information

ODPP (NSW) Annual Reports

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

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

Cost: No charge.

ODPP (NSW) Corporate Plan 2004–2007

The **Corporate Plan 2004–2007** contains information on the Office's goals, objectives and implementation strategies which will guide the operation of the ODPP until 2007.

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

DPP (NSW) Prosecution Guidelines

The DPP (NSW) Prosecution Guidelines were revised and re-published in October 2003. These principles are applied by persons acting in or representing the interests of the Crown or the Director under the **Director of Public Prosecutions Act 1986 (NSW)**.

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

Cost: No charge.

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

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

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

Cost: No charge.

Legal Research Publications

Advance Notes

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

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

South NSW 1232 or telephone (02) 9285 8764.

Cost: \$300 incl GST per annual subscription.

Evidence Act Cases 1995–1999

Editor Hugh Donnelly, **Evidence Act Cases 1995–1999** comprises 195 summaries of almost all NSW Court of Criminal Appeal decisions, High Court cases and a selection of Supreme Court and Court of Appeal cases on the **Evidence Act 1995 (NSW)**. Table of Contents, Table of Legislation and Subject Index. Available in soft cover only.

Access: Available in the State Library of NSW. To purchase a copy please forward a cheque for \$75 (incl GST) payable to ODPP (NSW) to the Principal Research Lawyer, Research Unit, ODPP (NSW), Locked Bag A8, Sydney South, NSW, 1232. For sales enquiries telephone (02) 9285 8761 between 9.00 – 5.00 pm weekdays.

Cost: \$75 incl GST.

Evidence Act Cases 2000

Editor Hugh Donnelly, **Evidence Act Cases 2000** comprises summaries of most NSW Court of Criminal Appeal decisions, all High Court cases and a selection of Supreme Court and Court of Appeal cases on the **Evidence Act 1995 (NSW)**. Table of Contents, Table of Legislation and Subject Index. Available in soft cover only.

Access: Available in the State Library of NSW. To purchase a copy please forward a cheque for \$75 (incl GST) payable to ODPP (NSW) to the Principal Research Lawyer, Research Unit, ODPP (NSW), Locked Bag A8, Sydney South, NSW, 1232. For sales enquiries telephone (02) 9285 8761 between 9.00 – 5.00 pm weekdays.

Cost: \$75 incl GST.

Appendix 16 Continued

Publications of the ODPP (NSW)

Information to Assist Witnesses and Victims of Crime

Your Rights as a Victim

This pamphlet was prepared to inform victims of crime as to how the ODPP (NSW) addresses their statutory rights and to provide details of who to contact if these rights have not been observed. The pamphlet also informs victims about how to contact the Witness Assistance Service.

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

Cost: No charge.

Being a Witness

This pamphlet provides prosecution witnesses with information about their role in the prosecution process, how to prepare for attending court, and what happens in the court room. It explains the role of the ODPP (NSW) and provides details of how witnesses can suggest ways to improve the service provided to them. This pamphlet also informs witnesses about the Witness Assistance Service.

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

Cost: No charge.

Information for Court Support Persons

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

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

Cost: No charge.

About the ODPP (NSW)

This document contains information about the role of the ODPP (NSW) in the prosecution process, the courts, victims and Crown witnesses and the Witness Assistance Service.

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

Cost: No charge.

Victim Impact Statement Information Package

This package was prepared jointly by the ODPP (NSW) and the Victims of Crime Bureau. It contains information to assist in preparing any victim impact statement authorised by law to ensure that the full

effect of the crime upon the victim is placed before the sentencing court.

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

Cost: No charge.

Supporting Your Child Though a Criminal Prosecution

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

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

Cost: No charge.

Witness Assistance Service Information Sheet

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

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

Cost: No charge.

Appendix 16 Continued

Publications of the ODPP (NSW)

Equal Employment Opportunity

Equal Employment Opportunity Annual Report

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

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

Cost: No charge.

Ethnic Affairs Priority Statement

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

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

Cost: No charge.

ODPP (NSW) Disability Action Plan

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

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

Cost: No charge.

Appendix 17

2004-2005 EEO Achievements

The EEO statistics were produced as part of the NSW Public Sector Workforce Profile. The number of women employed within the Office increased from 365 to 403 and the number of men employed decreased from 288 to 287.

The number of women earning salaries above \$72,434 (non-SES) increased from 106 to 115 and the number of men in the same salary band increased from 189 to 203.

The Office continued to employ one cadet under the Aboriginal and Torres Strait Islander Cadetship Program. One previous cadet has now progressed to acting Crown Prosecutor in Queensland.

The following relevant policies were implemented and/or reviewed during the year:

- Recruitment and Employment (Merit Selection);
- Employee Assistance.

Appendix 18

EEO Statistics

Table 1

Percentage of Total Staff by Level

LEVEL	Subgroup as Percent of Total Staff at each Level				Subgroup as Estimated Percent of Total Staff at each Level				
	TOTAL STAFF (Number)	Respondents	Men	Women	Aboriginal People & Torres Strait Islanders	People from Racial, Ethnic, Ethno-Religious Minority Groups	People Whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability Requiring Work-related Adjustment
< \$31,352	2	100%		100%	100.0%				
\$31,352 – \$41,177	20	55%	40%	60%		18%	18%	18%	
\$41,178 – \$46,035	84	86%	14%	86%	1.4%	39%	31%	10%	5.6%
\$46,036 – \$58,253	172	77%	21%	79%	0.8%	28%	15%	6%	1.5%
\$58,254 – \$75,331	118	73%	26%	74%	1.2%	23%	16%	2%	
\$75,332 – \$94,165	187	88%	57%	43%		19%	12%	5%	1.8%
> \$94,165 (non SES)	24	88%	79%	21%		19%	14%	5%	
> \$94,165 (SES)	6	100%	67%	33%		17%	17%	17%	16.7%
TOTAL	613	81%	35%	65%	1.0%	25%	16%	6%	2.0%

A total of 99 statutory appointees have been excluded for these reports.

Table 2

Percentage of Total Staff by Employment Basis

LEVEL	Subgroup as Percent of Total Staff in each category				Subgroup as Estimated Percent of Total Staff in each employment category				
	TOTAL STAFF (Number)	Respondents	Men	Women	Aboriginal People & Torres Strait Islanders	People from Racial, Ethnic, Ethno-Religious Minority Groups	People Whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability Requiring Work-related Adjustment
Permanent Full-Time	419	82%	42%	58%	0.3%	25%	17%	7%	2.6%
Part-Time	63	90%	5%	95%		25%	16%	4%	
Temporary Full-Time	110	70%	29%	71%	1.3%	26%	16%	4%	
Part-Time	14	71%	7%	93%	20.0%	10%	10%	10%	
Contract SES	6	100%	67%	33%		17%	17%	17%	16.7%
Non SES									
Training Positions	1	100%		100%	100%				
Retained Staff									
Casual									
TOTAL	613	81%	35%	65%	1.1%	25%	16%	6%	2.0%

Appendix 19

Government Energy Management Plan (GEMP)

During the reporting period 2004-2005 and as will be reported in the Office of the Director of Public Prosecution's (ODPP) GEMP Report 2004, the ODPP continues in its endeavours and commitment to reduce energy consumption. The ODPP remains contracted to Energy Australia for the supply of at least 5% Green Power:

The Office continues to assist in the effort to reduce power wastage by:

- incorporating energy management methodology in all construction works undertaken, i.e. install cbus lighting systems on all new refurbishments within financial restraints. This energy efficient system has been installed to date at Lismore, Campbelltown, Dubbo and Sydney locations. The basis of this system is that all offices and meeting rooms are connected to movement detectors and only operate while these areas are occupied,
- purchase in-contract electricity, including Green Power;
- purchase of energy efficient star rated equipment,
- engagement of power-save facilities on equipment (where those facilities are available).

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 and follow-up action towards meeting the Office's energy goals, being the responsibility of the Manager, Asset and Facilities Management Branch. The ongoing goals of the ODPP under the GEMP include:

1. Assisting the Government to achieve a reduction of the statewide total energy

consumption for government buildings of 25% of the 1995 level for 2005. This continues to be a real challenge for the ODPP because of increasing accommodation needs as a result of growth.

2. Upgrading to energy efficient facilities within Head Office and Regional Offices particularly those offices that have been refurbished. This is being achieved.
3. Purchasing electricity within Government contracts to ensure the minimum 5% Green Power content is obtained.
4. Continuing to purchase equipment that complies with SEDA's energy star
5. Acquiring fuel-efficient diesel and gas powered vehicles where opportunities exist.
6. Removal of "D" category fuel-inefficient vehicles from the Office's fleet and actively pursuing the acquisition of "A" category vehicles wherever possible.
7. Increasing staff awareness of energy management best practices.

The achievement of these goals directly relates to the Office's Corporate Plan Key Result Area 3, Goal 3.2, Accountability and Efficiency. Refer to the "Report Against Corporate Plan" in the 2004-2005 Annual Report.

7. The ODPP engaged its ABGR Assessor and undertook its Greenhouse Rating assessment, which was completed in February this year. The rating achieved was only 2 star but the review due in February 2006 is expected to show an improved result increasing the star rating to 3 or 4.

Future Direction

The ODPP is endeavouring to introduce energy efficiencies during fitout work;

complying with Government direction in respect to purchasing Green Power and in-contract energy; purchasing efficient equipment and by educating staff to use energy efficient methodologies and adopt a common-sense approach to energy management. The ODPP utilises the basic power sources, but the ODPP has the commitment to assist the Government in attaining its energy management goals and make savings in energy usage.

The ODPP's GEMP Report for 2005 has been completed and submitted to the Ministry of Energy and Utilities.

Appendix 20

Waste Reduction and Purchasing Plan and Recycling

The Office of the Director of Public Prosecutions (ODPP) has a sincere commitment to reduce waste and introduce wherever possible recycled products that will not have an affect on the operation of the Office equipment or interfere with its operational goals. The key reporting areas from the Office's latest produced WRAPP 2005 are reproduced below.

Inclusion of WRAPP principles in corporate plans and operational policies and practices

The Office's Corporate Plan 2004-2007, Key Result Area (KRA) 3, 3.2, 'To be efficient in the use of resources'. The strategies to achieve this KRA are 3.2.4 'Increase efficiency through improved technology' and 3.2.6 'Manage finances responsibly'. The Office continues to achieve this KRA by upgrading equipment facilities that will provide efficiencies in high-speed double-sided printing from PC's. Efficiencies have been realised in printing time, paper and consumables consumption and subsequent costs have not realised savings and as reported in the 2003-2004 Report the reasons are suspected to be because of the copies that are made of emails and other information sent electronically.

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

The ODPP's purchasing policy requires purchases to be made under Government contract wherever possible. This ensures the ODPP complies with this key reporting area. It was disappointing for the Office to discover that 100% recycled paper caused major problems in the operation of the Office's multi-functional copiers/printers/scanners. A test was undertaken and it was 100% proved that

pure recycled paper caused the majority of paper jams in the machines. The Office is undertaking testing on various recycled content paper to determine what will best suit the Office needs. For the time being the Office has had to revert back to virgin paper.

Improving waste avoidance and recycling systems across the agency

The ODPP has implemented recycling measures and provided the facilities to make recycling easy, throughout the Office. Receptacles are provided. As mentioned above, equipment enhancements have been put in place in an effort to reduce paper usage.

Establishing data collection systems to report agency progress

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

Increasing the range and quantity of recycled content materials being purchased

Despite not achieving a 100% success rate with copier and printing paper, the ODPP continues to pursue the purchase and use of other recycled products such as envelopes, post-it-notes, writing pads etc.

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

The Office's WRAPP is published on the ODPP's Internet. Recycling advertising has been placed on every floor of the Office. The Office has issued instructions to staff as to best practice methods for the operation of Office equipment to ensure copying and printing is double-sided with the additional option of multiple page printing.

Appendix 21

Chief Executive Service and Senior Executive Service

Number of CES/SES positions	Total CES/SES	Total CES/SES	Total CES/SES	Total CES/SES	Total CES/SES
Level:	30 June 2001	30 June 2002	30 June 2003	30 June 2004	30 June 2005
SES Level 1	3	3	3	3	3
SES Level 2	3	3	3	3	3
SES Level 3	—	—	—	—	—
SES Level 4	—	—	—	—	—
SES Level 5	—	—	—	—	—
SES Level 6	—	—	—	—	—
Statutory Appointments					
Under the DPP Act	4	4	4	4	4
Number of positions filled by women	2	2	2	2	2

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

CEO Statement of Performance

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

Staff Numbers	30 June 2001	30 June 2002	30 June 2003	30 June 2004	30 June 2005
Statutory Appointed and SES	85	100	104	100	105
Lawyers	268	280	282	303	315
Administration and Clerical Staff	189	193	199	221	233
Total	542	573	585	624	653

Recruitment Statistics	2000/01	2001/02	2002/03	2003/04	2004/05
Senior Executive Service	0	1	0	0	0
Statutory Appointments	0	1	0	2	0
Crown Prosecutors	5	19	14	1	5
Prosecution Officer (Lawyers)	30	74	33	27	44
Prosecution Officer (Administrative)	75	64	70	76	70
Total	110	159	117	106	119

Appendix 22

Report of the Chief Information Officer on Major IM&T Projects During 2004-05

Integrated Document Management System (IDMS)

The Integrated Document Management System was implemented in the 04/05 financial year. It allows for the automated management of electronic records created and received by the Office, allowing improved storage and retrieval of those records and full integration with existing workflow applications. It forms the first stage of the Office's compliance with the records management requirements of the State Records Act. It also delivers significantly improved document control and information sharing within the Office and other criminal justice agencies.

The system is in use by all staff within the Solicitor's Office and is being rolled out to Crown Prosecutors in the 05/06 financial year.

Activity Based Costing/Operational Performance Management System (ABC/OPMS)

These systems have been designed to capitalise on the improved reporting capacity of the Office's case tracking system to deliver better ways for the collection, analysis and reporting on the Office's performance against the Performance Indicators in the Corporate Plan.

The Activity Based Costing project has been initiated to capture critical data regarding the cost of each prosecution activity. It will provide important management information to enable better-informed resource allocation, budgeting and accountability.

ICT Infrastructure Upgrade Project

The following sub-projects make up the ICT Infrastructure Upgrade; the target date for completion of the whole project is June 2006:

1. Upgrade of the Wide Area Network (WAN) and Internet access.

This project aims to upgrade the existing WAN and Internet infrastructure to maintain adequate performance of ODPP applications at all sites, including regional offices. It also aims to allow the distribution of large electronic documents between offices and to improve communications and research by implementing less restrictive email and internet access. This project will be implemented in phases and is expected to be completed by March 2006.

