

DIRECTOR
OF PUBLIC
PROSECUTIONS

**ANNUAL REPORT
2014 – 2015**



ACT DPP
OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS





Ethos: the spirit of the community

The DPP logo is based on the statue of 'Ethos' by Thomas Dwyer Bass (6 June 1916 - 26 February 2010) which stands in Civic Square in front of the Legislative Assembly. Ethos was conceived by its creator as representing the spirit of the community of Canberra. It is a particularly appropriate symbol for the DPP, which acts for, and represents, the community.

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Glossary

Acronyms

ACTPS	Australian Capital Territory Public Service
AFP	Australian Federal Police
CASES	name of the case management system of the Office
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
FTE	full time equivalent employees
FOI	freedom of information
FV	family violence
FVIP	Family Violence Intervention Program
JACS	Justice and Community Safety Directorate
RJ	restorative justice
VSACT	Victim Support ACT
WAS	Witness Assistance Service

Technical Terms

accused	person charged with an offence, usually an indictable offence
complainant	person against whom it is alleged a crime has been committed, usually used in the context of sexual assault
Crown	the prosecutor in the Supreme Court or Court of Appeal
defendant	a person charged with an offence
Director	the Director of Public Prosecutions
directorate	administrative unit of the ACT Public Service
director-general	person appointed to head an administrative unit of the ACT Public Service under Division 3.4 of the Public Sector Management Act 1994
head of service	person appointed to head the ACT Public Service under Division 3.2A of the Public Sector Management Act 1994
indictable offence	an offence required or able to be dealt with in the Supreme Court
Office	the Director and staff assisting the Director
summary offence	an offence required or able to be dealt with in the Magistrates Court
victim	a person who suffers harm arising from an offence

Director's Overview

I have just completed my seventh year as Director. I look back with great satisfaction at what the Office has achieved in that time. It is a great privilege to lead such a dedicated, talented and passionate team.

From the Annual Report 2008-2009

Few public officials are subject to the amount of scrutiny that prosecutors are. Everything we do is scrutinised by the courts before which we appear, by our colleagues in the legal profession, by the police and other investigators whose cases we prosecute, by victims and witnesses, by the Assembly and its Members, and by the media.

This scrutiny is of course entirely appropriate. Prosecutors are ministers of justice - we act on behalf of the whole community. As such we expect and welcome the interest of those whose interests we represent. The new DPP logo, based on 'Ethos' the iconic sculpture of Tom Bass, reflects this. Ethos was conceived by its creator as representing the spirit of the community of Canberra. It is a particularly appropriate symbol for the DPP, which acts for, and represents, the community.

I want to take the opportunity to revisit the achievements of the last seven years and reflect on some of the disappointments. Before doing so I will mention some of the matters of current interest.

CURRENT ISSUES

Family Violence Reform

"Family violence is often characterised by a power imbalance that operates to oppress one person in a domestic situation. That power imbalance must be interrupted by a more powerful force - that being the criminal justice system."

Those words, taken from a submission made by one of my prosecutors this year, sum up perfectly the issue of family violence.

Indeed, prosecutors see this issue of power imbalance not just in relation to matters that are in a strict sense family violence matters, but also more generally in relation to sex offences, be they offences against children or adults.

Of course prosecution of offenders is only one part of a coordinated community response to family violence - but it is a vital part. While the community is rightly concerned at domestic violence, the level of domestic violence has not increased - what has changed is that the community no longer tolerates it.

It was gratifying to see that the ACT Government has apparently accepted most of my recommendations for legislative reform in this area.

One of those reforms in particular is potentially very significant: using interviews of complainants in family violence matters recorded by police at the scene as the evidence in chief of those complainants in criminal proceedings. New South Wales already has this system up and working. The impact of interviews - recorded immediately after the events have taken place - is graphic.

Complainants in family violence matters frequently seek to withdraw their statements, often for reasons to do with the power imbalance referred to above. Under the new proposals the statement the complainant has already given will be evidence whether the complainant is a reluctant witness or not. Delays in the resolution of family violence matters are a particular problem. Often the defendant and complainant will be residing in the same residence awaiting a matter progressing to hearing. At the moment there is no incentive for a defendant to consider entering an early plea of guilty. But with the new provisions defendants will no longer be rewarded by waiting until they see what a complainant says in the witness box - the evidence in chief of the complainant will go in regardless. This means that more pleas of guilty are likely, and more matters are likely to be resolved earlier.

Prosecution of significant cases

This year saw the prosecution of a number of complex and high profile trials in the Supreme Court, some of which are referred to in the Case Reports section of this report. My deputy, Margaret Jones, my Assistant Director, Shane Drumgold, and my Senior Advocates lead the way in those prosecutions.

As I detail below, the policy of prosecuting even the most complex matters in-house is bearing fruit.

The new prosecution policy

Pursuant to section 12 of the *Director of Public Prosecutions Act 1990*, the Director may give directions or furnish guidelines in relation to prosecutions. The prosecution policy of the ACT was originally propagated by the first Director, Ken Crispin QC in December 1991. It had not been amended or renewed since that time. Of course there have been many changes in the law and practice since then, and the task of renewing the policy had become a pressing one. Earlier this year I promulgated a new prosecution policy for the ACT. The wording of the updated policy reflects a careful researching of the policies of the various states, territories and the Commonwealth, and I must thank Katrina Marson for her work.

Crucially, the test in relation to the decision to prosecute in the new policy remains the same and mirrors that contained in all other Australian prosecution policies. However the policy as a whole emphasises high level principles and avoids the detail and prescription of some of the other Australian prosecution policies.

A key feature of the new policy is that it acknowledges and encompasses the *Human Rights Act 2004* and the *Victims of Crime Act 1994*, both of which post date the original policy. Other important inclusions are provisions relating to prosecution disclosure; the role of prosecutors in the sentencing process; prosecution obligations towards unrepresented accused, the prosecutions of corporations, and the treatment of victims of crime.

The policy performs a crucial role. As the then Attorney General Mr Terry Connelly said in the forward to the original policy it *"ensures the consistency of decisions made in similar circumstances and, by the same token, assists officers in reaching a sound decision-making process open and accountable, as well as ensuring that the public is informed for the principles which guide the Director of Public Prosecutions and his Office in the performance of their function."* The present Attorney General in his forward to the new policy repeated those words and remarked that the twin principles of consistency and transparency continue to be served by the revised policy.

Resourcing Pressures

It is now some years since the Office received a significant increase in its budgetary allocation. Indeed, over the past few years with “efficiency dividends” and the like, resources available to the office have actually contracted.

I will deal in more detail below with workflow trends. In summary, the number of matters dealt with in the superior courts has dramatically increased. In the summary courts while numbers have remained stable, demands on prosecutorial resources have increased.

The increase of Supreme Court work as a proportion of the work of the Office means the overall complexity of the work performed by the Office has increased. That itself puts pressure on resources. On top of that two challenges are emerging.

First, the Government has announced that a fifth judge will be appointed next financial year. As I foreshadowed in my Annual Report for 2012-2013:

However it must be observed that if a fifth judge were to be appointed, it would necessarily require the appointment of additional prosecutors to support the additional judicial resources. Every time the criminal courts sit they require a prosecutor to be present. Under present arrangements we only just cover the existing courts – and in some instances that is quite a struggle. We would not be able to support an additional judge unless there were an additional flow through of resources....

The other pressure comes from the Magistrates Court. That court had not previously listed matters for hearing during the intensive listing periods in the Supreme Court. That has now changed, which means we will require additional prosecutors to keep the Magistrates Court operating as well.

I have for some years been calling for greater efficiency in the Magistrates Court. Again I regret I must report that little progress has been made. I am determined to increase the efficiency of the handling of Magistrates Court matters within my Office, for instance by increasing the use of paralegals. I have made many suggestions to assist the Magistrates Court in increasing its efficiency. A separate traffic list (which I could staff largely with paralegals), night courts, and intensive listing of Magistrates Court matters for hearing, are all suggestions of mine which are yet to be taken up.

As a community we can do a lot better in this area.

From the Annual Report 2009-2010:

I often hear from members of the community that the criminal justice system seems to focus on the interests of accused persons to the exclusion of other interests. This is an unfortunate, but understandable, perception. The criminal justice system should be serving all of the community. Many people have a direct interest in the way that the system operates – accused persons certainly and their representatives, but also victims, witnesses, prosecutors and indeed the community as a whole. If the system is not seen to serve all of those interests, then this can lead to a lack of confidence in the system, or to cynicism about the way in which the system operates.

The right to have criminal charges heard fairly and impartially is a right enjoyed by the whole community, not only accused persons. Indeed prosecutors can do as much as any other actor in the criminal justice system – if not more – to ensure fairness.

THE LAST SEVEN YEARS

In looking back over the last seven years, I think it is fair to say that generally what has been achieved we have achieved by our own hand.

Work Flows

The last seven years - and more particularly the last five years - have seen a dramatic increase of prosecution work in the superior courts. In contrast, numbers in the Magistrates Court have remained relatively steady. However the resources required to be devoted to the Magistrates Court have increased, due mainly to the creation of an entirely new list each day, and increase in part heard matters.

I have compared three aspects of the Superior Court work, being numbers of trials, Supreme Court appeals (that is appeals to a single judge from the Magistrates Court), and Court of Appeal matters. The comparison has been between *the previous seven years* (i.e. from 2001-2002 to 2007-2008) and *the last seven years* (i.e. 2008-2009 to 2014-2015). More particularly a comparison has been made to *the last five years* when the workload has significantly increased.

Trials in the previous seven years averaged 33.6 per year with the highest number being 42 in any year. In the last seven years the average is 54.4 with the highest being 72. The average over the last five years is 62.8.

For Supreme Court appeals the average for the previous seven years was 37.1 per year, and the last seven years 72.3, with the average for the last five years being 76.6.

And in relation to Court of Appeal matters, the average in the previous seven years was 13.9 per year with the highest being 16. In the past seven years the average is 28.3 with the highest being 45. The average of the last five years is 33.4. These results are set out in the following table:

	Average Number per Year			
	A	B	C	Percentage Increase comparing A and C
	2001-02 to 2007-08	2008-09 to 2014-15	2010-11 to 2014-15	
Trials	33.6	54.4	62.8	86.90%
Supreme Court appeals	37.1	72.3	76.6	106.47%
Court of Appeal	13.9	28.3	33.4	140.29%

While work in the Superior Courts has increased across the board, there has been a particularly noticeable increase in **sexual assault and related offences**. The sense I have, (which of course is informed not just by the work of the Office but in discussions with rape crisis workers and sexual assault investigators) is that more matters are being reported, the investigations are of higher quality, and complainants are more likely to press on with their matters to hearing or trial. As I have previously noted, the availability of special measures, such as giving evidence from a remote location, and the pre recording of evidence for children, have made a real difference to the willingness of complainants to participate in the criminal process. Recent publicity, in particular relating to the Royal Commission into institutional responses to child sexual abuse, has also increased the rate of reporting of matters, particularly historical matters.

I only have reliable data relating to particular offences for the last five years when my Office switched to a computerised case management system. The figures do indicate a significant increase in completed sexual assault and related offences over that period of time, viewed year by year. I expect this trend to continue.

Sexual Assault and Related Offences

Magistrates Court and Childrens Court

Year	Matters
2010-2011	15
2011-2012	65
2012-2013	55
2013-2014	87
2015-2015	80

Supreme Court

Year	Matters
2010-2011	27
2011-2012	43
2012-2013	48
2013-2014	63
2014-2015	55

The in-house prosecution of matters

A significant change in my time as Director has been to ensure that matters are prosecuted by my prosecutors "in-house" and are not briefed out to external counsel. I want to retain within my Office the expertise which comes from prosecuting complex matters. This also offers a career path to my prosecutors.

To illustrate how dramatic a change this has been, one of my prosecutors, who when I commenced as Director was a paralegal in the Office, is now conducting Supreme Court trials. We grow our own prosecutors.

The results of this policy are there for all to see. It is undoubtedly the case that the Office generally is much more accomplished, and the standard of advocacy far higher than it was when I took the helm. There is no shortage of the highest quality young lawyers eager to seek employment in the Office.

The move to an in-house model of prosecuting has saved the community considerable resources. In the last four years before I was appointed, fees paid to external counsel averaged over \$500,000 a year, an expense often funded from the ACT legal expense budget. Since my appointment, with the exception of the ongoing Eastman matter, fees paid to external counsel have been virtually nil. Of course if occasion demands it I would not hesitate to brief external counsel, but generally the expertise exists within my Office to prosecute all matters.

The promotion of women

I am proud to head an Office which actively fosters and encourages women both as advocates and managers. In the legal ranks, Margaret Jones as my deputy is a leader of the profession in the Territory. Of eight supervising lawyers (who head up teams of prosecutors), five are women. Women also hold the important management posts of Director Corporate Services, Allocations Manager, and Paralegal Manager.

This doesn't just happen. Much work has gone into making the Office a supportive environment for women in what has been a male dominated profession. By way of contrast, in the last year the ACT Bar Association Bar Council contained just one woman out of nine positions. The current Bar Council has no women.

The profession has far to go, but we are proud to be leading the way.

Crown appeals

My period as Director has been marked by a vigorous approach to Crown appeals. While in our system the Crown's right to appeal is heavily circumscribed, and Crown appeals should be comparatively rare, nevertheless the Crown may need to appeal to vindicate the public interest. Before my time, Crown appeals were few and far between. As a result, sentencing standards had slipped out of alignment with other states and territories.

I have been prepared to appeal where appropriate against inadequate sentences particularly in the area of sexual offending. This has led to sentencing standards in the Territory becoming more aligned with national standards.

I have also been prepared to take reference and review appeals to establish significant principles of law, an approach which has been marked with great success.

Case Management System

When I commenced as Director there was no electronic case management system in the Office. The maintaining of rosters and allocating of work was very labour intensive and based on spreadsheets.

I oversaw the acquisition and installation of the CASES system which is the same system as that used by the New South Wales DPP. This has provided a much more professional platform for rostering and work allocation as well as file management.

The next frontier is moving to complete electronic service delivery – the receipt and service of briefs of evidence in electronic form and the tendering of documents in electronic form. We are working closely with Police to make this a reality.

Internal case management

Allied to the institution of an electronic case management system, there has been a complete revision of the way in which matters are handled within the Office since I have become Director.

I established a set of clear instructions to prosecutors about what decisions can be made at what levels, and what supporting documentation is required. This was particularly significant in relation to the discontinuing of indictable matters, which now must be adjudicated upon at a high level in the Office, and with evidence that appropriate consultation has taken place, in particular, with victims.

The most important aspect of all of this is that greater attention is paid to indictable matters. All allocations are now in the hands of an Allocations Manager, who controls workflows and distributes work equitably, with an eye to developing individual prosecutors. Importantly, time is allocated out of court for the preparation of committal documents - including the indictment and case statement - immediately after committal. This enables an assessment of the prospects of indictable matters to be made early, and identifies potential issues with the indictment and the evidence.

The result is a far higher quality of matters, with fewer matters being discontinued late in the process. When I commenced as Director, it was commonplace for matters to be discontinued just before trial. That is now a rare event.

From the Annual Report 2011-2012:

The basic principle of any response should be to achieve a trial listing as soon as possible after committal. The aim of reforms should be to cut down the time from committal to trial to say 6 months. The experience of the Blitz has shown that accused persons only concentrate on giving instructions if their trial is an immediate prospect. In fairness it must be said that this also concentrates the mind of the prosecution. The other benefit of bringing matters on earlier for trial is to prevent double handling – it is more likely that the same prosecutor and defence counsel can be involved at all times.

The Role and Independence of the DPP

An abiding disappointment has been a failure of government to take up the recommendation of Dr Hawke in his review of the ACT Public Service that the DPP should be funded in its own right. As I noted in the Annual Report for 2010-2011:

The independence of the DPP is a cornerstone of our system of government, and should never be taken for granted. It is certainly not the job of a DPP to be popular. Indeed a proper discharge of the DPP's functions requires the making of decisions which are bound to be unpopular in one quarter or another.

In this regard it was very gratifying to see that in his review of the ACT Public Service, Dr Hawke noted that the DPP was an office whose role, at arm's length from the government, was "part of the foundation of the ACT system of government and accountability frameworks". [Hawke Report loc.cit.].

Dr Hawke recommended that, in keeping with its independence, the DPP should receive appropriation funding in its own right. "While the level of resourcing for those officers is properly a matter for the Government to determine in setting the Budget, it is appropriate that funding is for independent office holders be appropriated directly to their offices" [Hawke Report loc.cit.].

I understand the government is now considering this recommendation. It is to be hoped that in relation to this Office at least it is speedily adopted, and the independence of the DPP is thereby irrevocably secured.

Two years later there had been no progress, as I recorded in the Annual Report 2012-2013:

It is now some time since the recommendation by Dr Hawke in his review of the ACT Public Service recommended the direct appropriation of my office. The government has supported the establishment of the Auditor-General, the Electoral Commissioner and the Ombudsman as officers of the Parliament achieving fiscal independence for them and confirming their independence. This means that four bodies identified by Dr Hawke as part of the foundation of the ACT system of government, my office is the only one which is yet to be dealt with.

