

# Office of the Director of Public Prosecutions

New South Wales



## Annual Report 2007–2008

# 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 proceedings be taken against a person who has been committed for trial or sentence; and
- Finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial.

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

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

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

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

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

# ODPP NEW SOUTH WALES

## OUR ROLE

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

## OUR VISION

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

## OUR STAKEHOLDERS

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

## OUR VALUES

### Independence

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

### Service

The timely and cost efficient conduct of prosecutions.

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

### Highest Professional Ethics

Manifest integrity, fairness and objectivity.

### Management Excellence

Continual improvement.

Encouraging individual initiative and innovation.

Providing an ethical and supportive workplace.

OUR REFERENCE

**DIRECTOR'S CHAMBERS**



YOUR REFERENCE

DATE

1 December 2008

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

Dear Attorney

**2007-2008 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 2008.

Yours faithfully

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

**N R Cowdery AM QC**  
**Director of Public Prosecutions**

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# Director's Overview



## Director's Overview

This is the Office's 21st Annual Report (and my 14th). There were some developments and changes this year in the operating environment on which comment should be made.

Budgetary issues continued to occupy a great deal of attention and time. For the year 2007-08 the funds provided to police and corrections were increased, while those provided to this Office were reduced, with the prospect of further significant reductions in the future. As I have remarked before, that seems illogical.

Budget cuts, in bureaucratic language, are described as "efficiency improvement dividends" and therein lies a clue to the way they are to be addressed. When required to develop an Efficiency Improvement Plan the Office was unable to identify any reductions in expenditure that would not have the effects of transferring work and shifting costs elsewhere. As a demand-driven agency working to capacity the Office has no "fat" to cut when requirements of this kind are made. The work continues to present itself – we have to respond as effectively as we can. Although no organisation operates perfectly and small improvements in efficiency are sometimes possible, improving our efficiency in ways that produce significant reductions in expenditure is simply not possible – especially since we are at the mercy of the practices of other agencies.

There have been and are likely to be in the future industrial consequences of the inadequate funding of the Office. I commend staff generally – they are working under ever increasing pressure from lack of resources and continuing to perform to the highest professional standards. The public is aware of many high profile prosecutions that have been successfully concluded, but not aware of

the thousands that are processed in the system without fanfare. ODPP officers give these matters equal attention. The increasing toll being exacted upon them personally is a matter of deep regret and it cannot go on indefinitely.

The Australian Productivity Commission Report on Government Services for 2008 examined the performance of the various State and Territory courts across Australia. The statistical analysis demonstrated that collectively the Supreme Court of NSW and the District Court of NSW in their criminal jurisdiction, together with the NSW Court of Criminal Appeal, were the most efficient in Australia.

In responding to those findings the NSW Government commented in the following terms:

*"NSW Criminal Courts continue to lead the nation in the timeliness of criminal matters, finalising more criminal cases within time standards than any other State or Territory. The District and Magistrates' Courts in NSW have consistently achieved the best performance in the timeliness of criminal matters of any jurisdiction over the past three years, while the Children's Court has achieved the best criminal timeliness for the past two years. The NSW Supreme Court has also improved its performance in relation to the timeliness of criminal matters."*

Those results would not have been achievable (and a source of such satisfaction for the Government) unless the ODPP, the principal party to litigation in each of those jurisdictions (except the Children's Court), had also been efficient and effective.

Such proposals as we were able to make in the Efficiency Improvement Plan were (not surprisingly) unacceptable, so in June 2007 the Treasurer requested the Auditor-General to conduct a

performance audit of the Office. The objective was to determine whether it operated efficiently. Presumably, if it did not, then by becoming more efficient it could do the same work for less money and return funds to the Government.

The Auditor-General reported on 26 March. Essentially he found that the Office could not demonstrate that it is efficient and that some management practices, particularly those relating to the counting, measuring, recording and reporting of its activities, were deficient. Importantly, the Auditor-General did not find that the Office is inefficient.

Among the 16 recommendations by the Auditor-General was one for the appointment of an Executive Director who, presumably, will be expected to solve the problem of not being able to prove that we are efficient. On 15 April 2008 the Treasurer approved of additional funding of \$304,000 pa for two years for such a position at SES Level 6. A position description was prepared and on 27 May at the request of the Department of Premier and Cabinet, the position was evaluated at SES 6. The deadline for applications for the position was 27 June and recruitment proceeded.

As noted in the Office's response to the Auditor-General's report (published behind the Executive Summary and available on the Auditor-General's website), the other recommendations are also receiving attention.

Additionally, in February Ms Jan McClelland was commissioned to identify options to achieve savings (ie budget cuts) in the Office. She reported on 26 June. Her recommendations are the subject of close examination and, like the Auditor-General's report, will be addressed also by the Executive Director.

## Director's Overview Continued

During the year the Director of Public Prosecutions Act 1986 and the Crown Prosecutors Act 1986 were amended to alter the tenure of senior statutory officers (measures were also introduced for the Solicitor General and Public Defenders). In short, for all future appointments:

- the Director is to be appointed for ten years, not renewable, with a retirement age of 72 years;
- Deputy Directors, the Solicitor for Public Prosecutions and Crown Prosecutors are to be appointed for seven years, renewable, with retirement ages of 65 years.

Guidelines for the Appointment (and reappointment) of Crown Prosecutors have been issued by the Attorney General.

My official travel has been noted elsewhere in this Report. It remains a matter of great regret that the Government does not see benefit in sponsoring the attendance of ODPP officers at legal professional events outside of Australia. Nevertheless, certain other officers and I continue to attend them on leave and without Government support to bring back the benefits for the State. No man or woman – and no prosecution service – is an island.

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## 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

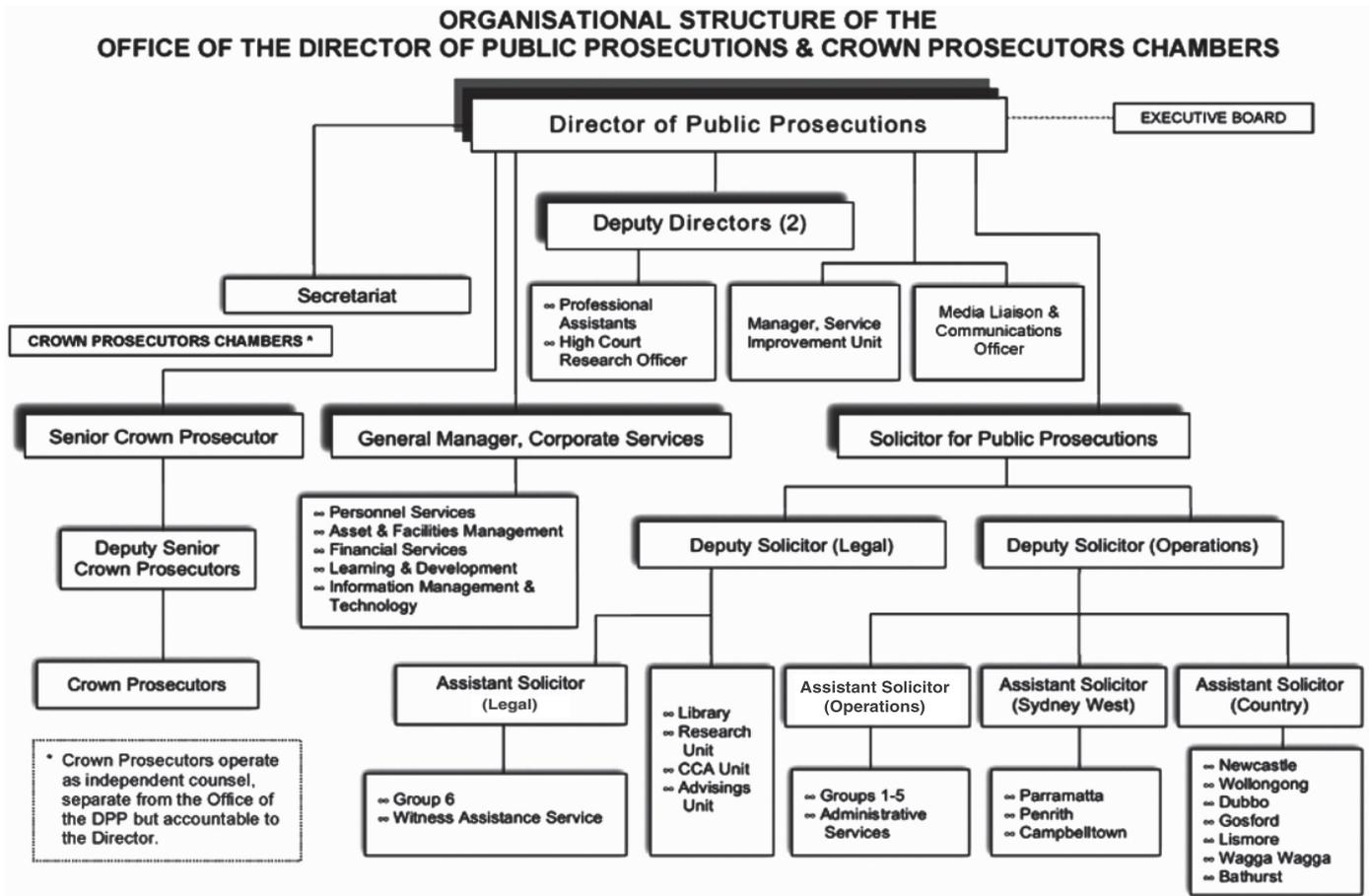
the functions described in section 27. No request has been made to the Attorney General pursuant to section 29.

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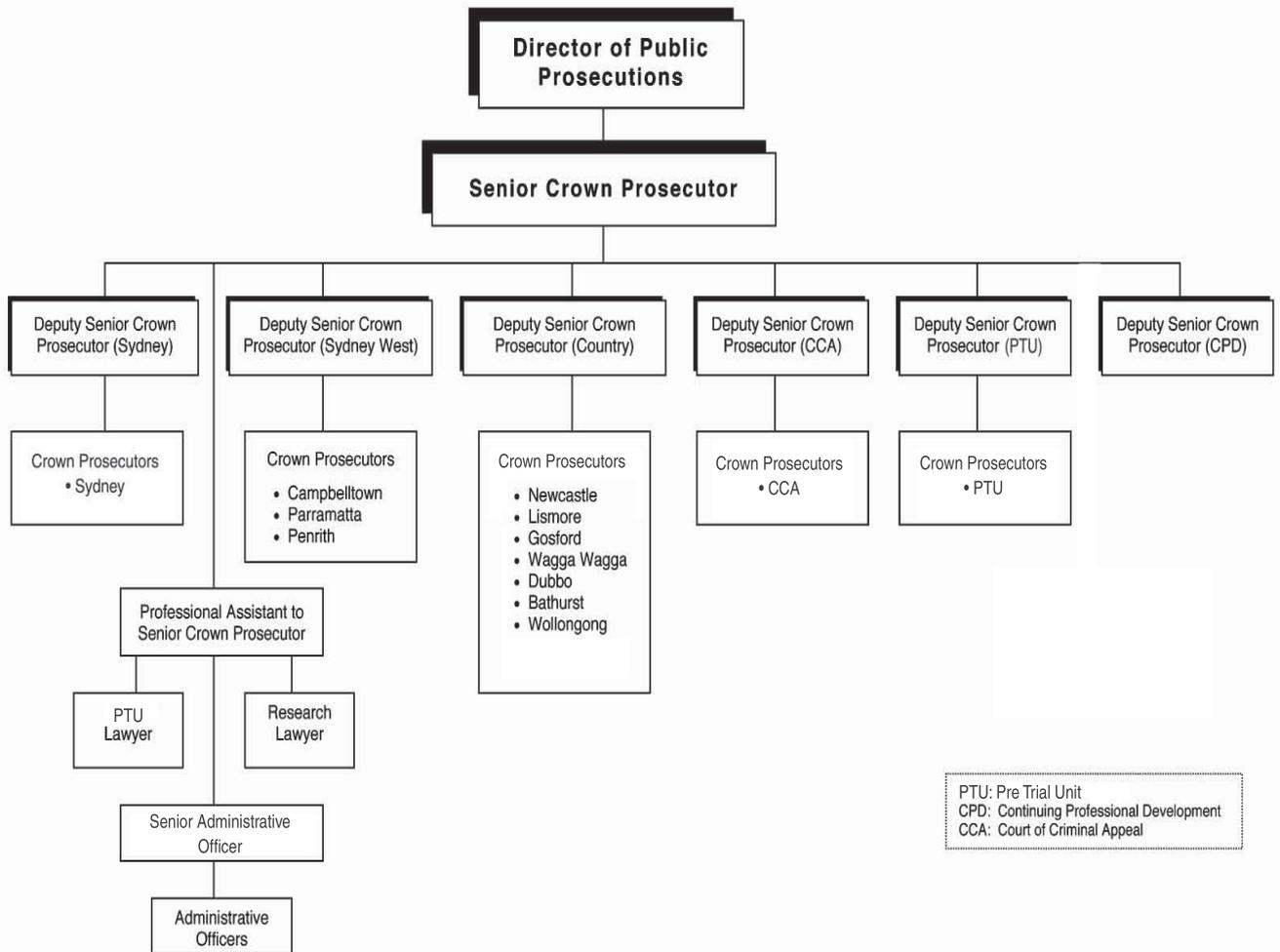
# Management and Organisation



# Organisational Structure



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

### 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 and Deputy Senior Crown Prosecutor in April 2002. Appointed

Senior Counsel in October 2003 and Deputy Director of Public Prosecutions in December 2003.

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

### David Frearson SC.

#### Deputy Director of Public Prosecutions

Worked in Local Courts before joining the Clerk of the Peace in 1977. Principal Solicitor, Office of the Clerk of the Peace, Sydney. Appointed as a Crown Prosecutor in 1985. Senior Prosecutor at Regional Centres in Sydney West. Appointed Deputy Senior Crown Prosecutor (Sydney West) in 2000

and Deputy Senior Crown Prosecutor (Appeals) 2002 – 2006.

Admitted to the Bar in 1984 and appointed Senior Counsel in 2004.

Appointed Acting Deputy Director in November 2006 and Deputy Director in November 2007.

*Provides advice to the Director of Public Prosecutions; practices in appellate matters in the High Court and the 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 (Advising Unit) in 1989 undertaking responsibility for a wide range of appellate litigation conducted by that Office in the Supreme Court and High Court. Appointed Solicitor for Public Prosecutions in June 2004.

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

## 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 and facilities management.*

## 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 Senior Crown Prosecutor, who is responsible in turn to the Director of Public Prosecutions, also an independent statutory officer.

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

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

## Mark Tedeschi QC MA, LLB

### Senior Crown Prosecutor

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

law, social welfare law, business law, mental health law and criminal law.

He is the President of the Australian Association of Crown Prosecutors and a visiting Professor in the Centre for Transnational Crime Prevention at the University of Wollongong.

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

## Significant Committees

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

### Executive Board

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

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

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

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

### Management Committee

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

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

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

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

### Audit and Risk Management Committee

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

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

The Audit and Risk Management Committee monitors the internal audit,

risk management and anti-corruption functions across all areas of the Office's operations, ensuring that probity and accountability issues are addressed.

### Information Management and Technology Steering Committee

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

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

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

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

## ODPP Internal Committees/Steering Groups

Committee/Steering Group	ODPP Representative	
Executive Board	Nicholas Cowdery AM QC (Chair) David Frearson SC Luigi Lamprati SC Mark Tedeschi QC	Stephen Kavanagh Patrick McMahon John Hunter (External representative) Sandra Egger (External representative)
Management Committee	Nicholas Cowdery AM QC (Chair) David Frearson SC Luigi Lamprati SC Mark Tedeschi QC Stephen Kavanagh Patrick McMahon	Claire Giroto Graham Bailey Jim Hughes Craig Hyland Johanna Pheils Janis Watson-Wood
Audit and Risk Management Committee	Luigi Lamprati SC (Chair) David Frearson SC Mark Tedeschi QC	Stephen Kavanagh Patrick McMahon Jeff Shaw
Information Management & Technology Steering Committee	Claire Giroto (Chair) Stephen Kavanagh Patrick McMahon David Arnott SC Graham Bailey	Craig Hyland Hop Nguyen Jeff Shaw Janis Watson-Wood Keith Wright
Crown Prosecutors Management Committee	Mark Tedeschi QC (Chair) John Kiely SC David Arnott SC Peter Barnett SC  <b>Representatives:</b> Level 9: Richard Herps (alt. John Pickering) Level 8, Castlereagh St: Ken McKay (alt. Paul Leask) Pitt St: Nicole Noman (alt. Natalie Adams)	Mark Hobart SC Patrick Barrett Peter Miller Deborah Carney  Sydney West: Keith Alder (alt. Siobhan Herbert) Country: David Degnan (alt. Michael Fox) Treasurer: Lou Lungo
Occupational Health & Safety Committee	<b>Sydney Office</b> Helen Langley Jenny Wells Barbara Barnes (Proxy)  <b>Employer Representatives</b> Tonia Adamson Peter Bridge Gary Corkill Jim Hughes (Proxy) Nigel Richardson (Proxy) Chris Clarke (Proxy)	<b>Sydney West</b> Fiona Horder Michael Frost Tracey Gray (Proxy)  <b>Country</b> Malcolm Young Vicki Taylor Duncan Wallace (Proxy)
PSA/Management Joint Consultative Committee	David Frearson SC Claire Giroto Stephen Kavanagh Patrick McMahon Graham Bailey Gary Corkill (Chair) Wendy Carr	Amanda Brady (PSA) Fiona Horder (PSA) Chris Murnane (PSA) Stephen Spencer (PSA) Jenny Wells (PSA)

## ODPP Internal Committees/Steering Groups Continued

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Disability Action Plan Implementation  
Committee

Peter Bridge  
Deborah Carney  
Anna Cooper  
Gary Corkill (Chair)  
Paul Fernon

Katarina Golik  
Jim Hughes  
Matthew Laffan  
Lee Purches  
Diana Weston

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Workplace Health Management Committee

Gary Corkill (Chair)  
Patrick McMahon  
Keith Holder

Craig Hyland  
Mark Hobart SC  
Amanda Brady

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# Report Against Corporate Plan



## Key Result Area 1: 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 timelines 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 0.05% of the 15,123 cases dealt with due to the conduct of the prosecution.
- 1.1(b) 77% of all matters concluded in the Supreme and District Courts resulted in findings of guilt, either byway of verdict following trial or by way of plea.

## Key Result Area 1: 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) All new staff attend "Intro to the ODPP" incorporating a session on the ODPP Code of Conduct.

A Management Development module "Management Roles & Responsibilities" was developed and rolled out on 28-29 November 2007. This contained sessions on EEO and appropriate behaviour, and case studies on ethical behaviour.

The Audit & Risk Management Committee monitors the ODPP Fraud Risk Management Plan on a regular basis.

The ODPP Code of Conduct was revised and given prominence at staff meetings throughout the year.

Procedure for panel members to declare a conflict of interest in the recruitment process was implemented.

## Key Result Area 1: 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) 82% of advisings were completed within the agreed time.
- 1.3(b) The proportion of all trials listed in 2007-8 which were adjourned on the application of the Crown was 4.9%
- 1.3(c) The average number of days between arrest and committal for trial during 2007 - 08 was 234.

## Key Result Area 2: Victim and Witness Services

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
2.1 To provide assistance and information to victims and witnessess	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
<u>Performance Indicator</u>		
2.1.(a) Level of victim and witness satisfaction (by survey)		

### Report:

2.1. (a) The ODPP biennial survey of victims and witness was conducted in 2006-07 and revealed overall consistency in the levels of customer satisfaction. Some areas of concern raised where service can be improved:

- Failure to notify victims and witnesses when court hearing dates were changed;
- Lack of contact by ODPP staff until the day of the court hearing;
- No notification of the outcome of the matter;
- Insufficient ODPP contact information given to victims and witnesses;
- Witnesses and victims held unreal expectations of service levels to be provided by ODPP staff; and
- Lack of continuity of representation when matters adjourned more than once.

## Key Result Area 3: Accountability and Efficiency

Goal	Strategy	Outcome
3.1 To satisfy the accountability requirements of courts, Parliament and ODPP policies	3.1.1 Promote a stakeholder focus	Recognition of the Office's achievements
	3.1.2. Maintain appropriate records concerning all decisions made	
	3.1.3 Provide timely and accurate reports	

### Performance Indicator

3.1(a) Level of compliance with statutory reporting requirements

3.1(b) Level of compliance with ODPP policies

### Report:

All Statutory Reports have been provided within the prescribed timeframes.

- Energy: 2007 Government Energy Management Plan was completed and submitted to the Department of Environment and Climate Change by 31 October 2007.
- EEO Annual Report: Submitted to ODEOPE on 22 October 2007.
- Disability Action Plan – implementation committee formed and drafting new Plan.
- Annual Financial Statements 2006-07: Completed and submitted to the Auditor General within the set deadline of 13 August 2007.
- FBT: Annual return for 2007/08 submitted on time on 22 May 2008 (as per the set deadline of 22 May 2008) and quarterly payment made up to June 2008.
- BAS: Monthly return submitted up to June 2008 before the set deadline of 20 July 2008.
- Waste Reduction and Purchasing Plan (WRAPP): The biennial report of August 2007 was completed. The next report is due August 2009.
- The Office is endeavouring to comply with the Government's directive to decrease energy consumption and increase greenhouse rating levels by including measures such as automatic lighting and good housekeeping practices of lights-out at close of business and the introduction of co-mingling recycling programs from 1 July 2008.

3.1.(b) The Audit and Risk Management Committee monitors compliance with ODPP policies. The level of such compliance has been found to be extremely high. The Committee reviews all audit reports and, where a breach of Office policy is identified, corrective action is taken.

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

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

## 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 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	Value for money

### Performance Indicator

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

### Report:

- 3.2(a) The Activity Based Costing System is still under review and accurate data in relation to the cost of particular types of matters is not available. Pending that data, the average cost of a matter for this reporting period was \$6180. This figure represents net cost of services divided by the total number of Advising, committals and summary hearings, bail applications to the Supreme Court, Trials (including hung and aborted trials) and higher court Appeals disposed of. It excludes Advising as to jurisdiction, Call Ups and Severity Appeals to the District Court.
- 3.2(b) Monthly and bi-monthly finance report submitted to the Executive Board and Management Committee. The Office operated within the allowable Controlled Net Cost of Service Limits for the financial year.
- Corporate services functions and processes continue to be further reviewed and efficiencies identified. Our emphasis is on retaining the Internal Shared Services Unit model (in accordance with the Government strategy for corporate services reform).
  - Learning & Development Branch is conducting research into e-learning & performance support tools. These would enable 'just in time' access to knowledge and skills, and reduce reliance on classroom training which is currently difficult to attend due to stretched staff resources, increasing court commitments and the cost of intrastate travel for regional participants.
  - The ODPP's IM&T operations at level 4, 265 Castlereagh Street have received security certification under ISO 27001. The Office's Disaster Recovery processes and procedures have been successfully tested, and the system is now in operation.
  - Development work for the portal is completed, and user acceptance testing is about to commence. Work on the Research system is continuing.
  - The Attorney General's Department implemented the Justicelink System in the Supreme Court on 2 Aug 2004 and the District Court in February 2008 and has developed an interim viewing platform containing some information currently required by the ODPP. The AGD has initiated a review of the Joined Up Justice Business Case which includes an allocation of funds for the ODPP to develop an interface to Justicelink.
  - Asset & Facilities Management Branch is assisting ODPP Operation's Groups and Regional management in efficient ordering techniques and e-ordering systems to minimise storage requirements and introduce 'just in time' ordering. The new GTA has been signed for telephony services. It is hoped that this will maximise the savings available to the ODPP for this service.

## Key Result Area 4: Staff Resourcing and Development

Goal	Strategy	Outcome
4.1 To recruit and retain quality staff	4.1.1. Market career opportunities 4.1.2. Review, evaluate and improve recruitment practices 4.1.3. Recognise good performance 4.1.4. Integrate equity strategies into all management plans.	High quality, committed staff

### Performance Indicator

- 4.1(a) Percentage of staff turnover
- 4.1.(b) Percentage of compliance with Recruitment and Selection Policy.
- 4.1.(c) Percentage of salary increments deferred

### Report:

- 4.1.(a) Staff Turnover for 2007/2008 was 14.1%. This compares with 2006/2007 with a 14.6% turnover.
- 4.1.(b) The Recruitment and Employment Policy requires retraining for panel members every 3 years. A two-day introductory workshop was conducted on 18 September 2007. Refresher workshops for experienced staff occurred on 24 October 2007, 22 November 2007 and 20 February 2008. Plans for refresher training to be run in-house as a short workshop with e-learning support.
- 4.1.(c) No salary increments were deferred during 2007-2008.

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

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
4.2 To provide workplace support	4.2.1. Provide accommodation, equipment and facilities in accordance with Office and OH&S 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 sick leave absences per capita.
- 4.2.(b) Percentage reduction in workplace injuries
- 4.2.(c) Percentage reduction in the proportion of employees still off work at 8, 12 and 26 weeks from date of injury.
- 4.2.(d) Percentage reduction in the average cost of works compensation claims.
- 4.2.(e) Percentage improvement in the number of injured workers who are placed in suitable duties within one week of the date that they become fit for suitable duties as specified on the medical certificate.
- 4.2.(f) Managers provided with appropriate information, instruction and training in OH&S and injury management.

### **Report:**

- 4.2.(a) Average Sick Leave for the Office for 2007-2008 was 6.78 days. This compares with 2006-2007 of 5.47 days.
- 4.2.(b) 40% reduction in workplace injuries by June 2012, with 20% achieved by June 2007 – Achieved (40%);
- 4.2.(c) 10% reduction by June 2008 in the proportion of injured employees still off work at 8, 12 and 26 weeks from the date of injury – on target (13% as at December 2006);
- 4.2.(d) 15% reduction in the average cost of claims by June 2008 – On target (76% in 2006/07)
- 4.2.(e) 10% improvement in the percentage of injured workers who are placed in suitable duties within one week of the date that they become fit for suitable duties as specified on the medical certificate, by June 2008 – on target (47% in June 2007) – Achieved.
- 4.2.(f) 90% of managers provided with appropriate information, instruction and training in their roles and responsibilities under the ODPP OHS and injury management system – Achieved

## 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) Learning needs identified and implemented.
- 4.3.(b) Learning and development participation rate.
- 4.3.(c) Percentage of Personal Development Plans received

### Report:

The 2007/2008 L&D plan was developed in line with organisational priorities. Branch activities have been reduced due to reductions in Branch staff – to 2.6 / 3 people.

The following training has occurred between July 2007-June 2008:

- |  |  |  |
|--|--|--|
| • Regional MCLE conference   | Sydney West and Newcastle)   | Environment  |
| • 2 x MCLE sessions  | • Recruitment & Selection – 2 day (inexperienced)                                      | • Solicitors conference                                  |
| • 9 x Technology Induction   | • Recruitment & Selection 1-day refresher  | • Pre-conference events                                  |
| • Understanding Criminal Law for Administrative Staff                                    | • Sexual Assault Legal Issues seminar at Parramatta, Penrith, Campbelltown and Lismore | • 2 x Application Writing & Interview Skills             |
| • Digital ERISP training - both initial and follow-up sessions, in Sydney and regionally | • 2 x Courtroom Drama (new advocacy skills program)                                    | • Management Roles & Responsibilities                    |
| • Advanced Digital ERISP training  | • Inmate Classification by DCS   | • Crash course in Grammar, Head Office and regions       |
| • ODPP Induction   | • EEO & OHS workshops in Head Office and regionally                                    | • Train the Trainer                                      |
| • Introductory Advocacy  | • IDMS for Crown Prosecutors   | • 3 x Managing Workplace Health: Preventing Psych Injury |
| • Accident Investigation   | • Sentencing Advocacy  | • Understanding Criminal Law for Administrative Staff    |
| • Introduction to Project Management   | • Speed Reading in a Legal   | • Professional Development for Administrative Staff      |
| • Prosecuting matters involving Aboriginal complainants (Sydney,                         |  |  |

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

Updated Manuals: 'Introduction to Criminal Law for Administrative Staff' – this manual has been developed for the training program and will be published on DPP intranet for use as an independent resource.

Training for Digital ERISP implementation commenced during 2007 and was completed June 2008. Formal training is supplemented by onsite follow up visits and a training CD.

L&D Participation Rate (i.e. number of staff, excluding Crown Prosecutors, that have attended two (2) L&D activities 2007/2008 to 30 June 2008) = 62%

Percentage of Personal Development Plans received during 2007/2008 (i.e. number of staff, excluding Crown Prosecutors) = 15.5%

Number of times a staff member attended a training event during 2007/2008 = 2,072

Cumulative statistics – 1 Jul 2007-30 June 2008

Number of learning programs (internal & external):	196
Number of studies assistance participants:	45
Total days study leave accessed:	108 days
Total study reimbursements:	\$23,216.38

## 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 2007-8 was 511
- 5.1(b) During the past 12 months the Office has completed over 55 submissions on proposals for law reform in New South Wales on subjects which include the review of the Crimes (Appeal and Review) Act 2001; amendments to the Jury Act 1977; the Criminal Appeal Act 1912; the Bail Act 1978; the Crimes Act 1960 and traffic legislation; the review of the law of complicity; the review of the FOI Act 1989 and the review of the Periodic Detention Scheme.

In addition the Office has participated in numerous external committees and groups including court user groups, Bar Association and Law Society committees, Sexual Offences Taskforce, Victims Advisory Board and ODPP Sexual Assault Review Committee. For full details of all external committees in which the Office has participated see Appendix 36.

# Director of Public Prosecutions Act 1986



## Important Provisions

### Section 4(3)

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

### Section 7(1)

The principal functions and responsibilities of the Director are:

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

### Section 7(2)

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

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

### Section 8

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

### Section 9

The Director can take over prosecutions commenced by any person (and see section 17).

### Section 11

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

### Section 13

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

### Section 14

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

### Section 15

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

### Section 15A

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

### Section 18

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

### Section 19

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

### Section 24

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

### Section 25

Consultation with the Attorney General is provided for.

### Section 26

The Attorney General may furnish guidelines to the Director.

### Section 27

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

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

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

### Section 29

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

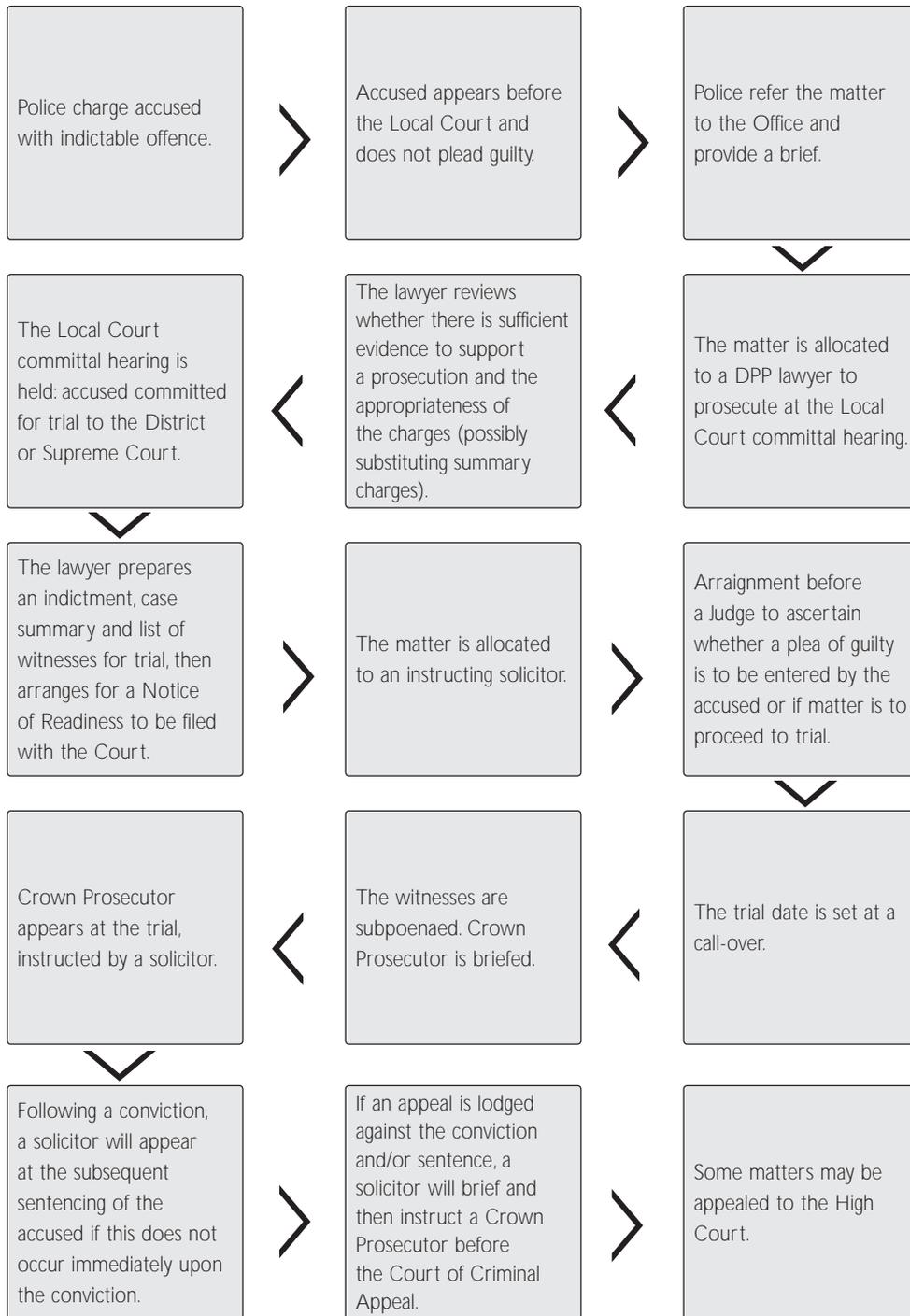
### Section 33

The Director may delegate certain of his/her functions.