2. Upgrade of Microsoft Software Licensing

This project aims to upgrade all Microsoft software to current, supported versions. This includes the upgrade of the network environment to Windows 2003 Active Directory Services, upgrade of email server software to Exchange Server 2003, and upgrade of desktop software to MS Office 2003. Testing of the Active Directory environment is currently underway. The Exchange Server and MS Office upgrades are in the design phase, with a new standard operating environment being developed.

3. Remote Access Project

This project aims to develop the strategies, policies and procedures to improve access to ODDP information and systems for staff who are working from outside the office, particularly those on court circuit. Trials of new remote access facilities are currently underway.

4. Security Certification to AS/NZS 7799:2 Standard

This project aims at implementing the Information Security Management System (ISMS) to achieve certification to the Australian Information Security Standard, in compliance with Premier's Department

Circular 2004-06. The scope has been revised to cover IM&T Operations and Infrastructure at the Head Office.

5. "Warm Site" for Disaster Recovery

In order to comply with Premier's Department Circular 2003-02, this project will implement a "warm site" for disaster recovery as proposed in the ODPP Disaster Recovery Plan. This warm site will consist of premises, equipment and network facilities to act as a backup in case of failure of the Head Office infrastructure. Investigation of suitable premises for the Disaster Recovery warm site is underway.

6. ODPP Portal

This project aims to manage disparate ODPP information resources in a consistent and integrated manner, whilst simplifying access to the information for ODPP personnel. This also includes upgrading of the DPPNet, the Research System and the ODPP web site. Requirements gathering for this project has commenced.

Disaster Recovery Plan and Business Continuity Plan

A disaster recovery plan and business continuity plan have been developed. This contingency planning provides detailed procedures for the recovery of ODPP systems in case of hardware, software or application failure, allowing the delivery of more robust and resilient technology systems.

Appendix 22 Continued

Report of the Chief Information Officer on Major IM&T Projects During 2004-05

Employee Self Service

The Office's time recording system (FLEX) was incorporated into its personnel system (CHRIS). Staff and managers are now able to access personnel records. Electronic lodgement of leave applications will be implemented in the 2005/2006 financial year.

SUN System Upgrade

The SUN financial system provides direct access to financial management information and self-service facilities to cost centre managers. The upgrade of this system was completed in this financial year. This upgrade makes the system more flexible and easy to use by providing users with a Windows Explorer working environment and customisation of user menus.

Appendix 23

Freedom of Information Act 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP).

Period

1 July 2004 to 30 June 2005

Contact

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

Summary

The ODPP is an agency under the Freedom of Information Act 1989 (FOI Act). Pursuant to section 9 and Schedule 2 of the FOI Act, the ODPP is exempt from the Act in relation to its prosecuting function. A copy of the ODPP Summary of Affairs as at 30 June 2005 under the FOI Act is included at the end of this **Appendix**.

In the period 1 July 2004 to 30 June 2005 the ODPP received 10 applications under the FOI Act for access to documents. Two applications were granted in full. A further

four applications were granted in part: the balance of the documents sought in these four applications were determined to be exempt because they related to the prosecuting function of the ODPP. In relation to one application, none of the documents sought were held by the ODPP. Part of one application was transferred to another agency.

The documents requested in three applications were determined to be exempt because all of the documents related to the prosecuting function of the ODPP. The ODPP was consulted pursuant to s59B on a number of occasions.

During the reporting period:

- No Ministerial Certificates were issued.
- All applications for access to documents were processed within 21 days, or within the 14 day period allowed by s.59B(2) of the Act.
- One application for internal review was received and determined.

- One determination was reviewed under s52A of the Act in accordance with a written suggestion from the Ombudsman in the course of a preliminary inquiry under s13AA of the Ombudsman Act. The Ombudsman then declined to further investigate the matter.
- No request for the amendment or notation of records was received.
- The administration of the FOI Act has had no significant impact on the ODPP's activities, policies or procedures.
- No significant issues or problems have arisen in relation to the administration of the FOI Act within the ODPP.
- The cost of processing FOI requests was not significant.
- No matters concerning the administration of the FOI Act by the ODPP have been referred to the District Court.

	Personal		Other		Total	
	2004-05	2003-04	2004-05	2003-04	2004-05	2003-04
Number Received	5	7	5	9	10	16
Number Completed	5	7	5	9	10	16
Transferred Out	0	0	1 in part	0	1 in part	0
Total Processed	5	7	5	9	10	16
Results*						
Granted in Full	1	1	1	0	2	1
Granted in Part	2	3	2	4	4	7
Refused	1	3	2	4	3	7
No Documents Held	1	0	0	1	1	1
Completed	5	7	5	9	10	16

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

Appendix 23 Continued

Summary of Affairs as at 30 June 2005

Freedom of Information Act 1989 section 14

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

The prosecution policy of the Office of the Director of Public Prosecutions (ODPP) is set out in the "Prosecution Guidelines of the Director of Public Prosecutions", which was last issued in October 2003. A copy of the Guidelines can be obtained from the ODPP web site, <http://www.odpp.nsw.gov.au> or from the ODPP Head Office Library at 265 Castlereagh Street, Sydney, by telephoning any member of the Library staff on (02) 9285 8912 between 9am and 5pm on weekdays. The publication is available at no charge. The publication may be inspected by arrangement with a member of the Library staff at the ODPP Head Office at 265 Castlereagh Street, Sydney.

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

The most recent Statement of Affairs of the ODPP published under section 14(1)(a) of the Freedom of Information Act was published as at 30 June 2005.

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

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

Deputy Solicitor (Legal)
Office of the Director of
Public Prosecutions

30 June 2005

Appendix 24

Risk Management and Insurance

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

In the 2004-2005 reporting period the Office's motor vehicle claims as at 30 June 2005 numbered thirty, representing an average cost per vehicle of \$2,633. This compares with twenty claims received during 2003-2004 (as at 30 June 2004), at an average cost per vehicle of \$1,300. The ODPP's fleet of vehicles has increased from year-to-year and comprises 100% business vehicles, 100% private vehicles leased under a salary sacrifice arrangement and business/private vehicles. One claim was considered a 'large claim' that incurred a cost of \geq \$25,000.

In the 2004-2005 reporting period, the Office's workers compensation claims as at 30 June 2005 numbered seventeen, representing a total claim payments cost of \$31,102. This compares with twenty-four claims received during 2003-2004 (as at 30 June 2004), representing a total claim payments cost of \$24,000.

Appendix 25

Occupational Health and Safety

The Office continues to work within the framework of the current Occupational Health and Safety Policy and Action Plan that sets targets to be achieved in all significant OH & S areas.

Examples of issues actioned in 2004-05 include but not limited to:

- Completion and circulation of the Office Motor Vehicle Policy with a greater focus on driver safety awareness;
- Ongoing involvement in workplace safety training sessions - focusing on office ergonomics, manual handling, personal security, vicarious trauma etc);
- Regular workplace assessments both one on one and in-group settings.
- Ongoing research into and introduction of, appropriate equipment;
- Court access and security of ODPP Officers on Court premises continues to be of concern. Issues have been raised with the Attorney-General in an attempt to minimise identified risks;
- Ongoing project work with ODPP EAP Counsellor to identify and implement strategies for issues specific to the ODPP;
- Ongoing workplace inspections and commitment to the ODPP OHS Committee process;
- Ongoing monitoring of OHS issues and strategies through assessment of ODPP Accident/Incident Reports, workplace rehabilitation programs and development of effective worker's compensation statistics.

Appendix 26

Witness Assistance Service Report

Developments of the Witness Assistance Service

A year of consolidation for the Witness Assistance Service 2004-2005

In September 2003 Treasury provided the ODPP with additional funding and the Witness Assistance Service (WAS) was expanded by 16 positions to 34.6 positions located across NSW. New staff included four Senior WAS Officer positions, two additional Aboriginal WAS Officer positions and 10 generalist WAS Officer positions located across NSW.

Expansion does not come without change and there has been the opportunity to review service delivery and some WAS Officers have been required to be relocated in order to accommodate the additional staff. The enhancement has resulted in more manageable caseloads for WAS Officers and has allowed WAS Officers to be allocated to specific trial groups in Sydney Head Office and to cover particular geographical areas in some rural areas.

During 2004-2005 WAS Officers have worked toward consolidating and broadening service delivery for victims and vulnerable witnesses. The increased number of staff has enabled WAS Officers to provide a more comprehensive service to victims and vulnerable witnesses in priority matters of child sexual assault, adult sexual assault, matters involving death and other personal violence matters. WAS has generally been able to handle an increased number of referrals of non-priority matters, although this ability varies from one office to another depending on the WAS staff ratio to the number of victim matters being prosecuted in any one office.

WAS Officers have responded to a number of legislative reforms and policy

initiatives over the past year. For example, there has been a greater demand on the service in supporting victims wishing to write victim impact statement relating to Table 1 offences dealt with in the Local Court. Many victims are now also taking up their right to read their victim impact statement to the court. There have been a number of reforms for adult victims of sexual assault during the past year. Hence WAS Officers have begun informing victims of these changes including the opportunity to utilise alternative provisions for giving evidence and have provided support for some adult victims utilising remote witness facilities. WAS Officers have also continued to assist with the CSA Specialist Jurisdiction Pilot Project and the evaluation process.

Main initiatives to enhance service delivery to victims and witnesses in 2004-2005

- Refurbishment of the prosecution witness facilities at the Downing Centre;
- Upgraded child witness conference rooms at several ODPP offices;
- Strategies to foster effective liaison with ODPP Lawyers and Crown Prosecutors;
- WAS Service Directory developed by Rebekah Lucas WAS Officer (Sydney) - an Excel database to assist WAS Officers in making effective referrals;
- Further Enhancements to WASS database filing and case tracking system.

Witness Assistance Service Structure

The Manager of the WAS and the Sexual Assault Liaison Officer (Senior Lawyer) have statewide briefs and are located at Sydney Head Office. There is 1 Administrative Officer located at Sydney Head Office. The WAS Manager has line management for staff at Sydney Head

Office and managing lawyers have line management for WAS Officers in regional offices. The WAS Manager reports to the Assistant Solicitor (Sydney) and liaises with Managing Lawyers, Assistant Solicitors (Sydney West and Country), and the ODPP Solicitors Executive in ensuring that the WAS provides a consistent quality service across NSW.

The four Senior WAS Officers provide professional supervision for WAS Officers and have regional responsibilities. They are located at Sydney, Parramatta, Newcastle and Wollongong. The three Aboriginal WAS Officer positions have regional briefs and they have been located in Sydney, Dubbo and Newcastle each covering approximately a third of the state.

Aims, role and functions of the Witness Assistance Service

The WAS has three main aims. Firstly, the WAS assists the ODPP in meeting the rights of victims of crime under the Charter of Victims Rights (Victims Rights Act 1996). Secondly, the WAS aims to minimise the stress, anxiety and re-traumatisation that can occur for victims of crime when matters progress through the criminal justice system. Finally, WAS assists the prosecution process by enabling vulnerable witnesses to give their evidence to the best of their ability.

A range of services is available to victims of crime and vulnerable witnesses through WAS:

- Information about the legal process, general updates on the progress of the matter, services available, victims rights and witness entitlements;
- Psychosocial assessment and case planning for special needs and support needs at court;
- Referral for counselling, practical assistance and support;

Appendix 26 Continued

Witness Assistance Service Report

- Liaison with ODPP Lawyers and Crown Prosecutors;
- Support during conferences with ODPP Prosecutors for vulnerable victims and witnesses when required;
- Court preparation and court familiarisation;
- Coordination and/or provision of court support;
- Providing information about preparing victim impact statements and supporting victims when reading their victim impact statement to the court;
- Crisis counselling and intervention related to the impact of the legal process;
- Debriefing in relation to the legal process and outcomes;
- Post-court follow-up;
- Inter-agency liaison and policy advice.

During 2004-2005 the WAS has continued to prioritise its services in the following ways:

1. Priority victim matters prosecuted by the ODPP include:

- Child sexual assault (CSA) and other crimes against children;
- Matters involving death including homicide, manslaughter and dangerous driving causing death;
- Adult sexual assault and historical child sexual assaults;
- Domestic violence offences, which are serious indictable offences or all ground appeals in the District Court arising from the making of apprehended violence orders in the Local Court.

Crimes such as serious physical assault / grievous bodily harm / malicious wounding / attempted murder / armed robberies and home invasions do not generally come under the WAS early referral scheme. However victims in these

matters are referred to WAS by ODPP lawyers and external agencies on a needs basis.

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

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

Service Delivery 2004-2005

In 2004-2005 the number of new WAS Registrations is similar to the previous year with a total of 2500. The percentage of new referrals across matter types is also very similar to the previous year with 64.15% of new referrals consisting of the priority matters of child sexual assault, other child abuse matters, adult sexual assault, and matters involving death. This figure excludes domestic violence related matters, which are categorised within the adult physical assault matter group. This category constituted 20.48% of new referrals to the WAS during 2004-2005.

A significant pattern change in referrals to the WAS over the past year has been the source of referral with a significant increase in the number of early referrals generated by WAS from 598 to 798. This figure reflects the effective implementation

of the WAS Best Practice Early Referral Flow Chart and the gradual move to adopting a more proactive service delivery model following the staffing enhancement being operational from February 2004.

Currently there are 2277 open files on the WAS database. In 2002-2003, prior to the enhancement, WAS Officers' caseloads averaged 150 open files for full-time officers. WAS Officers' caseloads now average approximately 80 open WAS files per full-time WAS Officer. Variables currently impacting on WAS caseloads include travel requirements in regional areas; complexity of matters; multiple victim matters; and staff being on leave or positions being vacant. WAS Officers are generally now able to offer a more proactive and quality service to victims and witnesses and outreach services are provided where possible. Cover is now more readily able to be provided for WAS Officers when on leave by WAS Officers in other offices.