Following Dr Hawke's recommendation there has been a move to a "one department" model within the ACT Public Service. This leaves my office in somewhat of an anomalous position. Appropriation for my office is channelled through one of the directorates of the one department notwithstanding that there is a lack of any synergy between the operational aims of any of the directorates and my office. (To exemplify this, while appropriation to DPP is channelled through JACS, of the 23 priorities of JACS for the 2013-2014 budget estimates, not one relates to the operation of my Office.) For similar reasons, communication on funding issues is complicated by having to be channelled through a directorate. Part of the funding currently appropriated for my office is directed to meeting the corporate overheads of JACS. It would make far better sense fiscally for my office to be directly appropriated so that it could deal directly with entities external of JACS such as Shared Services.

Regretfully, there has still been no progress. I must confess that it is difficult to understand why the important offices of Auditor General, Electoral Commissioner and Ombudsman should have their independence recognised whilst my office has not.

I remain determinedly optimistic that this is a matter that will soon be remedied.

The Professionalism of the Paralegal Branch

One of my proudest achievements has been to ensure that the work of paralegals has been recognised and rewarded. Mandatory qualification requirements have been introduced and were applied in the most recent recruitment round. Paralegal roles are now both stimulating and demanding. I can report that there is no shortage of well qualified applicants for paralegal positions. I have retained a mix between recruiting law students and others to the paralegal ranks. It is of particular importance to me that paralegals become even more involved in the legal work of the office. Ultimately as I have indicated elsewhere, there is a role for paralegals appearing in simple list matters which would have the dual purpose of enriching the paralegal work and freeing up prosecutors for preparing and appearing in hearings and trials.

Law reform

Matters of policy are ultimately for government and the Assembly. However prosecutors who run matters in court every day are uniquely well placed to identify the potential for improvements in procedures, and also the difficulties with the operation of particular criminal laws.

My Office has contributed significantly to law reform since my appointment. This presents great challenges, as it has to be fitted around extremely busy schedules, with all prosecutors in the Office carrying a significant advocacy load. The Office is not resourced to provide a separate policy section, as are some other Australian DPPs.

The progress of the SARP reforms is dealt with in the body of this report. Many adjustments have been made in this area, and the experience of witnesses and complainants of the criminal justice system has been greatly improved.

The following non exhaustive list shows the variety of matters raised by us and enacted in the last seven years:

- An increase in penalties for culpable driving offences;
- Removal of statutory limitations for historical sexual offences;
- Persons in authority - legislation which makes it an offence to engage in sexual intercourse or an act of indecency with a person over 16 but under 18 where the young person is under the person's special care -defined to include teachers, step parents, foster parents, a person providing religious instruction, employer, sports coach, counsellor, health professional, or custodial officer;
- Expanded definition of sexual intercourse to include penetration to any extent of the genitalia and also include fellatio;
- Recording of evidence of sexual offence complainants for replaying at retrial;

- Permitting police interviews to be evidence in chief of all child and intellectually impaired witnesses (not just complainants) in violent and sexual offence proceedings;
- Allowing victim impact statements to be given by AV link;
- Changes to the jurisdiction of the Magistrates Court to ensure less serious matters are dealt with in that jurisdiction;
- A scheme for service of expert reports in criminal matters.

The achievements

It has been my aim not only to improve the quality of what we do, but to make the Office a stimulating and harmonious place to work. I owe a great debt to many in helping me achieve that. If I attempt to name all who have contributed: if I do, I will inevitably miss out someone worthy.

I must acknowledge the great contribution my Director of Corporate Services, Emma Flukes has made. Emma has been with me since the start, having commenced in her role just a week before I did. We have faced many challenges together. Indeed, there is almost no aspect of the work of the Office – from staffing structures to records management – that has not been revised and improved.

I should also mention both my Deputy Margaret Jones and my Assistant Director Shane Drumgold. The contributions of each of them to criminal justice in the Territory goes back to before my tenure, and in my time they have provided great leadership for the Office in advocacy, law reform and management.

I never lose sight of the fact that prosecuting is both a responsibility and a privilege. I am very proud of the fact that my officers reflect that every day in the work they do.

Jon White SC
Director of Public Prosecutions

A. Transmittal certificate



6 October 2015

Mr Simon Corbell MLA
Attorney General
Legislative Assembly
CANBERRA ACT 2601

Dear Attorney,

ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2015.

This Report has been prepared under section 6(1) of the *Annual Reports (Government Agencies) Act 2004* and in accordance with the requirements under the Annual Report Directions. It has also been prepared in conformity with the *Director of Public Prosecutions Act 1990*.

I certify that the attached Annual Report, and information provided for whole of government reporting, is an honest and accurate account and that all material information on the operations of the Office during the period 1 July 2014 to 30 June 2015 has been included.

I hereby certify that fraud prevention has been managed in accordance with Public Sector Management Standards, Part 2.

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you cause a copy of the Report to be laid before the Legislative Assembly within 4 months of the end of the financial year.

Yours faithfully



Jon White SC
Director of Public Prosecutions

ACT DIRECTOR OF PUBLIC PROSECUTIONS

Reserve Bank Building 20-22 London Circuit CANBERRA CITY ACT 2601
Phone +61 2 6207 5399 | Fax +61 2 6207 5428 | GPO Box 595 CANBERRA CITY ACT 2601 | DX: 5725

B. Organisational Overview and Performance

B.1 Organisational Overview

The role and functions of the Office

The Office of the Director of Public Prosecutions was established by the *Director of Public Prosecutions Act 1990* ("the Act") to institute, conduct and supervise prosecutions and related proceedings. The Act provides that the Office be controlled by the Director, an independent statutory officer appointed by the Executive. The Director makes prosecutorial decisions independent of political influence or control. Although the Director reports to and through the Attorney-General, the Director has complete independence in relation to the operations of his Office.

The current Director, Jon White SC, was appointed in September 2008 and is currently serving a three year term ending in September 2018. The Deputy Director Margaret Jones, and the Assistant Director Shane Drumgold are both serving five year terms.

The Director has the powers mentioned in the *Public Sector Management Act 1994*, section 25(3) in relation to the staff assisting the Director, that is to say:

- a. the powers of the head of service relating to the appointment, engagement and employment of people; and
- b. the powers of a director-general.

The Act requires the Director and Attorney-General to consult with each other, if required, concerning the functions and powers of the Director. The Attorney General may give directions to the Director, but any such directions must not be given without prior consultation; must be in writing and be presented to the Legislative Assembly; and be of a general nature only and not refer to a specific case. Any such direction or guideline is a notifiable instrument. There were no such notifiable instruments during the period covered by this report.

The Act ensures that the Director's prosecuting role is independent of the police and other investigative agencies. Once a prosecution has been instituted all prosecutorial decisions are made by the Director.

The principal duties of the Director are:

- to institute and conduct prosecutions, both summary and indictable;
- to institute and respond to appeals;
- to restrain and confiscate assets used in, or derived from, the commission of criminal offences;
- to assist the coroner in inquests and inquiries; and
- to provide advice to the police and other investigative agencies.

The Director has some important statutory functions, including:

- to institute a prosecution on indictment where there has been no committal for trial (known as an ex officio indictment);
- to decline to proceed further in a prosecution and bring it to an end;

- to take over and conduct, or discontinue, prosecutions instituted by another person (other than the Attorney-General);
- to give to a person an undertaking that specified evidence will not be used against them, or that they will not be prosecuted for a specified offence or conduct; and
- to give directions or furnish guidelines to the chief police officer and other persons specified in the Act, including investigators and prosecutors.

In prosecuting matters, the Director acts on behalf of the community. Prosecutors have strikingly been called “ministers of justice”, a phrase which sums up the unique position of the prosecutor in the criminal justice system. It has been said that prosecutors must always act with fairness and detachment with the objectives of establishing the whole truth and ensuring a fair trial.

In making decisions in the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed, and in particular by the Prosecution Policy promulgated by the Director. During the reporting period, the Director promulgated a new Prosecution Policy, the first renewal of the policy since 1991. The Policy is available on the website of the Office and is appended to this report. The Director may also issue guidelines to prosecutors from time to time in relation to a particular area.

Although the Office does not have clients as such, in performing its functions the Office works closely with the courts, the legal profession, police and other investigators, victims’ representatives and other government agencies.

The organisation

During the reporting period, there were two senior executives employed in the Office, being the Deputy Director and Assistant Director. Each has the responsibility of assisting the Director with the management of the Office, with particular emphasis on providing a high degree of leadership of the Office’s staff and ensuring the effective deployment of resources; conducting more complex litigation; providing high quality legal advice to the Director; achieving effective and productive relationships with the courts, investigators, criminal justice agencies and the legal profession; and representing the Director in forums and meetings.

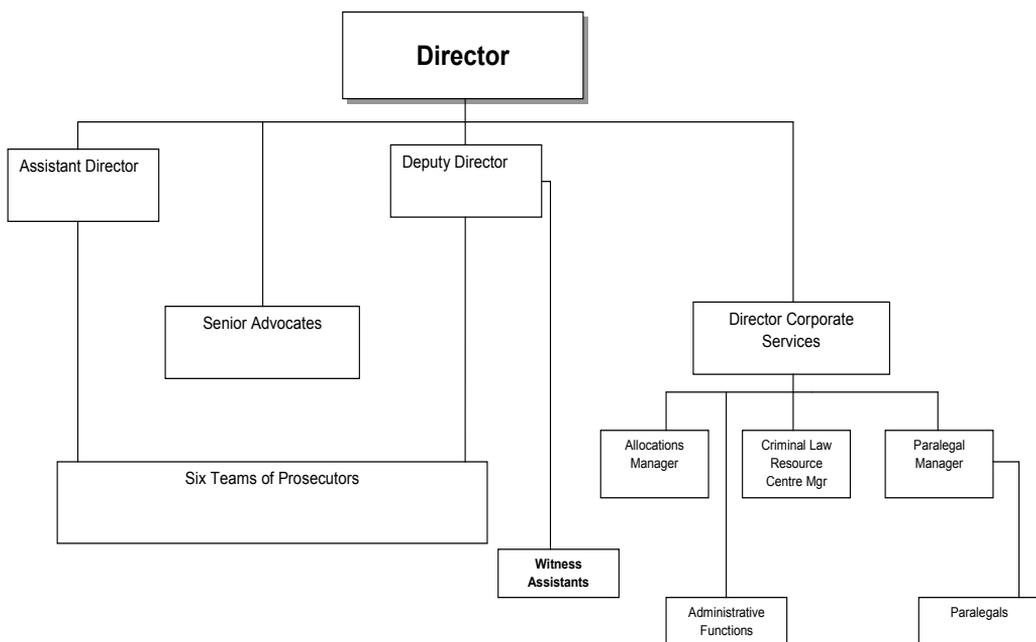
The ACT Remuneration Tribunal determines the remuneration of the Director and senior executive staff from time to time. The Director or executives may make submissions to the Tribunal on those matters.

The operations of the Office are overseen by the executive comprising the Director, senior executives, and the director corporate services. The executive meets weekly with a senior management committee comprising the executive, the allocations manager, the practice manager, the paralegal manager and senior advocates. Legal staff meet weekly to discuss matters of current concern, including legal and procedural issues, and administrative matters. Regular meetings of paralegal staff are held. There are also regular all staff meetings.

The Office has a Working Environment Group which meets monthly to discuss issues affecting staff and their working environment. Each section of the Office has a representative. The objectives of the group are to:

- foster co-operation in relation to working environment and workplace safety issues;
- disseminate information and consult about employment conditions, the working environment, and health and safety at work; and
- coordinate health and wellbeing activities for the Office.

The Office structure during the reporting period was as follows:



Summary of performance

During the reporting period, the Office's achievements included:

- promulgating a revised prosecution policy to respond to significant developments in statute and common law;
- ensuring a stimulating and enjoyable workplace, with a notably low rate of unscheduled absences;
- bedding down the professionalisation of the cohort of paralegals, including the requirement for qualifications;
- contributing significantly to the debate on family violence, including proposing significant law reform;

- putting in place a team dedicated to work safety, and other regulatory prosecutions, and enhancing expertise in the area;
- consolidation of the move to intensive listing of Supreme Court trials and the consequential changes required in internal management of work;
- prosecution of a number of complex and significant matters, including murders, sex offences and work safety prosecutions;
- continuing to prosecute high numbers of Supreme Court trials, sentences and appeals;
- consolidation of the move to electronic service delivery particularly in relation to the receipt and service of police briefs in electronic form;
- shifting criminal law resources within the Office to a new platform to enable better access to existing resources and precedents, and greater functionality in discussions between lawyers about current developments.

Outlook

Priorities for the coming year include:

- reviewing internal processes to maintain pressure for efficiency in dealing with Magistrates Court matters;
- reassessing the handling of straightforward traffic and like matters within the Office with a view to greater involvement of paralegals in the preparation and presentation in court of such cases;
- reviewing the witness assistance service to maximise efficiency within the Office and enhance co-operation with others in the field;
- recruitment particularly of senior lawyers;
- training across the organisation particularly for junior prosecutors and paralegals.

The major challenge facing the Office remains maintaining prosecutorial services in the face of increasing workloads and tightening resources. Specifically, the announcement of the impending appointment of a fifth resident judge will inevitably require additional resources, as I pointed out in a previous annual report. As well, the announcement by the Magistrates Court that hearings will be listed in that Court at the same time as the Supreme Court conducts its intensive listings means that additional staffing resources will be required to cover all courts.

Other major challenges are:

- working with the Magistrates Court to improve listing procedures;
- maintaining staff development in the face of work load and budgetary pressures;
- dealing with issues of security of staff outside the Office, particularly in court and on the way to court;
- engaging with legislative reform within existing staffing levels and workloads.

B.2 Performance Analysis

Superior courts

For many years the Supreme Court struggled with a significant trial back log. This back log was the subject of comment in previous Annual Reports.

I was keen to see the back log of criminal trials addressed. Some of the case reports in this Report indicate the somewhat glacial pace at which criminal matters previously moved, with significant impacts on victims, the accused, and the community: (see for instance case reports on *Gillard, Nona and Miles*).

Following the appointment of the present Chief Justice in 2013, the Supreme Court moved to the intensive listing of criminal trials. A pilot criminal trial listing period went for seven weeks from February 2014. That first period was a great success with the Office running 30 trials, and clearing a back log that went back in one case to a matter where the indictment had been filed in 2011.

Intensive listing has now become a permanent feature of the landscape, and the 2014/2015 year saw the first full year of operation. There are four criminal trial listing periods a year and each period goes for four or five weeks. Trials not reached are often re-listed in additional weeks made available at the end of a period. For long trials, a special fixture is given.

This new way of conducting trials has required us to focus our resources on the periods leading up to and during the criminal trial listing period. We are seeing very significant advantages. One of the challenges of conducting a fair and efficient criminal justice system is how to accommodate the reality that many accused do plead guilty, but not until very shortly before the trial is listed. Experience has shown that significant case management does not encourage early pleas of guilty. What encourages pleas of guilty is the certainty of the approach of a hard trial date which is unlikely to be shifted. It has to be said that with the hard date approaching, both the defence and the prosecution focus on their prospects, and engage in realistic negotiations to resolve matters.

Confident that many matters which are listed for trial will resolve prior to trial, the court can over list substantially.

There is a down side to this so far as the resources of my Office are concerned. Inevitably, many trials will have to be prepared, only to see pleas of guilty entered after most of the work has been done. Preparation for a standard trial takes weeks, and for complex trials, months. There is a brief of evidence to be gone through and served, loose investigative ends to be tied up, an indictment and case statement to be prepared and filed, preliminary applications to be made (such as applications to lead tendency evidence) witnesses to subpoena, and conferencing of witnesses to be arranged. Trials for sex offences are even more involved. A criminal trial is like an iceberg - the part played out before the jury is just the tip.

To illustrate, in the reporting period, there were 69 matters that were committed for trial following a plea of not guilty, where the plea was changed to guilty after committal.

Of those 69 matters, in 44 cases, the change of plea came after subpoenas were issued by my Office, which is a general indicator that most of the preparatory work has been completed. In 11 of those 44 cases, the change of plea came about either on the first day of the trial or later, after the trial had commenced.

In fact, during the reporting period, 108 trials were listed of which 49 actually made it to trial. As a rule of thumb, for every trial that runs, my Office prepares another that does not.

None of this is a complaint. Human nature is such that pleas of guilty will often be entered at the last minute. A plea of guilty at any time is welcome. It allows offenders to expiate their guilt, and comes as a relief to victims and other witnesses. And the dropout of matters where pleas of guilty are entered means that other matters are able to proceed in a timely manner. This benefits victims of crime, the accused and the community.

What is also of benefit is greater certainty of listings. We can more accurately predict very early in proceedings when a matter will be listed for trial. A matter committed for trial in September 2015 will be listed in the call over in November 2015 with a likely trial date in the February/March 2016 sittings.