# From Charge To Trial



## An Outline of a Typical Defended Matter



### 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.

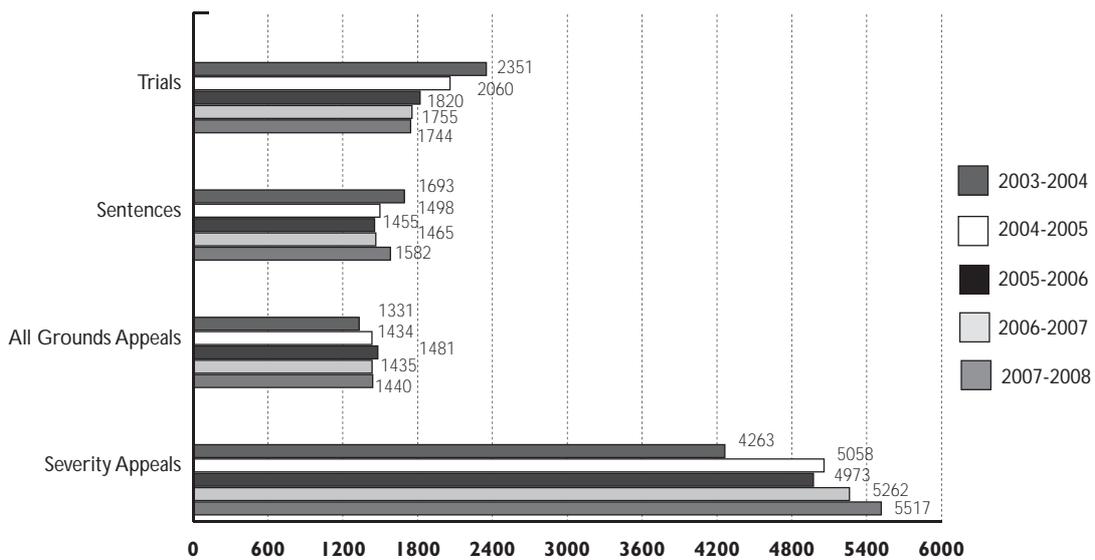
# Appendices



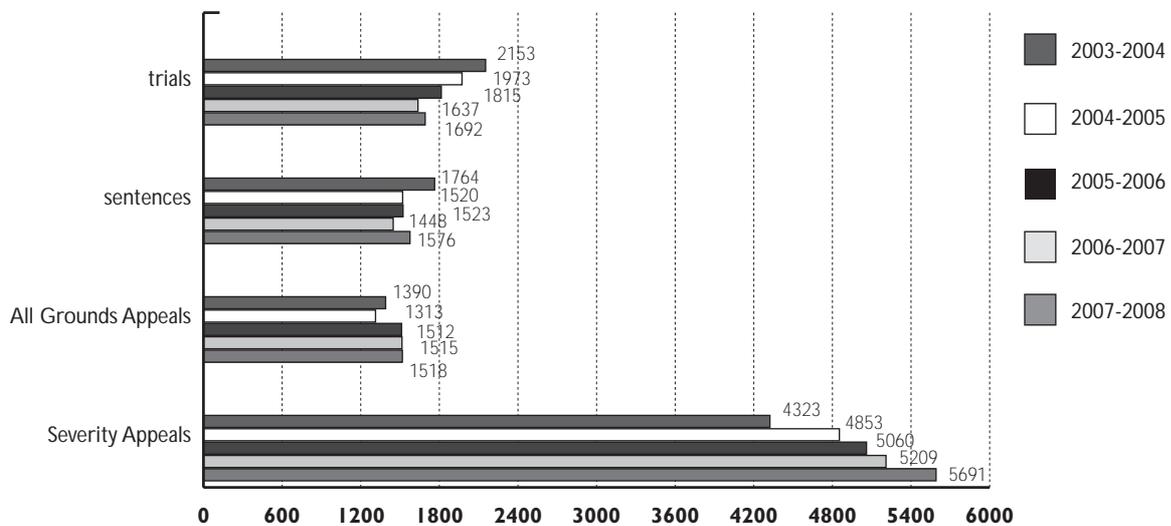
# Appendix 1

## District Court – State Summary

### District Court Matters Received – State



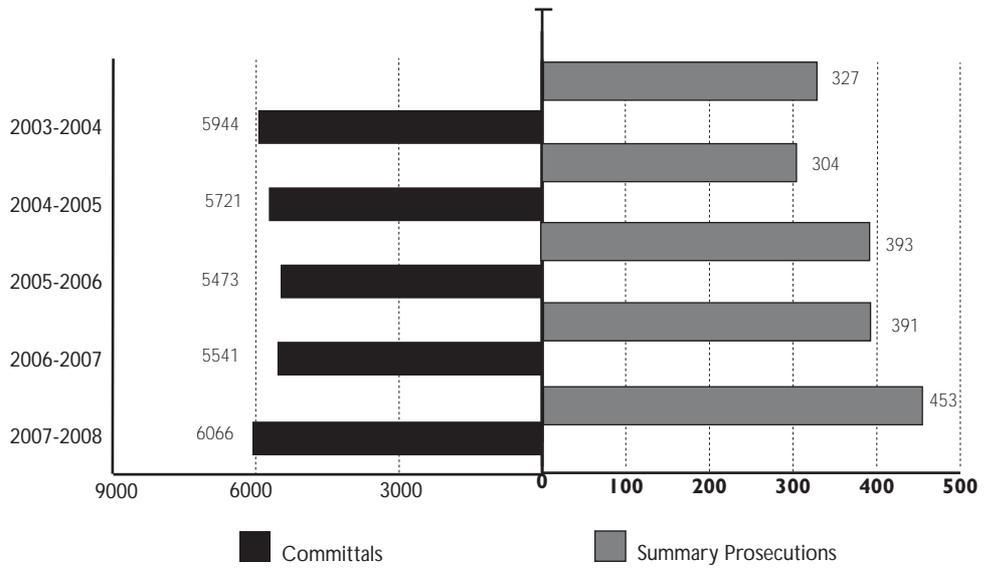
### District Court Matters Completed – State



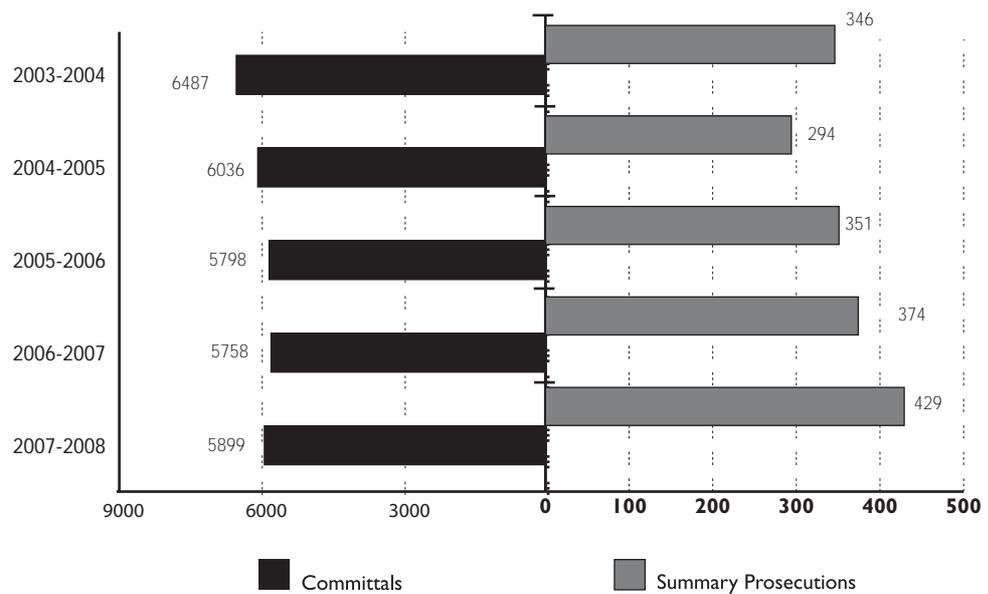
## Appendix 2

### Local Court – State Summary

#### Local Court Matters Received – State



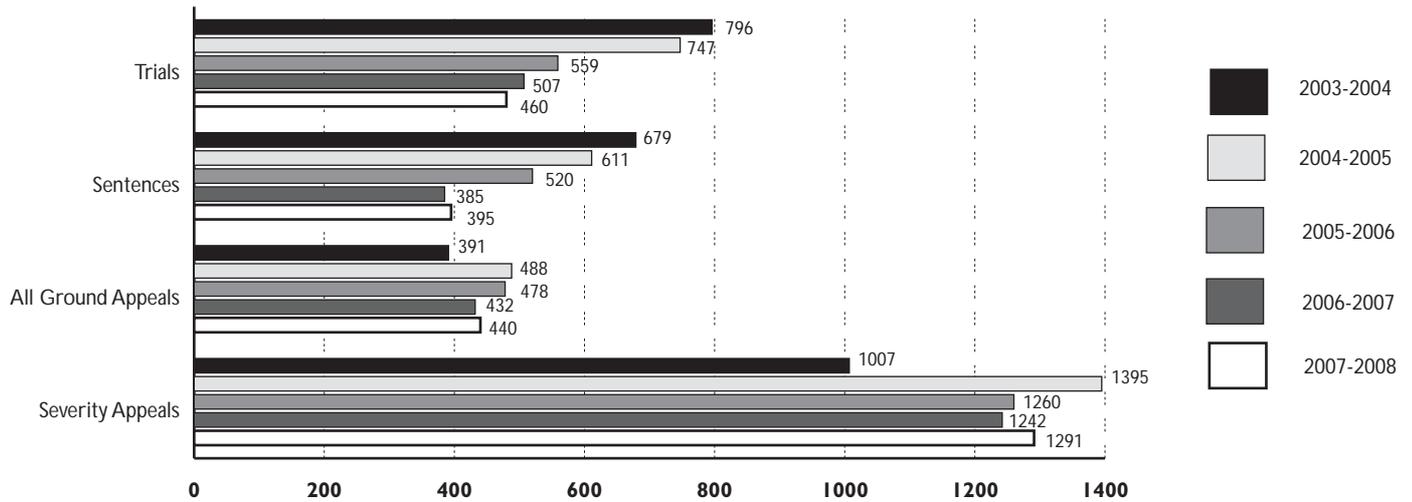
#### Local Court Matters Completed – State



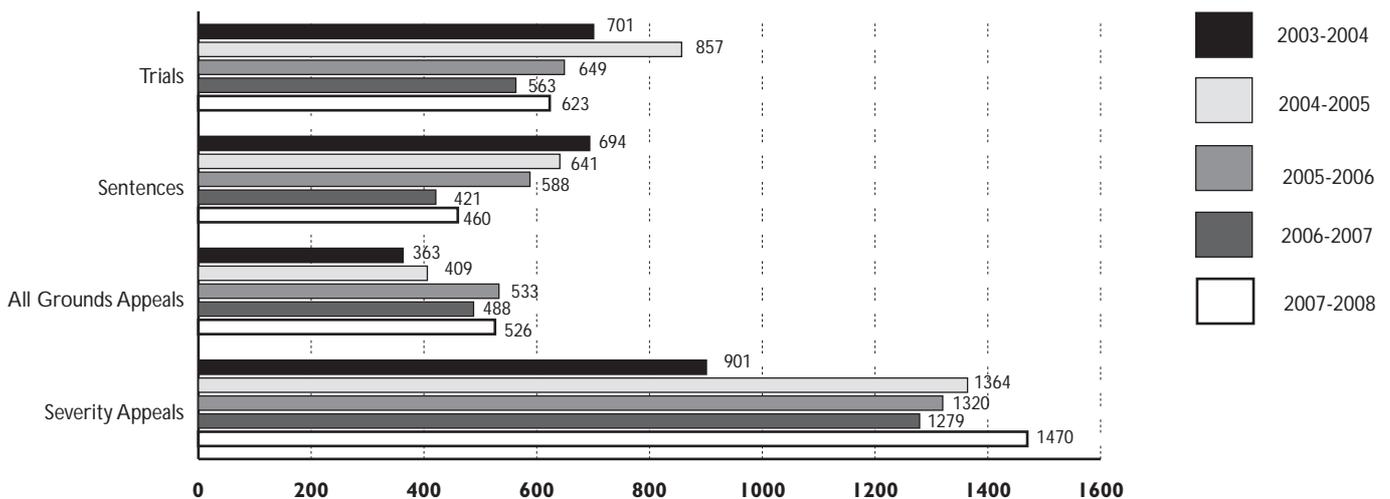
## Appendix 3

### District Court – Sydney Summary

#### District Court Matters Received – Sydney



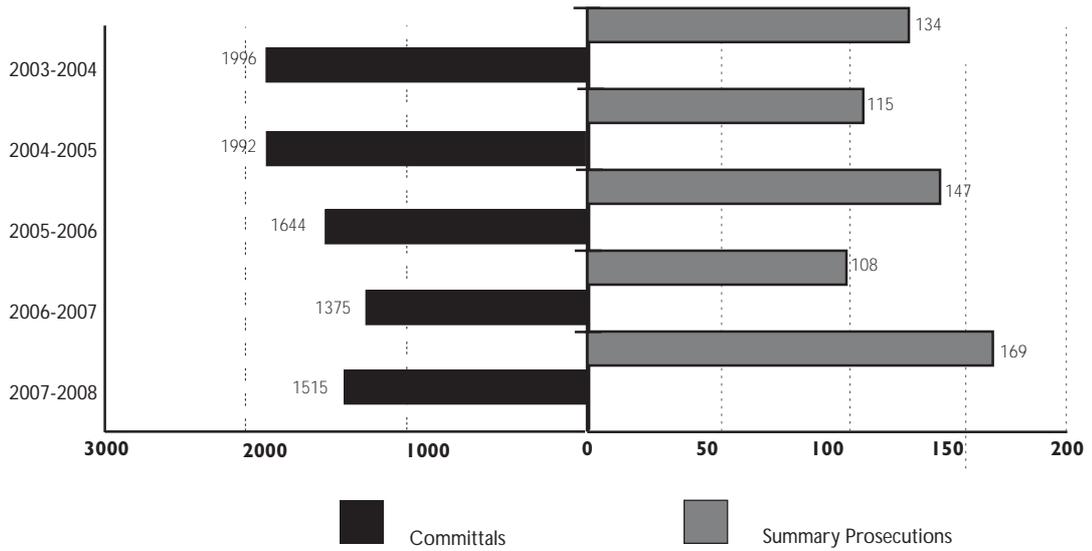
#### District Court Matters Completed – Sydney



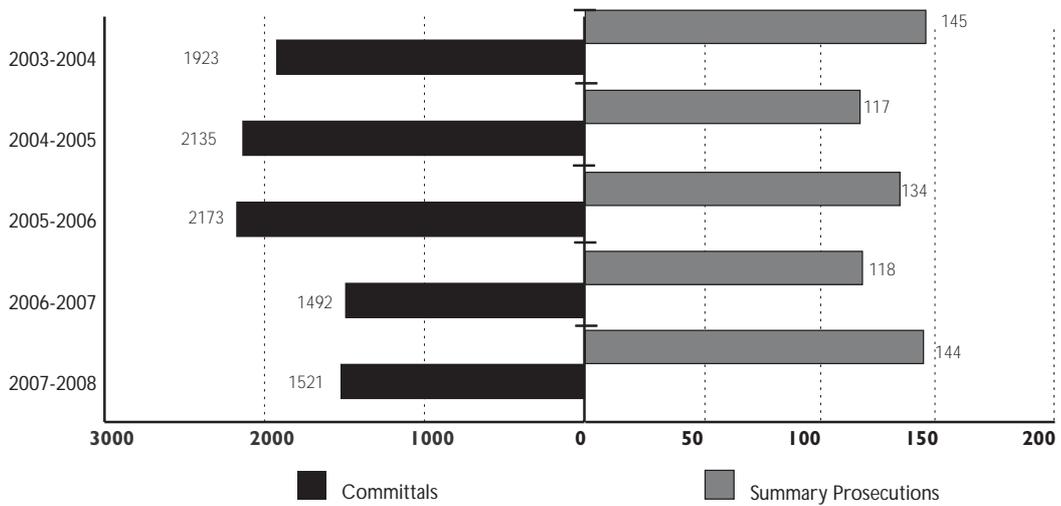
## Appendix 4

### Local Court – Sydney Summary

#### Local Court Matters Received – Sydney



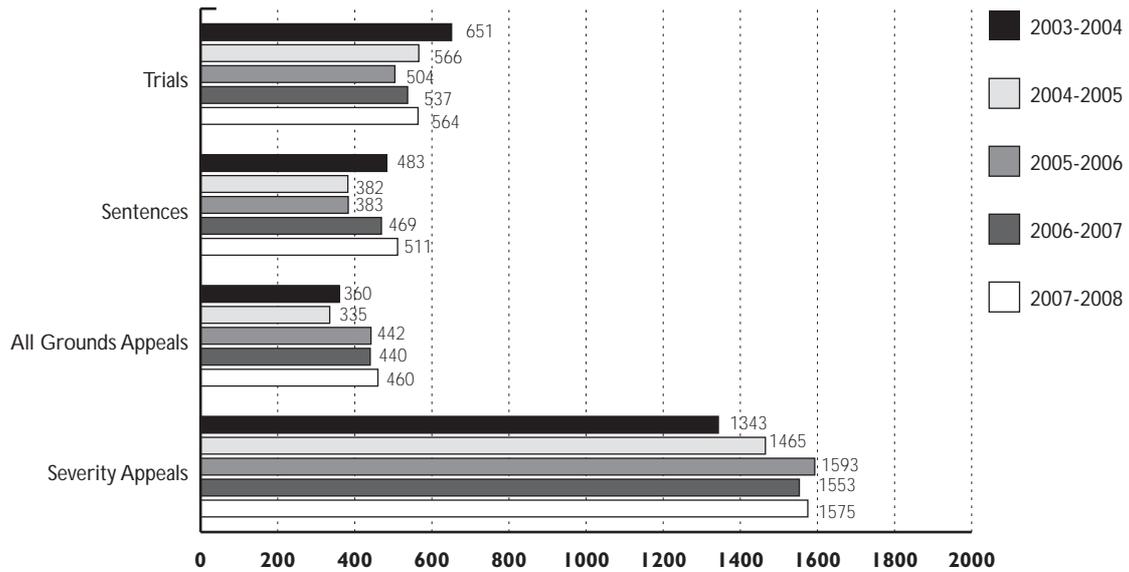
#### Local Court Matters Completed – Sydney



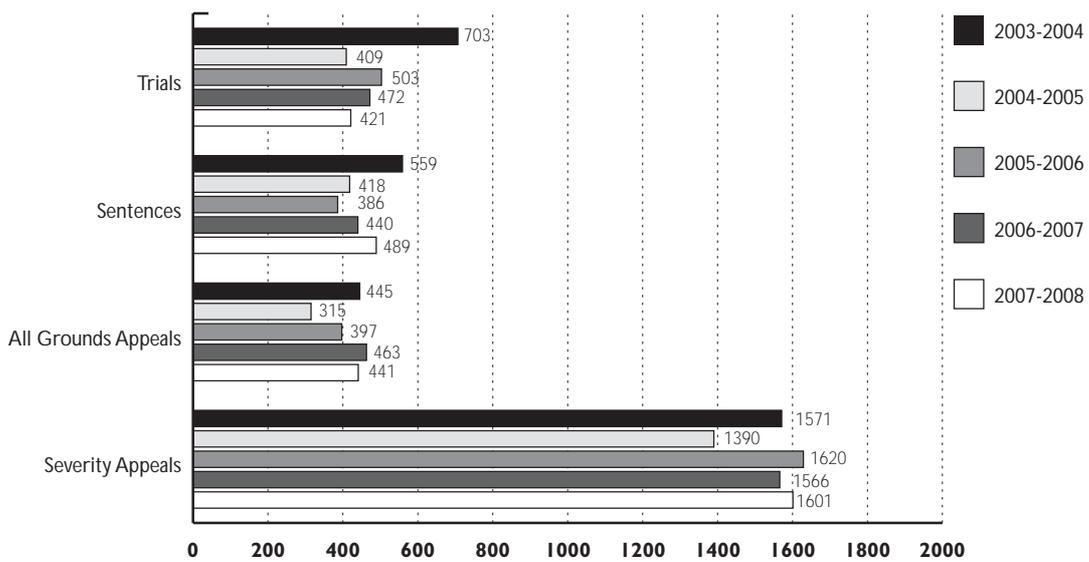
## Appendix 5

### District Court – Sydney West Summary

#### District Court Matters Received – Sydney West



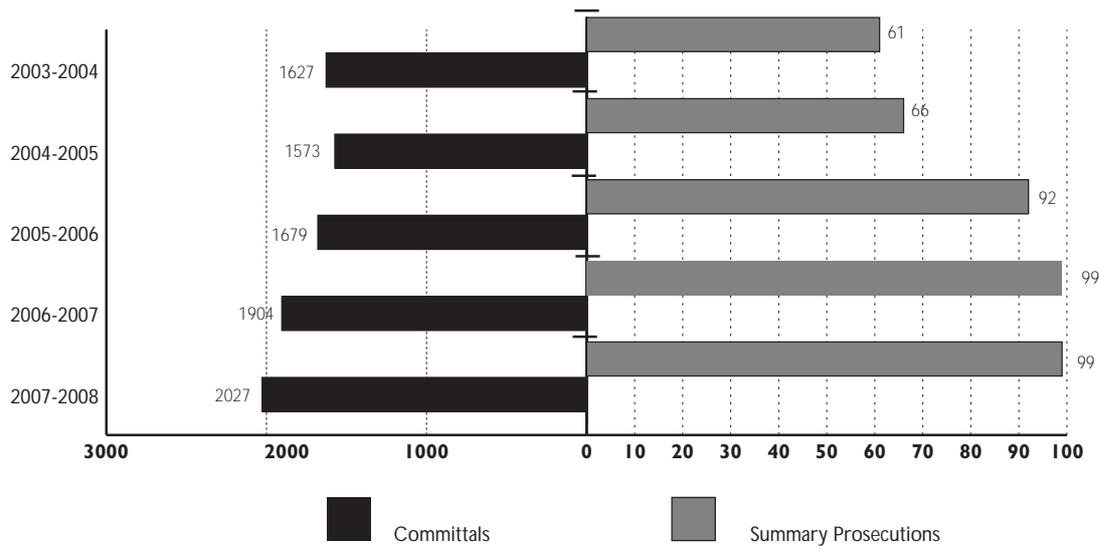
#### District Court Matters Completed – Sydney West



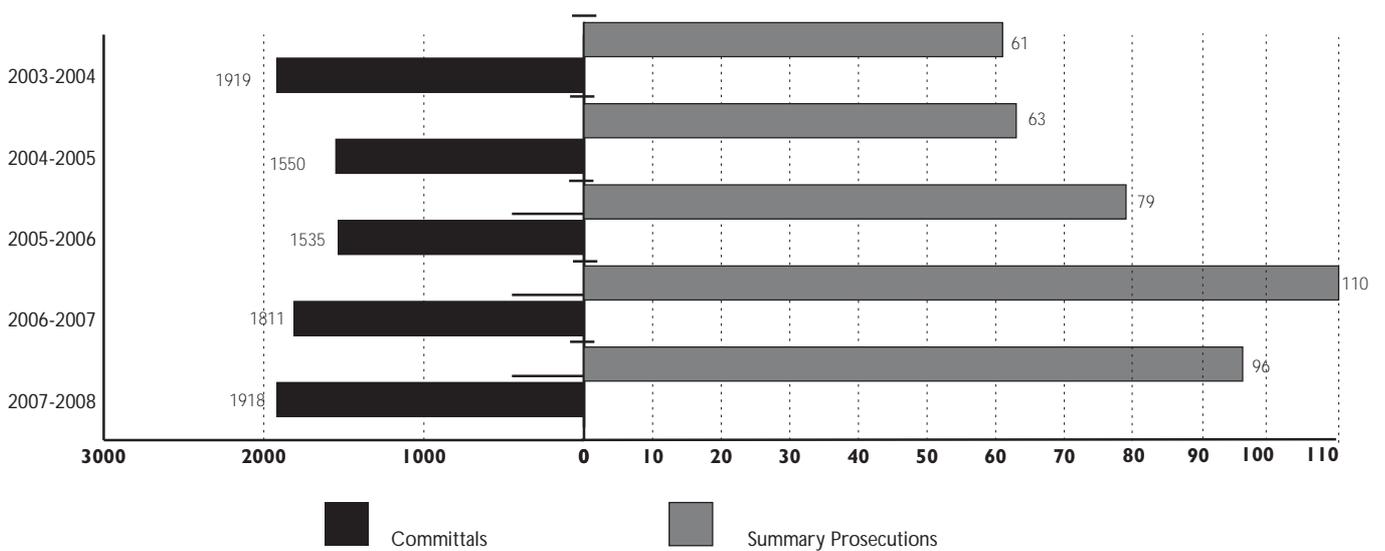
## Appendix 6

### Local Court – Sydney West Summary

#### Local Court Matters Received – Sydney West



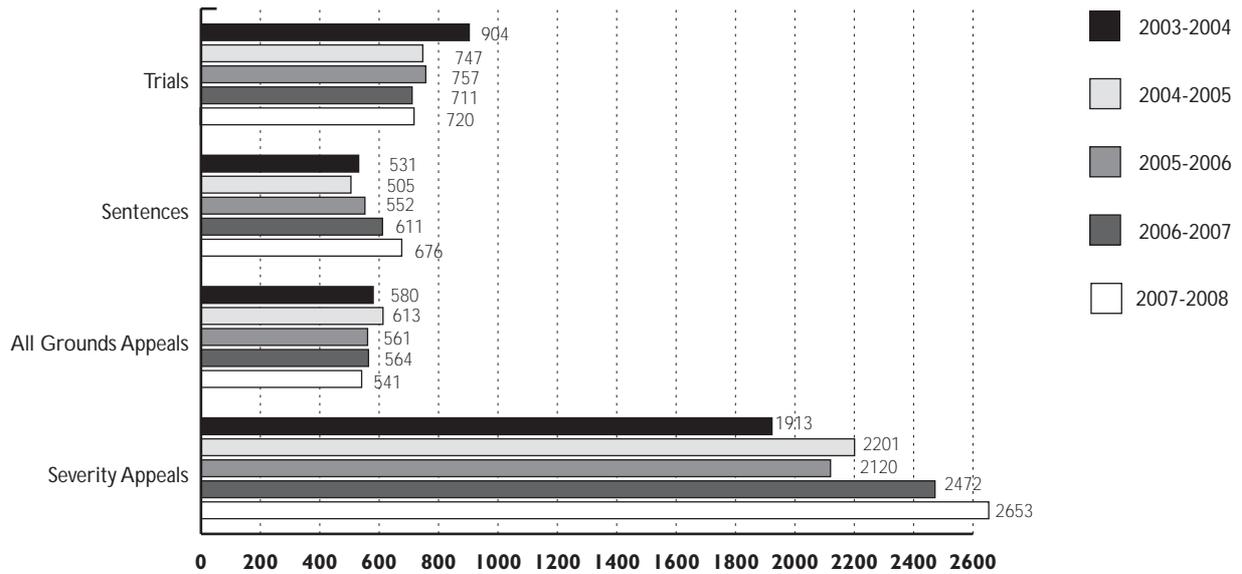
#### Local Court Matters Completed – Sydney West



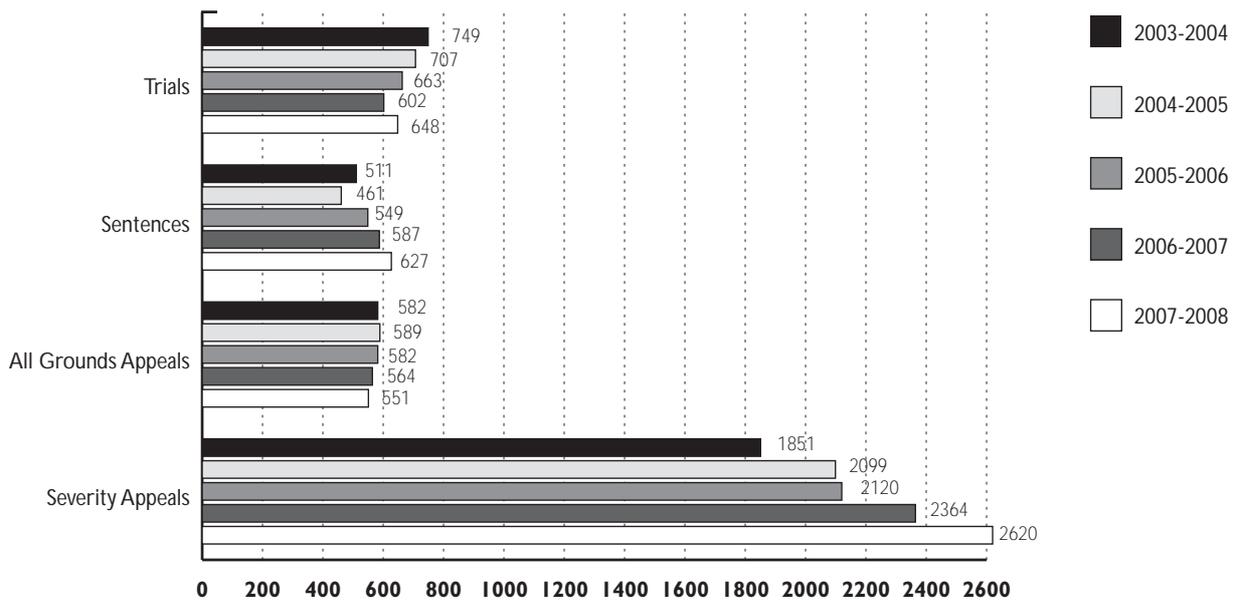
## Appendix 7

### District Court – Country Summary

#### District Court Matters Received – Country



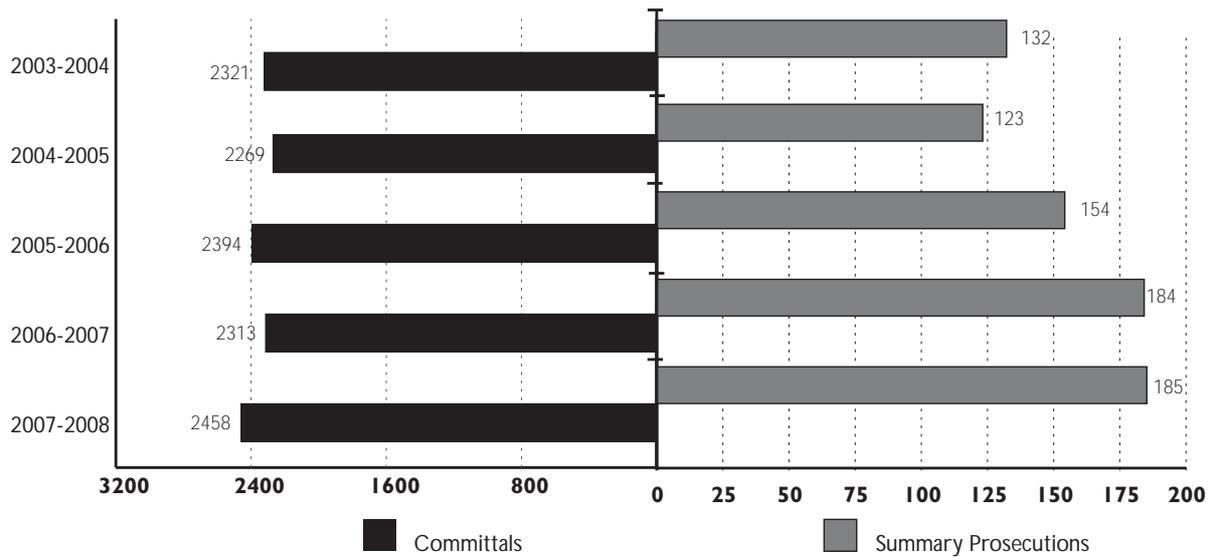
#### District Court Matters Completed – Country