While 64.15% of new referrals were priority matters and 35.85% of referrals are non-priority categories (excluding domestic violence), in fact 83.7% of contact service delivery hours provided by WAS Officers were provided to victims and vulnerable witnesses within the current WAS priority categories. This discrepancy importantly reflects the way in which WAS Officers manage their relatively high caseloads. WAS Officers have increasingly been able to accommodate providing a service to a greater cohort of victims and witnesses, while maintaining a more comprehensive service to those victims in priority matters, which is reflected in the greater number of service hours provided. A breakdown of service delivery for the WAS over the past year is as follows:

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Witness Assistance Service Report

Breakdown of types of service delivery provided by the Witness Assistance Service in 2004-2005

WAS Type	Percentage of contact time
Referral	1.7%
Assessment	2.3%
Interagency liaison /referral	5.3%
Provision of information	14%
Liaison and consultation with ODPP Lawyers and Crown Prosecutors and liaison / support for victims re conferences	25.9%
Court assistance activities including court preparation, court familiarisation and court support	30.7%
Debriefing	1.6%
Crisis Counselling	0.3%
Supportive Counselling	3.1%
Travel	8.5%
Other (not specified but may include admin tasks, assisting with VIS, memos/ reports, research, preparation time for court preparation activities).	6.6%

25.9% of service delivery time is involved in liaison with ODPP Lawyers and Crown Prosecutors, in liaison with victims about conferences and providing support in conferences. 30.7% of time WAS Officer service delivery time is devoted to providing assistance to victims and witnesses in going to court through court preparation and familiarisation and court support. 14% of WAS Officers service delivery time is spent in providing information to victims and vulnerable witnesses.

The figures above clearly support the way in which WAS is achieving its three main aims. The figures reflect the important contribution WAS Officers make to assisting the ODPP meet its obligations under the Charter of Victims

Rights, assisting victims and vulnerable witnesses required to attend court which contributes both to minimising the impact of the legal process and to assisting the prosecution process.

As mentioned in the Annual Report for 2003-2004, WAS has been able to slightly expand the cohort of victims of crime that are now provided a service, however a more comprehensive expansion of service delivery to all victims and more witnesses would require WAS to be adequately funded for that purpose.

The Attorney General's Department conducted a review of the implementation of the Charter of Victims Rights in the ODPP and as part of that review information was provided about how the ODPP implemented the Charter and a detailed review of the Sydney WAS and the Bathurst ODPP regional office was undertaken by officers of that Attorney General's Department. In their Report dated 10 May 2005 very positive feedback was provided in their review findings on the strategies that have been implemented in these two areas of the office and that Charter requirements are integrated into key roles and responsibilities with the office.

Child Sexual Assault (CSA)

Child sexual assault continues to be the main priority for the WAS because of the dynamics of this particular crime and the vulnerability of children and young people to re-traumatisation as prosecution witnesses. Being kept informed, being referred for counselling and being well prepared for court greatly assists these victims in developing resilience for surviving the legal process.

The WAS Manager and Sexual Assault Liaison Officer have continued to participate on the CSA Jurisdiction

Pilot Project Team. This important pilot project which is being coordinated by the Attorney General's Department has identified many areas for improvement in the criminal justice system that are required to enable children to effectively participate as prosecution witnesses in child sexual assault prosecutions.

WAS Officers in Sydney West and Dubbo have been involved in supporting children who have utilised the new remote witness suite at Parramatta and other CCTV facilities which are included in the pilot. WAS Officers have continued to assist with the development of the pilot project by providing feedback on identified operational and support issues to both the ODPP and the CSA Jurisdiction Project Team.

The WAS Officers in Sydney West and Sydney have continued to assist researchers from the Bureau of Crime Statistics and Research who have conducted the evaluation of the pilot. WAS Officers have assisted the researchers by informing children and parents about the evaluation research and with making contact with them if they wished to participate. A number of WAS staff have also participated in the evaluation research.

It is anticipated that revised court support guidelines (under review at time of writing this report) will greatly enhance the role of WAS Officers in carrying out their professional court support role for children in CSA matters. It is also hoped that improved court case management processes and pre-trial hearings will reduce delays for children when coming to court in the future.

Vulnerable Witnesses

A number of victims of crime and prosecution witnesses have particular

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Witness Assistance Service Report

needs, for example related to disability or the trauma associated with the nature of the crime. During the past year 1177 out of 2500 of new registrations were flagged as having a special need. WAS Officers are involved in the assessment of the special needs of vulnerable witnesses who are required to come to court to give evidence. The WAS Officers then liaise closely with ODPP Lawyers and Crown Prosecutors as to a witness's special needs.

WAS Officers often work at an interagency level to ensure holistic responses and proactive approaches to meeting the special needs of witnesses who have a disability. This case management approach to addressing such things as barriers to communication has enhanced access to the criminal justice system for several victims and witnesses with a disability.

Legislative reform by way of amendments to the Criminal Procedure Act 1986 provide for considerable improvements for adult victims of sexual assault when giving evidence in criminal proceedings. In particular, the right for adult victims of sexual assault to give evidence by closed circuit television is being taken up by many victims. As a consequence the courts are currently upgrading and expanding the number of available facilities in order to meet the increased demand on such facilities. Another important change relates to victims of sexual assault not having to give evidence at re-trials. It is also hoped that impending legislation relating to closed courts will also assist victims of sexual assault to be able to more effectively give evidence to the court.

Aboriginal Victims and Witnesses

Since May 2004 there have been three Aboriginal WAS Officers at the ODPP

who provide services for indigenous victims of crime and witnesses and also assist with general service provision. These positions have a regional focus, each covering approximately a third of the state.

The new registrations for 2004-2005 have continued to be higher than in past years. New registrations in this period were 103. This figure is a little less than last year (127) reflective of the fact that one of the positions has been vacant for a considerable amount of time. The statistics are also very conservative given the difficulties that remain with early identification of victims and witnesses as Aboriginal or Torres Strait Islander. The statistics also do not reflect the general support that is also provided to a large number of Aboriginal witnesses and community support people when providing support at court, especially in rural areas.

The Aboriginal WAS Officers have established a protocol for referral with WAS Officers and ODPP Lawyers. They continue to liaise with police and other external agencies to promote their positions, and to establish better ways of identifying Aboriginal victims and witnesses so that a more proactive service can be provided in the future.

As part of the strategy to improve services to Aboriginal victims and witnesses, a presentation was arranged as part of the WAS Statewide and Country WAS meeting agenda at the end of June 2005. The paper entitled *Working toward self-determination: within the confines of bureaucratic and colonial constructs. Dead Set!!* was presented by Lorna McNamara, Director Education Centre Against Violence and Mareese Terare, Aboriginal Health Worker NSW Health and Senior Educator ECAV. The paper was

previously presented at the "Home Truths" Conference in Melbourne 2004.

This paper challenges organisations to consider the changes that need to be made to effectively accommodate and support the work of Aboriginal workers. WAS management intends to use the principles in this paper to assist us in developing effective dialogue with our Aboriginal WAS Officers about the best way we can support their work and improve service delivery for Aboriginal victims and witnesses in the future. It will also be a useful reference point from which to begin to implement strategies for the NSW Aboriginal Justice Plan.

Victim Impact Statements

WAS Officers provide information, assistance and referral for victims of crime who wish to prepare a victim impact statement. This is an increasing component of the WAS role as many more victims take up this right under the Charter of Victims Rights and as authorised by the Crimes (Sentencing Procedure) Act 1999. The revised Victim Impact Statements Information Packages have assisted in informing victims of their rights and how to prepare a statement for the court.

Victim impact statements can now be tendered in the Local Court for some types of matters and several victims are exercising this right. Victims of crime continue to show interest in reading out, or having a representative read out, the victim impact statement to the court. Of concern to the WAS is the fact that there are no expenses available for victims of crime to attend court for reading the victim impact statement and this issue has been raised with the Attorney General's Department.

The legislation pertaining to victim impact statements is complex and there

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Witness Assistance Service Report

have been a number of recent Court of Criminal Appeal judgments impacting on the way victim impact statements are being considered by the court.

In response to the increasing significance of this area of work for WAS a new service delivery category of victim impact statements has been included on the WAS database system. This will enable WAS to ascertain more accurately what percentage of WAS time goes into this area of service delivery.

WAS Statewide Operations and Standards

WAS Officers have continued to focus on implementing the WAS Best Practice Early Referral Flow Chart and making early contact with victims of crime to assess their needs, provide information and referral, arranging early and pre-trial conferences and providing court preparation and court familiarisation. A proactive service delivery model greatly assists the WAS in providing effective case management and in contributing to the ODPP's effective implementation of the Charter of Victims Rights.

Continuity in service delivery and standards across the State is essential for the WAS so that victims and witness can be guaranteed a minimum level of service. This also assists ODPP Lawyers and Crown Prosecutors to understand the role of WAS and what to expect of the service. Statewide standards can also accommodate local circumstances and service needs and as a consequence the nature of the work for WAS varies from one office to the other in order to meet those needs.

WAS Officers have been provided with regular policy, procedure and legal updates by the Assistant Solicitor (Sydney), WAS Manager, the Sexual Assault Liaison

Officer and ODPP Research Unit. The WAS Manager provides individual supervision for the Senior WAS Officers and the Sydney based Aboriginal WAS Officer. Senior WAS Officers provide professional supervision for WAS Officers in their designated area and oversee case allocation and caseloads.

WAS Statewide meetings are now held twice a year in Sydney for all WAS staff. These meetings provide an opportunity to discuss operational and policy areas; to provide legislation and policy updates; present case studies; and training and professional development components are included. Meetings also take place in the regional areas and these address local administrative issues, planning for local initiatives, reporting on interagency activities, peer supervision, case presentations and professional development components.

Students

The WAS has continued to provide an opportunity for a number of student placements and research projects. These include longer-term practicums for social work, social work/ law, or master of forensic psychology students, and shorter-term orientation programs, and court familiarisation sessions for tertiary students and work experience students.

During 2004-2005 WAS also assisted a student undertaking a social work honours thesis involving research into victim impact statements and sexual assault matters. The WAS has also been approached to assist another student wishing to undertake a PhD research in the area of victim impact statements in the future.

The WAS is very interested in providing placements for overseas students and is also keen to forge secondment and exchange opportunities with witness /

victim support services with Australian and overseas prosecution authorities in the future.

Professional Development

During 2004-2005 the WAS staff have attended a number of professional development seminars, forums, workshops and conferences to enhance knowledge and skills, to keep abreast of research and legislative reform and developments in relevant fields. Some WAS staff have also undertaken secondments to other departments or career breaks to enhance and broaden their skills in areas related to their professional training.

Conferences, workshops, forums attended by various WAS staff have included:

- ODPP Solicitors Conference July 2004;
- ISPCAN 15th International Congress on Child Abuse and Neglect. Congress. 'Working Together for a Child Safe World', Brisbane. 19-22 Sept 2004;
- Home Truths, Stop Sexual Assault and Domestic Violence: A national challenge. Melbourne 2004;
- Australian Institute of Judicial Administration - Child Witness Best Practice for Courts July 2004;
- Joint Investigation Response Team NSW Forum, November 2004;
- Central Coast Connections Conference on Domestic Violence, Sexual Assault and Child Abuse and Neglect;
- Surviving the Legal System Forum - 7 December 2004;
- Supervision Workshop conducted by Professor Richard Bryant NSW; University, School of Psychology Master of Forensic Psychology Course, 10 December 2004;
- Employee Assistance Program Association Seminar "The New Realities: Resiliency Development as a

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Witness Assistance Service Report

Model for Traumatic Event Preparation" by Joe Piotrowski of IPS Worldwide, 1 December 2004;

- Law Week seminar - Dr Annie Cossins' workshop on Specialist Sexual Assault Courts;
- ALRC 1975-2005 30 Years of Law Reform Symposium, 9 June 2005;
- Various external workshops have been attended by WAS Officers which are related to the role of WAS.

The ODPP has provided training sessions which have been attended by various WAS staff:

- Intellectual Disabilities and Sexual Assault - workshop presented by Prof Susan Hayes 2004;
- Interviewing Children: forensic linguistics and child witnesses workshop presented by Martine Powell, 2004 and 2005;
- Child Sexual Assault Overview - workshop presented by Carolyn Quinn 2004;
- Understanding Loss and Grief - workshop presented by Julie Dunsmore, October 2004;
- Cultural Understanding and Sexual Assault workshop presented by ECAV April 2005;
- Effective Recruitment - workshops attended by WAS Manager, Senior WAS Officers and some WAS Officers 2004 and 2005;
- Performance Management - Workshop for Managers, March 2005;
- SAO Coaching Skills Training 2004;
- Physical Abuse of Children MCLE presented by Dr Dimitra Tzioumi, February 2005;
- Sexual Assault Communications Privilege MCLE presented by Glen Bartley, May 2005.
- Role of NSW Joint Investigation Response Teams. Presenters: Julie

Gray JIRI Statewide Coordinator and Anthony Holton Acting Inspector JIRT at WAS Statewide Meeting 29 July 2005

- Shine for Kids (Services for Children of Prisoners) Presenter: Senior Caseworker Julie Bennett at WAS Statewide Meeting 30 July 2005
- Victims Compensation in Sexual Assault Matters - recent changes. Presenters: Tracey Hall, Registrar Victims Compensation Tribunal and Marianne Curtis Manager Victims of Crime Bureau at WAS Statewide Meeting 30 July 2005
- "Working toward self-determination: within the confines of bureaucratic and colonial constructs. Dead Set!" Presented by Lorna McNamara - Director Education Centre Against Violence and Mareese Terare - Aboriginal Health Worker NSW Health and Senior Educator ECAV as part of WAS Statewide and County Meetings June 2005

Interagency Liaison and Policy Development

Interagency activities are undertaken by WAS in order to enhance effective working relationships with key external organisations; to ensure an effective referral base for victims and witnesses; and to assist external organisations have a better understanding of the role of WAS and the ODPP, the criminal justice system and the prosecution process.

During 2004-2005 there has been attendance by WAS Officers at Regional Joint Investigation Response Team meetings and Regional Police Liaison Group meetings. A number of liaison meetings have also been organised with NSW Health and CASAC sexual assault services. Informal liaison has also occurred with services such as Victims of Crime Bureau, Department of Corrective

Service, Mission Australia Court Support Service, and the various victim support groups such as a Homicide Victims Support Group, Enough-is-Enough and VOCAL.

During 2004-2005 WAS has contributed to the development, or review, of a number of publications, information resources and interagency guidelines. The WAS Manager and Sexual Assault Liaison Officer have provided consultation on draft ODPP policy and procedure documents, and have assisted the DPP provide comment on policy, legislative or systemic reform in a number of areas pertaining to victims of crime.