An example will help to illustrate the benefits of the central criminal listing approach. In *R v Singh & Singh* (the subject of a case note in this report) the two accused committed serious sexual offences on 26 September 2013. They were charged on 12 October 2013. The trial commenced on 1 September 2014, they were found guilty on 8 September 2014, and sentenced on 22 September 2014. That is less than one year from arrest and charge to trial and sentence.

This is to be compared with the history of *R v Gillard*. In that matter the accused appeared in the ACT Magistrates Court in February 2009 charged with sexual offences against two sisters which occurred between 1995 and 2000. He was committed for trial in June 2009. There were several adjournments. Trial dates were set at the end of September 2010: September 2011 for the trial involving the complainant (D), and November 2011 for the trial involving the other sister (J). Both trials resulted in findings of guilt. Gillard appealed against the findings of guilt in relation to complainant D ultimately to the High Court on four of the counts. The High Court upheld the appeal on 14 May 2014, quashing the convictions in relation to those four counts and ordering a retrial.

By the time the matter came back before the Supreme Court, the new central listing periods were in place. In September 2014 a trial date of 24 November 2014 was set. Prior to the trial Gillard pleaded guilty to two of the counts that had been overturned by the High Court, which pleas were accepted by the Crown in full satisfaction of the indictment. He was finally sentenced to 10 years and 9 months imprisonment with a non parole period of 7 years in relation to both sets of matters (on the two sisters) on 16 December 2014. While the proceedings were extended by the appeals, the difference in the time for setting down matters for trial is stark. Before the central listing reforms, there was a two year delay between committal and trial, and one year between the date the trial was finally set, and the trial date. After the new system came into operation, the matter was mentioned in September 2014 and given a November 2014 trial date.

In terms of the delivery of just and timely responses to serious criminal offending, with the assurance of a fair trial, the central trial listing periods have proved to be a great success.

In the appellate sphere, overall during the period, numbers of appeals were slightly up and completed matters in the Supreme Court slightly down. It is noted however that there has been an increase in matters committed for trial to the Supreme Court, which will no doubt reflect next year in trial work.

Summary courts

Obviously, the intensive listing of matters in the Supreme Court has resource implications for my Office. It is all hands on deck during such periods. Hitherto, and in response to a request by my Office and ACT Legal Aid the Magistrates Court has accommodated the central trial listing period by not listing hearings during those periods. Indeed I anticipated – and urged upon the Magistrates Court – that it should block list Magistrates Court hearings in periods *complementary* to the Supreme Court central trial listing periods. Unfortunately the Chief Magistrate has recently indicated that the Magistrates Court will not hold off on listing hearings during the Supreme Court criminal trial listing periods.

The Magistrates Court is moving towards more lists rather than fewer, and this makes less time available for Magistrates to hear matters. And there does not seem to be any clear commitment to block listing of Magistrates Court matters, let alone any effort to complement the listing periods of the Supreme Court.

This unfortunate development will have resource implications for this Office. I am hoping my Office can work with the Magistrates Court to identify possible efficiencies such as reducing the number of lists, and increasing hearing time available, moving towards block listing of hearings and other measures that could improve efficiency.

The number of completed matters in the Magistrates Court was remarkably similar to last year. However, delays in listing matters for hearing have increased, a matter of concern referred to elsewhere in this report. Numbers in the Childrens Court are slightly down but within historic trend lines.

In the Coroners Court, the long term trend away from coroners hearing evidence has continued. Coronial proceedings are investigative rather than adversarial in nature, and many coronial matters do not require a hearing of evidence. Alternatively, the coroner can often make findings in relation to the cause of death from statements and documents tendered in a short hearing. The Coroners Court now has attached to it a position to assist with coronial matters. Nevertheless I retain a function to assist coroners when requested.

R v Eastman

Last year an inquiry recommended that Mr Eastman's conviction for the murder of Assistant Commissioner Winchester be quashed and that there be no re-trial. The matter was then listed before the Full Court to consider the Report of the inquiry and determine for itself whether Mr Eastman's conviction should be quashed and if quashed whether there should be an order for a re-trial. When this matter was the last reported on, the Full Court had heard submissions on this issue and had reserved its decision.

The Full Court

On 22 August 2014, the Full Court delivered its judgment, quashing the conviction and ordering a new trial.

The Full Court found, amongst other things, that the reception of the forensic evidence of Mr Barnes' at trial, which had been shown by the inquiry to be significantly flawed, meant that Mr Eastman did not receive a trial according to law and resulted in a substantial miscarriage of justice. This required the conviction to be quashed.

With respect to the question of whether there ought to be an order for a re-trial, the Full Court considered the strength of the Crown case against Mr Eastman and whether the interests of justice supported a new trial. In doing so, the Full Court agreed with Martin AJ that a strong circumstantial case remained, even if the evidence of Mr Barnes' and the associated forensic evidence was put to one side, and found that "it would be open to a jury to convict Mr Eastman" on the evidence before the Court.

The Full Court went on to consider whether the interests of justice supported a new trial. After weighing a number of factors, the Full Court concluded that interests of justice required the Court to order a re-trial. In coming to the decision, the Court noted:

The gravity of the offence, the life sentence imposed and the strength of the remaining circumstantial case persuade us that, despite the time that has elapsed since the offence and the time that Mr Eastman has already spent in custody, this is an appropriate case to order a new trial. The community has a vital interest in ensuring that a person against whom a strong circumstantial case of murder of a very senior police officer exists, does not escape conviction if, on a trial conducted in accordance with law, a jury is satisfied beyond reasonable doubt of his or her guilt. And this is so even if the person has already served any term of imprisonment that might be imposed on him or her following conviction on the retrial: *Spies* 201 CLR at 638 [103]-[104].

When this decision was handed down, Mr Eastman applied for, and was granted, bail.

Question of re-trial

Following the Full Court's order, it fell to the Director to determine whether to prosecute Mr Eastman for a second time. After seeking independent advice on the matter, and by applying the test laid down by the prosecution policy, the Director determined that the matter should be re-tried. The Court was advised of this on 2 December 2014.

Stay Application

Mr Eastman foreshadowed an application to permanently stay the proceedings. In late December 2014, Acting Justice Whealy, retired NSW Court of Appeal judge, was appointed to hear the stay application and the new trial. His Honour listed the stay application to commence on 13 July 2015 and the re-trial - in the event the stay application was unsuccessful - to commence in February 2016.

In April 2015, Mr Eastman made an application that Whealy AJ disqualify himself from hearing the stay application on the basis of apprehended bias. Whealy AJ refused to disqualify himself but Mr Eastman appealed to the Court of Appeal which disqualified Whealy AJ from hearing the stay application. This created a great deal of uncertainty about when the stay application could be heard.

Several weeks prior to the date the stay application was due to be heard, the Court had still not appointed a judge to hear the matter and Mr Eastman made an application to vacate the stay date. The day before the application was to be heard, Mr Eastman's Senior Counsel advised that he had to withdraw from the matter due to ill health. This created further difficulties which ultimately led to the Court vacating the stay application.

In mid July, Ashley AJ was appointed to the Supreme Court of the ACT and allocated to hear the stay application. It is now expected to be heard in February 2016.

The SARP report 10 years on

This year marks 10 years since the publication of the report *Responding to sexual assault: the challenge of charge*, otherwise known as the SARP report. The report was result of the joint work of this Office and the AFP and was funded by the ACT government.

The SARP report was researched and written by Margaret Jones, then a senior prosecutor in the Office with experience in prosecuting sexual offences, (now my Deputy Director) and Sergeant Tony Crocker from the AFP. The report looked at ways of improving practices and procedures in the ACT criminal justice system for victims of sexual offences. The authors considered what was happening interstate and overseas in terms of legislation, court facilities and investigation and prosecutorial practices. Significant recommendations were made for improved investigation and prosecution of sexual offences, greater legislative protection for complainants, improvement of court facilities, and the establishment of a one stop shop for child victims in the ACT.

Ten years on from the SARP report, it is good opportunity to review what has been achieved, and what remains to be achieved.

We are often reminded of the prevalence of sexual offending, both current and historic, by newspaper reports of trials or charges. The Royal Commission into Institutional Responses to Child Sexual Abuse is a timely and ongoing reminder of the devastation caused by sexual offending upon children. Public awareness of the problem of the sexual abuse of children has never been higher. The community expects that this sort of offending will be properly investigated and prosecuted - and that complainants will be treated sensitively in the process.

Following SARP, legislative changes that had been recommended for sexual assault complainants, or had indeed already existed (such as CCTV) were extended to the majority of family violence (FV) victims. The ACT is now the most progressive jurisdiction in Australia when it comes to allowing FV victims give evidence from a remote room, removed from the alleged perpetrator, and connected by AV facilities.

There were other significant legislative changes. Children's interviews with police are now played as the child's evidence in chief. This applies not only to sexual offences, but all violent offences. Other jurisdictions have these provisions for sex offences, but the ACT is leading the way in extending this special measure to other violent offences - and other jurisdictions are starting to follow our lead.

The ACT now has legislation requiring the pre recording of the entirety of a child's evidence in sex offences. This allows a child to give their evidence many months before the trial is held, and they can then get on with their lives without the stress of court proceedings hanging over their heads.

Committal hearings no longer involve sexual offence complainants. Since 2008 there has been a prohibition on any complainant in a sexual offence giving evidence at a committal hearing, resulting in a reduction in the stress created by having to give evidence multiple times. It has also cut delays in matters being committed to the Supreme Court.

The AV and remote room facilities in the courts were revamped in 2008 in a major overhaul. Large screens are now in the jury court rooms and some of the Magistrates Court rooms. This upgrade greatly improved the quality of evidence given from outside the court rooms.

It is inevitable that where technology becomes more complicated, there will be problems. Frankly, in some instances, the performance of the technology has been disappointing. My Office has been

proactive in identifying problems early with a view to ensuring trials and hearings can proceed, and I should record the commitment of court staff to finding solutions. But the benefits of the post SARP legislation have greatly outweighed any technical hiccoughs.

The SARP report made a number of recommendations about internal practices of this Office. Funding for the DPP Witness Assistance Service was increased allowing the WAS to focus on sexual offences complainants. We now have processes in place that ensure early and regular contact between the WAS with victims of sexual offences. In addition, police, DPP, Canberra Rape Crisis Service and Victims Services ACT meet regularly in 'wraparound' meetings. These meetings discuss support for victims along the course of the criminal prosecution.

One of the recommendations in the SARP report was the establishment of a specialist sexual offences unit within the DPP. I established the unit soon after taking up my position as Director. That unit continues to function and perform the role recommended in the SARP report.

One of the criticisms in the SARP report of DPP practice was the lack of clarity over decision making to continue or discontinue sexual offence prosecutions. That decision making is now firmly centralised. Any decision in relation to sexual offences now rests with me, my Deputy Director or my Assistant Director.

A comparison of statistics from the SARP report with statistics in this current report reflects the immense changes that have taken place. This is shown in the following table. Many more trials are conducted, and fewer matters discontinued. But perhaps the biggest change is the increase in the numbers of matters where pleas of guilty are entered before trial. This is testament both to improved investigatory methods and improved preparation at the prosecution stage. There has also been a cultural change - consistency and steadfastness are our watchwords.

Sexual Offences in the Supreme Court

	2002/03	2013/14
No of trials conducted	11	21
Pleas of guilty prior to trial	3	28
Discontinued prior to trial	6	3
Total	20	52

I attribute the decrease in matters discontinued prior to trial to better communication with complainants in the course of the proceedings, the improvement in special measures, improved centralised decision making and the involvement of the WAS.

The Office has better internal processes and training. Prosecutors receive training on developments in evidence law as it particularly affects sexual offence prosecutions. Developments in the understanding of tendency, coincidence and relationship evidence have improved the quality of the evidence collected. Our newly forged understanding of the dynamics of power and control in intimate relationships allows prosecutors to approach matters with a far more realistic apprehension of the facts. The SARP report noted that discussions with prosecutors revealed differing views about

the importance of corroborative evidence, some prosecutors indicating that the absence of any corroborating evidence meant there was no reasonable prospects of success. We have broadened the understanding of what might be admissible as corroborative evidence, while not requiring corroboration as a necessary precondition to proceeding. Centralising decision making has meant that views of individual prosecutors are no longer determinative.

Recent changes in criminal listings in the Supreme Court have reduced delays and thereby greatly improved the situation for complainants.

The need for reform continues, and my Office continues to be a voice. For example, following representations from my Office and comments in previous annual reports (see for example my Annual Report for 2011-12) the following legislative changes were made in 2013:

- The definition of sexual intercourse was extended to encompass common sexual acts;
- It is now an offence to engage in sexual acts with young people under special care when they are under 18. This includes step parents, teachers, coaches, counsellors etc. Until the amendment it was legal to have a consensual sexual relationship once the child turned 16. This amendment recognises the special relationship of trust and the nature of power between the child and a person in a position of authority;
- For all child and intellectually impaired witnesses in sexual or violent offences the police interview can be played as the child's evidence in chief. This previously only applied to victims;
- The evidence of all sexual offence complainants is now recorded audio visually at trial and can be played at any subsequent trial (for example at a retrial following an appeal).

Some worthwhile reforms suggested in the SARP report have not been taken up. The report recommended a one-stop shop for child victims of sexual and physical abuse. Police, health and child protection would be co-located in one facility allowing the needs of the child to be met in one place. A revisiting of these recommendations is overdue.

In the meantime, my Office continues to remain actively involved in the ongoing SARP process. One legislative change worth implementing would be to permit the playing of a complainant's recorded interview with the police as their evidence in chief. This currently applies in the case of child witnesses but not adult complainants. Oral evidence given many months or years after the event is the norm. But that norm developed before developments in recording technology. We now use recorded evidence in a variety of situations. It is time to give consideration to extending it for adult victims of sexual offences.

Paralegals

The paralegal section has built on goals from previous years concerning the continuing training and development of paralegal staff and the procedural requirements of providing efficient and high quality support to the legal staff within the office.

All paralegals permanently employed within the Office now hold relevant qualifications. The mandatory qualifications recently introduced within the paralegal structure were applied during a recent recruitment round. Three permanent paralegal staff have a degree in law.

With the current workload pressures the paralegal staff have had limited availability to participate in further formal training, however in house training is provided on a regular basis. Each paralegal section within the Office has relevant training packages and procedural manuals.

Following on from the initiatives from last year traffic matters are now prepared by the paralegal staff. This has both freed up time for the legal staff and has allowed paralegals to gain valuable 'hands on' experience with the preparation of court matters and the legislation.

During this reporting year the Office has employed paralegals in specialist roles for short term contracts. This has allowed the remainder of the paralegal team to function effectively whilst still assisting with the Office's requirements as a whole.

The recent implementation of a new Magistrates Court Practice Direction has necessitated change to some Office procedures, especially in the management of hearing matters. There has been extensive consultation with the AFP to ensure the timely delivery of briefs for matters that are set for hearing.

In the last period we implemented a pilot program in consultation with the AFP for the delivery of briefs of evidence in an electronic format. This year has seen a further development of electronic records, with a number of internal and external processes moving from paper based methods to electronic procedures. The Office now receives a significant number of briefs in electronic format and is working on how best to integrate these briefs into the electronic case management system.

Sexual Offences Unit

The sexual offences unit is now in its fifth year after being established to respond to the significant challenges in prosecuting sexual offences. Such matters are challenging to prosecute, are often complicated and less likely to resolve by way of pleas of guilty. The specialisation that has arisen from the dedicated unit has allowed individual prosecutors to develop skills in the areas required for prosecuting sexual offences. This has brought strength and consistency to the office's prosecution of these offences.

Sexual offences continue to be over represented in the types of trials that are conducted, a reflection of the fact that pleas of not guilty are more common with these offences. This means that prosecutors outside the unit conduct many of these trials. The unit acts as a support for those prosecutors and ensures that there is consistency in the way in which these matters are prosecuted.

Increasingly the Crown is adducing tendency evidence and relationship evidence in sexual offence prosecutions. In many instances there are un-charged acts that support particular tendencies; or contextual (relationship) evidence that explains why complainants have responded in otherwise unexpected ways. This type of evidence allows the jury to understand why accused or complainants act in particular ways. The sexual offences unit has been instrumental in promoting the use of such evidence.

Giving evidence in a trial is daunting enough for any witness, but where that witness is a child giving evidence in relation to sexual offence it can be traumatic. The availability of pre-recorded evidence for children, whether complainant or a witness, has now been in place for some years and is a significant tool in combating the trauma of giving evidence. The Crown is also able to use a witness's recorded interview with police as part of their evidence in chief. The pre recorded evidence is often taken within months of the matter being committed to the Supreme Court. By giving witnesses the

earliest opportunity to record their evidence they are able to move past the court process and focus on their recovery. Currently this is only available to complainants who report offences while they are still children. People who delay reporting sexual abuse until they are over 18 are not eligible to give their evidence in this way. Rather, their evidence is taken during the course of the trial without the ability to use the recorded evidence with the police or have it recorded early. I have suggested in this report that consideration be given to allowing all sexual offence complainants to have their police interview tendered as their evidence in chief.