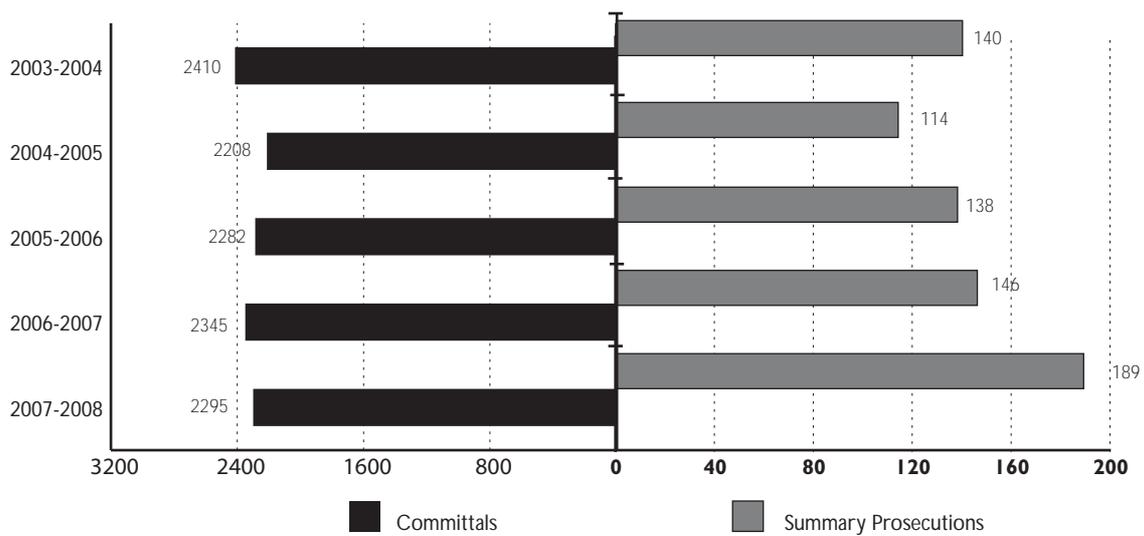
## Appendix 8

### Local Court – Country Summary

#### Local Court Matters Received – Country



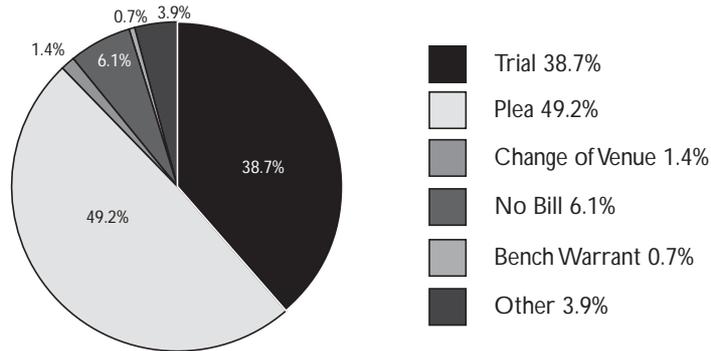
#### Local Court Matters Completed – Country



## Appendix 9

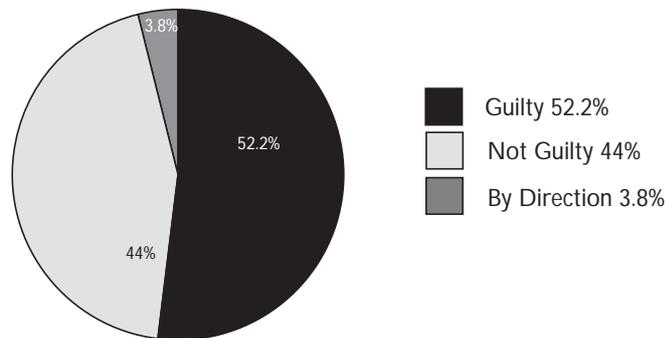
### District Court – Trial Statistics

#### Disposal of Trials Listed

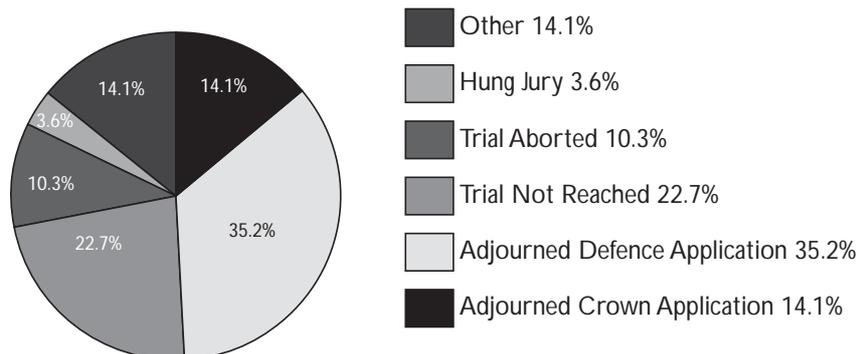


Trial Verdicts Comparison	2003–2004	2004–2005	2005–2006	2006–2007	2007–2008
Guilty	51.5%	47.3%	49.5%	55.4%	52.2%
Not Guilty	41.6%	48.1%	45.8%	39.8%	44%
By Direction	6.9%	4.6%	4.6%	4.8%	38%

#### Trials Verdicts



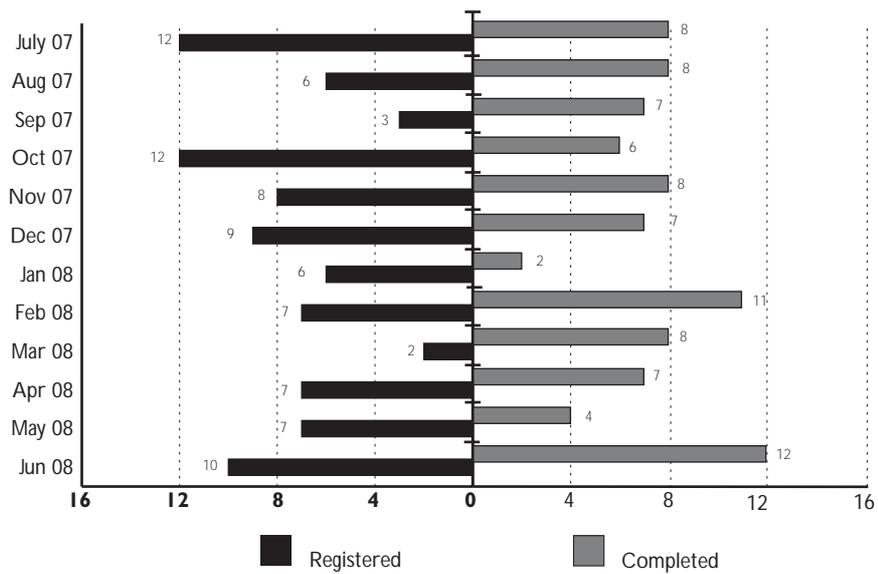
#### Trials Adjourned



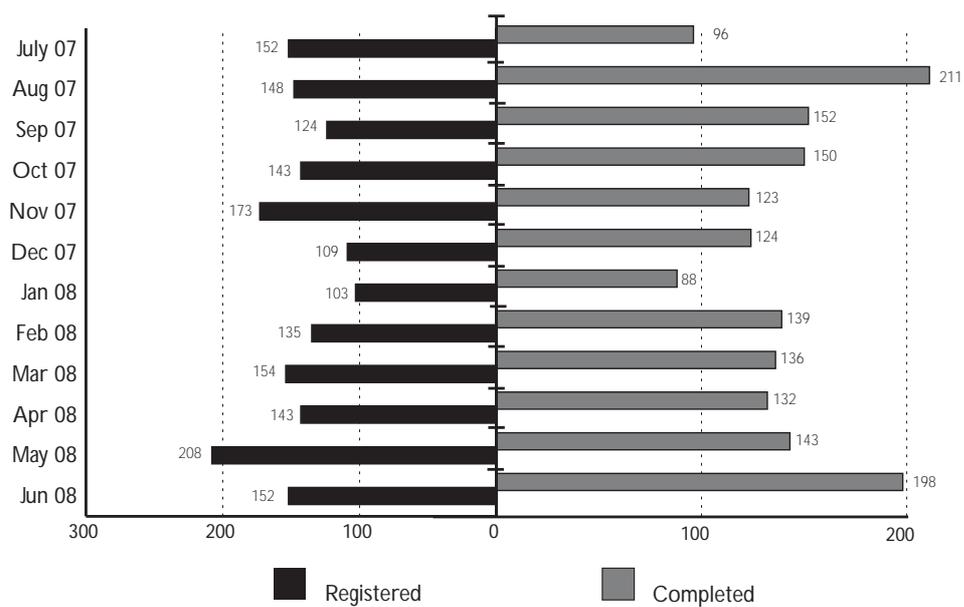
## Appendix 10

### Trials Registered and Completed

#### Supreme Court Trials Registered and Completed in 2007–2008



#### District Court Trials Registered and Completed in 2007–2008



# Appendix 11

## Local Court Committals – July 2007 to June 2008

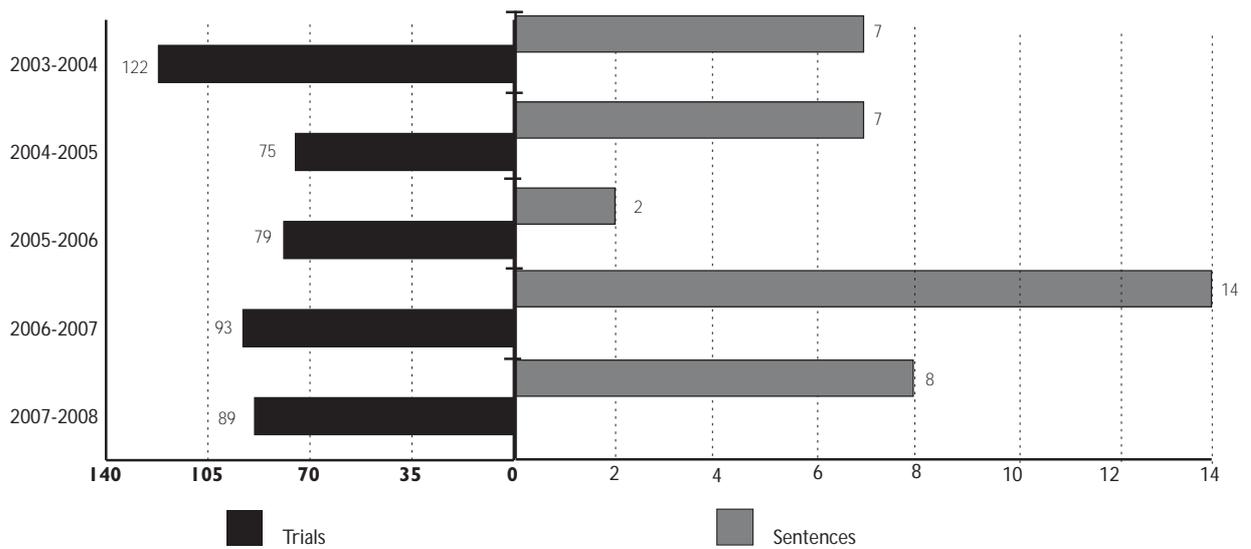
### LOCAL COURT COMMITTALS - JULY 2007 TO JUNE 2008

Regional Office	Registrations	Disposals						On Hand at End of June, 2008
		Committed for Trial	Committed for Sentence	Summarily Discharged	Discont	Other	Total	
Sydney Registrations	1442	95	108	77	5	15	29	329
Group 1		98	74	53	18	2	70	315
Group 2		118	98	73	14	22	45	370
Group 3		100	71	64	16	10	36	297
Group 4		17	15	21	0	2	7	62
Group 5		24	5	44	13	18	9	113
Group 6		0	1	0	0	0	33	34
Admin Services		1	6	8	0	2	19	36
Sydney Miscellaneous		453	378	340	66	71	248	1556
Sydney	1442							813
Parramatta	778	201	212	153	22	35	137	760
Penrith	626	170	122	130	17	67	144	650
Campbelltown	569	168	142	82	7	73	105	577
Sydney West	1973	539	476	365	46	175	386	1987
Newcastle	663	213	183	168	19	23	70	676
Lismore	651	113	114	108	5	47	47	434
Dubbo	231	71	29	30	6	19	29	184
Gosford	252	51	64	56	11	16	19	217
Wagga	278	73	77	63	2	48	20	283
Wollongong	427	116	117	41	7	110	19	410
Bathurst	149	35	53	42	2	10	10	152
Country	2651	672	637	508	52	273	214	2356
State Totals	6066	1664	1491	1213	164	519	848	5899
								2971

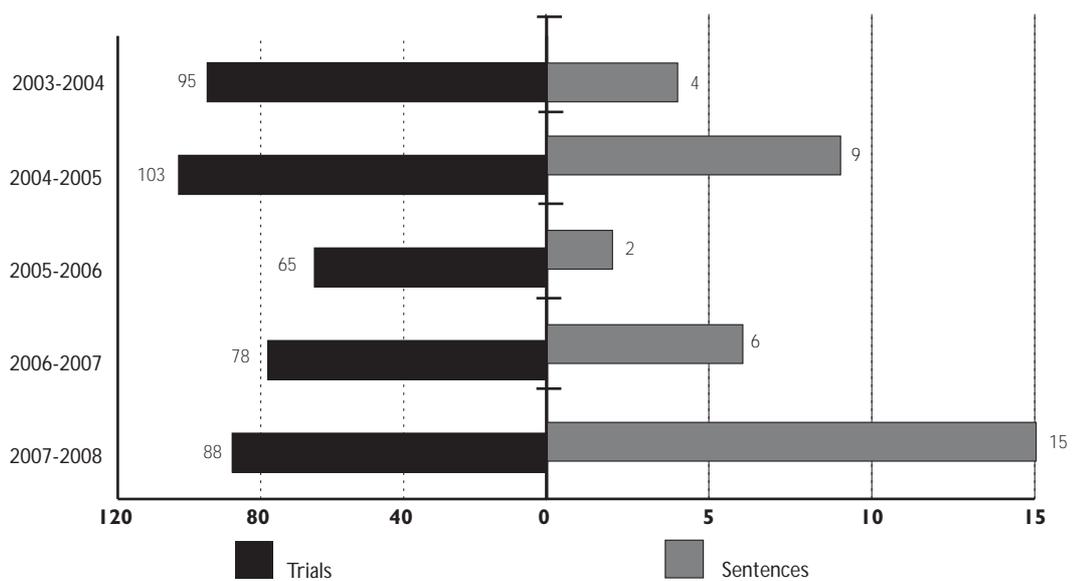
## Appendix 12

### Supreme Court – State Summary

#### Supreme Court Matters Received– State



#### Supreme Court Matters Completed – State

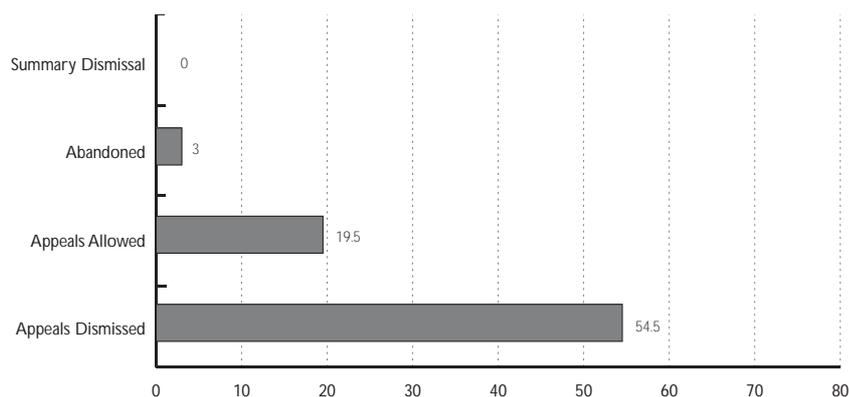


## Appendix 13

### Court of Criminal Appeal and High Court

Court of Criminal Appeal	2003–2004	2004–2005	2005-2006	2006-2007	2007-2008
<b>A. Appeals by Offenders finalised</b>					
Conviction and sentence appeals	105	119	107	99	74
Sentence appeals	217	259	211	199	154
Summary dismissals	11	0	2	2	1
Appeals abandoned	7	6	6	8	7
<b>TOTAL</b>	<b>340</b>	<b>384</b>	<b>326</b>	<b>308</b>	<b>236</b>
	2003–2004	2004–2005	2005-2006	2006-2007	2007-2008
<b>B. Crown Inadequacy Appeals finalised</b>					
Abandoned	19	24	24	14	23
Allowed	29	37	35	37	24
Dismissed	50	26	21	22	25
<b>TOTAL</b>	<b>98</b>	<b>87</b>	<b>80</b>	<b>73</b>	<b>72</b>
	2003–2004	2004–2005	2005-2006	2006-2007	2007-2008
<b>C. Appeals against interlocutory judgments or orders (s.5F appeals)</b>					
	25	20	25	20	16
<b>D. Stated cases from the District Court</b>					
	4	3	1	3	1
<b>E. Total of all appeals finalised</b>					
	467	494	432	404	325
	2003–2004	2004–2005	2005-2006	2006-2007	2007-2008
<b>High Court matters finalised</b>					
Completed applications for special leave to appeal					
Applications by the offender	25	22	15	9	18
Applications by the Crown	1	1	0	1	0
Hearings conducted after grant of special leave to appeal					
Appeal by offenders	3	3	2	2	4
Appeal by the Crown	0	1	0	1	0

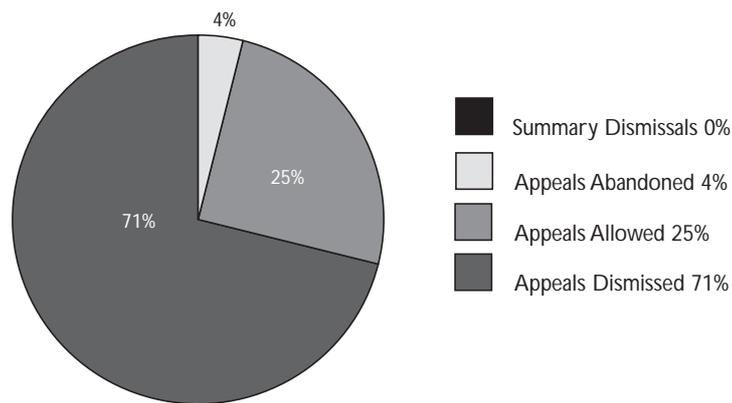
### Conviction and Sentence appeals finalised in 2007-08 in Court of Criminal Appeal – Breakdown by numbers



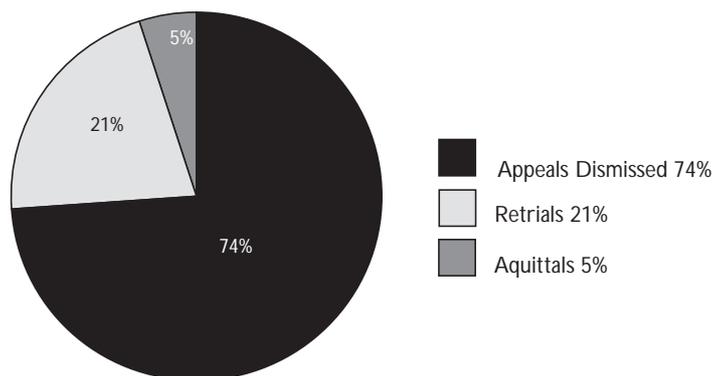
## Appendix 13 Continued

### Court of Criminal Appeal and High Court

Conviction and sentence appeals finalised in 2007-08 in Court of Criminal Appeal  
 – Breakdown by percentage



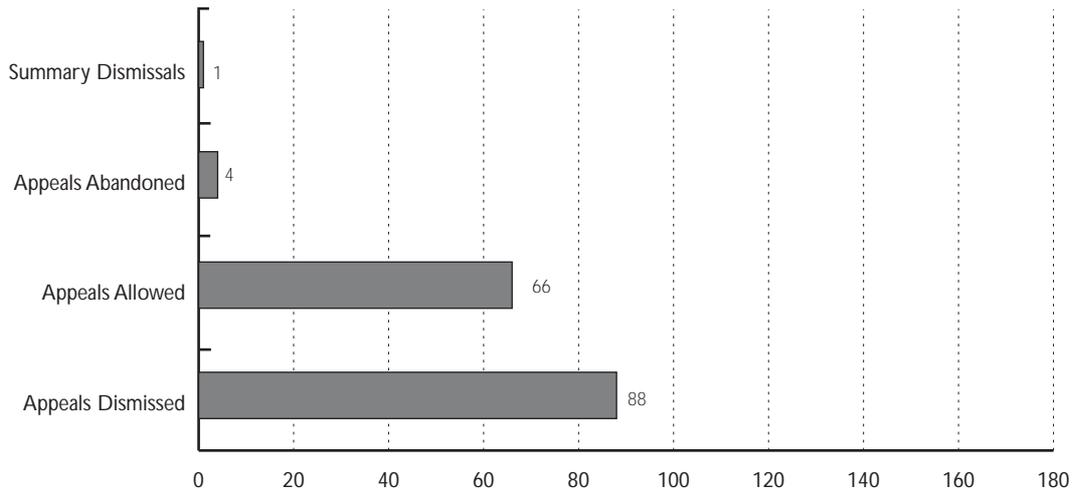
Results of finalised conviction and sentence appeals in 2007-08 in Court of Criminal Appeal  
 – Breakdown by percentage



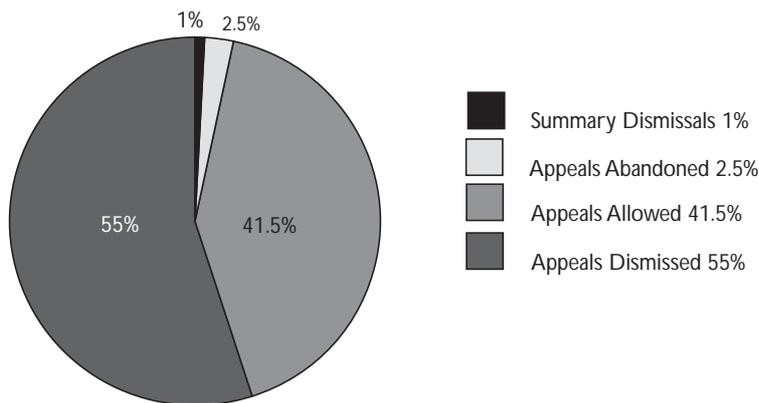
## Appendix 13 Continued

### Court of Criminal Appeal and High Court

Sentence appeals finalised in Court of Criminal Appeal in 2007-08  
Breakdown by number



Sentence appeals finalised in 2007-08 in Court of Criminal Appeal –  
Breakdown by percentage



## Appendix 14

### Significant Legislative Changes

#### Bail Amendment Act 2007 (No 55)

Assent 15/11/2007. Commencement 14/12/2007, Gaz 182, 14/12/2007 p 9535.

The **Bail Amendment Act 2007** amended the **Bail Act 1978** to make further changes to bail for accused persons. The amending Act extends the list of serious firearm offences for which there is a presumption against bail and provides that an accused person can make only one application to a court seeking the grant of bail.

Section 8B(1)(c) of the **Bail Act 1978** creates a presumption against bail for certain serious firearms and weapons offences. The list of serious firearms and weapons offences is extended to include a presumption against bail in respect of offences under ss 44A and 62 of the **Firearms Act 1996**.

The definition of "serious personal violence offence" in s 9D(4) of the **Bail Act** is amended. References to ss 195(b) and 196(b) of the **Crimes Act 1900** are replaced with references to ss "195(1)(b) or (2)(b), 196(1)(b) or (2)(b)" of that Act. The new references reflect amendments to the **Crimes Act 1900** made by the **Crimes Legislation Amendment (Gangs) Act 2006**.

Section 22 of the **Bail Act** which concerns **General provisions as to court bail** is replaced. The new s 22 sets out the courts' obligations concerning bail and the procedures that must be followed in applying for bail. Section 22(1) provides that a bail application must be dealt with as soon as is reasonably practicable. Section 22(2) provides that the Regulations may make provision for the manner in which a bail application is made.

Section 22A of the **Bail Act**, which deals with the Supreme Court's power

to refuse to hear a bail application is replaced. The new s 22A is not restricted in its operation to the Supreme Court. Rather it makes provision for courts to refuse to hear a bail application. Prior to the commencement of the amendment, an accused person was free to make unlimited bail applications. The amendment changes this situation by requiring the court to refuse to hear a bail application where the accused has already made an application to a court and it has been dealt with.

Section 22A is subject to two exceptions. First, where the accused was not legally represented at their previous bail application, and they have since obtained legal representation. Secondly, if the court is satisfied that new facts have arisen since the previous application which justify the making of a further bail application. The court has a power under s 22A(2) to refuse to hear a bail application where it is satisfied that the application is either frivolous or vexatious. Under s 22A(3), the Supreme Court can refuse to hear a bail application that comprises a bail condition review which could be dealt with under s 48A by a magistrate or authorised justice or the District Court.

A new Part 19 was added to Sch 1 of the **Bail Act** to provide for transitional matters. Under Part 19, cl 36, the amendment to s 8B applies to bail granted for an offence committed before the commencement of the amendment where (a) the accused was charged with that offence on the commencement date of the amendment; or (b) the accused was charged with the offence after the commencement of the amendment.

Under Part 19, cl 37, the amendments made to ss 22 and 22A apply to bail applications made by or on behalf of accused persons where an application in relation to that bail has already been

made by, or on behalf of, the accused and dealt with by a court before the commencement of the amendment.

#### Crimes Amendment (Sexual Procurement or Grooming of Children) Act 2007 (No 74)

Assent 7/12/2007, Gaz 182, 14/12/2007 p 9533. Commencement 18/1/2008. Gaz 9, 18/1/2008 p 75.

The **Crimes Amendment (Sexual Procurement or Grooming of Children) Act 2007** amends the **Crimes Act 1900** by creating offences regarding the grooming and procurement of children for unlawful sexual activity.

A new s 66EB creates an offence for an adult person to procure or groom a child for unlawful sexual activity. The terms "adult person", "child", "conduct" and "unlawful sexual activity" are defined in s 66EB(1). Although the section distinguishes between procuring and grooming, the term "procuring" is not defined. Under s 66EB(2) an adult who procures a child for unlawful sexual activity, either with that person or with another person, is guilty of an offence. The offence of grooming in s 66EB(3), is committed where an adult engages in conduct that exposes a child to indecent material or to an intoxicating substance with the intention of making it easier to obtain that child for unlawful sexual activity.

Under s 66EB(4) it is not necessary to prove or specify any unlawful sexual activity to establish an offence under s 66EB. Section 66EB(5) provides that an offence under s 66EB may be made out in relation to a fictitious child. In s 66EB(5) the word "child" includes a person pretending to be a child, provided the accused believed that person to be a child. Where this occurs, "unlawful sexual activity" refers to any activity that would be unlawful if there had been an actual

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### Significant Legislative Changes

child. The age of the fictitious child is the age that the accused believed the child to be.

Preparatory offences carry the following penalties, depending on the age of the child and irrespective of the nature of sexual activity for which the child was procured or groomed.

Procuring a child under 14 years - Imprisonment 15 years; Procuring a child under 16 years - Imprisonment 12 years; Grooming a child under 14 years - Imprisonment 12 years; Grooming a child under 16 years - Imprisonment 10 years.

Under s 66EB(6), the higher maximum penalties apply only where the age of the child is specified on the charge.

A defence to charges under s 66EB(2) and 66EB(3) of the **Crimes Act** is available under s 66EB(7) where the accused reasonably believed that the child was not a child. Consent is no defence. Section 77 of the **Crimes Act** is amended to include "66EB" in the list of offences for which consent is not a defence.

Section 66EB(8) allows a jury to return an alternative verdict. Under s 66EB(8), where a person has been charged with an offence against s 66EB(2), and the jury is not satisfied that that offence has been proven, but is satisfied that the alleged offender committed an offence against s 66EB(3), the jury may return a verdict of guilty in relation to sub-s (3).

A reference to s 66EB is inserted into the definition of "personal violence offence" in s 562A of the **Crimes Act**.

#### **Criminal Case Conferencing Trial Act 2008 (No 10)**

Assent 16/4/2008, Gaz 44, 24/4/2008 p 2789. The Act commenced on assent and applies case conferencing on a 12 month

trial basis to certain indictable offences at specified courts for which a court attendance notice was filed on or after 1 May 2008 but before 1 May 2009.

#### **Overview**

The three main objectives of the **Criminal Case Conferencing Trial Act 2008** are: (a) To codify discounts on sentence allowed by courts for guilty pleas. Codification of sentence discount represents an acknowledgment of savings in time and resources that would otherwise be spent if the trials were run, avoids potential trauma to victims that may arise if the offences were prosecuted, and reflects the offender's contrition that in the court's view is demonstrated by pleading guilty; (b) To reduce sentence discounts allowed by courts for guilty pleas in sentence proceedings; and (c) To require the Crown and the accused person's legal representative to participate in a compulsory conference to determine whether there is any offence which the accused is prepared to plead guilty to before being committed for trial or sentence; and any other matters in s 12(3) in relation to which the accused and the prosecution can reach agreement.

#### **Application of the Act**

The Act applies only to proceedings for indictable offences (excluding indictable offences dealt with summarily) where committal proceedings are heard in the Local Court sitting at the Downing Centre, Sydney or at Central, Sydney: s 4. The Act also applies to proceedings transferred from another court, subject to completion of the steps in the compulsory conference timetable listed in s 7. Regulations subsequently enacted may increase the number of courts or substitute the courts to which the Act applies.

#### **Compulsory Conferences**

The Crown and the accused's legal representative are required to participate in a compulsory conference regarding the indictable offence, before the accused is committed for trial. Exceptions include (in the alternative) where (a) s 16 does not apply to the offence or the offence "is any other offence prescribed by the Regulations"; (b) a plea of guilty is entered before a pre-conference disclosure certificate is filed; (c) the accused pleads guilty or agrees in writing to do so before the compulsory conference; (d) the accused is unrepresented; (e) the DPP do not prosecute the matter; or (f) a magistrate makes an order under s 6(5) that the conference need not be held.

A compulsory conference cannot be convened until the prosecution has (a) served or caused to be served on the accused or their legal representative, a copy of the brief of evidence that complies with s 8; (b) served or caused to be served on the accused or their legal representative a copy of the relevant pre-conference disclosure certificate; and (c) filed the pre-conference disclosure certificate with a Local Court: s 6(2).

Evidence of things said between the parties or admissions made during a compulsory conference or post conference negotiations regarding a plea by the accused, is not admissible before a court, tribunal or other body except as specified in s 13. Both the Crown and the legal representative of the accused may apply for a magistrate's order dispensing with a compulsory conference.