WAS interagency liaison activities during 2004-2005 include:

- Criminal Justice Support Network (Intellectual Disability Rights Service) Victim Support Roundtables July 2004 and April 2005
- Bureau of Crime Statistics and Research - consultation meeting re future research directions
- WAS & Sexual Assault Regional Liaison Meetings - various regions
- NSW Rape Crisis Centre Annual General Meeting, November 2004.
- NSW Violence Against Women Prevention Awards and Launch of the "Negotiating Consent" Resource Kit at Parliament House, November 2004.
- Launch of Staying Home Leaving Violence Report and Workshop, Australian Domestic and Family Violence Clearinghouse at UNSW, December 2004.
- Launch "Anyone's Story" Video produced by Education Centre Against Violence and NSW Police Service, June 2005
- Launch of "Our Silence is Abusing our Kids" at Dymnna House, August 2004.
- NSW Attorney General's Department Norimbah Network Conference, September 2004.

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Witness Assistance Service Report

- Sydney Aboriginal Interagency Forum, November 2004
- South Eastern Aboriginal Interagency Forum, December 2004
- Parramatta Justice Precinct Meeting
- CSA Specialist Jurisdiction Pilot - Operational Working Group (Sydney West)
- Joint Investigation Response Team Sydney West Coordination meeting,
- Criminal Justice Sexual Offences Taskforce Subcommittees:
Rates of attrition - SALO
Evidence of children - SALO
Improved Interagency Approach -WAS Manager

The Assistant Solicitor (Sydney) is the ODPP representative on the Victims Advisory Board. The WAS Manager has also recently been appointed to the Senior Officers Working Group for Reviewing Court Preparation Resources for Child Victims of Sexual Assault.

Interagency Committees

During 2004-2005 the WAS Manager and Sexual Assault Liaison Officer (SALO) have represented the ODPP the following committees pertaining to victims, child witnesses and sexual assault issues.

- Child Protection Senior Officers Group (processing recommendations of the Child Death Review Team reports) - SALO
- Joint Investigation Response Team State Management Group and Training Subcommittee - SALO
- Interagency Guidelines for Responding to Adult Sexual Assault Committee - SALO
- Police Adult Sexual Assault Interagency Committee and Legal Issues Subcommittee - SALO
- Victims of Crime Interagency Committee - WAS Manager and SALO
- Victims of Crime subcommittee reviewing of Your Day in Court Booklet and subcommittee reviewing legal processes information for victims of crime - WAS Manager
- ODPP Sexual Assault Review Committee - WAS Manager and SALO
- Child Sexual Assault Jurisdiction Interagency Project Team - WAS Manager and SALO
- Aboriginal Child Sexual Assault Taskforce - WAS Manager

Education, Training and Consultation

The WAS has provided education and training for a number of organisations and groups over the past year, including NSW Health, Victim Services, the Police and Mission Australia. WAS Officers also provide a training session on the WAS and victim issues to new ODPP lawyers and clerks.

WAS has provided service orientation and familiarisation to the courts, remote witness facilities and CCTV for new child protection and sexual assault workers on request. WAS is often requested to provide information about the service and also provides case consultation for external agencies with the permission of victims/ witnesses.

Training and education sessions that have been provided in 2004-2005 include:

- Specialist New Worker SAS Training Sessions for Education Centre Against Violence NSW Health;
- Mission Australia Court Support Service training for court support volunteers;
- Victims of Crime Bureau - Victims Services managers and staff;

- Education sessions by Newcastle WAS for local sexual assault services and social work students at Newcastle University;
- Training for new detectives - in a number of regions;
- Foundation Skills for Lawyers
- Joint Investigation Response Team - investigators training.

National and International Liaison and Networking

At a casework level, WAS Officers maintain telephone or e-mail contact with a number of victims of crime who reside overseas but who are required as prosecution witnesses in NSW. On occasion WAS has also been requested to assist with providing court preparation for victims of crime who have to testify interstate or in overseas jurisdictions where the crime occurred.

In the past year the WAS has been consulted about the service by justice departments and prosecution authorities both interstate and internationally, which is recognition of the regard in which the service is held. Activities have included:

- Presentation to a delegation of criminal lawyers from Japan
- Two sessions on child witnesses and on interagency work for the China-Australia Human Rights Technical Cooperation Program Supreme People's Procuratorate Study Visit to Australia in April 2005.
- Information and resources provided to Sri Lanka
- Information provided to the United Kingdom
- Consultation provided for Tasmania and Queensland who currently do not have a similar service to NSW within their respective DPPs.

Appendix 26 Continued

Witness Assistance Service Report

National Witness Assistance Network and Conference July 2004

A significant event in the past year was the opportunity for WAS in NSW to host the National Witness Assistance Network and Conference which was held over two and half days in July 2004. Participants included representatives from the Director of Public Prosecutions in the jurisdictions of NSW, ACT, Victoria, Queensland, Tasmania, Northern Territory, and South Australia.

Robyn Holder, Victims of Crime Coordinator ACT and Chair of Victim Support Australasia, very kindly assisted with chairing the meeting as an independent and provided the keynote address: "The challenge to be accountable in the context of victim's rights and victims legislation and how best to achieve this".

At the meeting a number of common issues were discussed. The differences and similarities across jurisdictions were highlighted and the idea of national standards for victims' and witnesses' support was flagged and future directions were discussed.

Session themes for the conference included: the needs and rights of Indigenous victims and witnesses; challenges of the witness assistance role; initiatives and reforms in the criminal justice system; dealing with the media and high profile matters; best practice case presentations in dealing with disabilities and complex multiple victim matters.

A range of interesting and challenging papers were presented, including some excellent presentations by Witness Assistance Officers highlighting the uniqueness of the WAS role and the exceptional level of skill and knowledge among the ranks of witness assistance staff within the Australian prosecution authorities. NSW WAS looks forward to attending and contributing to the next National Witness Assistance Network to be held in South Australia.

Appendix 27

Overseas Travel Information

1 JULY 2004 – 30 JUNE 2005

Staff Member	Dates, Places and Travel Details	Reason for Travel, and Expenses Details (\$AUS)	Total Cost
K Magnus	2-5 July 2004 Florence, Italy	The Australian Bar Association Conference	\$2,662
		Accommodation	\$1,212
		Registration	\$1,450
V Lydiard	2-5 July 2004 Florence, Italy	The Australian Bar Association Conference	\$2,938
		Accommodation	\$1,488
		Registration	\$1,450
N Cowdery AM QC	5-10 September 2004 Seoul, South Korea	IAP Annual Conference and General Meeting	\$7,010
		Airfare	\$4,932
		Sustenance	\$2,078
N Cowdery AM QC	27-28 September 2004 Tonga	23rd Pacific Islands Law Office Meeting (PILOM)	\$152
		Sustenance	\$ 152
N Cowdery AM QC	24-29 October 2005 Auckland, New Zealand	Annual Conference of IBA	\$3,200
		Registration	\$1,986
		Accommodation	\$1,146
		Taxi	\$ 68
N Cowdery AM QC	4-13 April 2005 Vilnius, Lithuania (4-5 April 2005) Ljubljana, Slovenia (7-9 April 2005) Belgrade, Serbia (11 April 2005)	At the invitation of Prosecutor General; Chair Executive Committee of the IAP; at the invitation of the Organisation for Security & Cooperation in Europe (respectively)	\$8,412
		Airfare	\$6,012
		Accommodation in Ljubljana only:	
		Accommodation	\$1,109
		Sustenance	\$1,291
N Cowdery AM QC	23-25 June 2005 Milan, Italy	IBA Conference	
		Registration	\$1,193
			\$1,193
N Cowdery AM QC	26-30 June 2005 Edinburgh, Scotland	International Society for the Reform of Criminal Law Conference	
		Registration	\$ 992
			\$ 992

Appendix 27 Continued

Overseas Travel Information

1 JULY 2004 – 30 JUNE 2005

Staff Member	Dates, Places and Travel Details	Reason for Travel, and Expenses Details (\$AUS)	Total Cost
M Tedeschi QC	14-18 July 2004 Fiji	Prosecution in Fiji Fares \$ 880	\$ 880
J Pheills	26-30 June 2005 Edinburgh, Scotland	International Society for the Reform of Criminal Law Conference Registration \$1,276 Accommodation \$1,422	\$2,698
J Henderson	26-30 June 2005 Edinburgh, Scotland	International Society for the Reform of Criminal Law Conference Accommodation \$1,710	\$1,710
M Barr	5-10 September 2004 Seoul, South Korea	IAP Annual Conference Registration \$1,056 Accommodation \$1,340 Sustenance \$ 56	\$2,452
T Macintosh	5-10 September 2004 Seoul, South Korea	IAP Annual Conference Registration \$1,055 Accommodation \$1,388	\$2,443
B Knox SC	25-27 November 2004 Hong Kong, China	IAP Regional Conference Registration \$ 163 Accommodation \$ 652 Sustenance \$1,346	\$2,161
F Veltro	25-27 November 2004 Hong Kong, China	IAP Regional Conference Registration \$ 163 Accommodation \$ 194 Sustenance \$1,012	\$1,369
M Tedeschi QC	Trial commenced 28 June 2004 Fiji	Assist with Fiji prosecution trial	No travel costs
P Barrett	8-9 July 2004 Dili, Timor Leste	2-day workshop to assist International Development Law Org.	No travel costs

Appendix 27 Continued

Overseas Travel Information

1 JULY 2004 – 30 JUNE 2005

Staff Member	Dates, Places and Travel Details	Reason for Travel, and Expenses Details (\$AUS)	Total Cost
P Conlon QC	2-9 September 2004, 1-17 January 2005 and 21-29 May 2005 Dubai	Training of Iraqi prosecutors	No travel costs
D Howard	13-26 October 2004, Fiji	Assist with Fiji prosecution trial	No travel costs
M Tedeschi QC	Appeal commenced November 2004, Fiji	Assist with appeals arising from Trial in June 2004	No travel costs
P Miller	April-June 2005, Vanuatu	Sector strengthening project in Republic	No travel costs
G Rees	4-6 May 2005, Vienna, Austria	United Nations Office on Drugs and Crime, meeting on effective confiscation and forfeiture casework practice	No travel costs
L Viney	30 August 2004 to 31 January 2005, Canada	Lawyer Exchange	No travel costs
K Vaughan	27 June 2005 to 4 January 2006, New Zealand	Lawyer Exchange	No travel costs
J Bennett, SC; P Barnett and S Bowers	29 June to 2 July 2005, Dublin, Ireland	Australian and Irish Bar Associations Conference	Travel costs to be reconciled in 05-06 financial year

Total cost to Office for overseas travel: \$40,272

Appendix 28

Internal Audit

The Internal Audit Committee comprises:

2 Deputy Directors (Alternate Chairs)	General Manager, Corporate Services
Senior Crown Prosecutor	Manager, Service Improvement
Solicitor for Public Prosecutions	

Appendix 29

System Reviews and Program Evaluations

- Security Reviews - A review of the Wollongong Office was conducted to identify and minimise risk to DPP operations and staff. This review completes an Office wide security review.
- Focus groups were completed across the Office to further explore the issues raised during the DPP wide 'climate survey' conducted in 2003/2004. Issues were examined in detail and comprehensive reports submitted to management for consideration. Status reports of action taken are now being released to those staff that participated in focus groups.
- A review of the Witness Assistance Service was completed to assess its impact on the prosecution process for staff within the Office.
- A Fraud and Corruption Risk Management Action Plan was reviewed and updated.
- The The ODPP Risk Management Action Plan was reviewed and updated.

Appendix 30

Consultants 2004-2005

PAYEE	CATEGORIES	Paid (GST exclusive)
Internal Audit Bureau	Improving Performance	\$9,990
Doll Martin Associates Pty Ltd	Drafting Business Plan	\$4,920
Point Zero	IT Management	\$29,944
TOTAL		\$44,854

Appendix 3 I

Ethnic Affairs Priority Statement

Through the commitment of the Office of the Director of Public Prosecutions (ODPP) to the Community and Ethnic Affairs Priority Statement, the ODPP continues to strive to increase satisfaction among our stakeholders and to ensure access to the criminal justice system for those from non-English speaking backgrounds.

The ODPP has this year participated in an inter-agency working party chaired by an officer of the Attorney General's Department, which is reviewing the serious vilification provisions of the Anti-Discrimination Act. The Discussion Paper prepared by the working party will be considered by Cabinet next financial year.

In 2004 the ODPP entered a Memorandum of Understanding with the Community Relations Commission and the NSW Attorney General's Department. The objectives of the MOU are to ensure that the principles outlined in the NSW Government's Charter of Principles for a Culturally Diverse Society are reflected in service delivery practices; that persons appearing at the Local, District and Supreme Courts in NSW are not disadvantaged in any proceedings as a result of language difficulties, and that witnesses and accused are aware of their right to an interpreter and the procedures for requesting one. Pursuant to the MOU the following categories of persons from a non-English background have access to interpreter services on a fee-exempt basis:

- The accused in all criminal matters (adults and juveniles) including appellants in appeal courts.
- Prosecution witnesses for the ODPP when appearing as witnesses at court.
- Defence witnesses in all criminal matters.
- The parents, guardians or primary carers of juvenile accused.

- The immediate family members of deceased persons (and/or persons able to demonstrate a direct interest) giving evidence or providing information at coronial hearings.
- Persons attending interviews conducted by court staff in relation to criminal, apprehended and personal violence, family law and care matters.

The ODPP will continue to offer interpreter services provided by the Community Relations Commission to prosecution witnesses and the families of deceased victims when they are involved in conferences with ODPP lawyers and Crown Prosecutors.

The ODPP Witness Assistance Service (the WAS) gives priority to certain vulnerable witnesses and special needs groups, including people who experience cultural or language barriers. There are now 34.6 positions in the WAS, including 4 senior WAS officers and 3 Aboriginal WAS officers. The WAS provides information, referral and support for victims of violent crimes and vulnerable witnesses giving evidence in matters prosecuted by the ODPP.

The Service aims to assist these people through the legal process so that victims have an opportunity to participate in the criminal justice system fully and to give evidence as a witness to the best of their ability. The Service is staffed by professionals who are qualified in social work, psychology, counselling or related areas, and who have a working knowledge of the criminal justice system and operates in all ODPP offices across the State. The Service liaises and consults directly and regularly with ODPP solicitors and Crown Prosecutors in relation to the special needs and support issues for victims and witnesses when attending conferences with a lawyer, and when required to give evidence at court. In conjunction

with legal staff in the ODPP, the Service provides information to victims, their families and counsellors about the court process and their role in it. WAS Officers utilise interpreter services for both face-to-face and telephone contacts with victims and witnesses who are more comfortable communicating in the primary language spoken.

WAS publishes a number of pamphlets and brochures aimed at providing information to victims and witnesses about the criminal process. The interpreter service number is prominently displayed on all WAS brochures published by the ODPP. All brochures are published on the ODPP website. WAS also has acquired a large number of brochures on sexual assault and domestic violence which are printed in a range of languages and these are provided to victims of crime where appropriate.