A number of cases prosecuted by the Unit are in the case reports section of this Report.

The most telling statistic from the reporting period is that for the first time, the number of pleas of guilty **exceeded** the matters run to trial on a plea of not guilty. This reflects the increasing success of the Office in prosecuting these difficult matters.

Relevant statistics for the Unit for all matters for the reporting period are:

Sexual Offences: Trials and Sentences in the Supreme Court - 1 July 2014 to 30 June 2015

Description	Matters
Trials	
Trials	22
Trial Outcomes	
Guilty Verdicts	11
Not Guilty Verdicts	10
Other	1
Pleas of guilty entered	
Accused sentenced after committal for sentence, after committal for trial when they changed plea' or re-sentenced after breach	28
Notices declining to proceed further	3

Sexual Offences All Matters - 1 July 2014 to 30 June 2015

	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual offence matters commenced	75	4	44	123
Sexual offence matters completed	69	9	55	133
Sexual offence matters proved	23	3	34	60
Sexual offence matters discontinued	1	0	3	4

Note: Sexual offence matters completed in the Childrens Court and Magistrates Court include matters completed by way of committal to the Supreme Court. Sexual offence matters completed in the Supreme Court include Supreme Court appeals and matters in which a Notice Declining to Proceed was filed.

Family Violence Team

A significant increase in homicides alleged to have occurred in the context of family relationships has focussed the Canberra community's attention on family violence, and its adverse and long term effects. There appears to have been an increase in reporting of family violence incidents. The community has a strong interest in prosecuting family violence offenders. Research suggests that adults affected by drug or alcohol abuse (who are then more likely to commit other offences), were, as children, subject to domestic and/ or sexual violence.

The Office has had specialist family violence prosecutors since 2000 under the ACT Interagency Family Violence Intervention Program (FVIP). The FVIP is a coordinated community and criminal justice response to family violence. The establishment of a specialist team reflected research findings on prosecuting family violence that suggested active and early involvement of prosecuting agencies is important in ensuring positive outcomes for victims.

The Office now has a specialist team of six family violence prosecutors and two paralegals. Although prosecutors have individual case loads, the team work collaboratively in order to maintain consistency and high quality prosecutions. Family violence offences are often complex and involve issues of a social as well as legal nature. Some victims are so vulnerable they cannot protect themselves or their children. Mental illness, drug and alcohol addiction, fear and stress associated with relationship breakdown, children with overwhelming behavioural issues, and many other factors can be a catalyst for incidents of family violence. While no case is the same, matters of family violence often have common characteristics. A specialist team of prosecutors working collaboratively, sharing their knowledge and experience, best serves the community in dealing with the complexity of family violence.

The Office continues to remain active in the FVIP. Apart from in house continuing legal education and training, prosecutors attend conferences and events hosted by other agencies to broaden their knowledge of family violence related issues. Prosecutors attended the launch of the Federal

Government's initiative addressing forced marriages and a conference hosted by the Women's Centre for Health Matters on financial impacts and costs of living with and leaving domestic violence. On a social note, there was the Domestic Violence Crisis Services' Blue and White Gala Ball at which Australian of the Year, Rosie Batty spoke. The FV team also assisted the Commonwealth Attorney-General's Department with their Legal Policy Twinning program. Two prosecutors, one from Tonga and the other from Kiribati spent time with FV prosecutors gaining insight into the Office's practice and policy.

The Office works independently from, but closely with the AFP. The stationing of an AFP officer at the Office facilitates communication. DPP officers meet directly with Station Sergeants to communicate concerns around family violence arrests, victim safety and prosecutions. The FV team has also established good communication with the AFP Victim Liaison Officer (VLO) in sharing information to protect vulnerable victims of family violence and develop training programs for the AFP.

The FV team continues to deliver training to police. The Office sees the benefit of that training coming thorough in some outstanding police investigations. One example is the prosecution of CG. The victim in that case had been subject to prior incidents of domestic violence. The offender rang 000 when the victim lost consciousness. Ambulance officers rang police. Police attended and arrested the offender on suspicion of family violence. The victim did not provide a formal statement to police. On the day of the hearing, she gave evidence to the effect that she remembered nothing of what had happened. The offender gave evidence consistent with his call to ambulance officers that he had "poked her" in the head and she had fallen over. The court found the offender guilty of having assaulted the victim by punching her repeatedly to the face and throwing her head first into a chest of drawers.

The success of the prosecution case was attributable to a persistent and careful investigation by the AFP. Evidence against the accused consisted of a 000 call where not only had the offender provided an implausible version of events, he had made partial admissions. Police recorded things the victim said at the scene. She said that she had been punched by the offender and thrown into a chest of drawers, but not to arrest the offender because he would kill her once he got out - thereby providing both a version of events and motive for her not to give evidence against the offender. Police also gathered medical records and subpoenaed treating professionals from the Canberra Hospital to give evidence of things that the victim had said to them, and that the injuries she sustained were consistent with her version of events, not the offender's. Police also gave evidence of their observations of the offender and victim at the scene.

Significant statistics during the reporting period include the following. The figures show a significant increase in the number of matters commenced (up 22% from the previous period), and a significant decrease in matters discontinued (down 38%) from the last reporting period:

	Magistrates Court	Childrens Court	Supreme Court	Total
Family Violence matters commenced	462	37	18	517
Family Violence matters completed	359	35	42	436
Family Violence matters proved	284	24	14	322
Family Violence matters discontinued	20	0	1	21

Note: Family violence matters completed in the Childrens Court and Magistrates Court include matters completed by way of committal to the Supreme Court. Family violence matters completed in the Supreme Court include Supreme Court appeals and matters in which a Notice declining to proceed was filed.

Witness Assistance Service

The WAS continues to support vulnerable witnesses throughout the Court process. Over the reporting period the WAS has worked on extending its focus to support witnesses deemed vulnerable, regardless of the matter type, who would benefit from WAS assistance. The WAS encourages referrals from prosecutors and other staff who identify witnesses who may be particularly in need of WAS support during their involvement with the Court process. The WAS continues to maintain a strong focus on supporting witnesses in sexual assault and family violence matters, and those matters where a child is required to give evidence.

WAS role in supporting witnesses

The WAS role is to provide support and information to vulnerable witnesses to ensure they are able to competently participate in the criminal proceedings. The WAS maintains ongoing contact, in line with the needs of witnesses, to provide updates on the criminal proceedings and provide them with opportunities to have any questions or concerns addressed by prosecutors or the WAS. The WAS also provides referrals for witnesses to a number of external service providers, who can offer additional support and services. The WAS continues to work closely with these agencies in assisting witnesses during and after the criminal proceedings.

During the year, the WAS continued to provide ongoing support to both witnesses and DPP staff throughout criminal proceedings (both WAS and non WAS matters). This support included making initial contact with witnesses and updating them on the criminal proceedings, providing a general overview of the court process, organising initial 'meet and greets' between witnesses, prosecutors and the WAS, scheduling and sitting in on proofings, facilitating court familiarisation tours, as well as accompanying witnesses to court or sitting with witnesses in remote witness rooms where they were required to give evidence. At the finalisation of matters before the court, the WAS also attended debriefing sessions with witnesses and prosecutors.

Victim Impact Statements

The WAS continued to assist witnesses in the preparation of Victim Impact Statements (VISs). There was a noted increase in assistance with VISs provided during the 2014 - 2015 financial year for non-WAS matters. Prosecutors were pro-active in promoting (to witnesses and to the Courts) the benefit of VISs when tendered prior to sentencing.

The WAS continued to reinforce the emphasis on witnesses preparing the statements in their own words, individually articulating the impact (of offences) on themselves. This ensures the credibility and transparency of the statement.

Training provided by WAS

The WAS continued to provide external training to the Australian Federal Police (AFP) recruits throughout the year. The training encompassed an overview of the role of the WAS, as well as training specifically focused on family violence. The WAS also presented the AFP recruits with training on the preparation of VISs in relation to the legislative requirements. This training was also provided to the Canberra Rape Crisis Centre (CRCC).

The WAS continued to provide in-house training on the role of the WAS, with particular emphasis on identifying appropriate WAS clients. This included meeting with new prosecutors and explaining the role and functions of the WAS and providing relevant information to prosecutors at the Sexual Assault and Family Violence team meetings.

The WAS also assisted prosecutors to identify where an external service provider was in contact with witnesses for non-WAS matters and seeking their assistance, where they were already involved. This assisted in managing WAS resources by involving supports already in place.

Contact with external service providers

During the reporting period, the WAS continued to attend weekly Family Violence case tracking meetings with relevant external service providers including the AFP, ACT Corrective Services (ACTCS), Care and Protection Services (CPS), VSACT and the Domestic Violence Crisis Service (DVCS). This forum is important in identifying support services linked in with victims of family violence throughout the court process, and ensuring assistance is offered to those identified as not receiving or engaging in support.

The WAS continued to attend monthly Wraparound Sexual Assault Reform Program (SARP) meetings with the AFP, CPS, Child at Risk Health Unit (CARHU), Forensic and Medical Sexual Assault Care (FAMSAC), CRCC and VSACT. Wraparound continues to provide a confidential forum where information regarding client matters and support is discussed. The WAS is responsible for providing updated information relating to matters before the court, as well as advising of support involvement in sexual assault matters.

'Side by Side' is a court support volunteer service overseen by VSACT. Throughout the year, the WAS continued to make referrals to Side by Side, who provided volunteers to the DPP in court matters where low level support was required. Further, the WAS encouraged the use of this service to prosecutors for non-WAS matters as appropriate.

During the reporting period, VSACT provided significant assistance to the WAS by out posting an officer at DPP. This collaboration and cross skill opportunity was of enormous benefit to the Office, and was greatly appreciated.

WAS Caseload

A breakdown of all WAS matters within the reporting period is set out in the following table. The caseload statistics reflect an increase in the number of clients supported by the WAS during the 2014 - 2015 financial year. While the number of child sexual assault clients has reduced, WAS involvement in family violence and violent offence matters has increased considerably from the last period.

Offence type categories	Clients	Percentage
Adult sexual assault	60	22
Child sexual assault	67	24.5
Death	28	10.3
Historical sexual assault	15	5.5
Less serious violence offence (adult)	29	10.6
Less serious violence offence (child)	1	0.4
Other	20	7.3
Serious violence offence (adult)	51	18.7
Serious violence offence (child)	2	0.7
TOTAL	273	100

The WAS Bi-annual Conference

The bi-annual WAS Conference was held in South Australia in June 2015 and was attended by the Witness Assistants. This provided an opportunity for exchanges of information and ideas in relation to supporting WAS clients. It also allowed the Witness Assistants to network with their counterparts from other jurisdictions.

Plans for 2015 - 2016 financial year

The WAS will continue to provide support and information to vulnerable witnesses to assist them throughout the court process. The aim of the WAS is to ensure those witnesses most vulnerable are identified, regardless of matter type. The WAS will be streamlining the referral process for DPP staff to assist with this. The WAS will continue to foster positive working relationships with external service providers to ensure a collaborative approach to supporting witnesses during and after the court process.

Confiscation of Criminal Assets

The Confiscation of Criminal Assets Act 2003 is an effective tool in the fight against serious crime. The Office continues to pursue the restraint and forfeiture of property in cases where there is clear evidence that property was either used in the commission of an offence, or where the property is the

proceeds of crime. Restraint and forfeiture of property can act as a significant deterrent to criminal activity.

The Office commonly pursues the restraint and forfeiture of houses used in relation to the cultivation of cannabis, cars used in relation to robberies and burglaries, cash being the proceeds of drug trafficking, and electronic equipment used in relation to child pornography.

There was a significant increase in the amount of property restrained and forfeited during the reporting period. 28 matters were completed, which comprised of 13 forfeiture orders and 15 restraining orders. \$684,486.00 worth of property was forfeited to the Territory, and \$8,182,901.61 worth of property was restrained.

This was due, in part, to the detection of a number of sophisticated drug trafficking offences committed by organised criminal syndicates. It was also due to the AFP allocating additional resources to the Criminal Assets Investigations Team which has enabled the AFP and DPP to take a more proactive approach to criminal asset confiscation.

As an example of this proactive approach, in a recent case where the accused was charged with murder, the DPP successfully argued that what was alleged to be the getaway vehicle was 'tainted property' in that it had been used by the accused to facilitate his offending. The vehicle is currently restrained and is under the control of the ACT Public Trustee. If the accused is convicted of the murder it will be forfeited to the Territory.

DPP v Close

This was a seminal judgment from the Supreme Court on the interaction between the *Confiscation of Criminal Assets Act 2003* and the *Human Rights Act 2004*.

Pamela Close was convicted of defrauding ACTAB of \$1.2 million. She gambled almost all of the proceeds of her fraud. The DPP sought to have her house forfeited to satisfy a penalty order and recover some of the stolen funds.

Close and her husband challenged the forfeiture order. They argued that the DPP should be prohibited from seeking forfeiture as the order sought contravened the *Human Rights Act 2004*, was unconstitutional, amounted to an abuse of process and was an arbitrary intrusion upon their family life. Relying on recent High Court authority, the Supreme Court emphatically rejected those arguments, holding that:

The community has a tangible interest in the suppression of crime, and an effective way of deterring crime is to ensure that criminals do not profit from their crimes. In the instant case there is the additional consideration that the first defendant effectively stole over \$1 million of community money. The action taken by the DPP in commencing and pursuing these proceedings clearly strikes a fair balance between the rights of the defendants and those of the community.

Regulatory Matters

Regulatory matters - matters referred to my Office by regulatory agencies rather than police - are now the subject of greater scrutiny within the Office. The last year following the allocation of additional funding saw the establishment of a dedicated regulatory prosecution section to deal with an increasing number of briefs referred to the DPP and to ensure a consistent approach. The section -

which comprises a senior lawyer and paralegal, also provides a single point of contact for regulatory agencies. The senior lawyer vets all briefs received prior to allocating them to a prosecutor for consideration of appropriate charges. This is in contrast with the usual business of the Office, where charges have generally already been laid by police before the Office is involved.

Regulatory prosecutions attract considerable public attention and feature frequently in the media. They range from mishandling of dangerous substances, to filthy restaurants, unauthorised tree lopping, unlicensed fishing, and cruelty and neglect of animals.

In the reporting period the Office dealt with high numbers of referrals for regulatory prosecutions. ACT Health prosecutions continue to be consistent. Referrals from the RSPCA have markedly increased. Those prosecutions often raise particularly emotive issues, and have prompted strong public reactions in relation to penalties imposed.

The variety of matters finalised during the reporting period is shown by the following table:

Act	Matters (No.)	Proved
ACT Criminal Code 2002	3	1
ACT Road Transport Regulations	1	
Agents Act 2003	1	1
Agents Act 2003 (ACT)	1	1
Animal Welfare Act 1992	10	9
Dangerous Substances Act 2004	1	1
Dangerous Substances Act 2004 (ACT)	1	1
Domestic Animals Act 2000	1	
Electoral Act 1992 (ACT)	3	1
Food Act 2001	9	7
Total	31	22

Work Health and Safety prosecutions

The most difficult and significant part of the regulatory practice is undoubtedly work health and safety prosecutions. In the reporting period, charges have been dealt with in both the newly formed Industrial Court and the Supreme Court. They have utilised both the repealed Work Health and Safety legislation and the relatively new nationally harmonised *Work Health and Safety Act 2011*.

This Act represents a new, national, approach to work health and safety prosecutions. It has been the subject of little judicial consideration since its introduction, so ACT cases have attracted national attention. Work health and safety prosecutions present particular challenges – complex engineering

subject matter, prosecution witnesses who remain loyal to defendant companies, witnesses in itinerant industries leaving the jurisdiction, and companies which frequently liquidate, to name but a few. The expectations of victims and grieving family members must also be understood. In a situation where most offences are only punishable by a fine - no monetary penalty seems sufficient to punish serious injury or the death of a loved one.

Prosecutions in this area are very resource intensive because of the complexity of the evidence and the fact they are often hotly contested by corporations with much to lose. The following matters were dealt with during the year:

Act	Matters (No.)	Proved
Work Health & Safety Act 2011	3	2

A number of significant cases will be determined in the coming year.

Parking matters

The Office prosecutes those parking offences which end up in court. There were 150 parking matters completed in the reporting period, a significant increase on previous years.

Criminal Law Resource Centre

During 2014-2015 the Criminal Law Resource Centre (CLRC) continued to provide quick access to relevant materials required by staff for their work. This material often comes in a number of different formats all of which must be accessible in some form for use in court, the office or work outside these two areas. In fact, users have access to the full suite of DPP Criminal Law resources when and wherever they need it.

It is this focus on mobility that has seen the use of iPads by prosecutors continue to grow, driven initially by access to legislation. The CLRC maintains a portfolio of legislation in the 'cloud' where users can 'sync' their iPads to automatically download data, ensuring quick access to up-to-date material. iPad devices can also access all our online subscriptions including case law, commentary and even the CLRC catalogue which contains sentencing data, judgments, internal legal education papers and examples of previous work.