A compulsory conference timetable contains mandatory steps to be taken in accordance with a timetable set by a magistrate. The timetable must comply with any relevant practice directions issued by the Chief Magistrate or a

## Appendix 14 Continued

### Significant Legislative Changes

Registrar exercising the magistrate's functions: s 7(5) – 7(6).

The following are compulsory steps in a compulsory conference held between the prosecution and the legal representative of the accused: (a) service of a copy of the brief of evidence in accordance with s 8 on the accused or their legal representative; (b) service of a copy of the pre-conference disclosure certificate in accordance with s 9 on the accused or their legal representative; (c) filing the pre-conference disclosure certificate; (d) holding the compulsory conference; and (e) filing the compulsory conference certificate.

The conference must be held before the date and time set under s 60 of the **Criminal Procedure Act 1986** for taking prosecution evidence in any committal proceedings for the offence.

#### Pre-Conference Disclosure Certificate

The Pre-Conference Disclosure Certificate is to be prepared before holding the compulsory conference. The certificate is to be signed by or on behalf of the Director of Public Prosecutions (s 9(5)), is to be in a form approved by the Attorney General (s 9(4)) and must be served on the accused or their legal representative in accordance with the timetable set out in s 7. Filing the certificate at a Local Court is to be done in accordance with s 7 of the Act. The certificate must (a) list the offence/s, including back up or related offences as defined by s 165 of the **Criminal Procedure Act**; (b) certify that the prosecution has the brief of evidence (s 8) and has disclosed all its relevant material on which agreement will be sought at the conference; (c) confirm that the evidence is capable of establishing the elements of the offence/s charged; and (d) state whether the prosecution has excluded any offence it may exclude

under s 18 of the Act, from the operation of s 16.

A pre-conference disclosure certificate is "conclusive evidence of the matters certified in it in any proceedings in a Local Court with respect to the offences set out in it and the completeness and accuracy of the matters may not be challenged in any manner in such proceedings": s 9(3).

A magistrate is required to give the accused person a written statement in a form prescribed by the Regulations, which explains the effect of participating in a compulsory conference (Part 3 of the Act) and the effect of sentence discounts in ss 16-18 of (Part 4) of the Act: s 10.

#### Attendance at compulsory conference by accused and jointly charged persons

A compulsory conference is to be attended by an ODPP officer and the legal representative of the accused. The presence or availability of a conference attendee by audio visual link (as defined in s 11(7)) or by telephone constitutes attendance under the section. Where an accused has been jointly charged with another, a separate compulsory conference must be held for each accused person, unless the prosecution and each co-accused consent to a joint compulsory conference: s 11(5).

#### Contents of compulsory conference certificate

The compulsory conference certificate is to be completed and signed by the prosecution and the accused's legal representative (who attended the conference) after the conference and before filing in accordance with s 12. The requirement for signature is satisfied by a facsimile of the relevant signature or authentication under the rules of court in the **Criminal Procedure Act 1986**. The certificate is to be filed at the Local Court

in a sealed envelope in compliance with the timetable fixed in s 7. The certificate may be amended after filing, and before the accused is committed for trial or sentence, providing the accused has consented in the presence of his/her legal representative.

The compulsory conference certificate is to certify the following matters:

- (a) Offence/s, including any back up or related offences under s 165 of the **Criminal Procedure Act** the accused has been charged with, in relation to which the prosecution is seeking the accused be committed for trial or sentence: s 12(3).
- (b) Any alternative offences discussed at the conference (s 12(3)(B)) and any of the offences in s 12(3)(a)-(b) to which the accused has offered to plead guilty: s 12 (3)(c).
- (c) The acceptance or rejection by either party of offers to plead guilty.
- (d) Details of the agreed facts and any facts in dispute concerning any offer to plead by the accused, which has been accepted by the prosecution: s 12(3)(e).
- (e) Additional offences charged to which the accused has offered to plead guilty and has agreed to ask the court to consider under s 33 of the **Crimes (Sentencing Procedure) Act 1999**: s 12(3)(f).
- (f) Details, if any, of the inadequacy of the brief of evidence where the accused considers the brief of evidence is insufficient to allow assessment of the prosecution case: s 12(3)(g).

#### Admissibility of a compulsory conference certificate

The original or a copy of the compulsory conference certificate filed with a Local

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### Significant Legislative Changes

Court is not admissible in proceedings before any court, tribunal or body, subject to limited exceptions listed in s 13.

Furthermore, it “cannot be required to be produced under a subpoena issued in any proceedings before any court, tribunal or body”: s 13(1)(b). The original or a copy of the compulsory conference certificate is admissible in sentence court proceedings for s 17(7) purposes and is “evidence of the matters certified in it”: s 13(2).

Evidence of any compulsory conference certificate must not be admitted by a sentencing court if Part 3 of the Act has not been complied with. An exception exists where the court is satisfied that there was “good and proper” reason for the failure to comply and it is in the interests of justice to admit the certificate: s 13(4).

#### Offence of disclosing original or copy of certificate or its contents

Under s 13(1) it is unlawful to disclose the certificate, a copy of it or any of its contents to any person other than the prosecution, a police officer, an accused person or their legal representative and a victim or member of victim’s immediate family as defined by the **Victims’ Support and Rehabilitation Act 1996**. Unlawful disclosure of a compulsory conference certificate or a copy, contrary to s 13(1), is an offence which carries a maximum penalty 20 penalty units. Disclosure of any information during or in relation to a compulsory conference does not constitute pre-trial disclosure for the purposes of s 22A of the **Crimes (Sentencing Procedure) Act 1999**: s 14.

#### Practice Directions by Chief Magistrate

The Chief Magistrate may issue directions concerning practices and procedures for taking compulsory conference steps under s 7(1), providing they are consistent with the **Criminal Case Conferencing Trial Act**

2008 and Regulations. Any directions which are not consistent, do not apply to the extent of their inconsistency: s 15.

#### Sentencing for certain indictable offences taking into account a guilty plea

##### Broad scheme of discounts

When sentencing an offender for certain indictable offences to which he/she has pleaded guilty, a sentencing court must state and record the penalty it would have imposed but for the guilty plea. It must also apply a discount on sentence for the guilty plea that complies with s 17(1) and may apply a discount on sentence pursuant to the terms of s 17(2) or (4): see s 16(1).

By s 16(9), the Act limits the discounts that a sentencing court can apply for guilty pleas to those matters set out in s 17. However under s 16(6), a court’s failure to comply with s 16(1) does not render invalid any sentence it imposes.

##### What a discount for a guilty plea reflects

A discount for a guilty plea reflects statutory recognition of (a) savings in time and resources that would have otherwise been spent if the offence was prosecuted (b) avoiding additional trauma to the victim that may be caused by a trial; (c) in the opinion of the sentencing court any demonstrated contrition by the offender; and (d) any other benefit demonstrated by the guilty plea or associated with it: s 16(2).

The statutory discounts do not apply to sentences of life imprisonment or to offences excluded by s 18. Moreover, s 21A(3)(k) and s 22 of the **Crimes (Sentencing Procedure) Act 1999** do not apply to a sentence caught by this section. Section 16 does not affect or limit any mitigating factor that a court is statutorily obliged to consider when determining a sentence.

##### Three Tiers of Sentence Discounts for Guilty Pleas Based on Timing of the Plea

A sentencing court must apply the following discounts for guilty pleas subject to the timing of the plea.

#### (1) Mandatory discounts for a guilty plea before committal for sentence

Penalty	Discount
Imprisonment	25 per cent
Fine	25 per cent
Community service order	25 per cent
Good behaviour bond	25 per cent

#### (2) Mandatory discounts for a guilty plea after committal for sentence

Penalty	Discount	Note
Imprisonment, fine, CSO or good behaviour bond	Up to 12.5 per cent: s 17(2)	Court may only allow discount proportionate to remaining benefit of guilty plea as determined by s 16(2): see s 17(3).

#### (3) Discretionary Discounts for Guilty Pleas Where Substantial Grounds Exist

Courts may apply a discretionary discount of more than 12.5 per cent but less than 25 per cent for a guilty plea, made after committal, where it is satisfied that substantial grounds exist for a greater discount under s 17(5) of this Act.

For the purposes of s 17(4), substantial grounds exist where the following are recorded in the compulsory conference certificate — (a) the offender offered to plead guilty to an alternative offence that was refused by the prosecutor at any time before committal for trial, and the offender was found guilty of that alternative offence; or (b) the offender offered to plead guilty

## Appendix 14 Continued

### Significant Legislative Changes

to an alternative offence that was refused by the prosecutor at any time before committal for trial and accepted by the prosecutor after committal for trial; (c) the offer to plead to an alternative offence is made for the first time and accepted, after committal for trial and the offender had no reasonable opportunity to plead guilty to such an offence before committal; or (d) the offender was found unfit to be tried for the relevant offence after being committed for trial and pleaded guilty when he/she was later found fit to be tried: s 17(5).

The burden of establishing that substantial grounds exist in s 17(5) is on the offender who is required to discharge the onus of proof on the balance of probabilities: s 17(6).

#### Offences Excluded from Discounts

The scheme of sentence discounts provided for in s 16 of the Act does not apply to a Commonwealth offence unless the Regulations state otherwise. It also does not apply to an offence that is excluded from s 16 by the prosecutor under this section. A prosecutor may also exclude an offence from the scheme of discounts by submitting a written notice to this effect when the pre-conference disclosure certificate is filed under s 9, or at such other time as prescribed by the Regulations: s 18(2). The notice must be signed by or on behalf of the Director of Public Prosecutions: s 18(4).

To exclude an offence from the scheme of discounts, a prosecutor must be satisfied of two things. First, the offender's level of culpability must be "so extreme" that community interest in retribution, punishment, community protection and deterrence can only be reflected by the imposition of a penalty without discount. Secondly, "it is highly probable that a reasonable jury properly instructed would convict" the accused. The term "highly probable" is not defined or explained in the

legislation: s 18(3). Where a prosecutor excludes an offence in the above manner, the sentencing court is statutorily obliged to consider the reason for the exclusion when imposing a sentence on the offender: s 18(5).

#### Relationship with Criminal Procedure Act and Bail Act

##### Criminal Procedure Act 1986

Except as provided for in this Act, the Regulations or court rules as specified in s 19(2), do not affect the application of the **Criminal Procedure Act 1986** or the **Crimes (Sentencing Procedure) Act 1999** to proceedings for offences to which the Act applies: s 19(1).

Rules of court which are consistent with this Act or its Regulations may be enacted under the **Criminal Procedure Act 1986** for the purposes of the **Criminal Case Conferencing Trial Act 2008**: s 19(2).

##### Bail Act 1978

Bail may be granted to an accused person under s 6 of the **Bail Act 1978** for the period between the alleged offender's first court appearance or appearance in connection with proceedings for an offence, and the time of the compulsory conference for that offence: s 20(1).

Without restricting the operation of s 36 of the **Bail Act**, bail may also be granted subject to the accused entering into an agreement to be available for a compulsory conference: s 20(2).

##### Memorandum of Understanding between NSW Police and ODPP

The Director of Public Prosecutions for NSW has a discretion to enter into a **Memorandum of Understanding** with the NSW Commissioner of Police, regarding police requests made of the ODPP (NSW) "on any matter that could be the subject of a compulsory conference": s 21(1).

A failure to comply with s 21 "does not invalidate anything done or omitted to be done by a police officer" or the Director, a Deputy Director, the Solicitor or a member of staff referred to in s 32 of the **Director of Public Prosecutions Act 1986**: s 21(3).

##### Jury Amendment Act 2008 (No 24)

Assent 11/6/2008, Gaz 72, 20/6/2008 p 5368. Commencement 1/7/2008, Gaz 76, 27/6/2008 p 5865.

The **Jury Amendment Act 2008** amends the **Jury Act 1977** to implement, in modified form, certain recommendations of the NSW Law Reform Commission Report 117 (2008) on Jury Selection. It also amends the **Criminal Appeal Act 1912** to enable, with the leave of the Court of Criminal Appeal, an appeal reviewing any decision of a court to discharge the jury.

In broad terms the **Jury Act 1977** is amended (1) to confer express power on a court or coroner to discharge a juror during a trial or coronial inquest; (2) in such a case to set out the circumstances in which the remaining jurors must be discharged or for the trial or coronial inquest to continue with those jurors; (3) to confer express power on a court or coroner to order the continuation of a trial or coronial inquest following the death of a juror; (4) to ensure that a jury's verdict is not invalidated if a juror is irregularly or mistakenly empanelled, or becomes disqualified or ineligible from jury service during a trial or coronial inquest; and (5) to expressly provide for serving and former jurors to report misconduct and irregularities by other jurors and former jurors.

Some of the more significant amendments to the **Jury Act 1977** are:

A new Part 7A is inserted as a result of the decisions in **R v Brown & Tran** [2004] NSWCCA 324 and **Petroulias v R** [2007]

## Appendix 14 Continued

### Significant Legislative Changes

NSWCCA 134. Sections 53A to 53C of the new Part 7A confer express powers on a court or Coroner to discharge jurors during a trial or inquest.

Section 53A(1) provides that a court or Coroner must discharge a juror who, during the trial or coronial inquest, is (a) found to have been mistakenly or irregularly empanelled, either because of disqualification or ineligibility, or has not been returned and selected in accordance with the **Jury Act**; or (b) becomes disqualified or ineligible to serve as a juror; or (c) has engaged in "misconduct". The term "misconduct" is defined in s 53A(2) as conduct in relation to a trial or Coronial Inquest that constitutes an offence under the **Jury Act 1977** or "(b) any other conduct that, in the opinion of the court or coroner, gives rise to the risk of a substantial miscarriage of justice in the trial or inquest." An example of "misconduct" is s 68C, which prohibits a juror from making enquiries other than those properly related to exercising the functions of a juror.

Section 53C(2)(b) defines "misconduct" as "any other conduct that, in the opinion of the court or coroner, gives rise to the risk of a substantial miscarriage of justice in the trial or inquest."

Section 53B provides that a court or a Coroner may discharge a juror during a trial or inquest if, apart from the situation where a juror refuses to participate in the jury's deliberations (s 53B(c)), it appears to the court or coroner that: (a) the juror, though able to discharge his or her jury duties, has developed an illness or infirmity likely to render that person ineligible to continue as a juror before the jury's verdict has been delivered, or to present a health risk to the remaining jurors or (b) because of the juror's statements, or evidence before the court of the juror's familiarity with witnesses, parties or legal representatives, or any reasonable

apprehension of bias or conflict of interest etc the juror may be unable to impartially consider the case; or (c) for any other reason affecting the juror's ability to function in his or her role, the juror should not continue as part of the jury.

Under s 53C(1) where a juror dies or is discharged during a trial, the court or Coroner must, if it considers (a) that there is a risk of a miscarriage of justice by continuing the trial or Coronial Inquest with the remaining jurors, discharge the jury or (b) that no such risk exists, and subject to s 22, order that the proceedings continue with the reduced number of jurors.

A court or a Coroner that discharges a jury under s 53C(1)(a), has under s 53C(2), a discretion to stay the proceedings under such terms as it thinks fit, if a party notifies an intention to seek leave to appeal to review the decision to discharge the jury under s 5G of the **Criminal Appeal Act 1912**.

A new s 73(a) is inserted into the **Jury Act** to prevent the invalidation of a verdict as occurred in **Brown & Tran [2004]** NSWCCA 1324, where a juror has been mistakenly or irregularly empanelled after being required to attend for jury service. This applies whether the juror was disqualified from serving, was ineligible to serve, or otherwise was not returned and selected in accordance with the **Jury Act**. Section 73(2)(a) and (b) are inserted to provide that s 73(1) does not apply where a juror impersonates another person, or is suspected of doing so, or where there is evidence of deliberate manipulation of the composition of the jury.

A new s 75C(1) is added to provide that where, during the trial or coronial inquest, a juror reasonably suspects any irregularity concerning another juror's membership of the jury, or performance of a juror's functions, the juror may disclose their

suspicion and the basis for it to the court or coroner. A former juror may make a similar disclosure in relation to the jury on which that juror formerly served. s 75C(2). A juror is not prevented by s 68B(1) from making a disclosure under s 75C.

For the purposes of s 75C, an "irregularity" concerning a juror's membership of a jury, or the performance of their functions as a juror, means:

"(a) the commission by the juror of an offence under this Act or any other misconduct; (b) a juror becoming disqualified from serving, or ineligible to serve, as a juror; (c) the refusal of the juror to take part in the jury's deliberations; (d) the juror's lack of capacity to take part in the trial or coronial inquest (including an inability to speak or comprehend English); (e) the juror's inability to be impartial because of the juror's familiarity with the witnesses, parties or legal representatives in the trial or coronial inquest, any reasonable apprehension of bias or conflict of interest on the part of the juror, or any similar reason."

The **Jury Amendment Act 2008** applies to and in respect of any jury empanelled in a trial or coronial inquest after its commencement.

The **Jury Amendment Act 2008** also amends the **Criminal Appeal Act 1912**. Section 5G(1) of the **Criminal Appeal Act** provides that where a court decides to discharge a jury in a criminal trial, except where that discharge is under ss 51, 55E, 56 or 58 of the **Jury Act**, the Attorney General, Director of Public Prosecutions or any other party to that trial may appeal to the Court of Criminal Appeal for a review of that decision. The appeal is to be dealt with as soon as possible after the application for leave to appeal is lodged. The Court of Criminal Appeal can either affirm the decision appealed against or vacate it and substitute another decision.

## Appendix 14 Continued

### Significant Legislative Changes

A refusal of leave to appeal under s 5G of the **Criminal Appeal Act** does not prevent a later conviction appeal arising from the proceedings the subject of the refused application. Section 5G "applies to and in respect of a decision of a court concerning a jury empanelled after the commencement of the section."

## Appendix 15

### Significant Judicial Decisions

#### High Court of Australia

##### CTM v The Queen [2008] HCA 25 11 June 2008

The appellant was convicted after a trial of an offence of "Sexual intercourse with a child aged of or above 14 years and under 16 years" pursuant to s 66(3) of the **Crimes Act 1900**. In the course of the trial the judge directed the jury that a complete defence to this charge would be made out if they were satisfied that the appellant had established on the balance of probabilities that at the time of the offence he reasonably believed the complainant to have been of or above the age of 16 years. This direction was given on the basis that the common law as set out in the decision of **Proudman v Dayman** (1941) 67 CLR 536 applied to the issue of the complainant's age. In that case Dixon J stated (at 539): "As a general rule an honest and reasonable belief in a state of facts which, if they existed, would make the defendant's act innocent affords an excuse for doing what would otherwise be an offence."

On appeal to the CCA against his conviction the appellant contended that the trial judge erred as to the onus and standard of proof in his directions as to the **Proudman v Dayman** "defence". The CCA agreed that those directions were erroneous, in that if the "defence" in **Proudman v Dayman** had applied, then, once the issue was raised by the appellant, it would have been for the prosecution to establish beyond reasonable doubt that the appellant was not operating under any such "honest and reasonable mistake" as to the complainant's age. However the CCA went on to dismiss the appeal, holding that in fact the **Proudman v Dayman** "defence" did not apply to an offence under s 66(3). The CCA noted that, prior to its repeal in 2003,

s 77(2) of the **Crimes Act** had provided a defence to a charge under s 66(3) in circumstances where both the accused and the child victim were not male, the child victim was of or over 14 years, the child victim consented, and the accused reasonably believed that the child victim was aged or over 16 years. The CCA held that, having regard to the history of the legislation, the scheme of the existing offences after the repeal of the statutory defence, and the purpose of the 2003 Amending Act, the repeal of s 77(2) did not result in the common law "defence" in **Proudman v Dayman** having any residual application.

The appellant appealed to the High Court of Australia. The High Court held that the principle of criminal responsibility set out in **Proudman v Dayman** was fundamental, such that the courts were entitled to expect that any intention by parliament to abrogate it would be made plain by express language or necessary implication. In the absence of any such indisputable evidence, the Court held that after the repeal of s 77(2), the common law "defence" of honest and reasonable mistake of fact as to a complainant's age remained an answer to a charge under s 66(3).

However in the present case the majority of the Court held that the appellant had not satisfied the evidential burden on him to initially raise the issue of an honest and reasonable mistake on his part as to the complainant's age, and accordingly the appeal was dismissed.

##### PM v The Queen [2007] HCA 49 8 November 2007

The appellant, aged 16 years at the time of the alleged offences, was charged with one count of "Aggravated sexual assault (victim under 16 years)" (s 61J(1)

and (2)(d) **Crimes Act 1900**– Court Attendance Notice (CAN 1)) and one count of "Aggravated sexual assault (malicious infliction of actual bodily harm)" (s 61J(1) and (2)(a) **Crimes Act** – CAN 2). Before the Children's Court CAN 1 was withdrawn and the appellant committed for trial in respect of the offence alleged in CAN 2. The offence alleged in CAN 2 was a "serious children's indictable offence" within the meaning of that term in the **Children's (Criminal Proceedings) Act 1987**, and for that reason could not be disposed of summarily before the Children's Court.

Subsequently the appellant was indicted before the District Court for an offence under s 61J(1) and (2)(d) in the same terms as CAN 1 withdrawn before the Children's Court. Two alternative counts were also charged in the same indictment. All of these 3 counts were indictable offences, but none were "serious children's indictable offences" as defined.

The District Court trial judge before whom the indictment was presented determined that, as none of the counts in the indictment had been the subject of an order for committal for trial by the Children's Court pursuant to the provisions of the **Children's (Criminal Proceedings) Act**, the District Court was without jurisdiction to deal with the matter. Accordingly the judge purported to remit the matter to the Children's Court pursuant to s 44 of the **Children's (Criminal Proceedings) Act**.

The DPP appealed to the CCA against the trial judge's order of remittal. The CCA by majority allowed the appeal, holding that the provisions of the **Children's (Criminal Proceedings) Act** did not affect either the authority of the prosecution to present an indictment before the District Court, or the

## Appendix 15 Continued

### Significant Judicial Decisions

jurisdiction of the District Court to determine any indictable offence.

The appellant appealed to the High Court of Australia. In dismissing the appeal the High Court held that the provisions of the **Children's (Criminal Proceedings) Act** did not limit the otherwise general conferral by the **Criminal Procedure Act 1986** of jurisdiction on the District Court in respect of all indictable offences. In particular the appellant's reliance on s 8 of the **Children's (Criminal Proceedings) Act** was misplaced. Section 8 provided that criminal proceedings against a child should not be commenced other than by way of CAN except in certain specified circumstances (which were not presently relevant). The High Court held that:

- (1) Non-compliance with s 8 did not affect the jurisdiction of a court to hear criminal proceedings against a child.
- (2) Nevertheless the criminal proceedings against the appellant in the present case which were maintained in the District Court by the presentation of the indictment had been commenced by CAN, in that all the offences alleged were either expressly charged in the second CAN, or were lesser, included offences.
- (3) Even if the charges in the indictment before the District Court had not previously been the subject of any proceedings in the Children's Court, the jurisdiction of the District Court to proceed would have been unaffected, although questions may have been thereby raised as to whether that jurisdiction should be exercised.

#### **Elliott v The Queen; Blessington v The Queen [2007] HCA 51** 8 November 2007

The appellants were convicted in 1990 of murder. At the time of the murder E was aged 16 years and B 14 years. In September 1990 each was sentenced to life imprisonment. In his remarks on sentence the sentencing judge recommended that neither E nor B ever be released.

In 1992 the CCA dismissed appeals by each of B and E against their sentences. In that decision Gleeson CJ commented in relation to the "non-release recommendations" (NRRs) that while in his view it was not appropriate for them to have been made, there was no statutory basis for them, nor any statutory basis for appealing against them. At that time s 13A of the then **Sentencing Act 1989** permitted prisoners who were serving life sentences to apply for a determinate sentence to be set once 8 years had been served.

In 1997 however legislation was enacted which prevented prisoners who were serving life sentences and in respect of whom a NRR had been made from applying for a determinate sentence until they had served at least 20 years of their sentence. In addition the court hearing any such application was required to be satisfied that there existed "special circumstances" warranting the imposition of a determinate sentence.

In 2006 both appellants sought the leave of the CCA to appeal for the first time against the NRRs made by the sentencing judge, or alternatively to re-open the original appeals heard in 1992. By majority the CCA refused the leave sought.

The appellants appealed against this decision to the High Court of Australia.

The High Court noted that the applications were predicated firstly on the discovery that the orders of the CCA of 1992 had not been perfected, and secondly on the contention that the legal consequences which now attended the NRRs meant that they should be regarded as "orders made by the court of trial" and therefore "sentences" which could be the subject of appeal.

In relation to the second contention the High Court held, following the decision in **Baker v The Queen [2004] HCA 45**, that because at the time the sentencing judge made the NRRs they had no legal effect, and the legal effect they subsequently acquired was not occasioned by anything done "by" the court of trial, the NRRs never were and did not subsequently acquire the character of "orders made by the court of trial". Accordingly they could not be the subject of appeals to the CCA.

In relation to the first contention the High Court noted that it was conceded by the respondent that the orders of the CCA made in 1992 had not been perfected, and that accordingly jurisdiction to re-open the appeals had been established. Nevertheless the CCA in 2006 properly refused leave to re-open the appeals, because the subsequent legislation affecting the position of the appellants did not create any miscarriage of justice by the 1992 decision. This accorded with the principles in **Autodesk Inc v Dyason (No 2) [1993] HCA 6**.

Accordingly the appeals were dismissed.

## Appendix 15 Continued

### Significant Judicial Decisions

#### Supreme Court of NSW

**DPP v O'Donnell and Fraser [2008]**  
**NSWSC 244**  
**2 May 2008**

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The defendants were environmental activists, who entered the site of a coal loader, activated a safety switch which rendered the loader temporarily inoperable, attached chains and locking devices to 4 conveyer belts and chained themselves to one of those belts. Police who attended the scene were compelled to use equipment to cut and remove the locking devices. The defendants were charged with malicious damage to the coal loader pursuant to s 195 of the **Crimes Act 1900**. The charges were dismissed before the Local Court, the Magistrate holding that a criminal charge was inappropriate because a civil remedy was available.

The DPP appealed to the Supreme Court against the Magistrate's decision.

Before the Supreme Court the defendants conceded that the Magistrate had erred in his reasoning, but contended that the ultimate decision to dismiss the charges was appropriate in that the evidence was not capable of establishing that "damage" within the meaning of s 195 had been caused. After reviewing the authorities the Supreme Court agreed with this contention, and dismissed the appeal. The court held that an essential element of "damage" for the purposes of s 195 was "physical derangement" to the property in question, and that interference with functionality alone without "physical derangement", as the court held had occurred in the present case, was insufficient.

**DPP v Donaczy & Anor [2007]**  
**NSWSC 923**  
**22 August 2007**

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The defendant was charged with manslaughter, and granted conditional bail. Subsequently the DPP applied to the Local Court for a review of the bail decision, seeking that bail be refused. The Magistrate who heard the application refused it, and in addition awarded costs against the DPP.

The DPP commenced proceedings in the Supreme Court, contending that the Magistrate was without jurisdiction to award costs. The Supreme Court upheld the DPP's contentions, and quashed the order for costs. The court noted that the Local Court, being an inferior court created by statute, had only the powers, jurisdiction and function conferred upon it, or necessarily implied, by legislation. In the present case the Magistrate had no express or implied power to make an order for costs in dealing with a review of a bail application.

#### NSW Court of Criminal Appeal

**Francisco CHUNG v R [2007]**  
**NSWCCA 231**

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Mr Chung was an employee of Westpac Bank who transferred a software template to persons outside the bank. This action enabled those persons to access accounts and transfer funds and defraud Westpac and its customers of more than US\$3.5 million and Aus \$1.1 million. Mr Chung pleaded guilty to one count of the common law offence of conspiracy to cheat and defraud. Before being sentenced he challenged the jurisdiction of the District Court to determine the matter on the basis that the common law offence

of conspiracy to cheat and defraud had been "repealed" by s 184(2) and (3) of the **Corporations Act 2001** (Cth).

The three issues which arose for determination on appeal were: (1) Has the common law offence of conspiracy to cheat and defraud been effectively repealed? (2) Did the Commonwealth Parliament intend "to displace the common law offence of conspiracy to defraud a corporation in a pertinent respect"? and (3) Was it an abuse of process to charge the applicant with the common law offence of conspiracy when the legislation covered the field of Mr Chung's criminality?

In dismissing Mr Chung's appeal against conviction, the NSWCCA held:

- (1) The common law offence of conspiracy to cheat and defraud has not been repealed. A valid Commonwealth Act may override or displace a common law offence either partially or entirely. Spigelman CJ held that it was extremely unlikely that Parliament impliedly intended the **Corporations Act** to repeal the offence. The provisions of the **Corporations Act** "clearly indicate that Parliament did not intend to cover the field with respect to the liability of directors and employees of corporations, save in the case of direct inconsistency." at 22]. The common law offence in question is a "law in force in the State" within s 9 of the **Corporations Act**, which was not intended to be a comprehensive code like set of provisions. The conclusion that the Commonwealth Parliament did not intend the criminal liabilities created under the **Corporations Act** to operate to the exclusion of other criminal liabilities, be they statutory or common law, is supported by the combined effect of s 5E, given the

## Appendix 15 Continued

### Significant Judicial Decisions

extended definition of "law of the State" in s 9 and s 185(a).

- (2) There was no intention to displace the common law offence in a "pertinent respect". The **Commonwealth Criminal Code 1995** applied to **Corporations Act** offences after 15 December 2001. At no time was there any suggestion "that the Commonwealth intended to exercise the full scope of its constitutional powers" concerning the relevant offences. at [38]. Spigelman CJ considered the effect of the **Criminal Code** at [32]-[44]. In rejecting the contention that Mr Chung pleaded guilty to an offence that does not exist, at [46], His Honour said at [44] that "Nothing in this legislative scheme suggests that the Commonwealth Parliament was intending to invoke the full range of its constitutional powers with respect to fraudulent conspiracies..."
- (3) The choice to charge under a section which carries a higher penalty than another is a legitimate exercise of prosecutorial discretion, rather than an abuse of process. Only rarely would a prosecutor's discretion to lay a charge constitute an abuse of process. A difference in the maximum penalty of alternative charges "is a perfectly legitimate basis for the exercise of prosecutorial choice." at [47]. While the practice of charging conspiracy where a substantive offence has been committed has been discouraged ( **The Queen v Hoar** (1981) 148 CLR 32 at 38), it has never been contended that charging conspiracy in preference to a substantive offence with a statutory maximum penalty is an abuse of process. In any event, Mr Chung's plea of guilty militated against any considerations of unfairness arising

from imprecise charges, a vague case or the nature of admissible evidence. at [53] What is a "sufficient and effective charge" is a matter for the prosecutor's discretion and courts are reluctant to intervene for reasons of judicial impartiality and independence: **Maxwell v The Queen** (1996) 184 CLR 501 at 534; **Weinger v The Queen** (2003) 212 CLR 629 at [80].

#### AGW [2008] NSWCCA 81

The appellant AGW (the offender) was convicted by a jury, by majority verdict, of one count of sexual intercourse with a person under the age of ten years contrary to s 66A **Crimes Act**. He was acquitted of two sexual offences and two other offences relating to acts of indecency.

At the time of the alleged offences, the appellant was married to the complainant's sister. At trial evidence to support the s 66A offence was given by the complainant's sister.

The appellant appealed against conviction only and the issues for the NSWCCA to determine on appeal were: (1) Whether the conviction for the s 66A **Crimes Act** offence was unreasonable and unable to be supported on the evidence? and (2) Whether the trial judge erred in applying s 55F of the **Jury Act** which resulted in a trial not conducted according to law?