The Service provides services for victims and witnesses where other services are not available, particularly in rural and remote locations. The Service is able to liaise with the NSW Police and advocate special arrangements for witnesses in relation to travel and expenses where necessary. The Service also assists the ODPP Learning and Development Branch in planning and implementing education programs for prosecutors in relation to victims and witness issues. The Service assists in interagency liaison, and in identifying areas for legislative reform and improvement in the criminal justice system.

The ODPP is involved in a number of interagency boards and committees which address issues for victims of crime and vulnerable witnesses. These include:

- The Victims Advisory Board
- The Victims of Crime Interagency Forum
- The Sexual Assault Review Committee

Appendix 3I Continued

Ethnic Affairs Priority Statement

- The Child Sexual Assault Jurisdiction Pilot Project Interagency Committee

The ODPP participates in a number of committees and consultation processes in which ethnic communities are also involved, including User group forums in NSW courts and the Forum referred to above. One of the WAS Officers at the ODPP attends the Arabic Workers Network meetings.

The ODPP Induction course includes a component in relation to anti-discrimination. All training programs conducted by the ODPP for its staff have regard to cultural diversity and all training providers are required to adhere to the ODPP Code of Conduct, which requires respect for individual differences and non-discriminatory behaviour. Training courses addressing methods of dealing sensitively with victims and witnesses continue to be run regularly. Components addressing cultural awareness are included in training courses relating to prosecution of sexual assault and matters involving indigenous victims.

During this financial year, the ODPP received visits from 12 international delegations, including senior prosecutors and or law enforcement officers (and sometimes judicial officers) from China, Korea, Vietnam, Hong Kong, Japan, and the Netherlands. Each group was provided with formal information and instruction about the activities of the ODPP or about the topic of particular interest to it in programs ranging in length from two hours to two days. The ODPP also received visits from the United Kingdom Director of Public Prosecutions (DPP), the Chief Justice of Tonga and the Solomon Islands DPP.

A Crown Prosecutor participated in the training of Iraqi prosecutors in Dubai on two occasions and a Crown participated in a 2-day workshop to assist the International Development Law Organisation in East Timor. A prosecutor from the Vanuatu DPP spent several weeks in the Sydney ODPP. A Crown Prosecutor spent 3 months working in the Vanuatu prosecutor's office under the AusAID funded Legal Sector Strengthening Program.

Two Crowns appeared in important criminal prosecutions in Fiji against prominent accused at the invitation of the Fijian authorities. The DPP attended the Pacific Islands Law Officers meeting and the DPP and a number of Crowns participated in many activities of the International Association of Prosecutors.

It remains the policy of the ODPP in its conduct of criminal proceedings to deal with all witnesses and accused and other persons with whom its officers come into contact having proper regard to, and respect for, their different linguistic, religious, racial and ethnic backgrounds. In accordance with the Director's Prosecution Guidelines (which were revised and republished in October 2003) the ODPP sought to conduct criminal proceedings throughout the year in a way which did not discriminate against any group or individual on the basis of race, gender, culture, religion, language or ethnic origin.

The ODPP will continue to implement the MOU, to participate in the activities described above, and to pursue the strategies described above, including the promotion of its Witness Assistance Service, during the next year.

Appendix 32

The concept for the presentation of the Director's Service Excellence Awards to staff and Crown Prosecutors of the ODPP was approved on 1 February 2000.

The awards are presented in December each year and were implemented to allow the Director to formally endorse the efforts and commitment of individuals and teams in striving for excellence in professional service. These awards are designed to recognise excellence in both individual and team performance by all staff and Crown Prosecutors.

Individual Recipients

1. Sheridan Goodwin
2. Cherie Howard
3. Julie Wilson

Corporate Services' Staff Recognition Awards

Awards to acknowledge outstanding work within the Corporate Services Division of the Office were made to the following staff during 2004-2005:

Lorie Parkinson (Learning and Development Branch)

Natasha Reddrop (Learning and Development Branch)

Mary Tang (Personnel Services Branch)

Iain Pigott (Financial Services Branch)

Tony Tadrous (Asset and Facilities Management Branch)

Bill Gibson (Financial Services Branch)

Kitty Boualywath (Financial Services Branch)

Appendix 33

Some Cases Dealt With During The Year

R v Andreas SMYRNIS - Corrupt Solicitation of Money from Property Developers

The accused, a solicitor and Councillor on Rockdale City Council, solicited bribes through intermediaries from two property developers in the Rockdale area in 2001 and 2002. The bribes together amounted to \$570 000. The accused received almost \$50 000 before the matter was referred to ICAC by one of the two developers. He was charged in 2004 with the offences of corruptly soliciting and receiving money as well as fifteen counts of giving false evidence to ICAC.

The accused pleaded guilty and was sentenced to, in total, a fixed term of 3 years periodic detention. A pecuniary penalty order was made in respect of the interest he would have earned on the corrupt money, the accused having repaid the solicited \$50000 to the developer in 2002. In sentencing the accused, the Judge took into account amongst other things, the accused's assistance in giving evidence against a number of co-accused, the delay in charging as well as his indication of his plea of guilty well before being charged.

R v Jihad RAZZAK - Firearms Offences

On Wednesday 11th February 2004 police attached to Task Force Gain executed a search warrant on premises being used by the accused, Jihad Razzak.

The bedroom of the accused was searched. An attaché case was located in the wardrobe. Secreted in the attaché case was the following:

- * A Glock detachable box magazine with an extended 30 round capacity;
- * A Colt detachable box magazine with an extended 17 round capacity;
- * Two Hundred and Thirty Five (235) 9mm Parabellum calibre cartridges;

- * Forty Nine (49) .45 Automatic Calibre cartridges.

The wardrobe also contained a black sports bag. The black sports bag contained:

- * Two homemade ballistic vests that have anti-ballistic properties.
- * 6 balaclavas
- * 3 firearms holsters

The homemade ballistic vest is an Australian manufactured wet suit vest that has been modified. The vest has a total of three panels attached to the interior covering the front and back of the vest. Each panel consists of segments of blue coloured polyester material seven layers thick. The panel segments have been sewn together in an overlapping fashion resulting in areas of the panel that are greater in thickness than seven layers. The weight of the wetsuit was approximately 4414 grams.

Five projectiles that were fired at the seams of the inside panelling of the vest all entered and partially passed through but did not exit the vest. Body Armour as defined in Schedule 1 of the Weapons Prohibition Act 1998 is any vest or any other anti ballistic article capable of being worn on any part of the body (other than helmets or anti-ballistic articles used for eye or hearing protection).

Secreted in clothing in the wardrobe was a fully loaded Glock Model 19 self-loading pistol.

A search of the roof cavity of the bathroom of the premises revealed a Glock Model 19 self-loading pistol with an extended 30 round magazine secreted in a towel.

Both of the firearms located were not stored in accordance with the provisions of the Firearms Act. That is, both were stored with ammunition and not secured

in an appropriate receptacle. The Accused had never held a licence to possess firearms and ammunition.

The accused had been in custody since his arrest. He pleaded guilty and was committed for sentence to the Sydney District Court in relation to two counts of possession of unauthorised firearms. The standard non-parole period for this offence is 3 years imprisonment.

Charges of not keeping the firearms safely, possessing a firearm with defaced identification, possessing ammunition without a licence and possessing prohibited weapons were placed on a Form 1 and taken into account on sentence.

In relation to the first count on the indictment, the accused was convicted and sentenced to 4 years 6 months imprisonment with a non-parole period of 3 years and 3 months. In relation to the second count the Accused was convicted and sentenced to 3 years imprisonment. The sentence in relation to the second count was partially concurrent.

R v David GRIFFIN - Multiple counts of fraud

The accused was charged with 69 counts of make false instrument pursuant to s300(1) Crimes Act and 7 counts of obtain benefit by deception pursuant to s178BA Crimes Act between the period of October 1997 and March 2002. The accused was successful in the first 75 transactions amounting to \$10 070 420.18, but was unsuccessful in receiving the benefit of the 76th transaction for \$878 700.00.

All offences related to cheques issued on behalf of the accused's employer, Sogelease Australia Ltd, ("Sogelease") a wholly owned subsidiary of Societe Generale, a world wide French based bank. When confronted by senior

Appendix 33 Continued

Some Cases Dealt With During The Year

staff of Sogelease about the identified discrepancies, the accused made admissions but said he committed the frauds to pay gambling debts as non-payment placed himself and his family in danger; that is, he raised a defence of duress. The majority of the bets were made to high profile bookies or betting establishments. The Prosecution evidence reflected that on many occasions the accused had funds in his betting accounts sufficient to cover bets. The accused said he received a "magic pen" which enabled him to erase original data on the majority of the cheques and replace the payee with his wife's name. On other occasions he endorsed the cheques to his wife. All but 3 cheques were deposited into the account of the accused's wife.

The trial proceeded on 16 counts on the indictment of making a false instrument with evidence being elicited with respect to the 76 transactions. Whilst the trial ran for just over a month, the accused made 51 admissions pursuant to s184 Evidence Act 1995 which considerably shortened the proceedings. The admissions included the methodology of the fraudulent conduct.

The accused was convicted by a jury of the 16 counts and sentenced to a total of 10 years 3 months imprisonment with a non-parole period of 6 years 3 months imprisonment.

In sentencing the prisoner, the sentencing Judge accepted that the prisoner had a "pathological attraction" to gambling but not a severe addiction. His Honour also formed the view that the offences were committed "to maintain the lifestyle and appearance of a VIP gambler".

R v Crespin ADANGUIDI - Triple Murder

The mother and two children were

murdered by the accused in their apartment. The son and daughter were shot at close range while the mother was beaten to death while lying in her bed. A large number of valuable items were taken by the accused from the home.

The accused and the father had maintained a close personal relationship. They had met while the accused worked as a security guard at the building where the family home was located. The wife of the accused had moved out of the matrimonial home a few weeks prior to the offences.

The father visited the accused at his home on the night of the offences. The accused struck the father over the head with an object and proceeded to tie him up and make demands and threats. He left the father tied up and drove to the apartment and used the father's security key for entry. The father eventually freed himself and contacted the Police who attended at the apartment. They used a ladder to enter and discovered the three deceased inside.

The accused stood trial on three counts of murder. At trial the accused admitted to the commission of the offences but raised the defence of mental illness. Several medical professionals and forensic psychiatrists attended and gave evidence. Psychiatric opinion differed as to whether the defence of mental illness was available. The accused did not give evidence at trial.

The jury delivered verdicts of guilty. The accused was sentenced to three terms of life imprisonment in respect of the murders.

R v GILLETT - Dangerous Driving Occasioning Death

The accused was driving along Condamine Street, Manly Vale when he drove into the rear of another vehicle at an intersection.

The accused did not stop and continued driving for a short distance, eventually colliding into the rear of a second vehicle, a Mitsubishi Lancer. The force of this second impact propelled the Lancer over the median strip and into the path of a 4WD travelling in the opposite direction. The subsequent collision resulted in the death of all three persons inside the Lancer, a young couple and their 18-month old daughter.

The accused was charged with three counts of Dangerous Driving Occasioning Death and the trial proceeded by judge alone. The accused's case was that shortly before the first collision he suffered an epileptic fit or seizure which meant that his actions were involuntary. The Crown presented its case in three ways, the first being that the accused suffered no fit or seizure and the second way being that even if the accused had suffered a fit or seizure, his level of awareness still meant that he was driving voluntarily. The third way the Crown put its case was on the basis that when the accused was driving voluntarily shortly before the first collision, he was nevertheless driving dangerously because of the risk that he would suffer a fit or seizure and lose control of his car.

Evidence was led at trial that the accused had been involved in an extremely similar series of non-fatal collisions on the same road 10 years earlier. Further, there was also evidence that the accused had repeatedly lied to the Roads and Traffic Authority, failing to disclose that he suffered from epilepsy when applying for renewals of his driver's licence.

The accused was found guilty on each of the three counts on the basis of the third way that the Crown had presented its case. He was sentenced to an overall sentence of seven years with a non-parole period of 5 years 3 months.

Appendix 34

Code of Conduct

1. The need for a Code

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

Professionalism

Independence

Fairness

The maintenance of public confidence in the prosecution process

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

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

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

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

2. The Code's principles

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

The Code is an evolving document that will be modified periodically according to our experience. In order to assist in understanding the standards of conduct expected, the Code includes illustrations of circumstances that might be confronted. The examples should not be regarded as exhaustive or prescriptive.

The following principles will guide the work of ODPP officers.

3. Accountability

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

4. Integrity and public interest

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

5. Effectiveness and efficiency

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

6. Decision making

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

7. Responsive Service

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

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

8. Respect for People

Officers will treat members of the public, stakeholders and colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights, special needs, obligations and legitimate expectations.

9. To whom does the code apply?

The Code applies to:

- The Director
- Deputy Directors
- Crown Prosecutors
- The Solicitor for Public Prosecutions.
- All staff within the ODPP whether or not they are permanent or temporary employees.

Appendix 34 Continued

Code of Conduct

- Persons on secondment, work experience, volunteer employment and work training schemes in the ODPP.

In their work, officers are individually accountable for their acts and omissions. In addition, managers of staff employed under the Public Sector Employment and Management Act 2002 No 43 are accountable for the acts and omissions of their subordinate staff. This does not mean that managers will be held responsible for every minor fault of subordinate staff. It means that managers will be called to account for unsatisfactory acts or omissions of their subordinate staff if these are so serious, repeated or widespread that managers should know of them and address them, if they are exercising the level of leadership, management and supervision appropriate to their managerial position.

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

10. how are ethical issues resolved?

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

11. Breach of the code

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

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

Failure to comply with the Code’s requirements, ODPP policies or any other legal requirement or lawful directive, may, in the case of staff employed under the Public Sector Management Act, render an officer subject to a range of administrative and legal sanctions. These sanctions may include a caution, counselling (including retraining), deferral of a pay increment, a record made on a personal file, suspension, or preferment of criminal or disciplinary charges (including external disciplinary action in the case of legal practitioners) with the imposition of a range of penalties, including dismissal.

Sanctions against a Director; a Deputy Director or a Crown Prosecutor are subject to the Director of Public Prosecutions Act, the Crown Prosecutors Act and the Legal Profession Act. A breach of the Code may also be reported to the ICAC, Law Society, Bar Association, Legal Services Commissioner or other relevant professional body.