At the end of 2014 the CLRC successfully launched a new Intranet at the DPP by migrating all our data to the Sharepoint platform. This gave us many more options in how we could set up the Intranet. An example of this is the implementation of a 'team' structure allowing users to interact with other members of their team, sharing news, discussion and data. News, Calendars, Meeting Room Bookings, Discussion Boards, Who's Not In and Social News are examples of new or improved functionality now available across the organisation.

Year-by-year the advance of technology continues to change how electronic information can be managed and accessed. The CLRC actively monitors new developments in information management and technology to ensure that the DPP can make the best choices to provide staff access to essential resources in the most cost-effective and efficient way.

Case Reports

The following cases are included in the report to illustrate the breadth of work of the Office or because they involved significant issues.

Family violence

We are only too often reminded of the terrible destruction wrought by family violence, and its prevalence in the community. While family violence homicides are always shocking, my prosecutors are involved in family violence cases day in and day out. Through their persistence, courts are now beginning to reflect the community's concern about these sorts of offences.

Timothy James West

Timothy West pleaded guilty in the Magistrates Court to choking his partner to the point of unconsciousness, assaulting her and assaulting her thereby occasioning actual bodily harm.

West and his partner were in a domestic relationship living together with the complainant's four year old son. On the day in question, the offender and the victim were in their bedroom when an argument ensued. As the argument escalated the offender lunged across the bed and struck the victim's face causing her to fall. The victim said *"Don't hit me in the head again, because I can't explain another black eye"*. The victim's four year old son was standing at the bedroom door and was told by the offender to leave. The offender then grabbed the victim's hair, wrapped both his legs around her body and grabbed her under her chin and pulling her towards his chest. He placed his arm around her throat in a martial arts style hold while still holding her by her hair. The victim pleaded for the offender to let her go but he continued to hold her in this way. This course of conduct constituted the assault.

Eventually West released his hold of the victim and the victim ended up on her back on the bed. West got on top of her holding her down by his knees. He said to the victim: *"Do you want to die"*, then placed his hand around her throat and squeezed, at the same time placing his other hand over her mouth and nose. West held this position until the victim lost consciousness. Whilst holding the victim in this way the offender said to her: *"The only way to fuck up a relationship is if you kill the person"*. This course of conduct constituted the offence of choking so as to render the victim unconscious.

West then left, returning a few hours later. He again grabbed the victim by her hair and shook her. The victim ended up on the ground where West kicked her face and jumped on her arm and head. The victim raised her arms in attempt to protect her face - West continued to stomp on her. The victim felt pain to the right side of her face. Her earrings were ripped off, causing her ear to bleed. The side of her face and ear were significantly swollen. As a result of the assault she felt concussed, dizzy and sick. This conduct by the offender constituted the offence of assault occasioning actual bodily harm.

At the time of committing these offences the offender was on parole for other offences. He had an extensive criminal record which contained numerous convictions for serious criminal offending including aggravated burglary, theft, recklessly inflicting actual bodily harm, burglary, supplying a prohibited substance and unauthorised possession of firearms.

The offender entered pleas of guilty to the charges. A pre-sentence report provided to the magistrate noted that the offender had a long history of substance abuse and that he presented a high risk of general reoffending as well as a high risk for future spousal assaults. A victim impact statement prepared by the victim outlined the lingering physical and emotional effect the offences has had on the victim. The statement also referred to the effects on the victim's four year old son who had witnessed part of the assault.

The magistrate imposed the following sentence:

- 15 months imprisonment for choking the victim. The offence carries a maximum penalty of 10 years imprisonment;
- 10 months imprisonment for assaulting the victim and thereby occasioning to her actual bodily harm. The maximum penalty for this offence is 5 years imprisonment.
- 5 months imprisonment for assaulting the victim (when the offender struck the victim's face and placed her in a 'martial arts style hold'). The maximum penalty for this offence is 2 years.
- The head sentence was set at 18 months imprisonment. The additional non-parole period on top of existing sentences was 12 months.

I appealed to the Supreme Court on the ground that the sentence was manifestly inadequate. The Supreme Court upheld the appeal, noting:

These offences occurred in the context of an intimate relationship between the respondent and the victim. The respondent only had access to the victim because of the trust that she reposed in him because of this relationship. Superior courts have repeatedly acknowledged the seriousness of offences of violence within intimate relationships, and that such offences call for sentences strongly denouncing, and designed to deter offenders from, such offending.

The Court was satisfied that the sentences imposed by the magistrate for the offence of choking and for the offence of assault occasioning actual bodily harm were each manifestly inadequate, having regard to the maximum penalty these offences carried, the objective seriousness of the offences and the subjective circumstances of the offender.

For the offence of choking, the Supreme Court increased the sentence to three years and one month imprisonment and, for the offence of assault occasioning bodily harm, to 20 months imprisonment. A new head sentence of three years and 10 months was imposed. The new non parole order set by the court effectively added two years and 10 months to the non-parole order applicable to West's previous sentences. There was therefore a significant increase in the sentence imposed, both in the head sentence and the non parole period.

Police v Nathan McClung

The majority of family violence matters are dealt with in the Magistrates Court, and magistrates are only too familiar with the devastating effects of this sort of offending.

McClung and victim were in a relationship for a long period and had four children aged between 3 and 13 years of age. They had separated two months prior to the assault but the offender had been staying on and off at the victim's home.

On the day in question, McClung banged on the victim's bedroom window whilst intoxicated, demanding she wake up. The victim let the offender in and went back to bed where their five year old daughter was also sleeping. The defendant punched a hole in the bedroom door and began yelling abuse. The five year old daughter begged her father to "stop daddy, stop". McClung went into his partner's bedroom, and pinned her down on the bed with his knees on top of her, put his fingers up her nose and wrenched her head backwards. He struck her repeatedly in the face. McClung then went to the kitchen yelling. He returned to the bedroom door, which he hit several more times, making a large hole and causing the hinges of the door to come off. During the commotion, the couple's 13 year old daughter called police.

McClung pleaded guilty to assault and property damage. At the time of these offences he was already on a good behaviour order for assaulting his partner and had previous convictions for assaulting her.

In sentencing the offender to 12 months imprisonment to be suspended after eight months, the experienced magistrate remarked:

At this point, it is pertinent to repeat something I have said in relation to many of the family violence matters I have dealt with over the last 15 years since the commencement of this court's specialist family violence list. That is, to classify the root cause of the defendant's abhorrent behaviour towards the victim as being because of alcohol or drug misuse or because of an issue with anger management is simply wrong. He may, in fact, have those problems. But family violence is a pernicious evil, unfortunately prevalent in our society, that stems directly from the perpetrator's attitude to women and from his attempt and desire to exert power and control over his partner. He would not behave in this way to one of his mates he had been drinking with at the pub or to a work colleague who had somehow tested his patience or with whom he had had an argument. And yet he did not think twice about abusing and violating his partner of 19 years, the mother of his children, and indeed terrorising his young family. And as the prosecutor pointed out, this incident occurred approximately two months after the victim had attempted to separate from the defendant, another demonstration of the window of vulnerability of women wishing to leave violent relationships.

McClung appealed against the severity of his sentence, but the appeal was dismissed.

Police v Nick Parlov

Parlov was charged with a number of offences of violence committed against his ex-partner and members of her family. Parlov and victim had been in a relationship for a couple of years, however, the victim decided to leave the relationship because of his increasingly aggressive, abusive and controlling behaviour. When the victim attempted to leave, he assaulted her multiple times, including punches to her face (resulting in a black eye), grabbing her around the throat and pushing her into a wall with sufficient force to cause the plaster to crack. Two days later, the victim had packed her bags to leave but Parlov attempted to stop her. He ripped the victim's dress off her, forcing her to flee the unit and call her mother from a nearby payphone to collect her. When the victim's mother and brother arrived to collect her, he punched the victim's mother in the face, causing her to fall backwards and fracture a vertebrae in her spine. Parlov also punched the victim's brother in the back of the head as he tried to assist his sister into the car.

The matter proceeded to a defended hearing and was heard over the course of three days in the ACT Magistrates Court. Twelve witnesses were called, including the victim, her mother and her brother. An expert forensic medical officer also gave evidence about the injuries that the victim and her mother sustained. The magistrate described the account provided by the victim as "harrowing". The offender was found guilty of all charges and is awaiting sentence.

Significant cases

The Office prosecutes matters using in-house counsel. Unlike some DPPs, matters are only briefed out in exceptional circumstances. The in-house model insures that prosecutorial expertise is built up and retained within the Office.

R v Costa

Luigi Costa was charged with murdering his elderly neighbour Mr Freebody. Costa had invited Mr Freebody and his wife over to his house for a glass of wine to thank them for keeping an eye on his house while he had gone on a recent skiing trip. The interaction was initially civil, however Costa, having got drunk, angrily ordered Mrs Freebody from his house because she asked him to stop swearing.

After Mrs Freebody left, Costa got into an argument with Mr Freebody. This escalated to the point that Costa killed him. Costa admitted killing Mr Freebody but pleaded not guilty on the grounds of mental impairment. Mental impairment is a defence to murder if it can be proved by the defence on the balance of probabilities that at the time of engaging in conduct (in this case killing Mr Freebody) the accused was suffering from a mental impairment that had the effect that he did not know the nature and quality of what he was doing, or did not know the conduct was wrong or was not able to control the conduct.

The jury heard from a number of expert witnesses. At the conclusion of the trial, the jury returned a verdict of guilty to murder, thus rejecting the defence case that Costa was mentally impaired at the time of killing Mr Freebody.

Mr Costa is awaiting sentence in the Supreme Court.

R v Vojneski

On the evening of Tuesday 27 March 2012, Paula Conlon, a 30 year old mother of three, was stabbed to death in a frenzied knife attack in the bedroom of her house at 52 Hollows Circuit Macgregor, while her young boarder played a computer game with headphones on in the next room.

Her former partner Aleksander Vojneski was subsequently charged with her murder.

Vojneski pleaded not guilty. His case at trial was that he had left shortly before the murder and the killer was someone else. Over the course of the six week trial the jury, heard over 100 witnesses, and almost 100 exhibits were tendered.

After two days of deliberations the jury returned a verdict of guilty to murder. Vojneski was sentenced to life imprisonment.

R v Christopher Miles

Shortly after 9:00pm on 6 January 2011, Christopher Miles and his co-accused, IR, crouched in the bushes outside Woolworths at Kambah waiting for the perfect time to run in as it closed and grab the takings. Miles was armed with a tyre lever. Unbeknownst to them the police knew of their plans and foiled the robbery, arresting Miles and IR. Thus began prosecution proceedings which are still going.

Police investigations revealed that Miles had been involved in multiple robberies dating back to 2009. Miles was charged with a raft of serious offences, including aggravated robberies, aggravated burglaries, and attempted arson.

In December 2012, Miles faced trial for conspiracy to commit aggravated robbery relating to the Woolworths at Kambah plan which had been foiled. He was found guilty and sentenced to six years and nine months imprisonment with a non parole period of four years and six months. Miles appealed against both the conviction and sentence.

In the meantime, the DPP made a coincidence application, seeking to use similarities between three aggravated robberies (and a related take and drive motor vehicle) as evidence that each was committed by the same offenders, and seeking to run all matters in one trial. The robberies were of the Erindale Vikings club on 6 July 2009 (during which Miles and IR used cable ties to bind two people's hands and Miles was armed with a rifle), a newsagency in Wanniasa on 16 August 2009 (during which Miles and IR used cable ties to bind the victims hands and then took his car), and the Wanniasa ACTTAB on 23 October 2010 (during which several people were present and Miles was armed with a rifle which he pointed at the victim).

The coincidence application was granted, but Miles appealed the decision to run the trials together. The Court of Appeal dismissed this appeal and the charges proceeded together at the one trial. On the day that Miles was to face trial for those four offences, he entered pleas of guilty to two aggravated robberies and agreed to have the other aggravated robbery (of the newsagency) and take and drive motor vehicle taken into account on sentence. For these offences Miles was sentenced to 11 years and one month imprisonment (adding seven years, three months and 21 days to the previous sentence). A new non parole period of nine years was set. Miles appealed against that sentence to the Court of Appeal.

On 29 August 2014, the Court of Appeal handed down its judgment on three outstanding Miles appeals (two sentence appeals and a conviction appeal. The conviction appeal (relating to the Woolworths at Kambah conspiracy offence) was dismissed, as was the second sentence appeal. The sentence on the conspiracy offence was reduced to four years. Miles' head sentence was reduced from 14 years and one month to 12 years and one month; with the non parole period reduced to seven years and seven months.

In March 2015, Miles faced a further trial for an aggravated robbery of the Wanniasa ACTTAB on 8 December 2009. On that occasion, Miles had gone to the ACTTAB alone and armed with a rifle. Evidence was given during the trial that Miles' had been observed shortening the rifle prior to the offence. Miles was found guilty by the jury following the trial.

Before being sentenced for this offence, Miles agreed to plead guilty to charges of attempted arson for gain (relating to an attempt to cause an explosion and gain the cash from an ATM on 12 March 2009) aggravated burglary and an associated theft (relating to the burglary of a residential premises

where Miles had been employed to remove asbestos) and a further aggravated robbery (relating to the robbery of the Burns club on 8 May 2010 during which Miles was armed with a rifle and in company with IR). Further, Miles agreed to have an aggravated burglary and associated theft (of the Kambah indoor sports centre) as well as a burglary and associated theft (of a residential premises that Miles had worked at removing asbestos) taken into account during his sentencing.

On 1 July 2015, Miles was sentenced for the latest lot of offences. He was also sentenced for four Commonwealth charges relating to the lodging of false tax returns while in custody in relation to the above offences.

In relation to his ACT charges, he was sentenced to 12 years to be served partially cumulative on his pre-existing sentences. This brings the total head sentence to 15 years and one month. A new non parole period of nine years and four months has been set (taking into account the previous non parole order). His head sentence expires on 4 February 2026 and he is eligible to apply for parole on 4 May 2020.

Miles has appealed both the most recent conviction (the Wanniasa ACTTAB aggravated robbery) and the sentence imposed on 1 July 2015. A date is yet to be set for the hearing of these appeals.

To date, from his arrest on 6 January 2011, Miles has been sentenced by the Supreme Court for conspiracy to commit aggravated robbery, four aggravated robberies, attempted arson for gain, aggravated burglary and theft, with a number of further offences taken into account on various sentences.

R v Holliday

Aaron Holliday was in the AMC on remand awaiting trial for serious sex charges against a number of young people. There, he hatched a plan to derail his prosecution and secure his release from prison, by offering another inmate money and a car to organise others to kidnap two young people involved in the case against him, force them to read a detailed retraction he had drafted for the purpose on tape, and present it to a lawyer.

Arising out of this, Holliday was charged one count of attempting to pervert the course of justice and two counts of inciting another inmate to kidnap the young people to force them to retract their statements.

Due to the trial and conviction on the serious sex charges, the new charges were delayed for a number of years until the appeal process for the original charges was completed. The new charges were eventually heard by a jury which returned verdicts of guilty to one count of attempting to pervert the course of justice and two counts of inciting kidnap.

Holliday was sentenced to an additional 30 months imprisonment, on top of his original eight year sentence for sex offences.

R v Harmouche

One punch assaults continue to be a serious problem in Canberra. My Office has conducted a number of prosecutions where a highly intoxicated offender has punched a victim (often previously unknown to them) in or near nightclubs or bars. The injuries that are caused can range from bruising to permanent and serious brain damage. This is but one of a number of similar matters prosecuted by this office.

Harmouche attended a nightclub in Civic on a Saturday night with a number of friends. The victim, a foreign student from the Middle East attending a university in Canberra on scholarship, also attended the club that night with his friends. The victim and Harmouche didn't know each other. At around 3.30am, the victim and his friend were dancing near the front stage. Harmouche made his way through the crowd on to the dance floor and punched the victim once to the head, causing him to fall to the ground and hit his head on the edge of the raised stage. The offender quickly left the nightclub. The victim lost consciousness. He was admitted to Canberra Hospital in a life-threatening condition, and spent a period of time in a coma. The victim suffered significant cognitive and physical impairment as a result of the punch, much of which continues to this day.

As part of their investigation, police intercepted telephone conversations where Harmouche discussed with others that the matter was unlikely to be prosecuted as witnesses in a nightclub would not have a reliable recall of events.

Harmouche was charged with recklessly inflicting grievous bodily harm (maximum 13 years imprisonment). He pleaded not guilty to that offence but guilty to the lesser offence of causing grievous bodily harm by an unlawful or negligent act (maximum 5 years imprisonment). I was of the view that the more serious charge should proceed in light of the evidence. The matter proceeded to a trial by judge alone in the Supreme Court. Justice Burns found Harmouche not guilty of recklessly inflicting grievous bodily harm on the grounds that he was not satisfied on the evidence that the accused had given any consideration to how hard he was going to hit the victim or to the possibility that the victim might suffer serious injury as a consequence.