In relation to the first issue, the court held that the offender's conviction for the s 66A **Crimes Act** offence was not unreasonable. The complainant's sister was cross-examined by the defence at the trial about the ill feeling between herself and the appellant as a result of their separation, in an attempt to undermine her credibility. The complainant's sister explained that her delay in coming forward was based on her marriage to

the appellant, her dependence at that time on him for support both for herself and a young baby, and her reluctance to accept that her husband had committed the offences alleged. In rejecting the ground of appeal, Grove J "was unpersuaded that, on the whole of the evidence, on the issues which were indisputably for the jury to determine, they ought to have had a reasonable doubt". at [14]

On the second issue, the court held that in relation to the trial judge's receipt of the jury's majority verdict two essential preconditions had not been met. As a result, the trial had not been conducted according to law. The trial judge failed to determine what was a "reasonable time" for the jury's deliberation for the purposes of s 55F(2)(a) of the **Jury Act** having regard to the nature and complexity of the proceedings. The statutory precondition in s 55F(2)(a) is not met by the trial judge acting after the passage of the minimum period of eight hours. Secondly, the trial judge did not satisfy himself of the requirements of s 55F(2)(b) of the **Jury Act** in that the juror of whom an enquiry was made was not sworn or affirmed, and no enquiry was made of her about the prospect of the jury reaching a unanimous verdict. His Honour's enquiry was confined to ascertaining the numerical division of opinion on the jury. at [26]. The NSWCCA allowed the appeal, quashed the conviction and ordered that the offender receive a new trial.

#### R v Carruthers [2008] NSWCCA 59

Mr Carruthers (the respondent) consumed five schooners of beer at a local Bowling Club over a period of some hours, without eating any food. He left the club by driving his utility truck, and a short time later attempted to turn right at an intersection. This action caused Mr Carruthers' vehicle to cross into the path

## Appendix 15 Continued

### Significant Judicial Decisions

of a motorcyclist (the victim) who was travelling in the opposite direction. On seeing the respondent, the victim applied his brakes. This caused his bike to slide, hit the road and collide with the respondent's utility. The victim was thrown from his bike and sustained multiple abrasions, ankle fractures and a laceration to his knee. Additionally, as a result of the collision, the motorcyclist suffered an adjustment disorder or an acute pain disorder, the latter of which is a form of post traumatic stress syndrome.

The respondent pleaded guilty to one count of aggravated dangerous driving (high range prescribed concentration of alcohol) occasioning grievous bodily harm contrary to s 52A(4) of the **Crimes Act**. He was sentenced to a term of imprisonment which comprised a non-parole period of 1 year, 8 months and 7 days, and a balance of term of 6 months and 22 days. The sentence was to be served by way of periodic detention and a license disqualification of three years was imposed.

The Crown appealed against the sentence on the basis that it was manifestly inadequate. On appeal, the two main issues for determination were (1) Whether the sentencing judge erred by failing to fix an appropriate sentence and then consider alternatives to full time custody and (2) Whether the sentence was manifestly inadequate.

The court allowed the Crown appeal, quashed the sentence and increased Mr Carruthers' sentence to a term of imprisonment comprising a non-parole period of 1 year and 8 months, and a balance of term of 6 months to be served in full time custody. It confirmed the three year licence disqualification.

In allowing the Crown appeal, the NSWCCA made three principal findings. First, it held that the sentencing judge

made no error in her approach to setting the sentence. When sentencing the respondent, the NSWCCA noted that the sentencing judge did not specifically fix a sentence before determining that an alternative to full time custody was appropriate. Rather, after stating that a custodial sentence was warranted, Her Honour said that the respondent was entitled to some leniency and determined that the sentence to be imposed enabled consideration of alternatives to full time custody. at [20]. Her Honour's remarks indicated that the unspecified sentence was of a length that made consideration of alternatives to full time custody appropriate. Moreover, Her Honour's remarks indicated that the length of the unspecified sentence was a decided issue. at [21]

The second finding made by the NSWCCA was that a consideration of blood alcohol concentration does not necessarily constitute double counting in the sentencing exercise. The court referred to **R v Jurisic** (1998) 45 NSWLR 209 and **R v Whyte** (2002) 55 NSWLR 252 and reiterated that, "the degree to which an offender exceeds the threshold blood alcohol level under s 52A(4) may inform the level of criminality involved in the offence."... "Where that offence might otherwise be in the mid-range, a level of alcohol significantly in excess of the threshold level will indicate that a more significant sentence is required." at [24]

The court's third finding was that the sentence of periodic detention imposed on Mr Carruthers was inadequate. The CCA held that where an offender has a high range prescribed content of alcohol and previous convictions for driving a vehicle whilst intoxicated, a sentence of full time custody will almost always be appropriate. at [30]. The court also held

that a sentence of periodic detention for an offence of dangerous driving occasioning grievous bodily harm, under s 52A(4) of the **Crimes Act**, will rarely be appropriate where the offence involves a significant level of intoxication and serious injury to another person. The CCA said that a sentence of full time custody would almost always be required to reflect the need for punishment and general and specific deterrence. McClellan CJ at CL observed that relevant factors in sentencing the respondent were his significant level of intoxication, a blood alcohol reading of .22 g of alcohol per 100 ml of blood, the serious injuries caused to the victim, and the fact that this was the respondent's third drink driving offence. at [32]

#### NSW Court of Appeal

##### **AB v DPP (NSW) & Anor [2008] NSWCA 91**

This matter concerns the offender dealt with in the High Court case of **PM** [2007] HCA 49.

The background to the proceedings is that in 2004 the appellant who was then aged 16 years, was charged with having committed a sexual offence against a 14 year old complainant. This offence could be dealt with summarily in the Children's Court. The appellant was later charged with aggravated sexual assault (malicious infliction of actual bodily harm) (victim under 16 years) contrary to s 61J(1) **Crimes Act**. This offence could not be tried in the Children's Court. In 2005 following the appellant's committal for trial on that charge, the prosecutor withdrew the original charge. The Director of Public Prosecutions (NSW) elected not to proceed with the s 61J(1) charge and filed an ex-officio indictment on the original charge.

## Appendix 15 Continued

### Significant Judicial Decisions

Before it was amended in 2007, s 208 of the **Criminal Procedure Act** provided that where a charge was withdrawn by the prosecutor it was taken to be dismissed. The appellant applied to the court for, and was granted, a certificate of dismissal. If valid, the certificate operated under s 206 of the **Criminal Procedure Act** to bar further proceedings being taken for the relevant offence.

The Director of Public Prosecutions appealed to the Supreme Court. Adams J dealt with the appeal by ordering that the certificate of dismissal be quashed for lack of jurisdiction: **DPP(NSW) v AB & Anor** [2008] NSWSC 115.

The appellant (offender) appealed to the Court of Appeal and the issue for determination was whether he was entitled to a certificate of dismissal. The Court of Appeal dismissed the appeal and held as follows: (1) The magistrate could not withdraw the charge, but only note that it had been withdrawn by the prosecutor under s 208 of the **Criminal Procedure Act**. at [7]. (2) The withdrawal of the matter by the prosecutor and its automatic dismissal was neither an actual nor a deemed decision giving rise to an entitlement to a certificate of dismissal under s 205(2) of the **Criminal Procedure Act**. at [12]

(3) The entitlement to a certificate of dismissal under s 205(2) of the **Criminal Procedure Act** only arises following an order of dismissal after adjudication by the court. at [11]. When the prosecutor withdrew the first charge the magistrate said, "Okay, well I will withdraw that and discharge the defendant." The relevant legislative provisions were ss 202, 205, 206 and 208 of the **Criminal Procedure Act**. Sections 205 and 208 were substantially amended by the **Criminal Legislation Amendment Act (2007)** (No 57), which expressly provided that the

relevant amendments only applied "to the dismissal of a matter on or after the commencement of the amendments." at [6]. It was clear that the first charge was withdrawn by the prosecutor alone without the magistrate adjudicating on the matter. Under s 205, as it then stood, a matter was taken to be dismissed if the prosecutor withdrew the charge. The entitlement to a certificate of dismissal only arises where the court makes "an order of dismissal": s 205. There was no trial or adjudication in the Children's Court. The magistrate did not make an "an order of dismissal" nor did he dismiss the matter. The automatic dismissal under s 208 flows from the decision to withdraw the matter, rather than from any order of the court. An accused person who benefits from a dismissal following the withdrawal of a matter by the prosecutor has no right to a certificate under s 205(2). at [10]-[13]

## Appendix 16

### Publications of the ODPP (NSW)

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

#### Corporate Information

##### **ODPP (NSW) Annual Reports**

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

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

**Cost:** No charge.

##### **ODPP (NSW) Corporate Plan 2005–2008**

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

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

**Cost:** No charge.

##### **DPP (NSW) Prosecution Guidelines**

The DPP (NSW) Prosecution Guidelines were revised and republished with significant amendments (to the original 2003 publication) on 1 June 2007. The Guidelines are applied by persons acting in

or representing the interests of the Crown or the Director under the **Director of Public Prosecutions Act 1986 (NSW)**.

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

**Cost:** No charge.

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

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

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

**Cost:** No charge.

##### **Equal Employment Opportunity Annual Report**

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

**Access:** Copies are available by contacting the Manager, Personnel Services on (02) 9285 2584 between 9.00 am – 5.00 pm weekdays or by writing to the Manager,

Personnel Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232.

**Cost:** No charge.

##### **Ethnic Affairs Priority Statement**

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

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

**Cost:** No charge.

##### **Disability Action Plan**

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

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

**Cost:** No charge.

#### Legal Research Publications

##### **Advance Notes**

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

**Access:** Advance Notes are available through the Legal Information Access Centre at the State Library of NSW or

## Appendix 16 Continued

### Publications of the ODPP (NSW)

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

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

#### Information to Assist Witnesses and Victims of Crime

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##### 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

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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.

## Appendix 16 Continued

### Publications of the ODPP (NSW)

#### 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 17

### 2007-2008 EEO Achievements

The EEO statistics were produced as part of the NSW Public Sector Workforce Profile. The percentage of women employed by the Office increased to 62% and the number of women earning over \$84,738 increased from 116 to 132. During the 2007-2008 financial year 72% of new starters or staff returning from secondments to the Office were women and 20% were people whose first language spoken as a child was not English. The Office aims to increase the representation of Aboriginal staff and it is proposed that the Office offers another Indigenous Cadetship next year.

Key achievements and actions were:

- 48 staff participated in the Merit Selection Refresher training and 23 staff participated in Selection Criteria and Interview Process training. Other learning activities undertaken by

staff that included EEO principles were Professional Development for Administration Staff, Prosecuting of Sexual Assault Matters involving Aboriginal complainants, Managing Workplace Health, and Cross cultural Communication Skills.

- Beyond Bullying (Preventing Bullying and Harassment in the Workplace) awareness sessions were attended by 54 staff. The Managers and Supervisors, Roles and Responsibilities program, the Introduction to the ODPP and new staff induction program also included a bullying and harassment prevention awareness session.
- Grievance, Workplace Concerns and Dispute Resolution Policy and Procedures were reviewed in consultation with key staff and

managers and a monthly reporting mechanism to capture grievance information was implemented.

- EEO Data Collection response rate increased to 90% by providing staff who had yet to respond with the opportunity to respond to the data collection. The ODPP's response rate exceeds the public sector benchmark.
- International Women's Day was celebrated by women attending an interactive forum to discuss their 'working lives'. A panel of four women who hold senior positions within the Office shared their career and personal life experiences to inspire and relate to women from the Sydney and Sydney Metropolitan Offices. Staff from the Wagga Wagga Office also celebrated the event.

## Appendix 18

### EEO Statistics

#### A. Trends in the Representation of EEO Groups

EEO Group	% of Total Staff				
	Benchmark or Target	2005	2006	2007	2008
Women	50%	65%	61%	60%	62%
Aboriginal people and Torres Strait Islanders	2%	1.0%	1.4%	1.1%	0.7%
People whose first language was not English	20%	16%	14%	16%	17%
People with a disability	12%	6%	6%	5%	7%
People with a disability requiring work-related adjustment	7%	1.9%	1.9%	1.7%	3.2%

#### B. Trends in the Distribution of EEO Groups

EEO Group	% of Total Staff				
	Benchmark or Target	2005	2006	2007	2008
Women	100	83	79	80	82
Aboriginal people and Torres Strait Islanders	100	n/a	n/a	n/a	n/a
People whose first language was not English	100	92	90	92	88
People with a disability	100	92	94	93	93
People with a disability requiring work-related adjustment	100	n/a	n/a	n/a	96

#### Notes:

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

## Appendix 19

### Government Energy Management Plan (GEMP)

The Office of the Director of Public Prosecution's (ODPP) GEMP Report 2007 was submitted to the Department of Environment and Climate Change in October 2007. The next Report is due in October 2008.

The ODPP is committed to assisting the NSW Government to reduce power usage and subsequent greenhouse emissions by:

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

The General Manager, Corporate Services is responsible for the energy management within the ODPP. The Manager, Asset and Facilities Management Branch has

responsibility for the day-to-day GEMP-related tasks and follow-up action towards achieving the Office's energy goals. The **future direction** and goals of the ODPP under the GEMP include:

1. Assisting the Government to achieve a reduction of the statewide total energy consumption.
2. Upgrading to energy efficient facilities within Head Office and Regional Offices particularly those offices that have been refurbished and planning for the future offices that are to be refurbished.
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 rating requirements.
5. Acquiring fuel-efficient vehicles where opportunities exist and the operational needs of the Office are met.

6. Increasing staff awareness of energy management best practices.

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

7. The ODPP engaged an assessor to undertake a Greenhouse Rating assessment in February 2007. The rating achieved was only 2 stars. The only opportunity for the ODPP to improve its energy rating in the 265 Castlereagh Street building is to have major building improvements undertaken by the building owner, which have been negotiated to be undertaken should a new lease be signed in November 2009.

## Appendix 20

### Waste Reduction and Purchasing Plan and Recycling

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

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

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

this area.

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

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

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

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

#### Improving waste avoidance and recycling systems across the agency

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

recycling programs in each regional office during 2008-09.

#### Establishing data collection systems to report agency progress

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

#### Increasing the range and quantity of recycled content materials being purchased

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

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

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

## Appendix 21

### Chief Executive Service and Senior Executive Service

Number of CES/SES positions	Total CES/SES				
Level:	30 June 2004	30 June 2005	30 June 2006	30 June 2007	30 June 2008
SES Level 1-\$165,401 - \$177,450	3	3	3	2	3
SES Level 2 -\$141,250 - \$165,400	3	3	3	2	3
SES Level 3	-	-	-	-	-
SES Level 4	-	-	-	-	-
SES Level 5	-	-	-	-	-
SES Level 6	-	-	-	-	-
Statutory Appointments					
Under the DPP Act	4	4	4	3	4
Number of positions filled by women	2	2	2	1	3

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

### Staff Numbers

	30 June 2003	30 June 2004	30 June 2005	30 June 2006	30 June 2007	30 June 2008
Statutory Appointed & SES	104	100	105	105	100	97
Lawyers	282	303	315	324	311	299
Administration & Clerical Staff	199	221	233	225	219	216
<b>Total</b>	<b>585</b>	<b>624</b>	<b>653</b>	<b>654</b>	<b>630</b>	<b>612</b>

### Recruitment Statistics

	2003/04	2004/05	2005/06	2006/07	2006/07	2007/2008
Senior Executive Service	0	0	0	0	0	0
Statutory Appointed	2	0	0	0	0	0
Crown Prosecutors	1	5	2	2	2	1
Prosecution Officer (Lawyers)	27	44	17	25	25	19
Prosecution Officer (Admin)	76	70	73	41	41	45
<b>Total</b>	<b>106</b>	<b>119</b>	<b>92</b>	<b>68</b>	<b>68</b>	<b>66</b>

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

### CEO Statement of Performance

Name:	Nicholas Cowdery AM QC
Position and level:	Director of Public Prosecutions
	The Director of Public Prosecutions is a statutory appointment under Section 4 of the 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.

## Appendix 22

### Report of the Chief Information Officer on Major IM & T Projects during 2007-08

#### 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 documents and full integration with existing workflow applications. It also delivers significantly improved document control and information sharing within the Office and other criminal justice agencies.

The rollout of the system was first started in the Solicitor's office and was successfully implemented in the Crown Prosecutor's Chambers in the 2006 /07 financial year. The project is now finalised.

#### Activity Based Costing (ABC)/ Operational Performance Management System (OPSM)

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.

ABC was implemented across the Office in April 2006 with the automatic selection of 15% of matters. Given the average length of matters it was expected that accurate and useful data would be obtained in 12 months; it was also anticipated that data collected during the transitional period might be questionable while technical and work-related issues were addressed. Following the Auditor General's report on the efficiency of the Office, new options are being examined on reporting time data for the purpose of reporting on workload. It is expected that

useful and reliable data will be available for the next reporting period.

#### ICT Infrastructure Upgrade

Several sub projects form part of this upgrade.

##### 1. Warm Site for Disaster Recovery

In order to comply with Premier's Department Circular 2003-02, the project has installed a 'warm site' for disaster recovery as proposed in the ODPP Disaster Recovery Plan. The site holds equipment and network facilities to act as a backup in case of failure of the Head Office infrastructure. The Disaster Recovery processes and procedures have been successfully tested and the system is now in operation.

The project is now finished.

##### 2. ODPP Portal

This project will enable disparate ODPP information resources to be managed in a consistent and integrated manner and will simplify access to that information for ODPP personnel. This also includes upgrading of the DPPNet, the Research System and the ODPP web site. A Business Agent has been employed to assist with the user requirements and acceptance testing. Developmental work for the Portal has been completed and the requirements for metadata search capabilities in the Research system are being reviewed and tested.

#### Digital ERISP Project (Electronic Record of Interview with Suspected Person)

This project is a multi-agency, led by NSW Police. The project oversees the replacement of outdated video

equipment used to record and play back interviews with suspected persons. The current combination of audio tape and videocassettes will move to a single standard format Digital Versatile Disc. Editing of interviews for use during trial by ODPP staff will be simplified particularly when on circuit. Laptops, editing equipment and software licences have been purchased and installed and equipment rolled out. A training consultant was engaged and training has been completed; follow up training and an E-Learning package is under negotiation with the provider. Installation of digital recording equipment at police stations has been completed.

Equipment purchased in the 2005/6 financial year for the ODPP totalled \$129,885 (28 Toshiba Satellite P100 Laptops \$28,389, 400 editing software licences - Adobe Premier Elements - \$41,600 and 15 portable storage devices \$1,896).

#### JusticeLink

JusticeLink is a project of the Attorney General's Department designed to implement a common case management system across the Local, District and Supreme Court jurisdictions to replace the existing Supreme Court, JIS and GLC systems. It is anticipated that benefit will be derived from electronic interfaces with the Courts and its major information exchange partners – the objective being to replace all document flows with electronic flows.

JusticeLink has now commenced operation in the Supreme and District Courts. Nominated ODPP officers have been granted "read only" access in the terms set out in the memorandum of understanding entered between the Office and the Chief Justice of the Supreme Court.

## Appendix 22 Continued

### Report of the Chief Information Officer on Major IM & T Projects during 2007-08

The Office has confirmed its support for the "Joined up Justice" Business Case. That business case is intended to provide the Office with resources to build an interface with JusticeLink which will replace "read only" access and provide for the electronic flow of information between the ODPP and the courts.

#### CASES Documentation

The CASES Documentation project is a priority project approved by the Joint Working Party between the ODPP and LAC, and is an important step in achieving the review of the re-development of CASES using Service Oriented Architecture (SOA) methodology as proposed in its 2006-2009 ICT Strategic Plan. By the end of June 2008, this project was ahead of budget and time, and phase 1 of the development of the CASES documentation is now completed.

## Appendix 23

### Freedom of Information Act 1989 (NSW)

#### Name of Agency

Office of the Director of Public Prosecutions (ODPP).

#### Period

1 July 2007 to 30 June 2008

#### 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 2008 under the FOI Act is included at the end of this Appendix.

In the period 1 July 2007 to 30 June 2008 the ODPP received 9 applications under the FOI Act for access to documents. One application was granted in full. One application was granted in part. Five applications were refused. No documents were held for the remaining two applications. The ODPP was consulted on five occasions by Agencies pursuant to s30 of the Act.

#### During the reporting period:

- No Ministerial Certificates were issued
- All applications for access to documents were processed within the time prescribed.
- One application for review was received and the matter re-determined pursuant to s52A.

- No request for the amendment or notation of records was received.
- The administration of the FOI Act has had no significant impact on the ODPP's activities, policies or procedures.
- No significant issues or problems have arisen in relation to the administration of the FOI Act within the ODPP.
- The cost of processing FOI requests was not significant.
- No matters concerning the administration of the FOI Act by the ODPP have been referred to the ADT.

	Personal		Other		Total	
	2006-07	2007-08	2006-07	2007-08	2006-07	2007-08
Number Received	3	4	2	5	5	9
Number Completed	3	4	2	5	5	9
Total Processed	3	4	2	5	5	9
Results*						
Granted in Full	0	0	0	1	0	1
Granted in Part	2	1	1	0	3	1
Refused	1	2	1	3	2	5
No documents held		1		1		2
Completed	3	4	2	5	5	9

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

## Appendix 23 Continued

### Summary of Affairs as at 30 June 2008

#### Freedom of Information Act 1989 section 14

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

The prosecution policy of the Director of Public Prosecutions (DPP) is set out in the "Prosecution Guidelines of the Director of Public Prosecutions", which were last furnished in their entirety on 1 June 2007. A copy of the Guidelines (which shows the current guidelines and the changes made since they were initially published on 20 October 2003) can be obtained from the ODPP web site, <http://www.odpp.nsw.gov.au> or from the ODPP Head Office Library at 265 Castlereagh Street, Sydney, by telephoning any member of the Library staff on (02) 9285 8912 between 9am and 5pm on weekdays. The publication is available at no charge. The publication may be inspected by arrangement with a member of the Library staff at the ODPP Head Office at 265 Castlereagh Street, Sydney.

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

purchase. There are exemptions in the Act applicable to operational documents of this type.

The most recent Statement of Affairs of the ODPP published under section 14(1)(a) of the Freedom of Information Act was published as at 31 December 2007.

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 for Public Prosecutions  
(Legal)

Office of the Director of Public  
Prosecutions

30 June 2008.

## 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 are responsible for the day to day functions of risk management for Workers' Compensation and Motor Vehicles respectively.

In the 2007-2008 reporting period, the Office's motor vehicle claims as at 30 June 2008 numbered twenty-one (21),

representing an average cost per vehicle of \$1,143.00 in claim payments for the four quarters. This compares with twenty-seven (27) claims processed in the four quarters during 2006-2007 (as at 30 June 2007), at an average cost per vehicle of \$1,519.00. The 2007-2008 year represents a significant improvement in the overall cost of claims of \$14,000.00 from 2006-2007.

In the 2007-2008 reporting period, the Office's Workers Compensation Claims

was twenty five (25), representing a total gross payment cost of \$29,229. Of these, twelve (12) claims (totalling \$10,568) represented injuries which occurred outside the immediate workplace eg travelling to and from work.

This compares with twenty three (23) claims reported during the 2006-2007 policy year representing a total gross payment of \$60,313.

## Appendix 25

### Occupational Health and Safety

During the Financial Year 2007-08, the ODPP continued the focus on issues relating to the NSW public sector Working Together Strategy. The primary OHS issues for the Office were psychological, ergonomic and manual handling related injuries. The first half of 2007-08 saw the culmination of a significant amount of work into the cause, prevention and management of psychological injury. The Workplace Health Management Committee, established initially in 2007 to look at the possible effects of vicarious trauma, proposed a plan to overhaul the Office EAP Program as the most effective way to begin to address this issue. This process was completed in October 2007 with the contracting of IPS WorldWide to provide a broad range of support services to staff and Crown Prosecutors.

Personnel Services then embarked upon an Office wide promotion of the new EAP service as the first step to raising awareness of the potential health risks to staff and Crown Prosecutors.

This was followed up with plans for a number of workshops for managers at

all levels within the Office as they were considered the important first link in the process. In consultation with IPS, the Workplace Health Management Committee established a series of Workshops - Understanding & Preventing Psychological Injury. These commenced in May 2008 and were completed in early 2008-09. There will also be related initiatives for all staff in 2008-09.

2007-08 also brought a review of the OHS Ergonomic and Manual Handling sessions conducted throughout the Office. The information sessions were modified to focus on current OHS issues for all staff within the ODPP and to relate to prevention strategies in day to day activities. Feedback from these sessions was very positive.

The OHS Co-ordinator also invested a significant amount of time and resources into direct consultation with individual office managers. Information was sought directly in order to understand their respective OHS practices, to gauge their understanding of current OHS issues and to plan for future preventative measures. A number of key areas have been

identified and these will be addressed in 2008-09.

The ODPP also met its responsibilities under the Working Together Strategy 2005-2008. An Audit was completed using the OHS Improvement Standards and the necessary report forwarded to WorkCover. The Audit identified both the positive OHS aspects for the ODPP, as well as a number of key challenges. A plan to address these challenges was included with the Audit. An Audit Report will be submitted in early 2008-09 proposing a detailed project plan for OHS activities for that period.

Whilst participating in these new initiatives, the OHS Co-ordinator continued:

- the research into new equipment
- to provide one on one workplace assessments
- manage an effective workplace injury service.

## Appendix 26

### Witness Assistance Service Report

#### Overview of the Witness Assistance Service 2006-2007

During 2007-2008 The Witness Assistance Service (WAS) continued to work to improve service delivery for victims and witnesses in ODPP prosecutions. The WAS is an integral unit within the ODPP assisting the ODPP strive to meet its obligations under the Charter of Victims Rights (Victims Rights Act 1996) and assisting victims of crime and vulnerable witnesses throughout the prosecution process.

In November 2008 the WAS will have been in existence at the ODPP for fifteen years. There has been considerable expansion to the service and changes in operations over those years with the emphasis now on a proactive and integrated model of service delivery for victims and witnesses.

The WAS is integrated into the legal operational units of the ODPP across NSW and WAS Officers work as part of a multidisciplinary prosecution team. This integrated model enables WAS Officers to maintain effective professional working relationships with the legal professionals within the ODPP, and to uphold the independent role of the ODPP. Physical co-location of WAS Officers within the legal operations units in each office remains a goal when funding and suitable accommodation becomes available.

A vital role for WAS Officers is referral, consultation and liaison with external agencies such as the NSW Police Force, Victims Services at the Attorney General's Department of NSW, government and non government sexual assault and child protection services, and a range of other victims' services and support groups. The WAS greatly appreciates the interagency collaboration and support that exists within the sector.

From May 2006 to February 2008 the WAS Manager was on secondment to the Attorney General's Department of NSW where she held the position of Senior Project Officer with the Families and Friends of Missing Persons Unit within Victims Services. The Senior WAS Officer for Sydney West held the position of Acting WAS Manager for the duration of that secondment period and returned to her substantive position in mid February 2008.

During 2007-2008 there were several vacant WAS positions at Wagga, Bathurst, Campbelltown, three in Sydney, and the Aboriginal WAS Officer position at Dubbo. These vacancies were being recruited in July 2008 and will be reported on in next year's report.

A WAS *Interim Strategy* was implemented in early 2008 across NSW to assist in managing the impact of the vacant positions on caseloads for WAS Officers, and to allow cross-regional cover for priority matters. This required WAS Officers to strengthen priorities for service delivery and to close matters which were not priorities, despite these matters still being of "substance" (Samuel's Report 2002). This has impacted on the capacity of the WAS to provide services to a number of victims of crime and witnesses in these types of matters. Where possible, referrals were made to other appropriate services.

WAS Officers have endeavoured to maintain caseloads at the recommended caseloads in the Office's Workload Management Agreement. However this is a challenge given the staffing levels and caseload numbers do not always reflect the workload being carried by WAS Officers.

#### Main initiatives to enhance the service delivery to victims and witnesses

During 2006-2007 a number of projects were commenced to enhance the WAS service delivery to victims and witnesses and these projects were ongoing during 2007-2008: a review of WAS Manual; updating the ODPP brochures and information for victims and witnesses; monitoring resources allocation and implementation of Best Practice in Sexual assault Prosecutions.

During 2008 the WAS Senior Officers team has been working with Senior ODPP managers on consolidating victim contact protocols in line with the Office's obligations under the Charter of Victims Rights (Victims Rights Act 1996).

A number of WAS working groups have been undertaking various projects to enhance service delivery and administrative processes. In early 2008 new WAS correspondence templates for victims and witnesses were finalised. The Senior WAS team has also been revising and standardising information provided to victims and witnesses.

There have been several enhancements to the WAS database system during 2007-2008. Two WAS working groups have been reviewing various aspects of the use of the WAS database system to further enhance best practice in record keeping and case management.

The ODPP has continued to liaise with and provided supportive information to the Attorney General's Department of NSW in relation to funding requirements for additional Aboriginal WAS Officer positions as pre the recommendations from the Aboriginal Child Sexual Assault Task Force Report.

During 2007-2008 Victims Services conducted reviews of the Charter of

## Appendix 26 Continued

### Witness Assistance Service Report

Victims Rights implementation at Broken Hill and Parramatta. WAS Officers assisted the Dubbo and Parramatta Offices with their responses.

#### Aims, role and functions of WAS

The aims of the WAS are to assist the ODPP in meeting the rights of victims of crime under the Charter of Victims Rights (Victims Rights Act 1996); to minimise the stress and anxiety that can occur for victims of crime when matters progress through the criminal justice system; and to assist the prosecution process by enabling vulnerable witnesses to give their evidence to the best of their ability. The WAS functions have continued to be carried out professionally by WAS Officers committed to their role within the prosecution teams.

The WAS service delivery model of early referral, establishing early contact, making early assessments of people's needs, referring to appropriate services and agencies and maintaining contact throughout the process has been strongly supported by research mentioned in past annual reports. The WAS Best Practice Early Referral Protocol assists WAS in making early proactive contact with victims of crime in WAS priority matters. The benefits of early WAS contact with victims includes

- Victims having access to information about the legal process and services available at the earliest opportunity;
- Victims contact details are current and available;
- ODPP is aware of the best means of communication with the victim so they can be kept informed of the progress of the matter;
- WAS can assess if a victim or vulnerable witnesses has any special

needs, that require case planning with the prosecutors, to ensure they are able to participate equally throughout the legal process.

#### Service Structure and Management

The Assistant Solicitor (Legal) is the ODPP Solicitor's Executive officer overseeing the WAS and victims and witness issues. The WAS Manager is responsible for developing policies and standards state-wide and manages direct service delivery of the WAS team at Sydney Head Office. The WAS Manager and the Sexual Assault Liaison Officer (SALO), a senior ODPP lawyer, report directly to the Assistant Solicitor (Legal).

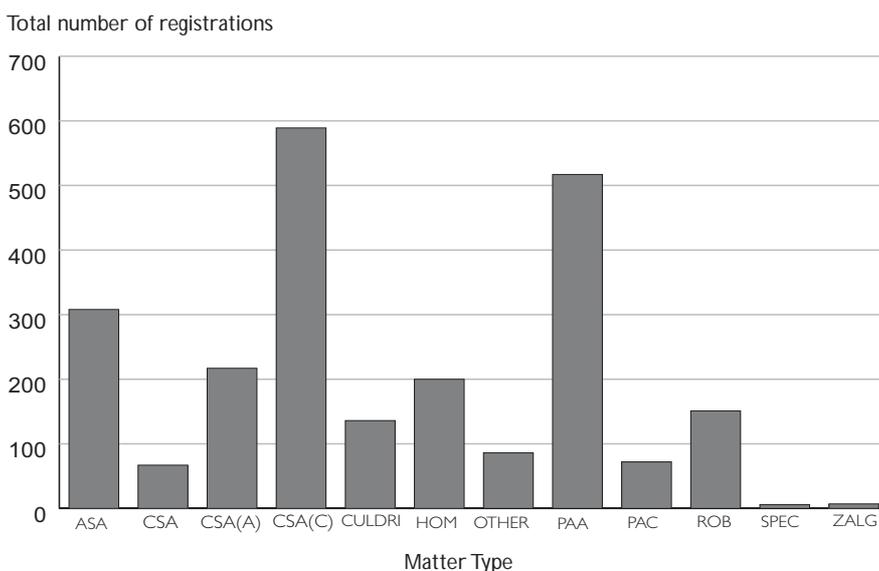
The WAS Officers in regional offices are managed by Managing Lawyers in those offices. They receive clinical supervision and case management support from their

respective Senior WAS Officers based in Parramatta, Newcastle and Wollongong. Senior WAS Officers receive professional supervision from the WAS Manager. WAS Officers in Sydney however must access external supervision in the absence of a Senior WAS Officer as this position was made redundant in 2006. In the absence of a Senior WAS Officer at Sydney the WAS manager continues to oversee case allocation and management for Sydney WAS Officers.