12. Guidelines

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

13. Personal behaviour

Officers are obliged:

- not to harass or discriminate against colleagues, stakeholders or members of the public on the grounds of sex, race, social status, age, religion, sexual preference or physical or intellectual impairment;
- to report harassment or discrimination to a manager or other senior officer;
- to be courteous and not use offensive language or behave in an offensive manner;
- to respect the privacy, confidence and values of colleagues, stakeholders and members of the public, unless obliged by this Code or other lawful directive or requirement to disclose or report.

14. Professional behaviour

Officers must:

- comply with the Director’s Prosecution Policy and Guidelines;
- work diligently and expeditiously, following approved procedures;
- maintain adequate documentation to support decisions made by them. In the case of prosecutors this should include decisions in relation to plea negotiations, elections and Form 1’s;
- give dispassionate advice;
- be politically and personally impartial in their professional conduct;
- take all reasonable steps to avoid and report any conflicts of interest: personal, pecuniary or otherwise;
- report any professional misconduct or serious unprofessional conduct by a legal practitioner, whether or not employed by the ODPP;

Appendix 34 Continued

Code of Conduct

- notify to the Director, as soon as practicable, the fact and substance of any complaint made against the officer to the Legal Services Commissioner, NSW Bar Association or NSW Law Society, pursuant to part 10 of the Legal Profession Act 1987;
- comply with the professional conduct and practice rules of those professional associations that apply;
- comply with all reasonable instructions and directions issued to them by their line management, or, in the case of Crown Prosecutors (for administrative matters), the Senior Crown Prosecutor.

15. Public comment/confidentiality

Officers will:

- not publish or disseminate outside the ODPP any internal email, memorandum, instruction, letter or other document, information or thing without the author's or owner's consent, unless this is necessary for the performance of official duties or for the performance of union duties or is otherwise authorised by law (for example, pursuant to a legislative provision or court order);
- within the constraints of available facilities, securely retain all official information, especially information taken outside the ODPP. Information should not be left unattended in public locations, including unattended in motor vehicles or unsecured courtrooms, unless there is no reasonable alternative course available in the circumstances. The degree of security required will depend upon the sensitivity of the material concerned and the consequences of unauthorised disclosure;
- use official information gained in the course of work only for the performance of official duties or for the performance of official union duties;

- comply with the requirements of the Privacy and Personal Information Protection Act 1998 relating to the use and disclosure of personal information, and take reasonable steps to ensure that private contractors engaged by the ODPP are aware of these requirements;
- not access or seek to access official information that they do not require to fulfil their duties;
- not make any official comment on matters relating to the ODPP unless authorised;
- comply with the Director's Media Contact Guidelines.

16. Use of official resources, facilities and equipment/financial management

Officers will:

- follow correct procedures as handed down by Treasury and in ODPP instructions;
- observe the highest standards of probity with public moneys, property and facilities;
- be efficient and economic in the use of public resources and not utilise them for private purposes unless official permission is first obtained;
- not permit the misuse of public resources by others;
- be aware of and adhere to ODPP Information Security Policies and Guidelines;
- be aware of and adhere to the ODPP Information Security Policies and Guidelines;
- not create, knowingly access, download or transmit pornographic, sexually explicit, offensive or other inappropriate material, using email, or the internet (examples of such material include offensive jokes or cartoons (sexist/racist/

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

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

17. Office motor vehicles

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

18. Secondary employment

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

For Crown Prosecutors the consent of the Attorney General or the Director must be obtained before engaging in the practice of law (whether within or outside New South Wales) outside the duties of his/her office, or before engaging in paid employment outside the duties of his/her

Appendix 34 Continued

Code of Conduct

office. In relation to a Director, a Deputy Director and the Solicitor for Public Prosecutions, the consent of the Attorney General must be obtained in similar circumstances.

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

19. Post separation employment

Officers must not misuse their position to obtain opportunities for future employment. Officers should not allow themselves or their work to be influenced by plans for, or offers of, employment outside the ODPP. If they do, there is a conflict of interest and their integrity as well as that of the ODPP is at risk. Officers should be careful in dealings with former employees and ensure that they do not give them, or appear to give them, favourable treatment or access to any information (particularly privileged or confidential information). Where officers are no longer employed, attached to or appointed to the ODPP, they must not use or take advantage of confidential information obtained in the course of their duties unless and until it has become publicly available.

20. Acceptance of gifts or benefits

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

If the gift is clearly of nominal value (cheap pens etc), there is no need to report it. Where the value of the gift is unknown, but is likely to exceed \$50, or

where the value clearly exceeds \$50, it should be reported (in writing) to:

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

seeking an approval to retain the item. An entry, indicating whether an approval to retain or otherwise has been given, should be made in the gift register, maintained by the position holder referred to above or their nominee/s. Any such gifts should only be accepted where refusal may offend and there is no possibility that the officer might be, or might appear to be, compromised in the process. This concession only applies to infrequent situations and not to regular acceptance of such gifts or benefits. No gifts or benefits exceeding \$50 may be accepted without the prior approval of the appropriate manager or senior executive officer. Such approval must be recorded in writing in the gift register

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

21. Conflicts of interest

In order to ensure that the ODPP's work is impartial, and is seen to be so, officers' personal interests, associations and activities (financial, political or otherwise)

must not conflict with the proper exercise of their duties.

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

Officers should assess conflicts of interest in terms of perception as well as result. With conflicts of interest, it is generally the processes or relationships that are important, rather than the actual decision or result. If there has been a potential or actual conflict then the decision or action becomes compromised, even if the decision or action has not been altered by the compromising circumstances.

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

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

Appendix 34 Continued

Code of Conduct

- an officer or friend or relative has a financial interest in a matter (including goods and services) that the ODPP is dealing with.

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

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

Additional information is available in a Fact Sheet titled Public Sector Agencies Fact Sheet No 3 Conflict of Interests dated June 2003. The direct link follows: www.ombo.nsw.gov.au/publications/Publist_pdfs/fact%20sheets/PSA_FS3_Conflict.pdf

22. Court character references

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

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

If an officer is to be called to give character evidence by the defence (or it is reasonably expected that he/she will be called) prior notice (being before the day of court at the very latest, but otherwise as soon as it is known) is to be given to either the Senior Crown Prosecutor (or a Deputy Senior Crown Prosecutor in his absence) or the Solicitor for Public Prosecutions or a Deputy Solicitor for Public Prosecutions by a Crown Prosecutor (in the first case), lawyer or

other staff member (in the second case).

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

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

23. Notification of bankruptcy, corrupt or unethical conduct and protected disclosures

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

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

- a public official carries out public duties dishonestly or unfairly
- anyone does something that could result in a public official carrying out public duties dishonestly or unfairly
- anyone does something that has a detrimental effect on official functions, and which involves any of a wide range of matters, including fraud, bribery, official misconduct and violence.
- a public official misuses his/her position

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

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

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

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

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

Appendix 34 Continued

Code of Conduct

Relevant legislative, professional, administrative and industrial requirements and obligations

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

- Director of Public Prosecutions Act 1986
- Public Sector Employment and Management Act 2002 No 43
- Crown Prosecutors Act 1986
- Legal Practitioners Act 1987
- Victims Rights Act 1996
- Independent Commission Against Corruption Act 1988
- Protected Disclosures Act 1994

- Anti Discrimination Act 1977
- Occupational Health and Safety Act 2000
- Public Finance and Audit Act 1983
- State Records Act 1998
- Freedom of Information Act 1989
- Privacy and Personal Information Protection Act 1998
- (Cth) Racial Discrimination Act 1975
- (Cth) Sex Discrimination Act 1984

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

- Director's Prosecution Policy and Guidelines
- Professional Conduct and Practice Rules, Law Society of NSW

- NSW Bar Rules
- AASW Code of Ethics and NSW Psychologists Board Code of Ethical Conduct
- Solicitors Manual
- Sentencing Manual
- Child Sexual Assault Manual
- Witness Assistance Service Manual
- NSW Solicitors Manual (Riley)
- Personnel Handbook
- ODPP Policies (refer to DPPNet)
- Protected Disclosures Procedures
- Guarantee of Service
- Corporate Plan
- Charter of Principles for a Culturally Diverse Society

Appendix 35

Disability Action Plan

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

The Office continues to participate in

the development of a Justice Sector Disability Action Plan, which provides key interagency strategies and activities planned by the justice sector over the next four years to improve the delivery of services to people with disabilities. Objectives of the Plan include ensuring people with disabilities have access to the NSW justice system fairly and easily while their legal rights and individual needs are respected and addressed. It is

also an important network for sharing information on practical workplace issues for people with disabilities.

The ODPP DAP is currently under review. However, the Office has continued to provide training and employment opportunities during the 2004-05 period. This period was also useful in identifying practical workplace modification requirements that were subsequently actioned.

Appendix 36

Director of Public Prosecutions' Prosecution Guidelines

No new Guidelines were issued during the reporting period nor were any amendments made to the Director of Public Prosecutions' Prosecution

Guidelines as published in October 2003 and reproduced in full in the Office's 2003-2004 Annual Report.

Appendix 37

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Aboriginal Affairs Policy Justice Cluster Committee	Philip Dart
Aboriginal Child Sexual Assault Taskforce	Lee Purches
Advisory Committee to the DNA Laboratory	Nicholas Cowdery AM QC
Attorney General's Criminal Justice Forum	Nicholas Cowdery AM QC
Attorney General's Inter-Departmental Committee on Mental Health (Criminal Procedure) Act	Daniel Howard SC
Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders)	Philip Dart
Audio/Visual Conferencing Committee	Craig Hyland
Australian Law Reform Commission Advisory Committee re: Evidence Act 1985	Wayne Roser
Bar Association: Criminal Law Committee	Greg Smith SC Paul Conlan SC James Bennett SC Maria Cinque Sally Dowling
Bar Association: Professional Conduct Committees	Frank Veltro Paul Conlon SC James Bennett SC Virginia Lydiard
Bar Association: Voluntary Membership Committee	Mark Hobart Ana Seeto
Bar Association: Various other Committees	David Frearson (Indigenous Barristers Strategy Working Party) Virginia Lydiard (Chairperson, Equal Opportunity Committee)
Bar Council	Virginia Lydiard
Cabinet Office Senior Officers Group on Child Protection (continually reviews child protection in NSW)	Philip Dart
Child Protection Senior Officers Group (progressing recommendations in Child Death Review Team reports)	Amy Watts
Child Sexual Assault Jurisdiction Interagency Project Team	Philip Dart Lee Purches Amy Watts
Community Justice Conferencing Pilot Scheme for Young Adult Offenders Working Party	Philip Dart Patrick Power SC
Conference of Australian Directors of Public Prosecutions	Nicholas Cowdery AM QC
Courtlink Inter-agency Group	Craig Hyland Claire Giroto Diane Harris

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Court of Criminal Appeal/Supreme Court Crime Users Group	Dominique Kelly Michael Day David Frearson SC
Court Security Committee	John Kiely SC
Criminal Case Processing Committee	Claire Girotto
Criminal Justice Research Network Committee	Helen Cunningham
Criminal Justice Sexual Offences Taskforce	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers' Standing Committee	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers - Senior Officers' Group	Philip Dart
Criminal Law Committee of the Law Society of NSW	Robyn Gray
Criminal Law Specialist Accreditation Board	Wayne Roser
Criminal Listing Review Committee (reviewing listings in the District Court)	Claire Girotto Patrick Power SC
Delays in Committal Proceedings Working Party	Nicholas Cowdery AM QC
Forensic Science Co-ordinating Committee	Claire Girotto
Government Chief Executive Officers Network	Nicholas Cowdery AM QC
Government Lawyers Committee of the Law Society of NSW	Peter Michie
Heads of Prosecuting Agencies Conference	Nicholas Cowdery AM QC
Homicide Squad Advisory Committee	Patrick Barrett
Intellectual Disability Rights Service, Criminal Justice Support Network: Inter-agency Victim Support Roundtable	Allison Johnson
Inter-agency Exhibit Management Committee	Claire Girotto Johanna Pheils
Inter-agency Guidelines for Responding to Adult Sexual Assault Committee	Amy Watts
Inter-departmental Committee on the Crimes (Forensic Procedures) Act 2000	Nicholas Cowdery AM QC
Inter-departmental Committee to review the Mental Health (Criminal Procedure) Act 1990	Craig Williams
Inter-departmental Working Group on Findlay's Review of Crimes (Forensic Procedures) Act 2000	Patrick Barrett
Internal Affairs Liaison Group	Janis Watson-Wood
International Association of Prosecutors	Nicholas Cowdery AM QC
Joint Investigation Response Teams State Management Group and Training Sub-Committee	Amy Watts
Local Court Rules Committee	Robyn Gray
Magistrates Early Referral Into Treatment (MERIT) – Regional Planning Group for South Western Sydney	Jim Hughes

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Magistrates Early Referral Into Treatment (MERIT) – Statewide Steering Group	Jim Hughes
National Advisory Committee for the Centre for Transnational Crime Prevention (University of Wollongong)	Nicholas Cowdery AM QC
National DPP Executives Conference	Patrick McMahon Claire Giroto
National Child Sexual Assault Law Reform Committee	Nicholas Cowdery AM QC
NSW Law Reform Commission	James Bennett SC
NSW Sentencing Council	Nicholas Cowdery AM QC
NSW Strategy to Reduce Violence Against Women – Senior Officers Group	Philip Dart
Police Adult Sexual Assault Interagency Committee and Legal Issues Sub-Committees	Amy Watts
Police Forensic Services/DAL/ODPP Liaison Committee	Paul Conlon SC Greg Smith SC
Police Integrity Commission Liaison Group	Janis Watson-Wood
Police–ODPP Prosecution Liaison Standing Committee	Graham Bailey David Frearson SC Claire Giroto Craig Hyland Stephen Kavanagh
Senior Officers Working Group for Reviewing Court Preparation Resources for Child Victims of Sexual Assault	Lee Purches
Serious Vilification Working Group	Beatrice Scheepers
Sexual Assault Review Committee	Philip Dart (Chair) Julie Lannen Lee Purches Samantha Smith Amy Watts
Sexual Offences Taskforce Subcommittees	
1. Rates of Attrition	Amy Watts
2. Evidence of Children	Amy Watts
3. Improved Inter-agency Approach	Lee Purches
Standing Inter-agency Advisory Committee on Court Security	Stephen Kavanagh Claire Giroto
University of Sydney Institute of Criminology Advisory Committee	Nicholas Cowdery AM QC
Victims Advisory Board under the Victims Rights Act	Philip Dart
Victims of Crime Committee for Reviewing the Standards for Counselling and Support Services for Victims of Crime	Allison Johnson

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Victims of Crime Inter-agency Committee	Philip Dart Lee Purches Amy Watts Samantha Smith
Victims of Crimes Inter-agency Sub-committee on Victim Information Needs	Lee Purches
Youth Justice Advisory Committee	Patrick Power SC (Chairperson)

Appendix 37 Continued

State-Wide Prosecution Liaison Groups

Prosecution Liaison Group	ODPP Representative
North Region	Graham Bailey Colin Cupitt Julie Lannen Janet Little Matthew Coates Malcolm Young Chris Smith
Southern	Graham Bailey Peter Burns Alison Dunn
South-West	Tonia Adamson Graham Bailey Kylie Barnett
Sydney East	Johanna Pheils Michael Day
Sydney North	Craig Hyland
Sydney South West	Judith Nelson Philippa Smith
Sydney West	Wendy Carr Claire Girotto Sashi Govind Sharon Holdsworth Jim Hughes Clare Partington

Appendix 38

Consumer Response

This Office undertakes a comprehensive victim and witness satisfaction survey biennially, as the main qualitative measure of our service. The following table shows the percentage of respondents who rated the overall level of service provided by the ODPP as "good" or "very good" in surveys conducted since 1994.