NSW law has recently been amended to clarify that in a similar situation in NSW, the prosecution has to prove that a person was reckless as to the possibility of causing *actual* bodily harm rather than *grievous* bodily harm. There has been no similar amendment in the ACT. Given the prevalence of the offence, this should be considered.

Harmouche is awaiting sentence on the charge to which he pleaded guilty.

The victim had returned home well before the trial. The prosecution, pursuant to its commitment to the fair and dignified treatment of victims, and despite the geographic, cultural or linguistic barriers, made every effort to afford the victim the opportunity to provide to the court material about the impact of the offending. The prosecution engaged an Arabic translator to assist with the preparation of the victim impact statement to be provided to the court at sentencing. A pro forma victim impact statement is now available in Arabic for the assistance of Arabic-speaking victims. These efforts are indicative of the prosecution's commitment to empowering victims with information about their rights to play a part in the prosecution process, pursuant to its prosecution policy.

Crown appeals and review applications

Crown appeals against sentence are comparatively rare. However it is appropriate for the Crown to appeal against the manifest inadequacy of a sentence to enable courts to establish and maintain adequate standards of punishment for crime, and to correct sentences which just so disproportionate to the seriousness of the crime as to shock the public conscience.

I have been particularly prepared to appeal against inadequate sentences for sexual offending, and particularly for sex offences involving children.

R v Williams

In this case the offender had been at the Belconnen library. A mother was also at the library with her three-year-old daughter. At some stage the daughter wandered away and approached the offender at the back of the library. The offender indecently assaulted her. The mother was looking for her daughter when she saw the offender crouched down with his arms around her. When the offender saw the mother he immediately moved away and pulled up his pants.

The offender was arrested shortly after. Sometime later he agreed to an interview with police in which he made full admissions, and indeed admitted that he had gone to the library on his way to report to police, as he was a registered child sex offender.

The offender appeared for sentence in the Supreme Court on this matter and on an unrelated serious offence.

The offender had a most unfortunate background. He was a man of reduced family support and limited community connection. He had developed in a context of neglect and abuse particularly in childhood and adolescence. He had been the victim of abuse at the hands of family members, and a history of alcohol and substance abuse had followed.

However he was also a man with an appalling criminal history including significant offending of a sexual nature in relation to children.

The primary judge sentenced the offender to six years imprisonment in relation to this offence, the maximum penalty for which was 17 years imprisonment. The judge acknowledged both the unfortunate background of the offender and his serious criminal history. The judge also acknowledged that the protection of the community was important as was the opportunity for the offender to engage in rehabilitation, although his unfortunate history suggested that his prospects of rehabilitation were not good.

The Crown appealed against the manifest inadequacy of the sentence. The Crown argued that the primary judge's sentencing discretion had miscarried because the judge had imposed a sentence that was so disproportionate to the seriousness of the crime as to shock the public conscience and undermine public confidence in the ability of the courts to play their part in deterring the commission of crimes. The objective seriousness of the offending, the appalling record of the offender, the limited insight shown by the offender into his offending and the poor prospects of rehabilitation - all of which had been accepted by the primary judge - meant that the sentence imposed was unjust.

The Crown appeal was upheld. The Court of Appeal accepted that the sentence was manifestly inadequate in the light of the offender's bleak prospects of rehabilitation and the importance of community protection having regard to the fact that the current matter constituted a repetition of offending behaviour. The Court of Appeal re-sentenced the offender to eight years imprisonment on that count.

Smorhun v Devine

This Crown appeal to the Supreme Court served to clarify the role of a sentencing magistrate when sitting in the Galambany circle sentencing court. Chapter 4C of the *Magistrates Court Act* provides that the Magistrates Court is known as the Galambany Court when sitting to provide circle sentencing for indigenous offenders.

In this case the defendant, who had two prior convictions for drink driving, was apprehended after driving on the wrong side of the road late on a Saturday night. She pleaded guilty to driving with a high prescribed concentration of alcohol, disobeying a left turn only sign and exceeding the speed limit. In the Galambany Court, the panel, made up of members of the aboriginal community recommended fines and a disqualification period. The magistrate imposed the orders suggested without giving any independent consideration to the appropriate penalty nor providing reasons for her decision.

I appealed on the grounds that the sentence was manifestly inadequate, the magistrate had failed to give reasons and had erred in failing to determine an appropriate sentence for each offence before considering totality. The basis of the appeal was that the Galambany Court process does not replace the requirement for a magistrate to impose a sentence that takes into account the relevant sentencing factors.

Justice Penfold upheld the appeal. Her Honour acknowledged the very important role the circle sentencing process plays for indigenous offenders in the ACT. Her Honour however noted that the magistrate is not to act as a rubber stamp for a decision made by the panel without any requirement to apply proper sentencing principles. In this case the magistrate did not exercise her own sentencing discretion and did not give adequate reasons for the sentences imposed.

Her Honour noted:

[C]ircle sentencing ... is not about handing over the sentencing power to a circle sentencing panel. It is about involving the Aboriginal and Torres Strait Islander community in that sentencing process in an intensive way so as to enhance the Magistrate's capacity to sentence Aboriginal and Torres Strait Islander offenders in a way that is not only in accordance with law but is also culturally sensitive....This should contribute to the engagement of that community with the justice system and, even more important perhaps for the individual offender, should ensure that the sentencing officer has a proper understanding of the offender's background and circumstances, of the difficulties he or she has faced and perhaps of the ways in which he or she might be motivated to engage in serious rehabilitation.

Sex offences

Amongst serious cases prosecuted by the Office, sex offences are the most prevalent. They often present difficult issues of fact or law.

R v Singh and Singh

In September 2014, following a trial, Ajitpal Singh and Randhir Singh (not related) were convicted of a number of sexual assaults upon a woman whom Randhir Singh met through Tango, a social networking app. The complainant ("C") was married, but had relationship difficulties. Randhir Singh sent a friend request. C accepted and they exchanged messages, eventually arranging to meet up for sex. C had second thoughts when she arrived at the meeting place. As it turned out Randhir Singh was not alone. His boss Ajitpal Singh had accompanied him and waited nearby with a third man. When C refused to go with Randhir Singh, Ajitpal Singh approached her, showed her the messages and threatened that he would show her family the messages. To prevent her family seeing

the compromising messages C reluctantly agreed to go with Randhir Singh. She was taken by him to Ajitpal Singh's apartment where she was confined for some hours and subjected to sexual assaults by both Randhir Singh and Ajitpal Singh. Two other men were in the apartment at the time adding to her fear. At one point she considered jumping out the window of the 14th floor apartment to escape her ordeal. She was eventually let out by one of the other men and dropped near her home. She reported the incident to police later that night.

Ajitpal Singh and Randhir Singh pleaded not guilty. Following a trial they were found guilty of abduction for the purposes of engaging in a sexual offence, a number of sexual assaults and unlawful confinement charges. Ajitpal Singh, whom the judge found to be the ring leader, was sentenced to 12 years imprisonment with a non parole period of eight years. Randhir Singh was sentenced to eight years imprisonment with a non-parole period of five and a half years. Ajitpal Singh appealed against his sentence on the grounds it was manifestly excessive - the decision is pending.

R v Livas

Section 67 of the *Crimes Act 1900* recognises that consent to sexual intercourse may be negated in certain circumstances. This was a case where consent had been negated by a fraudulent misrepresentation made by the offender.

The complainant was a self employed sex worker who worked from home. Livas had made an appointment with the complainant for a one hour session including sexual intercourse which it was agreed would cost \$250. The offender kept the appointment and sexual intercourse took place but he only gave the complainant \$200. When the complainant reminded him that the cost was \$250 he stated he would pay her the extra \$50 later. Several days later the complainant sent the offender a text message reminding him of the outstanding amount. He replied asking if they could meet again and a further appointment was made. This time the appointment was for four hours and the agreed cost was \$800 plus the \$50 that was owed.

Livas arrived at the complainant's house and went into the bedroom with the complainant. He gave her a sealed white envelope by placing it on a nearby dresser. He stated that the envelope had money in it, but in fact the envelope contained a card and a piece of paper folded up to give the appearance of money - but there was no money. The complainant went to open the envelope and check the money however Livas said "*no no no don't open it now. You have to trust me on this. It is part of my fantasy that it is all about the romance and I need you to trust me*".

The complainant did not open the envelope. Later she again went to open the envelope to make sure the money was there but again Livas asked her not to open it and she did not. Sexual intercourse took place. During this time the complainant had become increasingly uncomfortable about whether there was money in the envelope. When she stopped having sex she told the offender that she needed to open the envelope. She did so and discovered there was no money. She was shaking and crying and told Livas he had betrayed her trust. The offender left. Shortly after, she reported the matter to police.

The offender was charged with having sexual intercourse without the consent of the complainant, based on section 67 of the *Crimes Act*. The offender originally indicated a plea of guilty to the charge, but then tried to unsuccessfully challenge the basis for the charge. Eventually he did enter a plea of guilty.

In the course of the sentencing proceedings the complainant read her victim impact statement to the court. That victim impact statement included the following:

My retrospective regret focused mainly upon my naivety. In my work I do not simply allow clients access to my body. For a short time I give them the opportunity to feel loved. In a world that values romantic fantasy I offer a commercialised version.

The care and affection that I showed Mr Livas during what I thought to be an honest service was completely devalued when I realised that I had been deceived.

The tenderness of the act of lovemaking was shared by the man who called himself "Peter" and was incongruent with the violation that was really happening. My desire to give clients a service that I think they deserve was used to goad me into not checking the payment.

The offender was sentenced to 25 months imprisonment to be suspended after 8 months upon his entering into a good behaviour order. In sentencing the offender the judge noted:

The offence was clearly pre meditated and the statement of facts makes it clear that Mr Livas abused the trust that the complainant had placed in him.

...

It seems that Mr Livas is still focused on the event as a commercial transaction that he says he always intended to make good. While he may be genuinely regretful that he was not able to pay the money it is hard to see this as remorse for the deliberate deception and the violation of the complainant's personal integrity that he achieved by it.

Later her Honour noted:

Certainly, no one should doubt that fraudulently achieving sexual intercourse by this kind of activity constitutes rape, rather than a dishonesty offence, although, of course, dishonesty is a major element of this fact situation.

The offender appealed against the severity of his sentence to the Court of Appeal, but the appeal was dismissed.

R v Gillard

The following two cases illustrate the complexity of prosecuting historic child sexual abuse allegations against multiple victims.

In 2009 Michael Gillard was charged with a number of sexual offences against two sisters, J and D, between 1995 and 2000. The accused was a close friend of the girls' parents and had known the girls since they were young. The girls' older brother became very seriously and permanently disabled as a child following a severe asthma attack. He required 24 hour care. The family were required to move around due to the father's employment and the brother remained in Canberra when the rest of the family moved interstate. Gillard offered to have the girls stay with him in Canberra during school holidays to allow the girls to visit their brother. It was during these visits that the sexual abuse took place. J was abused when she was 13. D she was aged 14 when it commenced and it continued until she was 18 years old.

Gillard was committed for trial in June 2009. In September 2010 the Court allocated two dates for trial – September 2011 (involving D) and November 2011 (involving J).

In the September 2011 trial (trial A) he was found guilty of three sexual offences committed on D when she was 14 and 15 years of age, and a further three sexual offences committed upon D when she was aged 17 and 18 years of age. He was also found guilty of committing a sexual offence upon D in the presence of her younger sister J when J was aged 16 and possessing child pornography images of D.

In the November 2011 trial (trial B) Gillard was found guilty of committing sexual offences upon J when she was aged 13.

Gillard appealed against the findings of guilt in trial A. The Court of Appeal dismissed the appeal. Gillard then appealed to the High Court in relation to the convictions on four counts involving D when she was over the age of 16 (including the charge where J was present in the room). The ground of the appeal was that the trial judge had misdirected the jury in relation to the issue of consent.

At the trial the Crown case was that for one of the charges after D turned 16 (that is after she reached the age at which she could consent to engage in sexual acts) any “apparent” consent was negated by the relationship of authority Gillard had over her. Section 67 of the Crimes Act provides that any consent to a sexual offence is negated if it is caused by a range of factors including a threat to inflict violence, the effect of intoxicating liquor, fraud, or the abuse by the accused of his position of authority or professional or other trust in relation to the person. The Crown argued that Gillard was in loco parentis while the girls stayed with him. In addition, D having been sexually abused by him when younger, Gillard was abusing his position of authority over her.

Section 67 provides that if the Crown establishes that the accused knew the consent was caused by one of the relevant factors listed in s 67, the accused is deemed to know that the other person did not consent. The High Court overturned the convictions on all four convictions on the grounds that the trial judge had not correctly directed the jury in relation to this last aspect on one of the counts.

Following the overturning of the convictions in relation to the three offences committed on D after she turned 16, and the offence of committing a sexual offence in the presence of J when she was 16, the matter was remitted back to the Supreme Court for trial. The trial was set down for November 2014. In October 2014 Gillard pleaded guilty to two of the four offences, one charge of sexually assaulting D by force when she was 17, the other of engaging in sexual intercourse with D in front of J when J was aged 16. The Crown accepted these pleas in full satisfaction of the remaining charges. The two offences were ones that he had originally pleaded not guilty to, been to trial on, and the convictions for which he had appealed all the way to the High Court. His pleas of guilty were thus an extremely late acknowledgment of wrongdoing and the harm his gross abuse of trust had caused to the victims. Nevertheless, his admission of guilt came as a vindication for the victims.

Gillard was sentenced on all matters in December 2014 to 10 years and nine months imprisonment, with a non parole period of seven years. He appealed against the severity of the sentence to the Court of Appeal. That appeal has been heard, and the decision is pending at the time of publication of this report.

This case is illustrative of a number of challenges in prosecuting sexual matters. It is not uncommon for siblings or other close friends or relatives to be victims of the one offender in child sex cases. In

the 1988 case of *Hoch v The Queen* the High Court considered that the possibility of concoction between complainants deprived the evidence of the required degree of probative value necessary to render it admissible. Following this decision it was difficult to run trials with multiple victims of one offender if the victims knew each other. Various legislative responses followed in other jurisdictions. They are referred to in the *SARP* report. In 2010 the Australian Law Reform Commission in its report *Family Violence - A National Legal Response* recommended that legislation should be enacted to provide that in sexual assault proceedings tendency or coincidence evidence is not inadmissible only because there is a possibility that the evidence is the result of concoction, collusion or suggestion. This sensible recommendation would not preclude an accused cross examining victims about the possibility of collusion, but would mean that the issue of collusion between victims is one for the jury. The Gillard case shows the significant improvements to listings of criminal trials following the move towards central criminal trial listing in early 2014. This aspect is discussed elsewhere in this report.

R v Nona

This was another long running series of proceedings, again involving sexual abuse of two sisters, J and H. Nona was the boyfriend of the sisters' mother.

Nona first appeared in the ACT Magistrates Court in early 2009 charged with sexual offences committed upon J when she was aged 12 and 13 years of age. The offences took place in 1995 and 1996. Nona sexually abused J causing her to fall pregnant when she was 12 years of age. When the pregnancy was discovered J refused to disclose who had made her pregnant. DNA was taken from the foetus and from J. Nona was a suspect and his DNA was also taken. This was in the early days of DNA paternity testing. The result came back indicating it was 17,000 times more likely that Nona was the father. By this time Nona was living in Torres Strait whence he came. The AFP at that time was not prepared to authorise officers to travel to Queensland and effect Nona's extradition.

The investigation was revitalised in 2008. By this stage J was an adult with her own family. J was prepared to state that it was Nona that caused the pregnancy and in doing so revealed a number of sexual offences committed by Nona upon her when she was aged 12 and 13. Nona was committed for trial in December 2009.

One of the offences involved committing an act of indecency in the presence of J and her older sister H when J was 13 years of age and H was 14 years of age. In 2010 H revealed for the first time a number of sexual offences committed upon her by Nona when she was 13 and 14. Charges were then laid in relation to these matters and Nona was committed for trial on these as well.

Nona applied to permanently stay both proceedings on the ground there had been unreasonable delay in bringing the proceedings. This application was dismissed by Burns J on 23 March 2012 and the trials proceeded, separately.

The trial involving J

The trial involving J proceeded in July 2012. J gave evidence as did a number of other witnesses. The DNA evidence was tendered. Nona gave evidence that after a three day bender when he was drunk J approached him and told him she had had sex with him while he was drunk and unconscious.

Nona was found guilty of four of the five counts on the indictment. Nona appealed against the convictions and also appealed Burn J's decision to refuse to stay the proceedings.

On 22 October 2013 the Court of Appeal, by a majority of two to one, overturned the convictions on the grounds of incorrect directions. The dissenting judgment of Higgins CJ, noted that despite some deficiencies in the directions, the case was overwhelming, particularly in light of Nona's evidence that J had asserted that she had sex with him while drunk. A retrial was ordered. I sought special leave to appeal to the High Court on the ground that the Court of Appeal had erred in overturning the convictions. Nona sought special leave to appeal to the High Court on the ground that the proceedings should have been stayed. Both applications for special leave were refused.