#### Service Delivery 2007-2008

There were 2356 new WAS registrations in 2007-2008. This figure is slightly less than the last two years and reflects the implementation of the Interim WAS Strategy for prioritising referrals. The new registrations to WAS according to matter type are represented in Graph 1.

Graph 1 - Total New WAS Registrations by Matter Type 2007 - 2008



Legend:

ASA - Adult Sexual Assault; CSA - Child Sexual Assault - (Child or Historical);  
 CSA (A) - Child Sexual Assault (Adult historical); CSA (C) - Child Sexual Assault (Child);  
 CULDRI - (Culpable or dangerous driving); HOM - (Homicide); OTHER - other crimes;  
 PAA - Adult Physical Assault (incl. domestic Violence); PAC - Child Physical Assault;  
 ROB (Robbery – various); SPEC – Special Interest Matters; ZALG – obsolete category.

## Appendix 26 Continued

### Witness Assistance Service Report

WAS priority matters include: child sexual assault (CSA - child and adult); adult sexual assault, including sexual assault in a domestic violence context (ASA); child abuse matters (CPA); homicide (HOM); and culpable / dangerous driving (CULDRI) matters involving death. These priority groups accounted for 67.4% of all new WAS registrations during 2007-2008. The WAS priority group of domestic and family violence related matters (not including sexual assault) most commonly fall into the adult physical assault category, which accounted for 21.9% of new WAS registrations.

Non-priority matters are referred to WAS where there are vulnerable victims or witnesses and these matter types such as special interest matters, armed robberies, home invasions and other physical assaults.

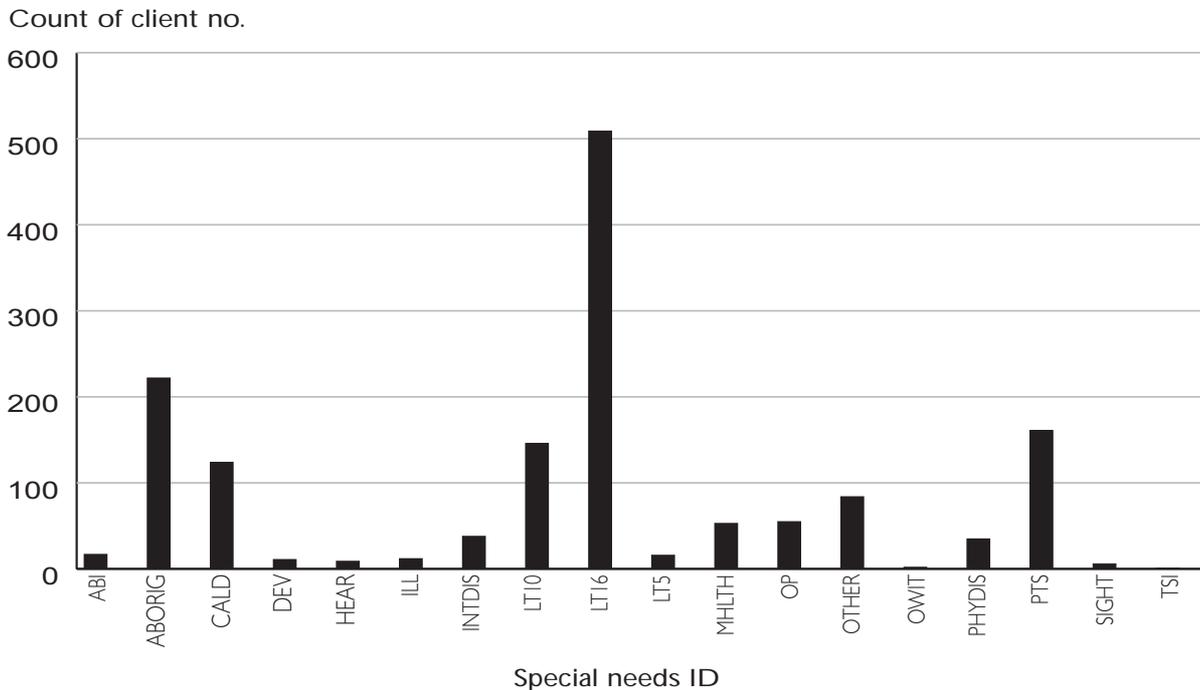
#### Special priority groups and vulnerable witnesses

In addition to prioritising by matter types, WAS prioritises service for those victims and vulnerable witnesses with special needs. The special priority categories registered by WAS during 2007-2008 are represented in Graph 2.

Victims or witnesses registered during 2007-2008 with special needs included:

- 671 children under 16 years of age;
- 259 people with a disability including acquired brain injury, intellectual or cognitive disability, physical disability, sight or hearing impairment or mental health issues;
- 124 people from culturally and linguistically diverse backgrounds;

Graph 2 - Witness Assistance Service Special Priority Groups Registered 2007-2008



Legend:  
 ABI – Acquired Brain Injury; ABORIG – Aboriginal; CALD – Culturally and Linguistically Diverse; DEV- Developmental Disability; HEAR – Hearing impairment; ILL – Literacy difficulties; INTDIS – Intellectual or cognitive disability; LT10 – Child 6 to under 10 yrs; LT16 – Child or young person 10 to under 16 yrs; LT5 – child 5 yrs and under; MHLTH – mental health issues; OP – older or frail aged person; OTHER – other disabilities; OVWIT – overseas vulnerable witness; PHYDIS – physical disability; PTS – Post traumatic stress difficulties; SIGHT – visual impairment; TSI – Torres Strait Islander.

## Appendix 26 Continued

### Witness Assistance Service Report

- 55 older or frail aged people or people with serious healthy problems.

In order to ensure the early identification of victims and witnesses in special priority groups the Sexual Assault Review Committee has been working with NSW Police Force representatives to implement a system to identify victims of crime for referral to WAS and to provide victim contact details and identify any particular needs the victims may have.

As a consequence a *Notification to ODPP of Victim for WAS Support Form* (P963 Form) has been developed for police officers to complete. The form includes a checklist including Aboriginal; Torres Strait Islander; culturally and linguistically diverse; disabilities; child or younger person under 18 years; older person over 70 years experiencing trauma about court appearance. Domestic violence related matters are also identified. The NSW Police Handbook now encourages police officers to refer particular victims / witnesses to WAS by sending the form to the ODPP. Police were informed of the existence of the form and the protocol in the Police Circular 07/05 and Police Weekly Vol 20 No 4 February 2008.

#### Child Witnesses

Child sexual assault matters are a priority for WAS. Child witnesses and victims and their parents and carers remain a high proportion of WAS referrals constituting 27.8% of all new registrations. During 2007-2008, 527 of the children under 16 registered with WAS were victims or witness in CSA matters with 7 under the age of 6; 124 between the age of 6 and under 10 years; and 396 children and young people aged between 10 and 16 years.

WAS also prioritises other child victims and witnesses. Twenty three (23) children were registered in relation to adult physical assault matters (majority being domestic violence related cases) and 45 children were registered in relation to child physical assault crimes.

The WAS is committed to ensuring that children and young people who are victims or witnesses of crime, are referred to appropriate counselling and support services and that the referrals are made in the best interest of the child.

The ODPP continues to be involved in a number of initiatives to enhance the service delivery to children and their families. These include:

- The ODPP has continued to participate in the *Courtwise* project, led by Victims Services. The WAS Manager or Senior WAS Officer (Sydney West) attend the Senior Officers Group overseeing the project. The Courtwise website - [www.courtwise.nsw.gov.au](http://www.courtwise.nsw.gov.au) - was developed to assist young people going to court and was launched by the Attorney General at the National Victims of Crime Conference in October 2007. The Senior Officers Group is now working on Stage 2 of the Courtwise project and is exploring the proposal for a court preparation DVD for children and young people.
- WAS and the SALO have been consulted in relation to reviewing the *Nothing but the Truth* court preparation manual.
- At the end of the financial year, resources were purchased for Sydney and Parramatta WAS aimed at assisting child victims and witnesses while waiting at court to give evidence at the new remote witness facilities at Sydney District Court and Sydney West

District Court complexes.

#### Adult Sexual Assault Victims

WAS continues to be aware of and respond to the legislative changes that have arisen from the Criminal Justice Sexual Offences Taskforce Report and assisting the Office in implementing the Best Practice for Sexual Assault Prosecutions.

#### Aboriginal Victims and Witnesses

The number of Aboriginal victims and witnesses registered in 2007-2008 was 223 which is approximately 9.5% of the overall new WAS registrations. This figure is higher than in previous years despite two positions becoming vacant for a period of time. The increasing number of referrals each year reflects:

- the work of the ODPP Aboriginal WAS Officers;
- the emphasis on identifying Aboriginal victims and witnesses as early in the process as possible; and
- the growing confidence for Aboriginal victims and witnesses in utilising the WAS.

The three Aboriginal identified WAS Officers each cover approximately a third of the state. As such they continue to have heavy caseloads with a high travel component. These workers face the challenges of working with often remote communities, and with victims and witnesses with communication and literacy issues. Regular peer support and supervision are a challenge due to being geographically dispersed, and having such busy workloads.

The Aboriginal Child Sexual Assault Taskforce (ACSAT) Report was released in July 2006. The ODPP has been addressing the recommendations in the ACSAT Report in a number of ways:

## Appendix 26 Continued

### Witness Assistance Service Report

- The Sexual Assault Review Committee (SARC) has been working with the NSW Police Force on early identification of Aboriginal victims and witnesses for referral to WAS (as mentioned above).
- WAS Officers are aware of the need for the early identification of indigenous victims and witnesses and have a policy of automatic referral to the Aboriginal WAS Officers for their assessment.
- Several WAS Officers and lawyers attended the *Prosecuting Matters Involving Aboriginal Complainants of Sexual Assault* workshops that were conducted by the Education Centre Against Violence and coordinated by the ODPP Learning and Development Unit.

Graph 3 provides a breakdown of the new WAS registrations for Aboriginal victims and witnesses by matter type in 2007-2008. The pattern of matter types is in line with the general patterns of WAS registrations. Of note are the high proportion of child sexual assault matters and the slightly high proportion of adult physical assault matters (which mainly constitute domestic and family violence related crimes).

The Aboriginal Child Sexual Assault Task Force (ACSAT) Report recommended an Aboriginal WAS Officer in each ODPP office with 2 Senior ATSI positions. Unfortunately funding for this enhancement has not been received to date.

Given the increasing number of referrals and the nature of the work for the Aboriginal WAS Officers, there is a need

for funding for three additional Aboriginal WAS Officer positions and a Senior Aboriginal WAS Officer who can provide culturally sensitive supervision and support for the Aboriginal WAS Officers.

#### Professional development

WAS staff are committed to ongoing professional development and ensuring that they are abreast of developments in the criminal justice system.

#### WAS State-wide conference

WAS State-wide conference was held on 27 & 28 March 2008. This provided the opportunity for WAS Officers from around the state to come together, for formal education sessions from internal and external presenters and for informal networking. Included in the program this year was a Strength-based practice one day workshop conducted by Anne Heath from Uniting Care Institute of Family Practice and a presentation by the Director Research and Sentencing at the Judicial Commission of NSW who provided an overview of the Judicial Sexual Assault Handbook.

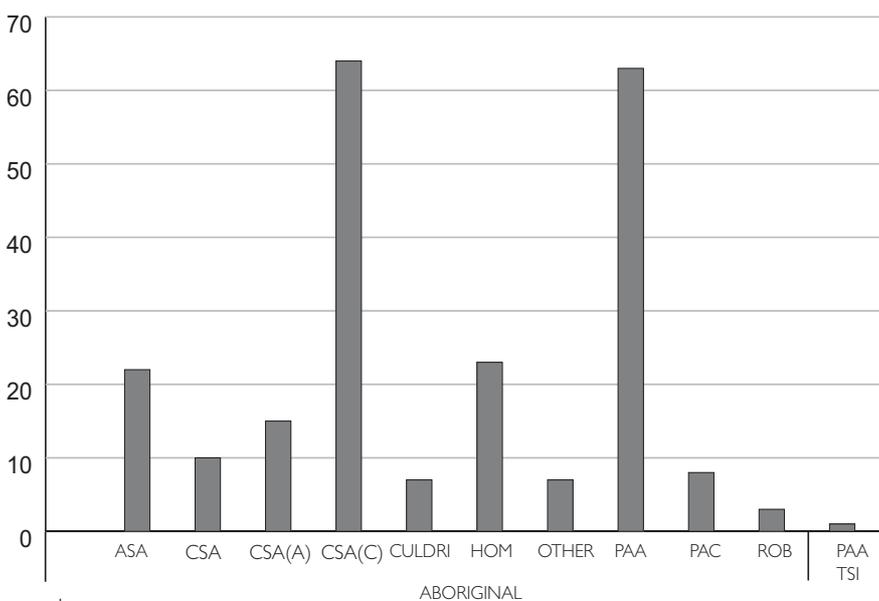
#### Regional WAS meetings

These meetings take place at regular intervals throughout the year depending on the location. Sydney WAS Team hold monthly team meetings and group supervision sessions. The Sydney West regional area meets approximately every two months, the Southern Central and Northern areas twice a year. The WAS Manager and the SALO attend these meetings where possible.

#### Training attended by individual WAS staff or SALO included:

- *Strengths-based practice*, one day workshop.

Graph 3: Aboriginal and Torres Strait Islander Victims and Witnesses  
New WAS registrations by matter type 2007-2008



Legend:

ASA - Adult Sexual Assault; CSA - Child Sexual Assault - (Child or Historical);  
CSA (A) - Child Sexual Assault (Adult historical); CSA (C) - Child Sexual Assault (Child);  
CULDRI - (Culpable or dangerous driving); HOM - (Homicide); OTHER - other crimes;  
PAA - Adult Physical Assault (incl. domestic Violence); PAC - Child Physical Assault;  
ROB (Robbery – various).

## Appendix 26 Continued

### Witness Assistance Service Report

- *Prosecuting Matter Involving Aboriginal Complainants of Sexual Assault*, two day workshop conducted by the Education Centre Against Violence for the ODPP.
- *Changing your thinking*, workshop.
- *Inmate Classification* conducted by Department of Corrective Services
- *Working with people of culturally diverse backgrounds*.
- *Fieldwork placement seminar*, University of Sydney.
- *Bereavement Counselling Course* at the Bereavement Care Centre.
- *Working with men who have been sexually abused* – one day workshop.
- *Workplace Health Management: Understanding and Preventing Psychological Injury* - two day managers workshop attended by WAS Manager and Senior WAS Officers.
- *Training for Trainers* – one day workshop attended by WAS Manager.
- *First Aid Training* – one day training workshop.
- *Reflections on 10 Years of Change* - Seminar at the UNSW on 31 August by Professor Betsy Stanko was attended by SALO.
- *Jury Research and Practice* conference; 11 December 2007.
- *Happiness and its Causes*; two day conference was attended by two WAS Officers 2008.
- *JustPartners: Family Violence, Specialist Courts and the Idea of Integration*, two day conference; Canberra, 22-23 May 2008.
- *Sexual Abuse in Religious Contexts*, two day conference; June 2008.
- Paper presented by Aboriginal WAS Officer (Newcastle) at Victim of Crime Conference in Sydney on “Prosecutorial Teams Successful Interaction with Aboriginal Clients and Communities.”
- Assistant Solicitor (Legal) and SALO conducted extensive training throughout the ODPP in relation to Best Practice in Sexual Assault Prosecutions and legislative reforms.
- Training for Commonwealth DPP, 2007.
- Presentation for NSW Rape Crisis Centre, 19 September 2007.
- Sexual Assault Coordinators State-wide meeting, presentation by Acting WAS Manager with Acting Director Victims Services, 20 November 2008.

#### Students

WAS Officers have continued to offer student placements. During 2007-2008 a WAS Officer at Parramatta supervised a fourth year social work student who assisted with the review of the Nothing but the Truth Manual.

#### Education, Training, Presentations and Consultation

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

- NSW Sexual Assault Services Specialist New Worker Training programme run by the Education Centre Against Violence in August 2007 and March 2008 by WAS and SALO.
- Mission Australia Court Support Service volunteers by WAS and SALO.
- ODPP “Foundation skills for lawyers” education sessions by WAS and SALO.
- Legislative issues update presentation by the SALO for Sydney West sexual assault counsellors at the Interagency Sexual Assault Forum April 2008.
- Workshop by Senior WAS Officer (Newcastle) for Social Work students at Newcastle University with solicitor.

#### **Conferences attended by individual WAS staff or SALO included:**

- National Victims of Crime Conference Sydney; October 2007.
- Solicitors Conference December 2007.
- Regional Lawyers Conference 2007.
- *Joint Investigation Response Team Conference*; 30 October 2007.
- BOCSAR Seminar *Confidence in the Criminal Justice System*; 26 November 2007.

#### Interagency Committees and Liaison

The WAS liaises closely with a number of government and non-government agencies. In particular WAS is appreciative of the liaison with police, court staff, sexual assault services, victims services, victim support groups and the range of court support services they work closely with.

WAS represents the ODPP on a number of interagency committees, forums and working groups related to victims and witness issues.

The Assistant Solicitor (Legal) represents the ODPP on a number of interagency committees pertaining to victims and witnesses, including the Victims Advisory Board and chairing the ODPP Sexual Assault Review Committee (SARC).

The SALO also represents the ODPP on several external interagency committees pertaining to sexual assault, child protection and victim issues, including JIRT State Management Group and providing executive support for the SARC.

## Appendix 26 Continued

### Witness Assistance Service Report

The WAS Manager attends the Victims of Crime(VOC) Interagency Forum meetings, the Sexual Assault Review Committee (SARC), the Justice Sector Disability Action Planning Group and participates on a number of reference and working groups. WAS Officers provide valuable feedback for the WAS Manager's Report to both the SARC and Interagency Forum.

The Aboriginal WAS Officer (Newcastle) has been working with Thiyama-Li Aboriginal Family Violence Service in Moree to address counselling needs of for Aboriginal and Torres Strait Islander victims.

A WAS Officer based in Sydney West has continued to attend the Arabic Workers Network bi-monthly meetings.

WAS Officers liaise closely with sexual assault services in their local areas. An interagency Sexual Assault Forum was also hosted by WAS at Campbelltown ODPP in April 2008.

WAS has had liaison meetings with Mission Australia Court Support Service, Salvation Army Court Chaplains at the Downing Centre and the Victims and Witnesses of Crime Court Support Service and Homicide Victims Support Group.

Regional WAS Officers have attended their local JIRT Co-ordination meetings during 2007-2008. However they will no longer attend these meetings as the meetings have been restructured as local JIRT management meetings.

WAS represented the ODPP at the launch of the *Looking after yourself* during court booklet for young people in September 2007 and launch of the *Courtwise* website in October 2007.

#### **National and International Liaison and Networking**

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There were a number of opportunities during the year for national and

international networking and liaison. These included:

- The SALO assisted the ODPP host a Sri Lankan delegation in relation to training on dealing with victims of crime, legislative, policy and practice issues during October 2007.
- The Acting WAS Manager and WAS Manager presented at two information sessions for the Sri Lankan delegation.
- On 20 February 2008 the WAS Manager and SALO presented, alongside the Director, to a delegation from the Chinese Supreme People's Court. This study visit on victims of crime in Australia was part of the China- Australia Human Rights Technical Cooperation Program and was coordinated by the Human Rights and Equal Opportunity Commission.
- A number of prosecution authorities in other state and international jurisdictions have liaised with the ODPP and WAS in regard to developing similar services within their own jurisdictions.
- There has been collaboration with an academic from the University of Sydney in relation to research on CSA matters.
- The Assistant Solicitor (Legal) and SALO met with representatives from the Australian Government to discuss the potential for collaboration between the Office for Women and NSW ODPP to progress the prosecutor aspect of the National Justice Practitioners Training Program.

## Appendix 27

### Overseas Travel Information

1 JULY 2007 – 30 JUNE 2008

Name	Country	Purpose
Nicholas Cowdery AM QC	1 – 6 July 2007, Heads of Prosecution Agency Conference (HOPAC), Montreal, Quebec City (Canada)	Attended Conference whilst on leave
Nicholas Cowdery AM QC	6 – 8 August 2007, IAP Asia-Pacific Regional Conference, Kuala Lumpur (Malaysia)	Attended Conference whilst on leave
Nicholas Cowdery AM QC	14 – 21 September 2007 I A P Conference, Hong Kong (China)	Level of approved sponsorship: - Absent on duty 6 working days - Accommodation contribution \$2641.10 - Air Fare \$5522.20 - Travel Allowance \$1316.90
Nicholas Cowdery AM QC	3 & 4 December 2007 Fijian Prosecutors' Conference	Attended Conference whilst on leave
Nicholas Cowdery AM QC	6 – 9 December 2007 Conference of Australian Directors of Public Prosecutions (CADS), Auckland (NZ)	Level of approved sponsorship: - Absent on duty 6 to 8 December 2007 - Accommodation \$460.00 - Air Fare \$1,807.20 - Travel Allowance \$352.62
Nicholas Cowdery AM QC	8 - 13 June 2008 IAP Asia-Pacific Regional Conference, Seoul (Korea) and High Level Prosecutors' Meeting, Busan (Korea)	Attended Conference whilst on leave

## Appendix 28

### Internal Audit, System Reviews and Program Evaluations

- The Fraud and Corruption Risk Management Action Plan is the subject of continual review and evaluation for effectiveness. Updates/changes are made to the Plan where a deficiency is identified or a policy change impacts upon the work processes of the Office.
- The ODPP Risk Management Action Plan is the subject of an annual review and evaluation for effectiveness. Updates/changes are made to the Plan where a deficiency is identified or a policy change impacts upon the work processes of the Office.
- The Audit and Risk Management Committee commissioned the conduct of a Flextime and Leave Management review. Minor deficiencies were identified and a management plan was prepared and implemented to address these deficiencies. The progress of this plan was reported to the Committee at each meeting.
- A Fraud Health Check survey of staff was completed 31 October 2007. The results identified areas of improvement for consideration by the Committee. A majority of Committee members decided that the sample surveyed was not representative of the Office and no further action was considered.
- The Audit and Risk Management Committee met 3 times between 1 July 2007 and 31 December 2007 and once between 1 January 2008 and 30 June 2008.

## Appendix 29

### Consultants 2007-2008

PAYEE	CATEGORIES	AMOUNT Excl. GST
SPHERE ASSOCIATES PTY LTD	EVALUATING POSITION DESCRIPTIONS	\$1,790
GLASGOW HART PTY LTD	DILAPIDATION REPORT	\$980
POINT ZERO PTY LTD	STRATEGIC PLAN FOR INFORMATION MANAGEMENT TECHNOLOGY RESTRUCTURE	\$44,366
KPMG	IMPLEMENTATION PLAN FOR AUDITOR GENERAL'S RECOMMENDATIONS	\$19,413
TOTAL		\$66,549

## Appendix 30

### 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 continued to implement 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 in 2007/8 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.

#### Witness Assistance Service

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 32.6 positions in the WAS, including 3 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.

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 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. WAS is able to liaise with the NSW Police and advocate special arrangements for witnesses in relation to travel and expenses where necessary. The WAS officers can also assist in planning and implementing education programs for prosecutors in relation to victims and witness issues as well facilitating interagency liaison, and identifying areas for legislative reform and improvement in the criminal justice system.

#### Interagency groups

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

## Appendix 30 Continued

### Ethnic Affairs Priority Statement

- The Sexual Assault Review Committee
- The NSW Police Adult Sexual Assault Interagency Committee
- Child Protection Senior Officers Group
- The JIRT State Management Group

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. In 2008 Macarthur Diversity Services Inc. attended the WAS Sydney West Regional and presented about their services and discussed with WAS Officers referral process and how the two service could complement each other.

#### Training Program

The ODPP Induction course includes a component in relation to anti-discrimination. Components addressing cultural awareness are included in training courses relating to prosecution of sexual assault and matters involving indigenous victims. Specifically in response to the Aboriginal Child Sexual Assault Task Force, a program for ODPP lawyers and WAS officer's addressing issues for aboriginal victims was run in 2007/8. All training programs conducted by the ODPP for its staff have regard to cultural diversity and all training providers are required to adhere to the ODPP Code of Conduct, which requires respect for individual differences and non-discriminatory behaviour. Training courses addressing methods of dealing sensitively with victims and witnesses continue to be run regularly.

#### International Delegations

The ODPP hosted a number of delegations from China, Vietnam, Thailand and Iran in the 2007 – 2008 reporting period.

Presentations to these groups are tailored to suit the delegation. Some groups are made up of prosecutors only, others include judges and academics.

A large number of the delegations are from China. Prosecutors there are particularly interested in the criminal trial process in NSW and more than one translator has struggled to translate the word (and definition) of jury to Chinese groups.

Wherever possible, delegations are addressed by the Director and a senior prosecutor or managing solicitor. Many groups have requested specifically to learn about the Witness Assistance Service while one Chinese group was interested mainly in the way the ODPP maintained its considerable data base of prosecution material to extract statistical data.

Groups from non-English speaking backgrounds have their own translators and the presentations are tailored to offer fair comparisons and contrasts between the NSW criminal justice system and the visitors' justice system. When itineraries allow, the presentations can be co-ordinated with the courts so that the visitors can sit in on a trial.

#### Summary

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 2008) 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 31

### Staff Awards

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

An individual award was presented to:

**Tony Ingegneri**

There were no team awards for 2007.

#### Corporate Services Staff Recognition Awards

The following staff were presented with Corporate Services Staff Recognition Awards in 2007/2008.

Recipient	Branch	Date awarded
Katarina Golik	Personnel Services	11 Jul 2007
Robert Saville	Financial Services	6 Nov 2007
Jaspreet Sodhi (nee Gill)	Personnel Services	6 May 2008
Alan Bailey	Asset & Facilities Management	29 May 2008

#### Code of Conduct

The Code was amended during the 2007/08 financial year. See Appendix 33.

## Appendix 32

### Some Cases Dealt With During The Year

#### **RV MILTON ORKOPOULOS - child sexual assault, possession of prohibited drug, possession of child pornography**

On 8 November 2006 Mr Milton Orkopoulos, the then member for Swansea and Minister for Aboriginal Affairs was arrested in relation to a number of charges relating to the supply of prohibited drug to, and sexual assault of minors. Initially there were two victims.

The police executed a number of search warrants simultaneously at Mr Orkopoulos' home, electoral office, parliamentary office, and a Redfern flat. The search of the flat at Redfern rented by Mr Orkopoulos revealed a 19 page story about homosexual intercourse with males under the age of 16. Forensic testing of this document revealed Mr Orkopoulos' fingerprints throughout the document.

Prior to the arrest the police had arranged for two of the victims to confront Mr Orkopoulos about the crimes committed against them. During the conversation with one of the victims Mr Orkopoulos made it clear that he was in a sexual relationship with that victim for some time.

During the course of the investigation the police identified a further possible victim and approached him. This further victim provided the police with a statement and additional charges were laid against Mr Orkopoulos for supplying prohibited drug and sexual assault of this person when he was a minor.

On 25 July 2007 Mr Orkopoulos was committed to stand trial in relation to a large number of charges relating to homosexual intercourse with two males at a time when they were under the age of 18, indecent assaults on the same two males and on a third male who was a former employee of Mr Orkopoulos.

There was also a charge of supplying prohibited drug to a minor whilst he was visiting Parliament house on a trip related to his school and possession of child pornography.

On 13 September 2007 Mr Orkopoulos was arraigned before the Newcastle District Court and entered a plea of not guilty to all matters. The matters were set down for trial to commence at Newcastle District Court on the 18th of February 2008.

All matters proceeded as a joint trial. The trial indictment contained counts relating to the three victims of sexual misconduct by the offender and drug supply to the same three victims. There was also additional counts relating to the supply of drugs to the school boy at Parliament house and relating to the possession of Child Pornography.

On the 19th of February the trial commenced. Mr Orkopoulos pleaded not guilty to all bar the possession of child pornography. He entered a plea of guilty to that count.

The trial commenced but the jury was discharged after the child pornography was tendered, as one of the jury members found the material too distressing. The trial recommenced on the 20th of February with a new jury.

During the new trial the jury had the child pornography read to them. The three victims gave evidence. There was a large volume of documentary evidence to sift through in order to extract the relevant portions, including numerous telephone message books from Mr Orkopoulos' electoral office, employment records and phone records for Mr Orkopoulos' mobile phone and those of the victims. The mobile phone records revealed extensive telephone contact between Mr Orkopoulos and one of the victims

commencing shortly before that victim turned 18. There were calls made by Mr Orkopoulos to this victim from overseas.

Mr Orkopoulos's case was that he had developed a sexual relationship with one of the victims but did not do so until that victim had turned 18. He admitted that as part of this relationship he supplied this victim with cannabis. He denied any sexual relationship or drug supply to the other victims.

After a number of hours the jury returned a verdict of guilty in relation to most counts.

Mr Orkopoulos was sentenced to an effective sentence of a non parole period of 9 years and 3 months in custody. The overall sentence was 13 years and 11 months. He will be eligible for release on the 18th of May 2017. His overall sentence will expire on the 18th of January 2022.

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

#### **R v Justins & Jennings – murder/ manslaughter/assist suicide**

On 22 March 2006, 71 year old Alzheimer's sufferer, Graeme Wylie, was found deceased at the Cammeray home that he had shared with his de facto partner for 19 years, Shirley Justins. An autopsy revealed that he had died from a massive overdose of the drug pentobarbitone, which is advocated as the suicide drug of choice in euthanasia circles. Wylie, a retired Qantas pilot, had previously expressed his support for euthanasia.

Wylie had been diagnosed with Alzheimer's disease in 2003, after suffering dizziness and other symptoms for some years. Wylie's disease progressed, and at

## Appendix 32 Continued

### Some Cases Dealt With During The Year

his last Mini Mental State Examination in January 2005 he scored 12 out of 30. This meant that he no longer had the ability to do simple tasks such as name the day, date or name a common object such as a pencil. The score indicated that Wylie suffered from severe cognitive impairment by that time.

In September 2005 Justins took Wylie for medical treatment for superficial, self inflicted lacerations to his wrist. In October 2005 Justins sent an application to the Swiss organisation Dignitas for legal euthanasia in that country. Dignitas had some doubts about the cognitive ability of Wylie and so they asked Dr Nitschke to assess him. Dr Nitschke is a well known advocate of euthanasia through his work with his group Exit International. When Dr Nitschke assessed Wylie on 16 November 2005, Wylie could not recall his date of birth or number, names or sex of his children. Dignitas rejected the application on 9 December 2005 as the organisation held concerns about Wylie's mental capabilities. Wylie was admitted to hospital on 2 February 2006 suffering from a pain to his hip and shoulder and he remained there for some weeks.

Jenning had been a friend of Wylie's for some 30 years and had got to know Justins through their association. She was present when police first attended the house after Wylie died.

Justins and Jennings were interviewed by police and denied having anything to do with Wylie's death. They suggested that a possible cause of death was a heart attack caused by the Alzheimer's medication that Wylie was taking. They presented a New York Times newspaper article to support this theory.

The trial commenced on 5 May 2008 with a count of murder for Justins and an alternative count of aid and abet suicide. Jennings was charged with accessory

before the fact to murder, aid and abet suicide and importation of pentobarbitone. Counsel for both accused opened with a version of events consistent with that provided to police.

The Crown case was that Justins had committed the offence for financial benefit. Jennings's motives for committing the offence were ideological as she had been an active member of euthanasia movement, Exit International for some years.

Some time after the commencement of the trial Justins entered a plea to aid and abet suicide and Jennings entered a plea to importation of the pentobarbitone. These pleas were not accepted by the Crown in full satisfaction of the indictment and the trial continued.

Evidence was given by the daughters of the deceased to the effect that Wylie was suffering greatly from the effects of the disease. Medical evidence from specialists who treated Wylie's Alzheimer's gave evidence consistent with this. The Crown also called an expert geriatrician Dr Peisah, who gave evidence about Wylie's likely cognitive ability at the time of his death.

A further aspect of the case was that Wylie's will had been changed on 15 March 2006. Justins had made the appointment and attended the solicitor's office with Wylie. The will was changed from a three way split between Justins and the two daughters to all but \$200,000 of the estate going to Justins. The estate was valued at around \$1.8m. Justins took Wylie to a medical centre to obtain a medical certificate to support Wylie's testamentary capacity. This certificate was inconsistent with one written by the same doctor six months earlier.