A survey was undertaken for 2004 and results are shown hereunder:

It has been clear from comments made by respondents in surveys that the defining issue in relation to satisfaction with the service provided by this Office is the level of communication received from the Office. Positive comments refer to our staff as "professional", "informative", "supportive", "helpful", "courteous" and "polite". Negative comments included "uncommunicative", "overall lack of

communication and information", "no explanation of what was expected", "no contact".

The past three survey results indicate that case outcomes have no significant impact on service satisfaction levels.

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

Acronyms

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

Audited Financial Statements 2004–2005



OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Financial Statements for the Year Ended 30 June 2005

Statement by the Director

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

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



N R Cowdery AM QC
Director of Public Prosecutions

5 October 2005



GPO BOX 12
Sydney NSW 2001

INDEPENDENT AUDIT REPORT

Office of the Director of Public Prosecutions

To Members of the New South Wales Parliament

Audit Opinion

In my opinion, the financial report of the Office of the Director of Public Prosecutions:

- presents fairly the Office of the Director of Public Prosecutions' financial position as at 30 June 2005 and its financial performance and cash flows for the year ended on that date, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and
- complies with section 45E of the *Public Finance and Audit Act 1983* (the Act).

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

The Director's Role

The financial report is the responsibility of the Director of Public Prosecutions. It consists of the statement of financial position, the statement of financial performance, the statement of cash flows, the summary of compliance with financial directives and the accompanying notes.

The Auditor's Role and the Audit Scope

As required by the Act, I carried out an independent audit to enable me to express an opinion on the financial report. My audit provides *reasonable assurance* to members of the New South Wales Parliament that the financial report is free of *material* misstatement.

My audit accorded with Australian Auditing and Assurance Standards and statutory requirements, and I:

- evaluated the accounting policies and significant accounting estimates used by the Director in preparing the financial report, and
- examined a sample of the evidence that supports the amounts and other disclosures in the financial report.

An audit does *not* guarantee that every amount and disclosure in the financial report is error free. The terms 'reasonable assurance' and 'material' recognise that an audit does not examine all evidence and transactions. However, the audit procedures used should identify errors or omissions significant enough to adversely affect decisions made by users of the financial report or indicate that the Director had not fulfilled his reporting obligations.

My opinion does *not* provide assurance:

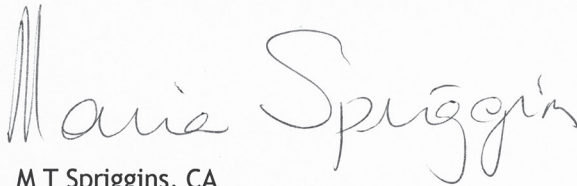
- about the future viability of the Office of the Director of Public Prosecutions,
- that the Office of the Director of Public Prosecutions has carried out its activities effectively, efficiently and economically,

- about the effectiveness of its internal controls, or
- on the assumptions used in formulating the budget figures disclosed in the financial report.

Audit Independence

The Audit Office complies with all applicable independence requirements of Australian professional ethical pronouncements. The Act further promotes independence by:

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



M T Spriggins, CA
Director, Financial Audit Services

SYDNEY
6 October 2005

Statement of Financial Performance

for the Year Ended 30 June 2005

	Notes	Actual 2005 \$'000	Budget 2005 \$'000	Actual 2004 \$'000
Expenses				
Operating expenses				
Employee related	2(a)	69,544	65,203	62,220
Other operating expenses	2(b)	11,059	10,702	10,491
Maintenance	2(c)	703	600	656
Depreciation and amortisation	2(d)	3,082	2,250	1,911
Other expenses	2(e)	2,780	3,143	2,724
Total Expenses		87,168	81,898	78,002
Less:				
Retained Revenue				
Sale of goods and services	3(a)	86	32	37
Investment income	3(b)	103	37	68
Other revenue	3(c)	239	250	252
Total Retained Revenue		428	319	357
Gain/(Loss) on disposal of non-current assets	4	-	5	(38)
Net Cost of Services	18	86,740	81,574	77,683
Government Contributions				
Recurrent appropriation	5	73,953	71,324	70,976
Capital appropriation	5	2,475	1,225	3,809
Acceptance by the Crown Entity of employee benefits and other liabilities	6	9,843	8,543	8,084
Total Government Contributions		86,271	81,092	82,869
SURPLUS/(DEFICIT) FOR THE YEAR FROM ORDINARY ACTIVITIES		(469)	(482)	5,186
TOTAL REVENUES, EXPENSES AND VALUATION				
ADJUSTMENTS RECOGNISED DIRECTLY IN EQUITY		-	-	-
TOTAL CHANGES IN EQUITY OTHER THAN THOSE				
RESULTING FROM TRANSACTIONS WITH				
OWNERS AS OWNERS	15	(469)	(482)	5,186

The accompanying notes form part of these statements.

Statement of Financial Position

as at 30 June 2005

	Notes	Actual 2005 \$'000	Budget 2005 \$'000	Actual 2004 \$'000
ASSETS				
Current Assets				
Cash	8	2,112	2,405	1,880
Receivables	9	1,548	1,265	1,224
Inventories	10	2	2	2
Total Current Assets		3,662	3,672	3,106
Non-Current Assets				
Plant and Equipment	11	14,565	14,146	15,171
Total Non-Current Assets		14,565	14,146	15,171
Total Assets		18,227	17,818	18,277
LIABILITIES				
Current Liabilities				
Payables	12	1,543	2,170	1,970
Provisions	13	4,771	4,067	4,067
Other	14	238	220	220
Total Current Liabilities		6,552	6,457	6,257
Non-Current Liabilities				
Provisions	13	1,545	1,261	1,218
Other	14	694	677	897
Total Non-Current Liabilities		2,239	1,938	2,115
Total Liabilities		8,791	8,395	8,372
Net Assets		9,436	9,423	9,905
EQUITY				
Reserves	15	551	551	551
Accumulated funds		8,885	8,872	9,354
Total Equity		9,436	9,423	9,905

The accompanying notes form part of these statements.

Statement of Cash Flows

for the Year Ended 30 June 2005

	Notes	Actual 2005 \$'000	Budget 2005 \$'000	Actual 2004 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(61,918)	(58,891)	(56,650)
Other		(16,508)	(15,825)	(17,186)
Total Payments		(78,426)	(74,716)	(73,836)
Receipts				
Sale of goods and services		86	32	37
Interest Received		100	37	41
Other		1,674	1,419	1,604
Total Receipts		1,860	1,488	1,682
Cash Flows from Government				
Recurrent appropriation		73,953	71,324	70,976
Capital appropriation		2,475	1,225	3,809
Cash reimbursements from the Crown Entity		2,846	2,424	2,321
Net Cash Flows from Government		79,274	74,973	77,106
NET CASH FLOWS FROM OPERATING ACTIVITIES	18	2,708	1,745	4,952
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of plant and equipment		-	5	7
Purchases of plant and equipment		(2,476)	(1,225)	(3,811)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(2,476)	(1,220)	(3,804)
NET INCREASE/(DECREASE) IN CASH		232	525	1,148
Opening cash and cash equivalents		1,880	1,880	732
CLOSING CASH AND CASH EQUIVALENTS	8	2,112	2,405	1,880

The accompanying notes form part of these statements.

Supplementary Financial Statements

Summary of Compliance with Financial Directives

for the Year Ended 30 June 2005

	2005				2004			
	Recurrent Appropriation	Expenditure/ Net Claim on Consolidated Fund	Capital Appropriation	Expenditure/ Net Claim on Consolidated Fund	Recurrent Appropriation	Expenditure	Capital Appropriation	Expenditure
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
ORIGINAL BUDGET APPROPRIATION/EXPENDITURE								
• Appropriation Act	71,324	70,986	1,225	1,225	61,832	61,832	1,809	1,809
	71,324	70,986	1,225	1,225	61,832	61,832	1,809	1,809
OTHER APPROPRIATIONS/ EXPENDITURE								
• Treasurer's Advance	2,967	2,967	1,250	1,250	9,144	9,144	2,000	2,000
	2,967	2,967	1,250	1,250	9,144	9,144	2,000	2,000
Total Appropriations Expenditure/Net Claim on Consolidated Fund (includes transfer payments)	74,291	73,953	2,475	2,475	70,976	70,976	3,809	3,809
Amount drawn down against Appropriation		73,988		2,475		70,976		3,809
Liability to Consolidated Fund*		35		–		–		–

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

* The "Liability to Consolidated Fund" represents the difference between the "Amount Drawn down against Appropriation" and the "Total Expenditure / Net Claim on Consolidated Fund"

Notes to and Forming Part of the 30 June 2005 Financial Statements

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Notes to and Forming Part of the 30 June 2005 Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Reporting Entity

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

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

(b) Basis of Accounting

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

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

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

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

Except for certain plant and equipment, which are recorded at valuation, the financial statements are prepared in accordance with the historical cost convention. All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

(c) Revenue Recognition

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

(i) *Parliamentary Appropriations and Contributions from Other Bodies*

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

An exception to the above is when appropriations are unspent at year-end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year.

(ii) *Sale of Goods and Services*

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

(iii) *Investment income*

Interest revenue is recognised as it accrues.

Notes to and Forming Part of the 30 June 2005 Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

(d) Employee Benefits and other provisions

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

Liabilities for salaries and wages (including non-monetary benefits), annual leave and vesting sick leave are recognised and measured in respect of employees' services up to the reporting date at nominal amounts based on the amounts expected to be paid when the liabilities are settled.

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

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

The outstanding 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.

(ii) Long Service Leave and Superannuation

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

Long service leave is measured using present value methodology. In the past, as permitted in AASB 1028, the Crown has relied on the short-hand method to approximate the present value of long service leave, based on the remuneration rates at year-end for all employees with five or more years of service. However, recent calculations by the Government Actuary indicate that this approach for budget dependant agencies resulted in liabilities that are lower than what would have been calculated by more accurate present value calculations. As long service leave is assumed by the Crown, the only effects on the Office's operating results of this changed methodology will be in respect of those on-costs not assumed by the Crown.

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

(iii) Other Provisions

Other provisions exist when the entity has a present legal, equitable or constructive obligation to make a future sacrifice of economic benefits to other entities as a result of past transactions or other past events. These provisions are recognised when it is probable that a future sacrifice of economic benefits will be required and the amount can be measured reliably.

(e) Insurance

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

Notes to and Forming Part of the 30 June 2005 Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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

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

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

(g) Acquisitions of Assets

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

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

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

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

(h) Plant & Equipment

Plant and equipment costing \$5,000 and above are individually capitalised unless they form part of an overall unit capitalised at below the threshold level.

(i) Revaluation of Physical Non-Current Assets

Physical non-current assets are valued in accordance with the "Guidelines for the Valuation of Physical Non-Current Assets at Fair Value" (TPP 03-02). This policy adopts fair value in accordance with AASB 1041 from financial years beginning on or after 1 July 2002. There is no substantive difference between the fair value valuation methodology and the previous valuation methodology adopted in the NSW public sector:

Where available, fair value is determined having regard to the highest and best use of the asset on the basis of current market selling prices for the same or similar assets. Where market selling price is not available, the asset's fair value is measured as its market buying price i.e. the replacement cost of the asset's remaining future economic benefits. The Office is a not profit entity with no cash generating operations.

Each class of physical non-current assets is revalued every 5 years and 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 assets was completed on 30 June 2001 and was based on 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 is separately restated.

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

Notes to and Forming Part of the 30 June 2005 Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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

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

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

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.

(j) Depreciation of Non-Current Physical Assets

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

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

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

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

(k) Maintenance and repairs

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

(l) Leased Assets

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

(m) Receivables

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

(n) Inventories

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

(o) Other Assets

Other assets including prepayments are recognised on a cost basis.

(p) Payables

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

(q) Interest Bearing Liabilities

The Office does not have any interest bearing liabilities.

Notes to and Forming Part of the 30 June 2005 Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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

(s) Lease Incentives

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

Notes to and Forming Part of the 30 June 2005 Financial Statements

2 EXPENSES

	2005 \$'000	2004 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)	55,222	50,143
Superannuation	6,012	5,210
Long service leave	3,470	2,561
Workers' compensation Insurance	213	345
Payroll tax and fringe benefit tax	4,151	3,711
On-cost on Long Service Leave	343	83
Temporary Staff	133	167
	69,544	62,220
(b) Other operating expenses		
Auditor's remuneration – audit of the financial reports	32	29
Operating lease rental expense – minimum lease payments	5,161	4,899
Outgoings	184	201
Insurance	165	140
Books	310	305
Cleaning	214	165
Consultants	45	34
Fees – Private Barristers	414	459
Fees – Practising Certificates	228	206
Fees – Security	124	120
Gas & Electricity	166	145
Motor Vehicles	353	289
Postal	107	106
Courier	27	32
Printing	78	64
Stores and equipment	482	479
Telephones	984	924
Training	190	116
Travel *	954	881
Other	841	897
	11,059	10,491
(c) Maintenance		
Repairs and maintenance	703	656
	703	656

* Travel expenses represent expenditure incurred by all staff of the Office for 2004-2005.