The matter came on again for trial in December 2014. Prior to the trial my Office put on a pre trial application seeking a ruling that J and H and their mother A were unavailable witnesses pursuant to s65 of the Evidence Act. An unavailable witness includes a person who is mentally or physically unable to give evidence and it is not reasonably practicable to overcome that inability. In the application evidence was tendered indicating a range of issues each of the women was facing. The application was granted and the Crown was permitted to play the evidence the women had given in the trial in 2012 to the jury.

Unfortunately the three women were not able to benefit from the introduction of s43A of the *Evidence (Miscellaneous Provisions) Act*. Section 43A provides that in sexual offence proceedings evidence of the complainant is to be audio visually recorded, and this is to be played at any retrial (for example following an appeal). Such provisions have existed for some years in other jurisdictions such as NSW. The ACT was slower to take up this; it was not enacted until April 2013, too late for the witnesses in this trial.

In December 2014 the second trial involving J (and the one offence involving H) was held. Evidence was given that improved DNA analysis indicated that Nona was 7.3 billion times more likely to be the father of the foetus than a person selected at random. Nona again gave evidence that J told him that she had engaged in sexual intercourse with him while he was passed out. Nona was found guilty of all counts on the indictment.

The trial involving H

The trial involving H proceeded in September 2012. The jury could not agree on a verdict. The matter went for trial a second time in July 2013. Nona was convicted of nine counts of sexual offences committed upon H when she was aged 13 and 14. He was sentenced in February 2014 to seven years, six months head sentence with a non parole period of three years and nine months. He appealed the convictions to the Court of Appeal. On 17 July 2015 Nona's appeal against the convictions relating to H was dismissed.

Nona was sentenced in April 2015 to five years imprisonment for the three offences against J (including two counts of sexual intercourse upon a child under 16) and the offence of commit act of indecency in the presence of H. The sentence added to the sentence imposed February 2014. The non parole period was increased to four years and six months (adding nine months to the non parole part of his sentence). He has again appealed against his conviction to the Court of Appeal. That appeal is pending.

In total Nona has been sentenced to a total head sentence of nine years with a non parole period of four years and six months. The proceedings have been on foot since 2009 (in the case of J) and 2010 (in the case of H). There have been four separate trials, three appeals to the Court of Appeal, and two applications for special leave to the High Court.

R v GZ

At about 7.00pm on Wednesday 8 April 2009, a Canberra mother, and grandmother returned to the house the grandmother shared with her partner, the accused GZ. The grandmother had just spent, two hours at the Canberra Hospital with her brother, who was in his last few hours of life.

The mother collected her five year old daughter who had been in the care of her "step-poppy" GZ for the previous two hours, and the mother and daughter headed home.

On the way home the daughter said "*mummy can I tell you about our Easter surprise?*". The mother said "*not if it's an Easter surprise, because you will spoil it*". The girl then told her mother "*it's not about Easter*" and she proceeded to disclose two sexual acts by GZ.

What followed was an investigation consisting of interviews with the child and later with GZ, the execution of a search warrant and forensic analysis of the clothing the child was wearing. As a result of the investigation, GZ was charged with two counts of engaging in sexual intercourse with the child.

The accused's DNA found on the inside of the child's underwear, consistent with the complaint. In a police interview the accused denied the events related in the complaint, and detailed a conversation he had with the child, suggesting to police she must have confused the conversation for reality.

The child's evidence in chief at the trial consisted of an interview she had done with police the day after the events in question. This was and played to the jury as her evidence in chief pursuant to the newly passed SARP legislation (see the discussion of the SARP legislation elsewhere in this report). The child attended court in August 2011 for pre-trial evidence, and the interview with police was played, following which she was cross-examined by the accused's lawyer. This was all recorded and played at the trial.

At a first trial the jury were unable to reach a verdict in relation to either count. The matter was retried, with the jury returning a guilty verdict on both counts. GZ appealed against the conviction and the Court of Appeal overturned it because GZ's counsel had failed to call evidence of good character on behalf of GZ. An appeal ground that the conviction was unsafe was dismissed, primarily because the word of the child was corroborated by the DNA evidence located on the child's underwear, with the court ruling that it was open to the jury to find GZ guilty on both counts. The matter was sent back for re-trial.

On the morning of the re-trial, defence sought the DNA evidence (led in the previous trial) to be excluded. The trial judge ruled that the probative value of the evidence was outweighed by the danger of unfair prejudice to GZ, in that the jury may not fully grasp the chances the DNA may have been deposited on the underwear other than in the commission of the crime. The trial judge excluded the DNA evidence from going before the jury, leaving largely the word of the child against the word of GZ. After a short deliberation, the jury found GZ not guilty of both counts.

R v SH

Following a trial, the offender was found guilty of one count of sexual intercourse on his 11 year old step-daughter and two counts of committing an act of indecency on her. The incident happened in 2007 when the child's mother (the offender's wife) was away interstate. During the night the child watched a scary movie and afterwards went into her mother and offender's room like she always did when she was scared. The offender agreed for her to sleep in the bed and she went to sleep. However, at some point during the night she woke to find her underpants removed and the offender

performing oral sex on her. She didn't understand what was happening and asked the offender to stop but he threatened to smack her. He continued to lick her for a short time. Afterwards the child moved over to the edge of the bed but the offender followed her and cuddled her feeling all over her chest. A few days later the offender's wife returned home but the child didn't say anything to her because she was too scared. The following year the child told some school friends about the incident but it wasn't until she was 16 years old that she told her boyfriend and mother and reported it to police.

During the trial the offender claimed he had been asleep during the incident in a state of automatism or 'sleep-sex'. The offender's wife gave evidence that on occasion she had woken to find him performing sexual acts on her when he appeared to be asleep although she also stated that sometimes it happened while he was awake. On the occasions she believed he was asleep she stated that he seemed unaware when she was talking to him. The offender also called expert evidence from two psychiatrists supporting his claim of 'sleep-sex'. However, there were a number of features of the offender's story that were inconsistent with experiencing a sleep-disorder episode including his failure to report the incident afterwards which was more consistent with trying to conceal it, as was his conversations with the child during the incident which were more consistent of wakefulness and coercion. The offender stated that he went back to sleep after finding himself performing oral sex on his step-daughter because he was tired. But the experts stated that sleep-disorder events usually occur at least one hour after falling asleep which was difficult to reconcile with the evidence that the offender continued touching the child afterwards. Ultimately the jury rejected the offender's version and convicted him. He was sentenced to five years three months imprisonment.

The offender has appealed against his conviction. The appeal has been heard and the decision reserved.

R v Djenadija

Sometimes offences, particularly sex offences against children, are not reported until years after the event. Such matters are challenging, but can still result in convictions being obtained.

Djenadija was charged with four counts of indecent assault against two children. The children were sisters who would often spend time at Djenadija's home as he was a family friend. The offences occurred from 1983-1985 when the victims were aged 10-12 years. The women did not report the matter to the police until 2012 and neither sister had told the other about the abuse until just prior to the matter being reported to the police. The evidence against Djenadija consisted solely of the testimony of the two victims.

The trial was heard in March 2015. The jury found him guilty on all charges. Djenadija was aged 42-45 at the time of the offences and was aged 75 at the time of sentence. Both victims read their victim impact statements at sentence. At the time of these offences, the maximum penalty was five years imprisonment, which is half the present maximum penalty for this type of offending. Djenadija was sentenced to one year and 11 months imprisonment, suspended after serving four months in full time custody.

Police v Skegg

Skegg was a school bus driver with ACTION who drove the afternoon school bus run at a Canberra girls school taking young teenage girls home. He befriended a small group of girls aged between

12 and 15 years old, often allowing them to stand at the front of the bus next to him while he drove. On these occasions he and the girls talked and he would discuss explicit sexual acts including making 'oral sex gestures' to some of the girls, and suggesting to one girl that she have 'Skype sex' with him and to others that they should have a 'foursome' with him. When his behaviour escalated to contacting one of the girls on social media, she became uncomfortable and eventually the girls reported his behaviour to their teacher. Police were called and Skegg was charged with committing acts of indecency in the presence of children, being the explicit and suggestive comments.

Initially he pleaded not guilty however on the morning of the hearing he changed his plea and pleaded guilty to a representative sample of the charges. He was convicted and sentenced to a 12 month good behaviour order and fined \$1,400. His employment with ACTION was terminated.

R v WR

In early 2001 WR attended a party hosted at his friends house in Theodore. At the time WR was separated from his wife. There were a number of other guests at the party including the hosts' 10 year old daughter and her nine year old friend. As the party went on the adults had too much to drink so a decision was made for some of the adults to sleep at the house. Arrangements were made for WR to sleep on a fold-out bed in the lounge room. The two girls also wanted to sleep on the fold out bed with WR - who was godfather to one of the girls - and the girls slept on either side of him. During the night the offender committed sexual acts on both girls. Neither girl told anyone what happened until a couple of weeks later when one of them told a friend. It wasn't long before the children's parents became aware and spoke to the girls. However, the girls were embarrassed and believed they would get in trouble so down played what happened. The parents also confronted WR who denied it.

It wasn't until years later when the girls were adults that they decided to report the incident to police. WR was charged and he pleaded not guilty.

Sometime after WR was charged his step-daughter, now in her 30's, came forward with complaints of being sexually molested by him when she was 10-12 years old in the early 1990's in the ACT. Police investigated and learned that the step-daughter had made complaints to Family Services and teachers around the time of the offending. Historical case records from Family Services showed that she was placed into foster care while they investigated the matter. However, WR had denied the allegations to Family Services staff and no further action had been taken. The step-daughter was returned to the family home. Surprisingly, at least by today's standards, the child's allegations were never reported to police. Despite this the step-daughter continued to confide in friends about what WR had done to her.

On becoming aware of the allegations by the step-daughter the Crown sought permission to run the cases - that is the case with the two girls in 2001, and the case involving the step daughter - together. The Crown based the application on WR's conduct as demonstrating a tendency to have a sexual attraction to young girls (aged between nine and 12 years old) notwithstanding the distance in time that elapsed between the alleged offending. The court ruled for the cases to be heard separately.

The trials were run in March and April 2015 respectively. Separate juries found WR guilty of offences against each of the three complainants. He was later sentenced five years and six months imprisonment with a non parole period of three years and one month.

Work safety

The Office now has a team dedicated to work safety and other regulatory prosecutions. Work safety matters are invariably complex.

Clare Brookes v Corporate Ventures (Aust) Pty Ltd

This matter was the first determined in the ACT under the new nationally harmonized Work Health and Safety legislation.

The victim, Jayson Bush, was employed as a construction worker by Corporate Ventures (Aust) Pty Ltd, at the well known New Action Nishi building. He was asked to go down to a basement level and cut large penetrations into a pre fabricated, steel covered concrete wall. He had not cut penetrations this large before and requested another worker assist him. This request was refused. The wall bordered a deep air conditioning void. At some point he fell through the large section he had cut and plunged 5.4 metres into the void. There was no edge protection (such as a barrier) and no fall arrest protection (such as a harness). He lay in the darkness for up to two hours with a broken back, five broken ribs, and a punctured lung. His attempts to call 000 were unsuccessful due to poor phone reception. Eventually a workmate heard him crying out for help and found him. He is no longer able to work as a labourer.

The defendant pleaded guilty to failing to comply with its health and safety duty under section 32 of the Act. It was convicted and fined \$270,000.

Regulatory matters

The Office prosecutes many regulatory matters which often raise difficult legal issues.

Hudson v ACT Magistrates Court and Landmark HC Computer ACT Pty Ltd aka "Spicy Ginger Cafe"

Spicy Ginger Cafe was charged with 11 offences for alleged breaches of the Australia New Zealand Food Standards Code contrary to s 27 of the *Food Act 2001*. The breaches variously related to Food Standards Code requirements for food storage, cleanliness, cleaning and sanitising equipment, maintenance, and hand washing facilities. Each of the 11 charges covered what the prosecution asserted was an individual breach of a particular requirement of the Food Standards Code.

The prosecution and the defendant reached an agreement that the defendant would plead guilty to three charges to cover the entirety of the offending: one covering breaches related to food storage; one covering breaches related to cleanliness; and one covering breaches related to maintenance. Once the pleas of guilty were entered, the prosecution would offer no evidence in relation to the other charges and ask the court to dismiss them, the reason being that the three charges would cover all of the offending conduct.

When the matter went before the Magistrates Court, the magistrate indicated his view was that it was appropriate for the defendant to face only one charge of contravening s 27 encompassing all the breaches of the different Foods Standards Code. The magistrate then rejected the defendant's attempt to enter guilty pleas in accordance with the agreement reached with the prosecution. The magistrate over the vocal opposition of the prosecution, purported to amend the charges to create a single rolled up charge. The defendant then pleaded guilty to the single rolled up charge. The magistrate purported to permanently stay the remaining charges.

I sought judicial review of the magistrate's actions in the Supreme Court on a number of grounds: that the rejection of the guilty pleas was a jurisdictional error; that the magistrate did not have power to amend the charges without the prosecution's consent; and that the magistrate had no power to stay the remaining charges.

The Government Solicitor's Office intervened on behalf of the Attorney General to argue against the prosecution's position.

Master Mossop upheld appeal on each of the three grounds. The Master held that:

- s 27 was a key provision in a national scheme designed to uphold food standards. The range of specific standards and the way defences under the *Food Act* would operate differently depending on the standard breached led his Honour to hold that a single rolled up charge covering with breaches of different standards was inconsistent with the text, context and purpose of s 27.
- a plea of guilty could only be rejected in limited circumstances, such as where the plea is equivocal, and none of those circumstances was present.
- the magistrate had no power to amend the charges without the prosecution's consent. His Honour stated: "The effect of what [the magistrate] did in the present case was to put [the single rolled up charge] in a form which the prosecution did not want to prosecute ... it is not open to compel a prosecutor to seek the amendment of charges and it is not [lawful] to make an amendment to which the prosecution does not consent."
- the magistrate had "no power to permanently stay" the remaining charges.

This case is important because it, once again, affirms the High Court's insistence that prosecutorial functions are not impinged upon by the courts. Further, the prosecution was entitled to procedural fairness. Mossop M's judgment referred to what was said by Gummow and Kirby JJ in *Ayles v The Queen* (2008) 232 CLR 410 at [39]:

Quite aside from these concerns about institutional integrity and the distinct role of prosecutor and judge, the requirements of procedural fairness apply no less to the amendment of informations than to any other aspect of the criminal trial. Where the judge realises that there is a defect in the information, the proper course is to draw the defect to the parties' attention and to indicate that it is for the prosecutor to apply for an order that the information be amended. Such a course would allow the prosecutor to seek the amendment should she or he so wish, and would allow the defence to raise any submissions about the injustice or otherwise of the amendment. In this way, the requirements of procedural fairness and institutional integrity would be upheld.

Here the magistrate had amended the charge without the prosecution's consent and in the absence of a defect, because of his Honour's finding regarding s 27. This led Mossop M to conclude this case was "much starker than *Ayles*".

As a result of the errors identified, his Honour quashed the magistrate's orders and remitted the matter back to the Magistrates Court to be determined according to law.

ACT Health v Khanh Hoang Pty Ltd trading as Kingsland Restaurant

This matter involved an unclean vegetarian restaurant. ACT Health inspectors attended the restaurant to discover numerous breaches of the *Food Act*. These related to unsafe food storage, inadequate hand washing facilities and unacceptable toilet facilities. The toilet opened straight onto the kitchen. Live cockroaches and their faeces were found throughout the kitchen.

The defendant submitted on sentence that he was a strict vegan and that he could not bring himself to kill the cockroaches. He admitted that, as an owner of a restaurant that, in retrospect, his beliefs had been misguided. The defendant pleaded guilty to offences under the *Food Act* and was fined a total of \$16,000.

RSPCA v Kyoung Eun

This year saw a dramatic surge in RSPCA prosecutions, a trend which is continuing.

In one such matter, inspectors were called to attend the defendant's address after receiving reports of a dog being hit with a stick. A witness, who also provided footage of the attack, reported seeing the defendant hit the top of the dog's head five to eight times, then a further three times on the back with a thick plastic pole. The witness had heard thuds and yelps coming from the defendant's backyard over a two month period. An examination of the dog revealed he was underweight, covered in an unknown sticky substance and the retina in the dog's right eye had been detached for a long time, possibly from previous trauma or congenital disease.

The defendant pleaded guilty to deliberately causing pain to an animal and committing an act of cruelty. He was convicted and fined \$3,240, and was ordered not to purchase, acquire or have custody of any domestic animals for a period of two years. The dog was successfully re-homed.

RSPCA v Claire Widdicombe

Claire Widdicombe was a Canberra RSPCA vet nurse. RSPCA inspectors attended Widdicombe's home and found her own animals were not being cared for properly. Inspectors found one of the dogs, a Pomeranian known as Mr Pom, in what appeared to be a bird cage, with no water. There were faeces in a container and on the floor. Two cats were also found in a cage together, with no water and faeces overflowing from two containers and all over the ground. One cat, a White Persian known as Kimba, was seriously underweight and was taken away.