Both of the accused gave evidence. Justins gave a full account of Wylie's mental

decline and his state of health at the time of his death. She agreed that Wylie was only speaking very rarely at the time of his death and could no longer articulate full sentences. She gave an account of her involvement in Wylie's death, however maintained that she did not know that Wylie lacked the cognitive capacity to commit suicide. Under cross examination she agreed that she now believed that he had in fact lacked that capacity at the time of his death.

Jennings gave evidence that she had travelled to Tijuana, Mexico in March 2006 where she obtained the drug Nembutal from a veterinary supply shop and gave it to Justins. She believed that Wylie had the capacity to commit suicide because he was able to converse with her about current affairs until his death. This evidence was inconsistent with the evidence of the co-accused and the evidence of the daughters. She denied that she had assisted Justins in any way because she was not present at the time of his death. There was evidence in the trial of emails that Jennings had written to a friend after Wylie's death asking for assistance finding news topics that she and Wylie "would" have discussed.

After extensive legal argument it became apparent that manslaughter (already a statutory alternative to murder) should be added to the indictment to make things clearer for the jury. The Crown proceeded on the basis of criminal negligence manslaughter.

The jury retired to consider their verdict with detailed legal directions.

After four days of deliberations the jury returned a verdict on 19 June 2008 of guilty to manslaughter for Justins and guilty of accessory to manslaughter for Jennings (along with the importation offence which Jennings had already pleaded guilty to). Sentencing is to take place in November

## Appendix 32 Continued

### Some Cases Dealt With During The Year

2008 for Justins. It is expected that strong subjective circumstances will be presented on behalf of the offender, such as her advancing age, lack of criminal history and good character.

#### R v Michael Rex Clark - murder

On 29 April 2005, Dick Clark was shot whilst in the rear garden of his home at Bexley. Two bullets were fired. The first struck a glancing blow to the left side of his head. The second was fired at close range to the left side of his forehead. It penetrated his skull, fracturing the base of the skull and other facial bones. The victim staggered a short distance before collapsing on the lawn. About an hour later he was found unconscious by his partner, Ms Jessica Chung. Ms Chung had returned home at about 12.30 am on 30 April 2005. An ambulance was called. Dick Clark was taken to the St George Hospital but he never regained consciousness and died later that afternoon.

As a result of lawfully obtained telephone intercepts and listening devices the deceased's son, Michael Rex Clark, and the deceased's grandson, Benjamin Richard Clark, were charged with the murder of Dick Clark.

The offender Ben Clark pleaded guilty to the charge of Murder in August 2007. He was sentenced by Patten AJ to a term of imprisonment of 20 years with a non parole period of 14 years.

Michael Clark, however, pleaded not guilty.

Ben Clark lived with his father, Michael Clark, at Faulconbridge. At about 6.30 pm on 29 April 2005, Ben Clark left Faulconbridge by motorcycle for Dick Clark's home. At 8.23 pm and again at 8.26 pm, he sent text messages to his father. Michael Clark was then in a restaurant at Richmond with his wife, stepdaughter and her boyfriend. At 8.27 pm, Michael Clark

telephoned Ben. They spoke briefly. Ben was then in the Kogarah area, very close to Dick Clark's home. It was a Friday night. Dick Clark was in the habit of watching the football on a Friday evening.

At some point soon after 8.27 pm, Ben Clark rode his motorcycle to his grandfather's home. He took the precaution of parking in an adjacent street some distance away. He was armed with a loaded .38 calibre handgun. His grandfather invited him into the house. Together they sat and watched the football on television, each drinking beer.

At about 11.10 pm Ben Clark left the house to go home. He walked up the back steps towards the back gate. His grandfather came outside to see him off. He was standing at the bottom of the steps when Ben Clark turned towards him and fired the first bullet. It was immediately clear that the first bullet had not killed him. Ben Clark descended several steps, moving towards his grandfather, and discharged the gun a second time, directly into his grandfather's forehead, at close range. This was the fatal shot.

Ben Clark then made his escape and rode back to Faulconbridge. Between 11.44 pm and 11.53 pm, there was an exchange of messages and a telephone call between Ben and Michael Clark. Ben arrived home soon after.

Warrants were obtained for the installation of listening devices into the accused's home on 8 July 2005. Based upon the conversations between Michael and Ben Clark, it was the Crown case that Michael and Ben Clark had engaged in a joint criminal enterprise whereby Ben Clark would shoot Dick Clark when Michael Clark was well away from the murder scene and thus provided with a seemingly plausible alibi. Michael Clark, according to the Crown, needed that insulation because

he had an obvious motive. He was in poor financial circumstances and was a beneficiary under Dick Clark's Will.

It was the defence case that Ben Clark was acting alone and out of fear of Dick Clark. There had been a number of incidents five years earlier when Ben Clark was working for Dick Clark. They took place during two weeks when he was at Dick Clark's workshop at Granville in late 2000, or early 2001. His grandfather had repeatedly assaulted him sexually. The recorded conversations between Ben Clark and Michael Clark included Ben Clark confessing to Michael Clark that he had murdered Dick Clark.

Ben and Michael Clark both gave evidence at Trial that Ben Clark acted alone and that Michael Clark was not aware of Ben Clark's involvement until he confessed to Michael Clark approximately two weeks before Ben Clark's arrest.

The jury, by their verdict, clearly rejected Ben Clark's evidence and the explanation put forward by the offender, Michael Clark. The jury found Michael Clark guilty of the murder of Ernest Clark.

Michael Clark was sentenced to 30 years imprisonment with a non parole period of 24 years.

#### R v Rodrigo Diaz – assault occasioning actual bodily harm, grievous bodily harm, aggravated detain for advantage, sexual intercourse without consent, attempted sexual intercourse without consent

The offender, Rodrigo Diaz and the complainant had been in a relationship for two months prior to the offences. After a series of events at the complainant's home between 20 – 23 January 2005, the offender was charged with three counts of malicious damage, one count of assault occasioning actual bodily harm, one count of maliciously inflicting grievous bodily harm

## Appendix 32 Continued

### Some Cases Dealt With During The Year

with intent and one count of aggravated detain for advantage. As a result of these offences the complainant was admitted into hospital. The complainant was released into the care of the offender at her home. Subsequently, the offender was charged with one count of assault occasioning actual bodily harm, one count of aggravated detain for advantage, five counts of sexual intercourse without consent and one count of attempted sexual intercourse without consent, all relating to incidents that took place between 27 January – 1 February 2005, while the complainant was in the offender's care.

On 21 January 2005, the offender started looking through the complainant's mobile phone messages. An argument followed and the offender pulled out the SIM card, threw the phone into the pool and then destroyed the complainant's SIM card.

The offender started to verbally abuse the complainant. The complainant left the room to use the bathroom. She then heard the offender yelling from outside. He opened the bathroom door holding the complainant's laptop. The offender had discovered a photo of a male on the laptop and demanded that the complainant explain the photo. The complainant told the offender the image was of an ex-boyfriend. The offender became enraged and threw the laptop on the tiled floor of the bathroom, before picking it up and throwing it at the complainant hitting her legs. It then smashed into several pieces on the floor.

The offender has approached the complainant who had moved to the lounge and began to hit her in the face with both clenched fists and open hands, which resulted in the complainant's jaw being broken. This continued over a period of time. The complainant tried to escape but was prevented from leaving.

The offender later entered the complainant's bedroom and smashed her digital camera against the wall.

On 22nd of January 2005 offender ordered the complainant to leave a letter to her flatmate about going away Byron Bay on the table and left the offender's mobile phone number as the only way to contact her.

The offender made the complainant drive him to his unit in Glebe. On arrival the offender became affectionate towards the complainant and apologised for his behaviour. Later that night the offender eventually agreed to take the complainant to hospital on the condition that she tells the doctor that she had fallen down the stairs.

Initial examination of the complainant revealed that she had a broken jaw, a fracture of the skull and possible internal bleeding of the head. The complainant was admitted to Hospital for treatment and was informed that she required surgery for her jaw.

The complainant was discharged on 27 January. The offender made the complainant drive him to his unit in Glebe.

During the night, the offender has grabbed the complainant around her throat and began to choke her. He did this with one hand and punched the complainant in the throat with the other. This caused the complainant to start to cough. He grabbed her face by the jaw area, causing the complainant immediate pain.

Between the 29 January and the 31 January 2008 the offender had sexual intercourse with the complainant without her consent on five separate occasions.

On a further occasion the offender made the complainant attempt to perform oral sex with her broken jaw.

On 31 January 2005 the offender and complainant went to pharmacy to buy bandages. A friend of the complainant saw her and took her to Randwick Police Station. The complainant was again admitted to hospital and the accused was later arrested.

As a result of the offences the complainant incurred very serious injuries including a broken jaw, nasal fracture, multiple bruising on her legs and arms, bruising to her brain and mild concussion

On the 21 November 2005 the matter was listed for Trial. Prior to the Trial commencing the offender pleaded guilty to one count of maliciously damaging the complainant's mobile phone and one count of maliciously inflicting grievous bodily harm with intent to inflict grievous bodily harm, namely that he broke the complainant's jaw.

That trial was aborted.

On the 24 April 2006 the trial and the complainant began giving evidence but the jury was discharged on 1 May 2006 after one of the jurors became too ill to continue.

On the 3 May 2006 a new jury was empanelled and the trial commenced for a third time. On 11 May 2006 the offender sacked his counsel. The trial recommenced with new counsel for the offender on 22 May 2006. On the 5 June 2006 the trial resulted in the acquittal of the offender for one count of larceny but the jury were unable to reach a verdict in relation to the other counts.

On the 15 November 2006 a new trial commenced and the complainant gave evidence for a fourth time. On 1 December 2006 the jury returned a verdict of guilty in relation to one count of assault occasioning actual bodily harm but they were unable to reach a verdict in relation to the other counts.

## Appendix 32 Continued

### Some Cases Dealt With During The Year

As a result of cases like this, amendment was made to the Criminal Procedure Act to allow a complainant's evidence to be replayed in the event a jury was unable to reach a verdict in a previous trial.

On the 6 June 2008 a new trial commenced. Pursuant to the change in legislation the complainant's evidence which had been video recorded in the fourth trial was played as the complainant's evidence. The defence case at trial was that the offender and complainant had engaged in consensual sadomasochistic sex. This was rejected by the jury who on 28 June 2007 returned a verdict of guilty in relation to the remaining 11 counts.

The matter has proceeded to Sentence. A significant issue at sentence has been the offender's alleged use of the anti-depressant Efexor and its association, if any, with the above offences.

#### **R v Paul Raymond Evans – child sexual assault**

Paul Raymond Evans was a priest and teacher at Boys Town during the 1970's and 80's. Boys Town was then primarily a home for troubled boys, some of whom were there by court order, others placed or fostered there by their families. Nearly all of the boys had learning or behavioural difficulties. They lived at Boys Town full time during the 70's, but in the 80's were expected to go home and spend the weekends with their family. During that time, Evans was chiefly involved as a dorm master and in organising outdoor activities for the boys, although he had some teaching duties.

The indictment against Evans alleged that he sexually interfered with seven boys in his care either in their dorm, whilst on activities or whilst camping with him.

In around 2003, the child of one of the complainants was sexually assaulted. This unrelated event was the catalyst

for that complainant to investigate what could be done about his own boyhood abuse. He was eventually referred to the "Beyond Healing" programme run by the Catholic Church. The Beyond Healing process involved the church hiring a private investigator. The investigator found the complaints proven against Evans and an internal appeal was unsuccessful. The complaints and the evidence from the investigation were referred to police, who started seeking out all the boys they could from the relevant period. The number snowballed as more and more students alleged sexual contact at the hand of Evans.

The complaints made by the boys (now grown men) were strikingly similar. All the boys were around 14 years of age at the time of the sexual assaults. In many cases, Evans would take the boy from their bed to his cubicle in the dorm and perform sexual acts on them, or have them perform sexual acts on him. The evidence given by the boys was that these acts occurred several nights a week whilst under his care, and generally stopped when they moved into an older dorm.

Boys Town organised daily activities for the boys, and the most popular of these were the outdoor activities – bushwalking, water skiing, spearfishing, surfing etc – most of which were run by Evans. The Crown alleged that Evans had a special group of boys, including many of the boys on the indictment, who would receive special treatment. These chosen boys were allowed first preference of the outdoor activities. Evans also took these boys camping on weekends, without any of the other boys, on trips that were not part of the Boys Town programme. On these trips he would allow them other special treats such as driving cars, despite the fact they were not old enough.

Many of the boys alleged that sexual assaults had occurred whilst away on the

weekend activities, generally in their tents at night.

Many of the boys were later given further special treats in order, the Crown alleged, to remain quiet about the sexual assaults. One boy was given a motorbike, and two boys were taken flying by Evans, who had become a pilot whilst suspended from teaching due to (unrelated) allegations of sexual assault around the same time. One boy gave evidence at the trial that as an adult he contacted the accused in later years to blackmail him for the sexual assaults. Evidence was led to show that the accused did in fact pay small amounts of money to that boy shortly after the demand.

The story of another boy warrants particular mention – the earliest complainant in time. Fostered by his parents to Boys Town, the boy gave evidence that he was initially molested by the principal of the school (since deceased). At around the same time, Evans also started sexually assaulting him. The boy ran away from Boys Town and was caught by police. He told the police of the sexual abuse, but was not believed. He was returned to Boys Town and the abuse continued. He ran away again, this time telling his father, an alcoholic. His father laughed at him, so the boy burnt the house down. He was again returned to Boys Town. The abuse continued at the hands of Evans, and the boy dripped burning plastic onto his leg, and tied a tourniquet around the leg, in order to remove what he perceived to be the stain caused by the bodily fluids of the accused.

Initially, four boys were identified by police through the church investigation, all of them from the 1980's. The Crown sought to go to trial with those four complainants. Publicity surrounding the committal of those initial charges caused further boys to approach police, from an earlier period.

## Appendix 32 Continued

### Some Cases Dealt With During The Year

One boy coincidentally simply decided to call the police from interstate to investigate whether he could pursue charges after 20 years. All the further boys became tendency witnesses, but the first trial was aborted when defence sought time to investigate the claims made by the new witnesses.

As a result, the Crown determined to join all the matters together – making the boys complainants in their own right. That meant a total of seven complainants, plus one tendency witness who had alleged similar acts whilst the accused was teaching him in Victoria. An ex officio indictment was presented. It included 20 separate counts of various forms of sexual assault.

At trial, witnesses, including clerical and teaching staff as well as social workers were called to explain the makeup of staff and students at Boys Town, because these varied considerably over the approximately 15 years spanned by the indictment. Staff gave evidence confirming the special group of boys favoured by Evans. All the complainants and some of the members of their families gave evidence, including of the fact that Evans had taken boys away regularly on weekends by himself. Because in some cases their evidence was nearly 30 years after the fact, witnesses were scattered around the country, and some gave evidence from overseas.

Evans gave evidence in his defence. He claimed, in essence, that the boys were variously either mistaken or lying for financial advantage. He admitted “cuddling” and “comforting” the boys, many of whom he had recorded in apparently contemporaneous notes as needing “TLC”. He categorically denied all of the allegations. In particular, he gave evidence that he never had a special group of boys, had never taken any of the boys camping on weekends other than as part of organised Boys Town activities, and did

not provide them with gifts in order to buy their silence.

Having heard about five weeks of evidence, the jury retired to consider their verdict. After nearly seven days of deliberations, they returned 18 verdicts of guilty, and two verdicts of not guilty – at least one guilty verdict in respect of each of the complainants. The accused, who had been on continuous bail since his initial charging in 2005, was remanded into custody to await sentencing.

#### **R v Robert Black FARMER - Detain for Advantage; Cause Grievous Bodily Harm with Intent to Murder; Malicious Damage by Fire with Intent to Endanger Life**

On 9 November 2006, shortly after 2:00 pm, Lauren Huxley returned home after attending TAFE. At 4:39 pm a triple-0 call was made to the fire department notifying them the Huxley residence was on fire. The Crown alleged that at some point between those times, Robert Farmer, who lived within a few blocks of the Huxleys, entered the house, where he detained Ms Huxley before she escaped and fled into the garage toward the rear of the property. Farmer followed her and with some fibro cutters that he found in the garage, beat Ms Huxley around the head and body, causing severe skull fractures and injury to the brain. Ms Huxley was left unconscious but still breathing.

Using a fuel tin found in the garage, Farmer poured petrol over Ms Huxley then re-entered the house and proceeded to pour petrol around the kitchen and living area. Before leaving he left the toaster on the stove top, and left the stove top on. This resulted in a fire which burnt a significant portion of the kitchen and roof before the arrival of the fire department. Police also attended, and they found Ms Huxley in the garage, after which she was taken to Northmead Hospital, where medical

personnel estimated that she was close to death.

Ms Huxley spent weeks in intensive care and then approximately 4 months in the hospital's brain rehabilitation unit. She continues to be affected by the injuries inflicted on her.

That evening Farmer displayed strange and agitated behaviour to his girlfriend and mother. Two days later he arrived at a friend's house in Bargo, where he stayed for 2 weeks, watching television and rarely leaving the house. He told his friend that he had done something wrong but could not tell him what it was.

During the crime scene investigation police collected numerous DNA swabs which were taken for testing at the Division of Analytical Laboratories (DAL).

Most of the swabs, including from the fibro cutters and the fuel tin lid, had a mixture of DNA, that of Ms Huxley and an unknown male. A number of partial DNA profiles (where not every DNA marker could be identified) of the unknown male were obtained. A search of the DAL DNA database using a partial profile resulted in a cold link with Farmer's profile. Police commenced further investigation.

When told by his friend that the police were looking for him in relation to the Huxley bashing, Farmer left the house and “went bush” for 4 days. On returning to his friend's house he was arrested by police. He denied any involvement.

A full profile (where every marker is identified) was later obtained from a swab that had been taken from the eastern bedrail in Ms Huxley's bedroom. The sample was not mixed, and was the same profile as that of Farmer.

Between 11 and 29 February 2008, legal argument was conducted in the Supreme Court on the admissibility of the mixed swabs and the partial DNA profiles

## Appendix 32 Continued

### Some Cases Dealt With During The Year

obtained from them. Extensive evidence, including statements obtained from forensic biologists in other states and in New Zealand, was given by both Crown and defence witnesses in relation to the interpretation of DNA profiles, and in particular, the identification of markers from a minor contributor to a mixed profile. All of the evidence sought to be used by the Crown was ultimately admitted by the trial judge.

The trial commenced on 2 April 2008, and interpretation of the DNA evidence was again a critical issue. On 15 May 2008 Farmer was found guilty of all counts. On 2 June 2008 he was sentenced to a total term of imprisonment of 24 years 6 months, with a non parole period of 20 years.

# Appendix 33

## Code of Conduct

### 1. THE NEED FOR A CODE

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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

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

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

The following principles will guide the work of ODPP officers.

### 3. ACCOUNTABILITY

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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

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Officers will promote confidence in the integrity of the ODPP's operations and processes. They will act officially

in the public interest and not in their private interests. A sense of loyalty to colleagues, stakeholders, family, friends or acquaintances is admirable; however, that sense of loyalty cannot diverge from, or conflict with, public duty. Officers will behave in a way that does not conflict with their duties as public officials.

### 5. EFFECTIVENESS AND EFFICIENCY

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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

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

### 7. RESPONSIVE SERVICE

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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

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

## Appendix 33 Continued

### Code of Conduct

#### 9. TO WHOM DOES THE CODE APPLY?

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The Code applies to:

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

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

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

#### 10. HOW ARE ETHICAL ISSUES RESOLVED?

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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

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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

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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

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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

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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

## Appendix 33 Continued

### Code of Conduct

- include decisions in relation to plea negotiations, elections and Form 1's;
  - give dispassionate advice;
  - be politically and personally impartial in their professional conduct
  - take all reasonable steps to avoid and report any conflicts of interest: personal, pecuniary or otherwise;
  - report any professional misconduct or serious unprofessional conduct by a legal practitioner, whether or not employed by the ODPP;
  - notify to the Director, as soon as practicable, the fact and substance of any complaint made against the officer to the Legal Services Commissioner, NSW Bar Association or NSW Law Society, pursuant to part 10 of the Legal Profession Act 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 the ODPP Information Security Policies and Guidelines;
  - be aware of and adhere to the ODPP Policy and Guidelines on the Use of Email;
  - not create, knowingly access, download or transmit pornographic, sexually explicit, offensive or other inappropriate material, using email, or the internet (examples of such material include offensive jokes or cartoons (sexist/racist/smutfy), offensive comments about other staff members and material which is racist, sexist, harassing, threatening or defamatory). If such material is received, immediately delete it and advise the line manager or the Senior Crown Prosecutor, as appropriate;
  - use official facilities and equipment for private purposes only when official permission has been given. Officers must ensure that the equipment is properly cared for and that their ability and that of others to fulfil their duties is not impeded by the use of the equipment. Occasional brief private use of email or the internet is permissible, provided that this does not interfere 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;

## Appendix 33 Continued

### Code of Conduct

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

#### 17. OFFICE MOTOR VEHICLES

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

#### 18. SECONDARY EMPLOYMENT

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

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

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

#### 19. POST SEPARATION EMPLOYMENT

Officers must not misuse their position to obtain opportunities for future employment. Officers should not allow themselves or their work to be influenced by plans for, or offers of, employment

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

#### 20. ACCEPTANCE OF GIFTS OR BENEFITS

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

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

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

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

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

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

Any such gifts should only be accepted where refusal may offend and there is no possibility that the officer might be, or might appear to be, compromised in the process. This concession only applies to infrequent situations and not to regular acceptance of such gifts or benefits. No gifts or benefits exceeding \$50 may be accepted without the prior approval of the appropriate senior executive officer.

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

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

## Appendix 33 Continued

### Code of Conduct

must be reported in accordance with the procedures for notification of corrupt conduct

#### 21. CONFLICTS OF INTEREST

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

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

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

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

- an officer has a personal relationship with a person who is involved in a matter that he/she is conducting (e.g. the victim, a witness, a police officer, the defendant or defendant's legal representative). This has the potential to compromise an officer's ability to make objective professional judgments; for example as to the extent of prosecution disclosure to the defence;
- secondary employment or financial interests that could compromise an officer's integrity or that of the ODPP;

- party political, social or community membership or activities may conflict with an officer's public duty (e.g. prosecuting someone known to be a member or participant of the same or a rival political party, social or community organisation);
- personal beliefs or those of others are put ahead of prosecutorial and ODPP obligations;
- an officer or friend or relative has a financial interest in a matter (including goods and services) that the ODPP is dealing with.

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

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

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

[http://www.ombo.nsw.gov.au/publications/Publist\\_pdfs/fact%20sheets/PSA\\_FS3\\_Conflict.pdf](http://www.ombo.nsw.gov.au/publications/Publist_pdfs/fact%20sheets/PSA_FS3_Conflict.pdf)

#### 22. REFERENCES

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

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

If an officer becomes bankrupt, or makes a composition, arrangement or assignment

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

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

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

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

## Appendix 33 Continued

### Code of Conduct

conduct by police officers are reported directly to the appropriate agency.

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

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

#### 24. CRIMINAL CONDUCT

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

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

Any officer directly witnessing criminal conduct by another officer must report it immediately to police if outside the

workplace and, if inside the workplace, to his or her manager or supervisor to be dealt with as above.

#### Appendix A.

### Relevant legislative, professional, administrative and industrial requirements and obligations

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

- Director of Public Prosecutions Act 1986
- Public Sector Employment and Management Act 2002 No 43
- Crown Prosecutors Act 1986
- Legal Profession Act 2004
- Victims Rights Act 1996
- Independent Commission Against Corruption Act 1988
- Protected Disclosures Act 1994
- Anti Discrimination Act 1977
- Occupational Health and Safety Act 2000
- Public Finance and Audit Act 1983
- State Records Act 1998
- Freedom of Information Act 1989
- Privacy and Personal Information Protection Act 1998
- (Cth) Racial Discrimination Act 1975
- (Cth) Sex Discrimination Act 1984

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

- Director's Prosecution Policy and Guidelines
- Professional Conduct and Practice Rules, Law Society of NSW
- NSW Bar Rules
- AASW Code of Ethics and NSW Psychologists Board Code of Ethical Conduct
- Solicitors Manual
- Sentencing Manual
- Child Sexual Assault Manual
- Witness Assistance Service Manual
- NSW Solicitors Manual (Riley)
- Personnel Handbook
- ODPP Policies (refer to DPPNet)
- Protected Disclosures Procedures
- Guarantee of Service
- Corporate Plan
- Charter of Principles for a Culturally Diverse Society
- Conflicts of Interest Guidelines

## Appendix 34

### 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.

In 2007-2008, an internal ODPP Disability Action Plan Implementation Committee was formed to facilitate the development of the ODPP Disability Action Plan. The Committee met during the year to develop the Office's plan, in line with the Department of Aging, Disability, and Homecare (DADHC) guidelines. Consultation with key stakeholders will be undertaken during 2008-09.

Actions and achievements during the 2007-2008 financial year include:

- An identification system was developed by the Sexual Assault Review Committee and NSW Police Force representatives to assist police

officers in identifying victims of crime for referral to WAS at the ODPP. The process includes identifying victims of crime who have a disability and other specific needs. The process has been documented in the **NSW Police Handbook, Chapter V Victims, Specialist and/or support services – ODPP** and encourages police officers to refer particular victims or witnesses to WAS.

- Emergency Procedures were reviewed and modified to provide for safe evacuation of persons with a disability. In multi-tenancy premises occupied by the ODPP the evacuation procedures are managed in the majority of cases by a coordinated approach of all tenants by the managing agents. Where managing agents have not implemented evacuation procedures, the ODPP has prepared evacuation procedures for ODPP staff and stakeholders.

- Floor and fire warden training was undertaken by staff and included training for evacuation of people who are mobility impaired.
- Facilities and furniture were modified during fitouts to accommodate staff who have a disability. The Office continued to provide equipment as required, such as portable 'ergo-tilts' and hands free telephones during the year.

Recommendations were made from security reviews of States Courthouses. Consultation continues with Attorney General's Department and local registrars to implement access improvements

## Appendix 35

### ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Advisory Committee for the NSW Sexual Assault Conference 2008	Amy Watts
Advisory Committee to the DNA Laboratory	Nicholas Cowdery AM QC
Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders)	Johanna Pheils
Bar Association: Criminal Law Committee	Margaret Cunneen SC Elizabeth Wilkins SC Sally Dowling Sarah Huggett Frank Veltro
Bar Association: Human Rights Committee	Nicholas Cowdery AM QC
Bar Association: New Barristers Committee	Kara Shead
Bar Association: Professional Conduct Committees	Margaret Cunneen SC Mark Hobart SC Natalie Adams
Bar Association: Various other Committees	Peter Miller (Indigenous Barristers Strategy Working Party)
Bar Council	Margaret Cunneen SC
Child Protection Senior Officers Group (progressing recommendations in Child Death Review Team reports)	Amy Watts
Conference of Australian Directors of Public Prosecutions	Nicholas Cowdery AM QC
Court of Criminal Appeal/Supreme Court Crime Users Group	David Arnott SC Dominique Kelly Michael Day
Court Security Committee	John Kiely SC
Criminal Case Processing Committee	Claire Giroto Craig Hyland
Criminal Justice Research Network Committee	Helen Cunningham
Criminal Justice System Chief Executive Officers' Standing Committee	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers – Senior Officers' Group	Johanna Pheils
Criminal Law Committee of the Law Society of NSW	Janis Watson-Wood
Criminal Listing Review Committee (reviewing listings in the District Court)	Claire Giroto

## Appendix 35 Continued

### ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
DNA Review Panel	Nicholas Cowdery AM QC
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 Council	Patrick Barrett
Inter-agency Exhibit Management Committee	Claire Giroto Johanna Pheils
International Association of Prosecutors	Nicholas Cowdery AM QC
Joint Investigation Response Teams State Management Group	Amy Watts
Justicelink Inter-agency Group	Colette Dash Claire Giroto Craig Hyland
Justice Sector Disability Action Plan Senior Officers Group	Lee Purches Katarina Golik
Law Council of Australia Criminal Law Committee	Stephen Kavanagh
Law Council of Australia Human Rights Observer Panel	Nicholas Cowdery AM QC
Local Court Rules Committee	Janis Watson-Wood
Magistrates Early Referral Into Treatment (MERIT) – Regional Planning Group for South Western Sydney	Jim Hughes
Magistrates Early Referral Into Treatment (MERIT) – Statewide Steering Group	Jim Hughes
Mid Size Agency Forum (MIDAS)	Keith Holder
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 Public Sector Legal Manager's Forum	Stephen Kavanagh Claire Giroto

## Appendix 35 Continued

### ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
NSW Sentencing Council	Nicholas Cowdery AM QC
OHS Justice Forum (Court User Forum)	Keith Holder
Police Adult Sexual Assault Interagency Committee	Amy Watts
Police Cold Case Justice Project	Patrick Barrett
Police Integrity Commission Liaison Group	Marianne Carey
Police–ODPP Prosecution Liaison Standing Committee	Graham Bailey Claire Giroto Jim Hughes Craig Hyland Stephen Kavanagh Johanna Pheils Peter Miller Janis Watson-Wood
Professional Standards Liaison Group	Marianne Carey
Public Sector Rehab Co-ordinator Network	Keith Holder
Senior Officers Working Group for Reviewing Court Preparation	Lee Purches Deborah Scott
Serious Vilification Working Group	Beatrice Scheepers
Sexual Assault Review Committee	Madeline Khan Julie Lannen Johanna Pheils Deborah Scott Amy Watts Laura Wells
Standing Inter-agency Advisory Committee on Court Security	Stephen Kavanagh Claire Giroto
Supreme Court, Darlinghurst Court Complex Renovation Users Committee	Patrick Barrett
Trial Efficiencies Working Group	Stephen Kavanagh Mark Tedeschi QC
University of Sydney Institute of Criminology Advisory Committee	Nicholas Cowdery AM QC
Victims Advisory Board under the Victims Rights Act	Johanna Pheils
Victims of Crime Inter-agency Committee	Lee Purches Amy Watts

## Appendix 35 Continued

### ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Victims of Crime Inter-agency Sub-committee for reviewing the Standards for Providing Court Support Services for Victims of Crime	Lee Purches
Video Conferencing Steering Committee	Johanna Pheils
Working Group examining Part 9 of LEPR	Johanna Pheils

### State-Wide Prosecution Liaison Groups

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

## Appendix 36

### Consumer Response

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

The table below represents the results of the past seven surveys conducted by the Office. It has been clear from comments made in all surveys that the defining issue in relation to satisfaction with the service provided by the Office is the level of communication received from the Office. Results of surveys conducted indicate that

case outcomes have no significant impact on service satisfaction levels.

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

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

## Acronyms

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

# Audited Financial Statements 2007–2008



## OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

### Financial Statements for the Year Ended 30 June 2008

#### Statement by the Director

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

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the *Public Finance and Audit Act 1983*, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the *Public Finance and Audit Regulation 2005* and the Treasurer's Directions;
- (b) the financial statements exhibit a true and fair view of the financial position and transactions of the Office; and
- (c) there are no circumstances, which would render any particulars included in the financial statements to be misleading or inaccurate.



N R Cowdery AM QC  
Director of Public Prosecutions

21 October 2008



GPO BOX 12  
Sydney NSW 2001

## INDEPENDENT AUDITOR'S REPORT

### Office of the Director of Public Prosecutions

To Members of the New South Wales Parliament

I have audited the accompanying financial report of the Office of the Director of Public Prosecutions (the Office), which comprises the balance sheet as at 30 June 2008, the operating statement, statement of recognised income and expense, cash flow statement, a summary of compliance with financial directives for the year then ended, and a summary of significant accounting policies and other explanatory notes.

#### Auditor's Opinion

In my opinion, the financial report:

- presents fairly, in all material respects, the financial position of the Office as at 30 June 2008, and its financial performance and cash flows for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- is in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2005.