Notes to and Forming Part of the 30 June 2005 Financial Statements

2 EXPENSES (continued)

	2005 \$'000	2004 \$'000
(d) Depreciation		
Computer Equipment	1,668	803
General Plant and Equipment	1,285	1,002
Library Collection	129	106
	3,082	1,911
(e) Other expenses		
Allowances to Witnesses	2,764	2,688
Ex-gratia payments	-	34
Maintenance Costs of Non Australian Citizens	16	2
	2,780	2,724

3 REVENUES

	2005 \$'000	2004 \$'000
(a) Sale of goods and services		
Sale of goods	3	5
Rendering of services		
Commissions – Miscellaneous Deductions	6	5
Costs Awarded	33	17
On-cost – Officers on loan	25	4
Appearance Fees	12	6
Training fees	7	-
Total sale of goods and rendering of services	86	37
(b) Investment Income		
Interest	103	68
	103	68
(c) Other revenue		
Lease Incentive	220	220
Other revenue	19	32
	239	252

Notes to and Forming Part of the 30 June 2005 Financial Statements

4 GAIN/(LOSS) ON DISPOSAL OF NON-CURRENT ASSETS

	2005 \$'000	2004 \$'000
Proceeds from disposal	-	7
Written down value of assets disposed	-	(45)
Net gain/(loss) on disposal of plant and equipment	-	(38)

5 APPROPRIATIONS

	2005 \$'000	2004 \$'000
Recurrent appropriations		
Total recurrent drawdowns from Treasury (per Summary of Compliance)	73,988	70,976
Less: Liability to Consolidated Fund (per Summary of Compliance)	35	-
Total	73,953	70,976
Comprising:		
Recurrent appropriations (per Statement of Financial Performance)	73,953	70,976
Total	73,953	70,976
Capital appropriations		
Total capital drawdowns from Treasury (per Summary of Compliance)	2,475	3,809
Less: Liability to Consolidated Fund (per Summary of Compliance)	-	-
Total	2,475	3,809
Comprising:		
Capital appropriations (per Statement of Financial Performance)	2,475	3,809
Total	2,475	3,809

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

	2005 \$'000	2004 \$'000
The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:		
Superannuation	6,012	5,210
Long Service Leave	3,470	2,561
Payroll Tax on Superannuation	361	313
	9,843	8,084

7 PROGRAMS/ACTIVITIES OF THE OFFICE

The Office operates on one program "22.1.1 Crown Representation in Criminal Prosecutions". The objective of the program is to provide the people of New South Wales with an independent, fair and just prosecution service.

Notes to and Forming Part of the 30 June 2005 Financial Statements

8 CURRENT ASSETS – CASH

	2005 \$'000	2004 \$'000
Cash at bank and on hand	1,932	1,700
Permanent Witness Advance	180	180
	2,112	1,880

Cash comprises cash on hand and bank balances within the 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 Treasury. The Office does not have any bank overdraft facility.

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

	2005 \$'000	2004 \$'000
Cash on hand and cash at bank (per Statement of Financial Position)	2,112	1,880
Closing Cash and Cash Equivalents (per Statement of Cash Flows)	2,112	1,880

9 CURRENT ASSETS – RECEIVABLES

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

	2005 \$'000	2004 \$'000
Sale of Goods & Services	7	32
Prepayments	1,141	711
Interest	49	46
Advances	40	56
GST Recoverable from ATO	311	379
Total Current Assets – Receivables	1,548	1,224

10 CURRENT ASSETS – INVENTORIES

	2005 \$'000	2004 \$'000
Corporate Wardrobe		
At Cost	2	2
	2	2

Notes to and Forming Part of the 30 June 2005 Financial Statements

11 NON-CURRENT ASSETS – PLANT AND EQUIPMENT

	2005 \$'000	2004 \$'000
Plant and Equipment		
At Fair Value	33,696	31,219
Less: Accumulated Depreciation	19,131	16,048
Total Plant and Equipment at Net Book Value	14,565	15,171

The Office considers that the written down value approximates to the fair value.

Reconciliations

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

	2005 \$'000	2004 \$'000
Carrying amount at start of year	15,171	13,316
Additions	2,476	3,811
Disposals	-	(45)
Depreciation expense	(3,082)	(1,911)
Carrying amount at end of year	14,565	15,171

12 CURRENT LIABILITIES – PAYABLES

The liabilities are recognised for amounts due to be paid in the future for goods or services received. Whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219. 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 219.1 allows the Minister to award interest for late payment. No interest was paid during the year (30 June 2004: \$nil). The carrying amount approximates net fair value.

	2005 \$'000	2004 \$'000
Accrued salaries and wages and on-costs	764	1,220
Creditors	394	183
Accruals	385	567
	1,543	1,970

Notes to and Forming Part of the 30 June 2005 Financial Statements

13 CURRENT/NON-CURRENT LIABILITIES – PROVISIONS

	2005 \$'000	2004 \$'000
CURRENT		
Employee benefits and related on-costs		
Recreation leave	4,602	3,931
On-cost on Long Service Leave	60	41
Payroll Tax on-cost for recreation leave and long service leave	109	95
Total Provisions – Current	4,771	4,067
NON-CURRENT		
Employee benefits and related on-costs		
On-cost on Long Service Leave	544	366
Deferred Retention Allowance	16	
Payroll Tax on-cost for long service leave	985	852
Total Provisions – Non-Current	1,545	1,218
Aggregate employee benefits and related on-costs		
Provisions – current	4,771	4,067
Provisions – non-current	1,545	1,218
Accrued salaries, wages and on-cost (Note 12)	764	1,220
Total Provisions	7,080	6,505

14 CURRENT/NON-CURRENT LIABILITIES – OTHER

	2005 \$'000	2004 \$'000
CURRENT		
Deferred Income	203	220
Liability to Consolidated Fund	35	-
Total Liabilities – Current	238	220
NON-CURRENT		
Deferred Income	694	897
Total Liabilities – Non-Current	694	897

Notes to and Forming Part of the 30 June 2005 Financial Statements

15 CHANGES IN EQUITY

	Accumulated Funds		Asset Revaluation Reserve		Total Equity	
	2005 \$'000	2004 \$'000	2005 \$'000	2004 \$'000	2005 \$'000	2004 \$'000
Balance at the beginning of the financial year	9,354	4,168	551	551	9,905	4,719
Changes in equity – other than transactions with owners as owners						
Surplus/(deficit) for the year	(469)	5,186	-	-	(469)	5,186
Total	(469)	5,186	-	-	(469)	5,186
Balance at the end of the financial year	8,885	9,354	551	551	9,436	9,905

Asset Revaluation Reserve

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

16 COMMITMENTS FOR EXPENDITURE

Operating Lease Commitments

	2005 \$'000	2004 \$'000
Future non-cancellable operating lease rentals not provided for and payable		
Not later than one year	5,272	5,281
Later than one year and not later than 5 years	13,279	15,631
Later than 5 years	279	1,364
Total (including GST)	18,830	22,276

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

The total "Operating Lease Commitments" above includes input tax credits of \$1.712 Million (30 June 2004 : \$2.027 Million) expected to be recoverable from the Australian Taxation Office.

17 BUDGET REVIEW

Net Cost of Services

The actual net cost of services was higher than the budget by \$5.166 Million, primarily due to the additional funding that was provided from the Treasurer's Advance Account, for reinstating the budget-cut of \$2 Million imposed for global savings and to pay the salary increase awarded by the SOORT to the statutory officers amounting to \$0.597 Million and Crown Employees amounting to \$0.37 Million. There was an increase in the Crown accepted employee benefit expenses amounting to \$1.3 Million due to salary increase. There was an increase in the depreciation expenses amounting to \$0.832 Million due to increased capital expenditure.

Assets and Liabilities

Total non-current assets were higher than the budget by \$0.419 Million, due to additional funding of \$0.450 Million received from Treasurer's Advance Account for the purchase of computer and \$0.8 Million for office accommodation for additional staff recruited for the implementation of Criminal Case Processing Reform and increase in depreciation amounting to \$0.832 Million due to increased capital expenditure.

Notes to and Forming Part of the 30 June 2005 Financial Statements

Total liabilities were \$0.396 Million higher than the budget due to the increase of \$0.972 Million in the provision for employee benefit as result of increased rate of pay and balance of entitlement hours and decrease of \$0.576 Million in the payables due to prompt payment of payroll deductions from the cash received for reinstating the budget-cut of \$2 Million imposed for global savings.

Cash Flows

Net cash flow from operating activities was \$0.963 Million higher than the budget, mainly due to the receipt of \$2 Million funding during the last week of the financial year for reinstating the budget-cut imposed for global savings.

Net cash flow from investing activities was \$1.251 Million higher than the budget, due to the receipt of additional capital funding of \$1.250 Million from the Treasurer's Advance.

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

	2005 \$'000	2004 \$'000
Net cash used on operating activities	2,708	4,952
Cash flows from Government/Appropriations	(79,274)	(77,106)
Acceptance by the Crown Entity of employee benefits and other liabilities	(6,997)	(5,763)
Depreciation	(3,082)	(1,911)
Decrease/(Increase) in provisions	(1,031)	(139)
Increase/(decrease) in prepayments and other assets	324	466
(Increase)/decrease in Creditors	427	1,636
Net (loss)/gain on sale of plant and equipment	-	(38)
Increase/(Decrease) in deferred income	185	220
Net cost of services	(86,740)	(77,683)

19 AFTER BALANCE DATE EVENTS

The Office is not aware of any circumstances that occurred after balance date which would render particulars included in the financial statements to be misleading.

20 IMPACT OF ADOPTING AUSTRALIAN EQUIVALENTS TO INTERNATIONAL FINANCIAL REPORTING STANDARDS (AEIFRS)

The Office will apply the Australian Equivalents to International Financial Reporting Standards (AEIFRS) from the reporting period beginning 1 July 2005.

The following strategy is being implemented to manage the transition to AEIFRS

The Office's Audit Committee is overseeing the transition. The Chief Financial Officer is responsible for the project and reports regularly to the Committee on the progress against the plan.

The following phases have been identified as relevant for consideration of appropriate action by the Office:

The Office has to retrospectively account for change in accounting policy and correction of errors by restating comparatives and adjusting the opening balance of accumulated funds for the first time adoption of AEIFRS as required by AASB 1.

The Inventories are to be valued at the lower of cost and current replacement cost rather than lower of cost and net realisable value to comply with AASB 102.

Notes to and Forming Part of the 30 June 2005 Financial Statements

20 IMPACT OF ADOPTING AUSTRALIAN EQUIVALENTS TO INTERNATIONAL FINANCIAL REPORTING STANDARDS (AEIFRS) (continued)

The Plant and Equipment (P&E) are to be included at cost and fair value, inclusive of restoration and inspection cost and depreciation reallocated to the related assets to comply with AASB 116. The adoption of AASB 138 will also result in certain reclassifications from plant and equipment to intangible assets (e.g. computer software)

The operating lease contingent rentals are to be recognised as an expense on a straight-line basis over the lease term rather than expensing in the financial year incurred, to comply with AASB 117.

The defined employee benefits are to be discounted, using the Government Bond Rate as at each reporting date rather than the long-term expected rate of return, to comply with AASB 119.

The Grants are to be recognised on receipt and alternatively when conditions are satisfied for the supply of related goods and services.

NSW Treasury is assisting agencies to manage the transition by developing policies, including mandates of options; presenting training seminars to all agencies; providing a website with up-to-date information to keep agencies informed of any new developments; and establishing an IAS Agency Reference Panel to facilitate a collaborative approach to manage the change.

Progress To-date:

No change in Accounting Policy was deemed necessary for the first time adoption of AEIFRS as required by AASB 1.

The Inventories have been valued at the lower of cost and current replacement cost rather than lower of cost and net realisable value to comply with AASB 102.

The Plant and Equipment (P&E) have been included at cost and fair value, inclusive of no restoration and inspection cost and no depreciation reallocated to the related assets as they are not applicable in the Office's environment to comply with AASB 116. The Office identified intangible assets to be reclassified separately from plant and equipment to comply with AASB 138. Net value of the intangibles included in the plant and equipment as at 30 June 2005 was \$1.573 Million.

There are no operating lease contingent rentals as of 30 June 2005. However this will be reviewed in the future to identify any contingent rentals to recognise as an expense on a straight-line basis over the lease term rather than expensing in the financial year incurred, to comply with AASB 117.

The defined employee benefits are assumed by the Crown. The Office provided "Crown Data Return" to the Treasury to discount the liability, using the Government Bond Rates at each reporting date rather than the long-term expected rate of return, to comply with AASB 119.

The Office does not receive annual grants. However the systems are in place to recognise the grant on receipt and alternatively when conditions are satisfied for the supply of related goods and services.

The Office has determined the key areas where changes in accounting policies are likely to impact the financial report. Some of these impacts arise because AEIFRS requirements are different from existing AASB requirement (AGAAP). Other impacts are likely to arise from options in AEIFRS. To ensure consistency at the whole of government level, NSW Treasury has advised agencies of options it is likely to mandate for the NSW Public Sector. The impacts disclosed below reflect Treasury's likely mandates (referred to as "indicative Mandates").

The management believes that there is any material financial impacts of AEIFRS on the Office's equity and profit/loss as at the date of preparing the 30th June 2005 financial report. The Office does not anticipate any material impacts on its cash flows. The actual effects of the transition may differ from the reported figures because of pending changes to the AEIFRS, including the UIG Interpretations and/or emerging accepted practice in their interpretation and application. The Office's accounting policies may also be affected by a proposed standard to harmonise accounting standards with Government Finance Statistics (GFS). However, the impact is uncertain because it depends on when this standard is finalised and whether it can be adopted in 2005-06.

END OF AUDITED FINANCIAL STATEMENTS

Account Payment Performance

1 July 2004 to 30 June 2005

To facilitate comparison against actual performance, an internal target level of 98% was set for the financial year 2004/2005

	Current Year	Previous Years	
	2004/2005	2003/2004	2002/2003
Aging of Accounts Paid:			
Current (ie. within due date)	\$17,745,314	\$18,209,525	\$15,309,996
Less than 30 days overdue	\$895,067	\$923,145	\$2,135,236
Between 30 and 60 days overdue	\$12,091	\$87,070	\$874,467
Between 60 and 90 days overdue	\$1,825	–	\$326,501
More than 90 days overdue	-	\$181	\$2,822
Accounts Paid on Time:			
Percentage of accounts paid on time	95%	95%	82%
Total of accounts paid on time	\$17,745,314	\$18,209,525	\$15,309,995
Total of account paid	\$18,654,297	\$19,219,921	\$18,649,022

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

Reasons for Accounts Not Paid on Time:

Suppliers invoices were not received on time for payment.

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Wollongong Court

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



DIRECTOR OF
PUBLIC PROSECUTIONS
NEW SOUTH WALES