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

#### Director's Responsibility for the Financial Report

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

#### Auditor's Responsibility

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

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

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

My opinion does *not* provide assurance:

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

#### Independence

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

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



Peter Carr  
Director, Financial audit Services

21 October 2008  
SYDNEY

## Operating Statement

### for the Year Ended 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>Expenses excluding losses</b>				
Operating expenses				
Employee related	2(a)	76,391	73,974	74,886
Other operating expenses	2(b)	13,481	13,245	13,234
Depreciation and amortisation	2(c)	3,872	3,877	4,426
Other expenses	2(d)	2,965	3,410	2,911
<b>Total Expenses excluding losses</b>		<b>96,709</b>	<b>94,506</b>	<b>95,457</b>
<b>Revenue</b>				
Sale of goods and services	3(a)	168	67	139
Investment revenue	3(b)	349	207	253
Grants and contributions	3(c)	2,629	-	107
Other revenue	3(d)	336	260	288
<b>Total Revenue</b>		<b>3,482</b>	<b>534</b>	<b>787</b>
<b>Gain/(Loss) on disposal</b>	4	19	5	20
<b>Net Cost of Services</b>	18	<b>93,208</b>	<b>93,967</b>	<b>94,650</b>
<b>Government Contributions</b>				
Recurrent appropriation	5	82,733	82,866	85,580
Capital appropriation	5	1,302	1,302	1,258
Acceptance by the Crown Entity of employee benefits and other liabilities	6	6,386	6,973	6,037
<b>Total Government Contributions</b>		<b>90,421</b>	<b>91,141</b>	<b>92,875</b>
<b>SURPLUS/(DEFICIT) FOR THE YEAR</b>		<b>(2,787)</b>	<b>(2,826)</b>	<b>(1,775)</b>

The accompanying notes form part of these financial statements.

## Statement of Recognised Income and Expense

### for the Year Ended 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>TOTAL INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY</b>		<b>-</b>	<b>-</b>	<b>-</b>
Surplus / (Deficit) for the Year		(2,787)	(2,826)	(1,775)
<b>TOTAL INCOME AND EXPENSE RECOGNISED FOR THE YEAR</b>		<b>(2,787)</b>	<b>(2,826)</b>	<b>(1,775)</b>

The accompanying notes form part of these financial statements.

# Balance Sheet

as at 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>ASSETS</b>				
<b>Current Assets</b>				
Cash and cash equivalents	8	3,593	2,810	2,949
Receivables	9	2,430	2,508	2,559
<b>Total Current Assets</b>		<b>6,023</b>	<b>5,318</b>	<b>5,508</b>
<b>Non-Current Assets</b>				
Plant and equipment	10	9,760	9,426	10,811
Intangible assets	11	1,002	924	2,114
<b>Total Non-Current Assets</b>		<b>10,762</b>	<b>10,350</b>	<b>12,925</b>
<b>Total Assets</b>		<b>16,785</b>	<b>15,668</b>	<b>18,433</b>
<b>LIABILITIES</b>				
<b>Current Liabilities</b>				
Payables	12	2,359	1,694	1,345
Provisions	13	7,393	6,956	6,971
Other	14	393	349	484
<b>Total Current Liabilities</b>		<b>10,145</b>	<b>8,999</b>	<b>8,800</b>
<b>Non-Current Liabilities</b>				
Provisions	13	428	481	409
Other	14	90	105	315
<b>Total Non-Current Liabilities</b>		<b>518</b>	<b>586</b>	<b>724</b>
<b>Total Liabilities</b>		<b>10,663</b>	<b>9,585</b>	<b>9,524</b>
<b>Net Assets</b>		<b>6,122</b>	<b>6,083</b>	<b>8,909</b>
<b>EQUITY</b>				
Reserves	15	356	356	356
Accumulated funds		5,766	5,727	8,553
<b>Total Equity</b>		<b>6,122</b>	<b>6,083</b>	<b>8,909</b>

The accompanying notes form part of these financial statements.

## Cash Flows Statement

### for the Year Ended 30 June 2008

	Notes	Actual 2008 \$'000	Budget 2008 \$'000	Actual 2007 \$'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
<b>Payments</b>				
Employee related		(68,679)	(66,679)	(68,671)
Other		(17,928)	(18,100)	(18,721)
<b>Total Payments</b>		<b>(86,607)</b>	<b>(84,779)</b>	<b>(87,392)</b>
<b>Receipts</b>				
Sale of goods and services		168	67	139
Interest received		300	207	199
Other		4,238	1,495	1,746
<b>Total Receipts</b>		<b>4,706</b>	<b>1,769</b>	<b>2,084</b>
<b>Cash Flows from Government</b>				
Recurrent appropriation		82,901	82,866	85,837
Capital appropriation		1,302	1,302	1,258
Cash transfers to the Consolidated Fund		(257)	-	-
<b>Net Cash Flows from Government</b>		<b>83,946</b>	<b>84,168</b>	<b>87,095</b>
<b>NET CASH FLOWS FROM OPERATING ACTIVITIES</b>	18	<b>2,045</b>	<b>1,158</b>	<b>1,787</b>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Proceeds from sale of plant and equipment		19	5	303
Purchases of plant and equipment		(1,420)	(1,302)	(1,562)
<b>NET CASH FLOWS FROM INVESTING ACTIVITIES</b>		<b>(1,401)</b>	<b>(1,297)</b>	<b>(1,259)</b>
<b>NET INCREASE/(DECREASE) IN CASH</b>		<b>644</b>	<b>(139)</b>	<b>528</b>
Opening cash and cash equivalents		2,949	2,949	2,421
<b>CLOSING CASH AND CASH EQUIVALENTS</b>	8	<b>3,593</b>	<b>2,810</b>	<b>2,949</b>

The accompanying notes form part of these financial statements.

## Supplementary Financial Statements

### Summary of Compliance with Financial Directives

for the Year Ended 30 June 2008

	2008				2007			
	Recurrent Appropriation	Expenditure/ Net Claim on Consolidated Fund	Capital Appropriation	Expenditure/ Net Claim on Consolidated Fund	Recurrent Appropriation	Expenditure/ Net Claim on Consolidated Fund	Capital Appropriation	Expenditure/ Net Claim on Consolidated Fund
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
<b>ORIGINAL BUDGET APPROPRIATION/EXPENDITURE</b>								
• Appropriation Act	82,866	82,278	1,302	1,302	86,537	85,580	1,258	1,258
	82,866	82,278	1,302	1,302	86,537	85,580	1,258	1,258
<b>OTHER APPROPRIATIONS/ EXPENDITURE</b>								
• Treasurer's Advance	455	455	-	-	-	-	-	-
	455	455	-	-	-	-	-	-
<b>Total Appropriations/Expenditure/ Net Claim on Consolidated Fund (includes transfer payments)</b>	83,321	82,733	1,302	1,302	86,537	85,580	1,258	1,258
<b>Amount drawn down against Appropriation</b>		82,901		1,302		85,837		1,258
<b>Liability to Consolidated Fund*</b>		168		-		257		-

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"

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## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES****(a) Reporting Entity**

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

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

The financial report for the year ended 30 June 2008 has been authorised for issue by the Director on 21 October 2008.

**(b) Basis of Preparation**

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

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

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

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

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

**(c) Statement of Compliance**

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

**(d) Insurance**

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

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

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

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

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

**(f) Income Recognition**

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

**(i) Parliamentary Appropriations and Contributions**

Except as specified below, parliamentary appropriations and contributions from other bodies (including grants and donations)

## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

are generally recognised as revenue when the Office obtains control over the assets comprising the appropriations / contributions. Control over appropriations and a contribution is normally obtained upon the receipt of cash. Appropriations are not recognised as revenue in the following circumstances:

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

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

**(ii) Rendering of Services**

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

**(iii) Investment Revenue**

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

**(g) Assets****(i) Acquisition of assets**

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

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

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

**(ii) Capitalisation Thresholds**

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

**(iii) Revaluation of Plant and Equipment**

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

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

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

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

## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

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

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

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

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

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

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

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

**(iv) Impairment of Plant and Equipment**

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

**(v) Depreciation of Plant and Equipment**

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

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

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

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

**(vi) Restoration Costs**

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

## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)****(vii) Maintenance**

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

**(viii) Leased Assets**

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

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

**(ix) Intangible Assets**

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

Development costs are only capitalised when certain criteria are met.

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

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

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

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

**(x) Receivables**

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

**(xi) Impairment of financial assets**

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

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

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

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

## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)****(xii) Other Assets**

Other assets are recognised on a cost basis.

**(h) Liabilities****(i) Payables**

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

**(ii) Financial Guarantees**

The Office has reviewed its financial guarantees and determined that there is no material liability to be recognised for financial guarantee contracts at 30 June 2008 and at 30 June 2007. However, refer Note 20 regarding disclosures on contingent liabilities.

**(iii) Employee Benefits and other provisions****(a) Salaries and Wages, Recreation Leave, Sick Leave and On-Costs**

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

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

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

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

**(b) Long Service Leave and Superannuation**

The Office's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. The Office 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 at present value in accordance with AASB 119 Employee Benefits. This is based on the application of certain factors (specified in NSWTC 07/04) to employees with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

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

## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)****(iv) Other Provisions**

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

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

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

**(i) Budgeted Amounts**

The budgeted amounts are drawn from the budgets as formulated at the beginning of the financial year and with any adjustments for the effects of additional appropriations, s 21A, s 24 and / or s 26 of the Public Finance and Audit Act 1983.

The budgeted amounts in the Operating Statement and the Cash Flow Statement are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Balance Sheet, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; i.e. per the audited financial report (rather than carried forward estimates).

**(j) Comparative Information**

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

**(k) Lease Incentives**

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

**(l) Witness Expenses**

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

## Notes to the Financial Statements

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)****(m) New Australian Accounting Standards issued but not effective**

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

AASB 8 Operating Segments that is operative for 31 December 2009 and 30 June 2010 year ends;

AASB 101 and AASB 2007-8 Presentation of Financial Statements that is operative for 31 December 2009 and 30 June 2010 year ends;

AASB 123 Borrowing Costs that is operative for 31 December 2009 and 30 June 2010 year ends;

AASB 1004 Contributions that is operative for 30 June 2009 year ends; and

AASB 1049 Whole of Government and General Government Sector Financial Reporting that is operative for 30 June 2009 year ends.

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

Notes to the Financial Statements

2. EXPENSES EXCLUDING LOSSES

	2008 \$'000	2007 \$'000
<b>(a) Employee related expenses</b>		
Salaries and wages (including recreation leave)	61,724	60,721
Superannuation – defined benefit plans	3,726	3,394
Superannuation – defined contribution plans	3,316	3,165
Long service leave	2,436	2,439
Workers' compensation insurance	628	575
Payroll tax and fringe benefit tax	4,464	4,427
On-cost on long service leave	44	27
Temporary staff	53	138
	76,391	74,886

	2008 \$'000	2007 \$'000
<b>(b) Other operating expenses including the following:</b>		
Auditor's remuneration – audit of financial reports	40	33
Operating lease rental expense – minimum lease payments	5,787	5,365
Outgoing	313	255
Insurance	206	191
Books	40	49
Cleaning	258	254
Consultants	67	44
Fees – Private Barristers	493	750
Fees – Practising Certificates	246	240
Fees – Security	150	147
Gas and Electricity	243	229
Motor Vehicles	335	336
Postal	105	99
Courier	24	23
Printing	114	126
Maintenance *	1,484	1,492
Stores and equipment	509	552
Telephone	1,029	1,240
Training	149	137
Travel **	1,000	934
Other	889	738
	13,481	13,234

<b>* Reconciliation- Total maintenance</b>		
Maintenance expenses – contracted labour and other (non-employee related), as above	1,484	1,492
Maintenance expense – employee related included in Note 2 (a)	14	13
Total maintenance expenses included in Note 2 (a) + 2 (b)	1,498	1,505

\*\* Travel expenses represent expenditure incurred by all staff of the Office for 2007/2008.

## Notes to the Financial Statements

**2. EXPENSES EXCLUDING LOSSES (continued)**

	2008 \$'000	2007 \$'000
<b>(c) Depreciation and amortisation expense</b>		
Depreciation		
Computer equipment	885	818
Plant and equipment	1,557	1,924
Library collection	158	91
	<u>2,600</u>	<u>2,833</u>
<b>Amortisation</b>		
Software	1,272	1,593
	<u>3,872</u>	<u>4,426</u>
	<b>2008 \$'000</b>	<b>2007 \$'000</b>
<b>(d) Other expenses</b>		
Allowances to witness	2,891	2,898
Ex-gratia payments	16	-
Maintenance costs of non Australian citizens	58	13
	<u>2,965</u>	<u>2,911</u>

**3. REVENUE**

	2008 \$'000	2007 \$'000
<b>(a) Sale of goods and services</b>		
Rendering of services	3	-
Commissions – miscellaneous deductions	4	4
Cost awarded	66	41
On-cost-officers on loan	-	1
Appearance fees	95	93
	<u>168</u>	<u>139</u>

## Notes to the Financial Statements

## 3. REVENUE (continued)

	2008	2007
	\$'000	\$'000

## (b) Investment revenue

Interest revenue from financial assets not at fair value through profit or loss	349	253
	<u>349</u>	<u>253</u>

2008	2007
\$'000	\$'000

## (c) Grants and contributions

Grants	2,629	107
	<u>2,629</u>	<u>107</u>

2008	2007
\$'000	\$'000

## (d) Other revenue

Lease incentive	227	240
Other revenue	109	48
	<u>336</u>	<u>288</u>

## 4. GAIN / (LOSS) ON DISPOSAL

2008	2007
\$'000	\$'000

## Gain / (loss) on disposal of computer equipments

Proceeds from disposal	19	6
Written down value of assets disposed	-	-
Net gain / (loss) on disposal of computer equipments	<u>19</u>	<u>6</u>

## Gain / (loss) on disposal of office equipments

Proceeds from disposal	-	15
Written down value of assets disposed	-	1
Net gain / (loss) on disposal of office equipments	<u>-</u>	<u>14</u>

Gain / (loss) on disposal	<u>19</u>	<u>20</u>
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Notes to the Financial Statements

**5. APPROPRIATIONS**

	2008	2007
	\$'000	\$'000
<b>Recurrent appropriations</b>		
Total recurrent draw-down from NSW Treasury (per Summary of Compliance)	82,901	85,837
Less: Liability to Consolidated Fund (per Summary of Compliance)	168	257
	<u>82,733</u>	<u>85,580</u>
Comprising:		
Recurrent appropriations (per Operating Statement)	82,733	85,580
	<u>82,733</u>	<u>85,580</u>
	<b>2008</b>	<b>2007</b>
	<b>\$'000</b>	<b>\$'000</b>

**Capital appropriations**

Total capital draw-down from NSW Treasury (per Summary of Compliance)	1,302	1,258
Less: Liability to Consolidated Fund (per Summary of Compliance)	-	-
	<u>1,302</u>	<u>1,258</u>
Comprising:		
Capital appropriations (per Operating Statement)	1,302	1,258
	<u>1,302</u>	<u>1,258</u>

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

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

	2008	2007
	\$'000	\$'000
Superannuation	3,726	3,394
Long service leave	2,436	2,439
Payroll tax	224	204
	<u>6,386</u>	<u>6,037</u>

## Notes to the Financial Statements

**7. PROGRAMS / ACTIVITIES OF THE OFFICE**

The Office operates on one program " 18.1.1 Crown Representation in Criminal Prosecutions ". The objective of the program is to provide the people of New South Wales with an efficient, fair and just prosecution service.

**8. CURRENT ASSETS – CASH AND CASH EQUIVALENTS**

	2008 \$'000	2007 \$'000
Cash at bank and on hand	3,410	2,769
Permanent witness advance	183	180
	3,593	2,949

For the purposes of the Cash Flow Statement, cash and cash equivalents include cash at bank, cash on hand and witness advances float given to courthouses.

The Office has the following banking facilities as at 30 June 2008:

- Cheque cashing authority of \$45,000, which is the total encashment facility provided to enable recoupment of petty cash and witness expenditure floats.
- Tape negotiation authority of \$2,500,000. This facility authorised the bank to debit the Office's operating bank up to the above limit when processing the electronic payroll and vendor files.
- Master card facility of \$158,600, which is the total credit limit for all credit cards issued.

Cash and cash equivalent assets recognised in the Balance Sheet are reconciled at the end of the financial year to the Cash Flow Statement as follows:

	2008 \$'000	2007 \$'000
Cash at bank and on hand (per Balance Sheet)	3,593	2,949
Closing cash and cash equivalents (per Cash Flow Statement)	3,593	2,949

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

**9. CURRENT ASSETS – RECEIVABLES**

	2008 \$'000	2007 \$'000
Rendering of services	1	25
Prepayments	1,859	1,978
Interest	193	144
Advances	34	63
GST recoverable from ATO	343	349
	2,430	2,559

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

## Notes to the Financial Statements

## 10. NON-CURRENT ASSETS – PLANT AND EQUIPMENT

	\$'000 Plant and Equipment
<b>At 1 July 2007</b>	
At fair value	31,004
Accumulated depreciation	(20,193)
Net carrying amount	<u>10,811</u>
<b>At 30 June 2008</b>	
At fair value	31,775
Accumulated depreciation	(22,015)
Net carrying amount	<u>9,760</u>
<b>Reconciliation</b>	
A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the current reporting period is set out below:	
<b>Year ended 30 June 2008</b>	
At fair value	10,811
Additions	1,549
Depreciation expenses	(2,600)
Net carrying amount at the end of year	<u>9,760</u>
<b>At 1 July 2006</b>	
At fair value	30,138
Accumulated depreciation	(17,673)
Net carrying amount	<u>12,465</u>
<b>At 30 June 2007</b>	
At fair value	31,004
Accumulated depreciation	(20,193)
Net carrying amount	<u>10,811</u>
<b>Reconciliation</b>	
A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the previous reporting period is set out below:	
<b>Year ended 30 June 2007</b>	
At fair value	12,465
Additions	1,180
Revaluation decrement	(1)
Depreciation expenses	(2,833)
Net carrying amount at the end of year	<u>10,811</u>

## Notes to the Financial Statements

## 11. INTANGIBLE ASSETS

	\$'000
	Software and Others
<b>At 1 July 2007</b>	
Cost (gross carrying amount)	9,380
Accumulated amortisation and impairment	(7,266)
Net carrying amount	<u>2,114</u>
<b>At 30 June 2008</b>	
Cost (gross carrying amount)	9,539
Accumulated amortisation and impairment	(8,537)
Net carrying amount	<u>1,002</u>

**Reconciliation**

A reconciliation of the carrying amount of intangible assets at the beginning and end of the current reporting period is set out below:

**Year ended 30 June 2008**

Net carrying amount at start of the year	2,114
Additions	160
Amortisation (recognised in "depreciation and amortisation")	(1,272)
Net carrying amount at the end of year	<u>1,002</u>

**At 1 July 2006**

Cost (gross carrying amount)	9,294
Accumulated amortisation and impairment	(5,672)
Net carrying amount	<u>3,622</u>

**At 30 June 2007**

Cost (gross carrying amount)	9,380
Accumulated amortisation and impairment	(7,266)
Net carrying amount	<u>2,114</u>

**Reconciliation**

A reconciliation of the carrying amount of intangible assets at the beginning and end of the previous reporting period is set out below:

**Year ended 30 June 2007**

Net carrying amount at start of the year	3,622
Additions	368
Disposals	(283)
Amortisation (recognised in "depreciation and amortisation")	(1,593)
Net carrying amount at the end of year	<u>2,114</u>

## Notes to the Financial Statements

## 12. CURRENT LIABILITIES – PAYABLES

	2008 \$'000	2007 \$'000
Accrued salaries, wages and on-costs	902	635
Creditors	903	273
Accruals	554	437
	2,359	1,345

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

## 13. CURRENT/NON-CURRENT LIABILITIES – PROVISIONS

	2008 \$'000	2007 \$'000
<b>CURRENT</b>		
Employee benefits and related on-costs		
Recreation leave *	5,650	5,270
On-cost on long service leave	620	571
Payroll tax on-cost for recreation leave and long service leave	1,123	1,130
Total Provision - Current	7,393	6,971
* Expected to be settled within 12 months.		
<b>NON - CURRENT</b>		
Employee benefits and related on-costs		
On-cost on long service leave	33	30
Deferred retention allowance	61	46
Payroll tax on-cost for long service leave	59	59
	153	135
Other provisions		
Restoration costs	258	252
Rent adjustment reserve	17	22
	275	274
Total Provisions non - current	428	409
Aggregate employee benefits and related on-costs		
Provisions - current	7,393	6,971
Provisions – non current	153	135
Accrued salaries, wages and on-costs (Note 12)	902	635
	8,448	7,741

## Notes to the Financial Statements

**13. CURRENT/NON-CURRENT LIABILITIES – PROVISIONS (continued)**

## Movements in provisions (other than employee benefits)

Movements in each class of provision during the financial year, other than employee benefits, are set out below:

2008	Restoration Costs \$'000	Rent Adjustment Reserve \$'000	Total \$'000
Carrying amount at the beginning of financial year	252	22	274
Additional provisions recognised	6	-	6
Amount used	-	(5)	(5)
Carrying amount at end of financial year	<u>258</u>	<u>17</u>	<u>275</u>
<b>2007</b>			
Carrying amount at the beginning of financial year	266	21	287
Additional provisions recognised	-	1	1
Amount used	(14)	-	(14)
Carrying amount at end of financial year	<u>252</u>	<u>22</u>	<u>274</u>

**14. CURRENT/NON-CURRENT LIABILITIES – OTHER**

	2008 \$'000	2007 \$'000
<b>CURRENT</b>		
Deferred income	225	227
Liability to Consolidated Fund	168	257
	<u>393</u>	<u>484</u>
<b>NON – CURRENT</b>		
Deferred income	90	315
	<u>90</u>	<u>315</u>

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

## Notes to the Financial Statements

## 15. CHANGES IN EQUITY

	Accumulated Funds		Asset Revaluation Reserve		Total Equity	
	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000	2008 \$'000	2007 \$'000
Balance at the beginning of the financial year	8,553	10,328	356	356	8,909	10,684
Surplus/(deficit) for the year	(2,787)	(1,775)	-	-	(2,787)	(1,775)
Balance at the end of the financial year	5,766	8,553	356	356	6,122	8,909

**Asset revaluation reserve**

The asset revaluation reserve is used to record increments and decrements on the revaluation of non-current assets. This accords with the Office's policy on the 'Revaluation of Plant and Equipment', as discussed in Note 1.

## 16. COMMITMENTS FOR EXPENDITURE

## Capital Commitments

	2008 \$'000	2007 \$'000
Aggregate capital expenditure for the acquisition of library reference materials contracted for at balance date and not provided for:		
Not later than one year	98	103
Total (including GST)	98	103

The total "capital commitments" above includes input tax credit of \$0.009 M (30 June 2007: \$0.009M) recoverable from Australian Taxation Office.

## Operating Lease Commitments

	2008 \$'000	2007 \$'000
Future non-cancellable operating lease rentals not provided for and payable:		
Not later than one year	5,402	5,121
Later than one year and not later than five years	5,806	6,110
Later than five years	73	149
Total (including GST)	11,281	11,380

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

The total "operating lease commitments" above includes input tax credit of \$1.025 M (30 June 2007: \$1.035M) recoverable from Australian Taxation Office.

There were no material other expenditure commitments at balance date.

## 17. BUDGET REVIEW

### Net Cost of Services

The actual net cost of services result was \$0.759M lower than budget. This favourable result was mainly attributed to the following factors:

- Under expenditure in witness expenses amounting to \$0.445M as a result of reduced number of witness claims made.
- NSW Police Force transferred digital ERISP assets amounting to \$0.282M and as result Office's revenue increased, which was not included in the budget.
- Interest income on surplus cash balance was \$0.142M more than budget due to increased cash balance and miscellaneous income was \$0.094M more than budget, mainly due to increased number of appearance fees recovered.
- Over expenditure in Rent and outgoing of \$0.168M as a result of unexpected rent review of 265 Castlereagh street property for previous periods.

### Assets and Liabilities

The non-current assets were \$0.412M higher than budget due to NSW Police Force transferred \$0.282M digital ERISP project assets to Office and in addition Office also purchased \$0.112M assets out of Office's fund.

The current assets were \$0.705M higher than budget mainly due to increased cash balance.

The non-current liabilities \$0.068M were lower than budget mainly due to on-cost on long service leave liability was lower as a result of Crown Entity converted the long service leave liability at lower than projected Net Present Value (NPV).

The current liabilities were \$1.146M higher than budget. This was largely due to \$0.665M increase in payables mainly as a result of delays in the receipt of creditors' invoices for payment plus a \$0.437M increase in employee entitlements due to staff taking less than their accruing leave entitlements in order to manage increased work load and as a result of 4% salary rate increase.

### Cash Flows

Net cash flow from operating activities was \$0.887M higher than budget mainly due to \$0.455M less than budget payment in witness expenses and \$0.427M more than budget revenue collected

Net cash flow from investing activities was \$0.104M higher than budget mainly due to purchase of plant and equipment from Office's fund.

## Notes to the Financial Statements

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

	2008 \$'000	2007 \$'000
Net cash flow from operating activities	2,045	1,787
Cash Flows from Government / Appropriations	(84,035)	(86,838)
Acceptance by the Crown Entity of employee benefits and other liabilities	(6,386)	(6,037)
Depreciation and amortisation	(3,872)	(4,426)
Decrease / (increase) in provisions	(441)	(173)
Increase / (decrease) in prepayments and other assets	(129)	1,016
Decrease / (increase) in creditors	(1,014)	33
Decrease / (increase) in deferred income	316	(17)
Increase / (decrease) in assets	308	5
Net cost of services	(93,208)	(94,650)

## 19. FINANCIAL INSTRUMENTS

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations or are required to finance the Office's operations. The Office does not enter into or trade financial instruments including derivative financial instruments, for speculative purposes. The Office's main risks arising from financial instruments are outlined below, together with the Office's objectives, policies and processes for measuring and managing risk.

The Audit and Risk Management Committee has overall responsibility for establishment and oversight of risk management and reviews and agrees policies for managing each of these risks. Risk management policies are established to identify and analyse the risks faced by the Office, to set risk limits and controls and to monitor risks. Compliance with policies is reviewed by the Audit and Risk Management Committee on a continuous basis.

### (a) Financial instrument categories

Financial Assets	Notes	Category	Carrying Amount	Carrying Amount
Class			2008 \$'000	2007 \$'000
Cash and cash equivalents	8	N/A	3,593	2,949
Receivables <sup>1</sup>	9	Receivables measured at cost	35	88

Financial Assets	Notes	Category	Carrying Amount	Carrying Amount
Class			2008 \$'000	2007 \$'000
Payables <sup>2</sup>	12	Financial liabilities measured at cost	1,409	1,201

#### Notes

- 1 Excludes statutory receivables and prepayments.
- 2 Excludes statutory payables and income received in advance.

## Notes to the Financial Statements

**19. FINANCIAL INSTRUMENTS (continued)****(b) Credit Risk**

Credit risk arises when there is the possibility of the Office's debtors defaulting on their contractual obligations, resulting in a financial loss to the Office. Credit risk arises from the financial assets of the Office, including cash and receivables. The carrying amount of financial assets in the Office's balance sheet represents the Office's maximum exposure to credit risk. No collateral is held by the Office. The Office has not granted any financial guarantees.

Credit risk associated with the Office's financial assets is regarded as minimal as the counterparty of the Office's main financial assets, other than some of the trade debtors (refer below), is NSW Treasury Corporation and other NSW government agencies are subject to effective performance management, monitoring, capital structure and / or funding arrangements, by the NSW Government.

**Cash**

Cash comprises cash on hand and bank balances within the NSW Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (Tcorp) 11 am unofficial cash rate, adjusted for a management fee to NSW Treasury.

**Receivables – trade debtors**

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Procedures as established in the Treasurer's Directions are followed to recover outstanding amounts, including letters of demand. Debts, which are known to be uncollectible, are written off. An allowance for impairment is raised when there is objective evidence that the entity will not be able to collect all amounts due. This evidence includes past experience, and current and expected changes in economic conditions and debtor credit ratings. No interest is earned on trade debtors. Sales are made on 30-day terms.

The Office is not materially exposed to concentrations of credit risk to a single trade debtor or group of debtors. Based on past experience, debtors that are not past due (2008:\$0.003M; 2007:\$0.001M) and not less than 3 months past due are not considered impaired and together these represent 100% of the total debtors. Most of the Office's debtors have a 100% credit rating. There are no debtors which are currently not past due or impaired whose terms have been renegotiated.

2008	Total <sup>1, 2</sup> \$'000	Past due but not impaired <sup>1, 2</sup> \$'000	Considered impaired <sup>1, 2</sup> \$'000
1- 3 months overdue	228	228	-

2007	Total \$'000	Past due but not impaired \$'000	Considered impaired \$'000
1- 3 months overdue	242	242	-

**Notes**

- Each column in the table reports 'gross receivables'.
- The ageing analysis excludes statutory receivables, as these are not within the scope of AASB 7 and excludes receivables that are not past due and not impaired. Therefore, the 'total' will not reconcile to the receivables total recognised in the balance sheet.

Notes to the Financial Statements

## 19. FINANCIAL INSTRUMENTS (continued)

### (c) Liquidity risk

Liquidity risk is the risk that the Office will be unable to meet its payment obligations when they fall due. The Office continuously manages risk through monitoring future cash flows planning to ensure adequate holding of high quality liquid assets. The objective is to maintain a balance between continuity of funding and flexibility through the use of other advances.

During the current and prior years, there were no defaults or breaches on any payables. No assets have been pledged as collateral. The Office's exposure to liquidity risk is deemed insignificant based on prior periods' data and current assessment of risk.

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. No interest was paid during the year (30 June 2007: \$nil).

### (d) Market risk

The Office's borrowing is nil. The Office has no exposure to foreign currency risk and does not enter into commodity contracts.

#### Sensitivity disclosure analysis

The effect on profit and equity due to a reasonably possible change in risk variable is outlined in the information below, for interest rate risk and other price risk. A reasonably possible change in risk variable has been determined after taking into account past performance, future expectations, economic forecasts and management's knowledge and experience of the financial markets. The sensitivity analysis is based on risk exposures in existence at the balance sheet date. The analysis is performed on the same basis for 2007. The analysis assumes that all other variables remain constant.

#### Interest rate risk

The Office has no interest bearing liabilities.

#### Other price risk

The Office has no direct equity investments.

### (e) Fair Value

Financial instruments are generally recognised at cost and the carrying amount is a reasonable approximation of fair value.

## 20. CONTINGENT LIABILITIES

The Office was not aware of any contingent asset or liability as at 30 June 2008 (nil in 2007)

## 21. AFTER BALANCE DATE EVENTS

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

## END OF AUDITED FINANCIAL STATEMENTS

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# OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS LOCATIONS

## Head Office

265 Castlereagh Street  
SYDNEY NSW 2000  
Locked Bag A8  
SYDNEY SOUTH NSW 1232  
Telephone: (02) 9285 8606  
Facsimile: (02) 9285 8600

**DX:11525**  
**Sydney Downtown**

## Newcastle

Level 1, 51–55 Bolton Street  
PO Box 779, NEWCASTLE NSW 2300  
Telephone: (02) 4929 4399  
Facsimile: (02) 4926 2119

**DX:7867**

## Parramatta

Level 3, 146 Marsden Street  
PARRAMATTA NSW 2150  
PO Box 3696, PARRAMATTA NSW 2124  
Telephone: (02) 9891 9800  
Facsimile: (02) 9891 9866

**DX:8210**

## Regional Offices

### Campbelltown

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

**DX:5125**

### Dubbo

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

**DX:4019**

### Gosford

Level 2, 107–109 Mann Street  
P O Box 1987, GOSFORD NSW 2250  
Telephone: (02) 4328 7150  
Facsimile: (02) 4323 1471

**DX:7221**

### Lismore

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

**DX:7707**

### Penrith

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

**DX:8022**

### Wagga Wagga

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

### Wollongong

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

**DX:27833**

**Wollongong Court**

### Bathurst

Level 2  
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PO Box 701 BATHURST NSW 2795  
Telephone: (02) 6332 2555  
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**Note: Each Office is open Monday to Friday (excluding Public Holidays) from 9.00 a.m. to 5.00 p.m. Appointments may be arranged outside these hours if necessary**



OFFICE OF THE  
DIRECTOR OF  
PUBLIC PROSECUTIONS  
NEW SOUTH WALES