Widdicombe pleaded guilty to five charges of failing to provide her two dogs and one cat with water, food and suitable shelter. She was sentenced to 64 hours community service and banned from acquiring any new pets for two years.

On sentence, the prosecution tendered an itemised medical record of the out-of-pocket expenses incurred by the RSPCA to house and care the animals. The costs incurred included vaccinations, vet treatment, food, and shelter) and amounted to \$24,073.15. The prosecution made an application to the court for a reparation order in favour of the RSPCA for this amount. Reparation orders can be made pursuant to the *Crimes (Sentencing) Act* where a person suffers loss or incurs expense as a direct result of the commission of the offence. The Chief Magistrates held that no reparation order could be made in relation to the RSPCA's expenses because the costs incurred were not as a direct result of the commission of the offence.

Statistics

A note on statistics used in this report

Most of the statistics used in this report are generated from the case management system of the Office, known as CASES. These statistics comply with the Australian Bureau of Statistics (ABS) standards for the characteristics of defendants dealt with by criminal courts (see ABS 4513.0). A fundamental aspect that is different is that the ABS standard reports against **defendants** rather than **charges**. As ABS 4513.0 (Criminal Courts, Australia) at para 29 puts it: "The principal counting unit for the Criminal Courts collection is the finalised defendant. A defendant is a person or organisation against whom one or more criminal charges have been laid and which are heard together as one unit of work by a court at a particular level."

Because a different system is used by ACT Law Courts, there is potential for a divergence between statistics produced by this Office and those produced by the courts. In particular, if charges were finalised at different court appearances in the same case for a defendant and these were counted as finalised at each appearance rather than being aggregated as a single finalised defendant, there would be a greater number of matters recorded. This would particularly affect matter shown as discontinued by the prosecution. For example, often "back up" charges are discontinued at a particular appearance, but other charges against the same defendant that are part of the same unit of work continue on another day. If ABS rules are followed, the "back up" charges would not be counted as finalised separately. If they were incorrectly counted as having been finalised, then it would appear that more matters were discontinued than was in fact the case.

Generally, matters reported are those **finalised** within the reporting period. As set out in ABS 4513 "finalisation" describes how a criminal charge is concluded by a criminal court level. Matters are concluded as explained in ABS 4513 depending on the court involved. Of particular note, a transfer to another court level (for example a committal either for trial or sentence) concludes the matter in one court level and initiates it in another court level.

All offences in CASES are **classified** against the Australian and New Zealand Standard Offence Classification (ANZSOC). The ABS has formulated ANZSOC to provide uniform national statistics. The sixteen divisions within the ANZSOC are set out in ABS 1234.0. Where tables refer to matters being "disaggregated by matter type", this is a reference to the ANZSOC divisions.

The National Offence Index (NOI) is a **ranking** of all ANZSOC Groups and supplementary ANZSOC codes. This ranking is based on the concept of 'offence seriousness'. Where a finalised defendant has multiple charges the principal offence is determined by the type of finalisation and/or the highest ranked ANZSOC using the NOI.

Table 1: Total matters finalised by jurisdiction

Description	Matters
Children's Court	206
Magistrates Court	3910
Industrial Court	6
Supreme Court	304
Court of Appeal	35
High Court	1
Total	4462

Note: Children's Court Magistrates Court and Industrial Court matters include committals to the Supreme Court. Supreme Court matters include Supreme Court appeals and matters where a Notice Declining to Proceed was filed.

Table 2: Matters finalised disaggregated by matter type

Description	Matters
Homicide and related offences	
Children's Court	
Magistrates Court	7
Industrial Court	
Supreme Court	3
Court of Appeal	4
High Court	
Sub Total	14
Acts intended to cause injury	
Children's Court	43
Magistrates Court	445
Industrial Court	
Supreme Court	54
Court of Appeal	3
High Court	
Sub Total	545
Sexual assault and related offences	
Children's Court	9
Magistrates Court	71
Industrial Court	
Supreme Court	55
Court of Appeal	9
High Court	
Sub Total	144

Description	Matters
Dangerous or negligent acts endangering persons	
Children's Court	5
Magistrates Court	79
Industrial Court	
Supreme Court	7
Court of Appeal	
High Court	
Sub Total	91
Abduction and related offences	
Children's Court	3
Magistrates Court	13
Industrial Court	
Supreme Court	10
Court of Appeal	2
High Court	
Sub Total	28
Robbery, extortion and related offences	
Children's Court	12
Magistrates Court	38
Industrial Court	
Supreme Court	41
Court of Appeal	5
High Court	1
Sub Total	97

Description	Matters
Unlawful entry with intent/burglary, break and enter	10
Children's Court	20
Magistrates Court	83
Industrial Court	
Supreme Court	34
Court of Appeal	6
High Court	
Sub Total	143
Theft and related offences	
Children's Court	47
Magistrates Court	286
Industrial Court	
Supreme Court	13
Court of Appeal	1
High Court	
Sub Total	347
Deception and related offences	
Children's Court	
Magistrates Court	33
Industrial Court	
Supreme Court	10
Court of Appeal	
High Court	
Sub Total	43

Description	Matters
Illicit drug offences	
Children's Court	1
Magistrates Court	189
Industrial Court	
Supreme Court	31
Court of Appeal	4
High Court	
Sub Total	225
Weapons and explosives offences	
Children's Court	11
Magistrates Court	77
Industrial Court	
Supreme Court	5
Court of Appeal	
High Court	
Sub Total	93
Property damage and environmental pollution	
Children's Court	19
Magistrates Court	84
Industrial Court	
Supreme Court	10
Court of Appeal	
High Court	
Sub Total	113

Description	Matters
Public order offences	
Children's Court	6
Magistrates Court	59
Industrial Court	
Supreme Court	1
Court of Appeal	
High Court	
Sub Total	66
Road traffic and motor vehicle regulatory offences	
Children's Court	24
Magistrates Court	2062
Industrial Court	
Supreme Court	18
Court of Appeal	1
High Court	
Sub Total	2105
Offences against justice procedures, government security and government operations	
Children's Court	6
Magistrates Court	194
Industrial Court	
Supreme Court	6
Court of Appeal	
High Court	
Sub Total	206

Description	Matters
Miscellaneous offences	
Children's Court	
Magistrates Court	186
Industrial Court	
Supreme Court	12
Court of Appeal	
High Court	
Sub Total	198
Coronial	
Children's Court	
Magistrates Court	4
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	4
Total	4463

Table 3: Committals to the Supreme Court

Description	Matters
Children's Court	11
Magistrates Court	199
Industrial Court	1
Total	211

Table 4: Committals to the Supreme Court disaggregated by matter type

Description	Children's Court		Magistrates Court		Industrial Court		Total
	Trial	Sentence	Trial	Sentence	Trial	Sentence	
Homicide and related offences			5				5
Acts intended to cause injury			13	7			20
Sexual assault and related offences	2	3	32	7			44
Dangerous or negligent acts endangering persons			2				2
Abduction and related offences			5	1			6
Robbery, extortion and related offences		3	17	8			28
Unlawful entry with intent/ burglary, break and enter	1	2	20	15			38
Theft and related offences			2	5			7
Deception and related offences			8	4			12
Illicit drug offences			25	9			34
Weapons and explosives offences			1	3			4
Property damage and environmental pollution			4	2			6
Public order offences							0
Road traffic and motor vehicle regulatory offences							0
Offences against justice procedures, government security and government operations				3			3
Miscellaneous offences			1		1		2
Total	3	8	135	64	1	0	211

Table 5: Supreme Court Matters

Description	Matters
Trials	49
Trial Outcomes	
Guilty Verdicts	24
Not Guilty Verdicts	22
Other	1
Awaiting verdict	2
Pleas of guilty entered	
Accused sentenced after committal for sentence, after committal for trial when they changed plea, or re-sentenced after breach	154
Notices declining to proceed further	10

Note: This includes trials which resulted in a hung jury or were aborted. Such matters are not “finalised” for the purposes of Tables 1 and 2.

Table 6: Appeals

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	73	8	81
Court of Appeal	31	9	40
High Court	1		1
Total	105	17	122

Note: These include appeals which were discontinued, withdrawn, or in respect of which leave to appeal was refused; and matters where the appeal hearing was completed during the reporting period and the decision was reserved.

B.3 Scrutiny

The Office is subject to scrutiny from the Auditor General and the Ombudsman. There were no relevant reports during the reporting period.

The Director also appears from time to time before committees of the Legislative Assembly. There were no inquiries by any Legislative Assembly Committee that related to the operations of the Office during the reporting period.

B.4 Risk Management

The DPP risk management arrangements are part of the risk management framework partnership within JACS. This approach emphasises that the management of risk is the responsibility of all employees within the Office.

B.5 Internal Audit

The Office's internal audit arrangements are primarily managed under the broader enterprise risk management framework of JACS. Details of the Audit Committee arrangements can be found in the JACS Annual Report. Areas of significant operational and financial risk are identified and managed under the Risk Management and Fraud Prevention Plans detailed in this report.

B.6 Fraud Prevention

The Office has a Fraud and Corruption Prevention Plan, prepared in accordance with the requirements of the ACT Integrity Policy. The Plan has been circulated to all staff.

There have been no reports or allegations of fraud or corruption received and/or investigated during the reporting period.

B.7 Work Health and Safety

No reports or notices were given under the *Work Health and Safety Act 2011* and no directions were issued during the reporting period.

The Office works proactively to prevent injuries by utilising the Office Working Environment Group (the role and functions of which are discussed elsewhere in this report) as a forum to assess injury data and develop injury prevention programs for implementation and monitoring within the Office.

The Office Health and Wellbeing Policy outlines our commitment to the provision of a healthy and safe workplace. Because of the nature of work in the Office, staff are encouraged to avail themselves of counselling services whenever necessary. The Office had one elected Work Safety Representative for the entire year.

The Office continued to ensure that its focus was on preventative measures during the year, offering staff:

- Respect, Equity and Diversity (RED) training;
- the opportunity to participate in flu vaccinations;
- Health and Safety Representative training;

- Fire Warden training; and
- defibrillator training.

Notifiable incidents

Figures shown in the following table are based on data provided by the Workplace Injury Performance Unit in the Chief Minister’s Directorate.

Section 38 notifiable incidents	Incidents without injury	Minor injuries	Total all incidents
nil	1	3	4

Note: Dates of incidents is in the range 1/07/2014 to 30/06/2015.

B8. Human Resources Management

The Office has continued to maintain its focus on supporting staff in a variety of ways including health and wellbeing and appropriate training.

The Office has now completed its long term goal of formally professionalising the paralegal workforce through vocation training arrangements. All permanent paralegal staff having now attained the required qualifications. This has been a significant achievement for the office and is reflected in the improved quality of the work output and improved skills of paralegals.

Prosecutors are provided with opportunities to participate in continuing legal education and training sessions. This year has seen a marked drop in participation rates as the high level of court commitments and workloads have often taken priority.

Two employees worked part-time for the entire reporting period. A further eleven had short term part-time arrangements during the reporting period. While the Office continues to look for opportunities to provide flexible working arrangements this presents a challenge in the face of inflexible court schedules.

The Office continues to work with staff to collaborate and promote opportunities in support of leading a healthy lifestyle.

Two members of staff were remunerated pursuant to the terms of Attraction and Retention Initiative (ARins). Information on the remuneration payable under ARins has not been disclosed due to the small number in operation within the Office and the need to retain the confidentiality requirements of these agreements.

Agency profile

FTE and headcount by Branch

Branch/Division	FTE	Headcount
Corporate	6.1	8
Executive	2.0	2
Legal Support	30.0	31
Prosecutor	35.2	38
Total	73.3	79

FTE and headcount by gender

	Female	Male	Total
FTE by Gender	49.2	23.0	72.2
Headcount by Gender	55	24	79
% of Workforce	69.6%	30.4%	100.0%

Headcount by classification and gender

Classification Group	Female	Male	Total
Administrative Officers	7	2	9
Executive Officers	1	1	2
Legal Support	19	4	23
Professional Officers	2	0	2
Prosecutors	23	15	38
Senior Officers	3	1	4
Statutory Office Holders	0	1	1
TOTAL	55	24	79

Headcount by employment category and gender

Employment Category	Female	Male	Total
Casual	0	0	0
Permanent Full-time	31	20	51
Permanent Part-time	9	0	9
Temporary Full-time	11	4	15
Temporary Part-time	4	0	4
TOTAL	55	24	79

Headcount by diversity group

	Headcount	% of Total Staff
Aboriginal and/or Torres Strait Islander	1	1.3%
Culturally & Linguistically Diverse	10	12.7%
People with a disability	1	1.3%

Headcount by age group and gender

Age Group	Female	Male	Total
Under 25	4	1	5
25-34	30	11	41
35-44	10	6	16
45-54	8	1	9
55 and over	3	5	8

Headcount by average length of service

Gender	Female	Male	Total
Average years of service	4.9	7.2	5.6

Recruitment and Separation Rates by Classification

Division	Recruitment Rate	Separation Rate
Administrative Officers	13.7%	27.4%
Executive Officers	0.0%	50.0%
Legal Support	7.6%	0.0%
Professional Officers	0.0%	0.0%
Prosecutors	28.3%	3.5%
Senior Officers	0.0%	0.0%
Total	17.8%	7.1%

Note: Recruitment and separation by division data was not supplied. Due to a small sample size the data was not statistically valid or reliable.

B.9 Ecologically Sustainable Development

Sustainable development performance - current and previous financial year

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Agency staff and area				
Agency staff	FTE	73.3	73.1	0.27
Workplace floor area	Area (m2)	1600.10	1600.10	0
Stationary energy usage				
Electricity use	Kilowatt hours	146,918	144,964	1.35
Renewable electricity use	Kilowatt hours	N/A	N/A	
Natural gas use	Megajoules	unavailable	unavailable	
Transport fuel usage				
Total number of vehicles	Number	Nil	Nil	N/A
Total kilometres travelled	Kilometres	N/A	N/A	N/A
Fuel use - Petrol	Kilolitres	N/A	N/A	N/A
Fuel use - Diesel	Kilolitres	N/A	N/A	N/A
Fuel use - Liquid Petroleum Gas (LPG)	Kilolitres	N/A	N/A	N/A
Fuel use - Compressed Natural Gas (CNG)	Kilolitres	unavailable	unavailable	
Water usage				
Water use	Kilolitres	unavailable	unavailable	
Resource efficiency and waste				
Reams of paper purchased	Reams	2937	3125	-6
Recycled content of paper purchased	Percentage	100%	97.6%	2.4
Waste to landfill	Litres	20640	16560	19.8
Co-mingled material recycled	Litres	21120	23760	-11

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Paper & Cardboard recycled (incl. secure paper)	Litres	54240	53520	1.35
Organic material recycled	Litres	0	2880	-100
Greenhouse gas emissions				
Emissions from stationary energy use	Tonnes CO2-e	117.83	153.66	-23.3
Emissions from transport	Tonnes CO2-e	N/A	N/A	
Total emissions	Tonnes CO2-e	117.83	153.66	-23.3

Notes

- 1 ACT Property Group purchased 7,700 MWh (Mega Watt hours) of GreenPower on behalf of the ACT Government, representing an indicative 5% of the ACT Government's energy consumption for 2014-15.
- 2 No water consumption data is captured in the ESP for DPP's occupancy. The ACT Government is not formally billed for its water consumption as it is factored into the landlord's rent.
- 3 Greenhouse gas emissions for electricity consumption in 2014-15 have been calculated using an emissions factor of 0.802 kilogram (kg) CO2-e / kilowatt hour (kWh) or 0.802 tonne (t) CO2-e / megawatt hour (MWh). This lower emissions factor (Scope 2 plus Scope 3) is specific to the ACT and reflects the contribution of renewable electricity generated under the ACT's 90% Renewable Energy Target (RET).
- 4 The Enterprise Sustainability Platform was used to provide historical data for the previous FY column (2013-14) in this current Annual Report. This will account for data different to that originally published in the 2013-14 report, as more comprehensive and complete data is now available.

C. FINANCIAL MANAGEMENT REPORTING

C.1 Financial Management Analysis

The Office is a downstream agency. Both its workload and timeframes for service delivery are externally imposed. The level of Supreme Court work continues to increase in both time and complexity, while Magistrates Court work remains high. At a time when the workload of the Office is expanding, the resources available to it are contracting with further efficiency dividends continuing to add to the challenges.

C.2 Financial Statements

The financial transactions of the Office for the year ending 30 June 2015 are subsumed within the audited financial statements of JACS. For information related to the budget outcomes please refer to the audited JACS financial statements for 2014-15 (Output 1.4). It should be noted that total expenses in Output 1.4 include allocated JACS overheads.

C.3 Capital Works

The following new works were completed by the Office during the reporting period.

Capital Project	Original Project Value \$000	Actual Cost \$000	Estimated Completion Date	Actual Completion Date
Upgrade of Office Security System	20	20	August 2014	August 2014
Work Safety Prosecutions Unit	27	26	January 2015	March 2015

There are no works still in progress at year end.

Contact details of capital works officer:

Emma Flukes
Director Corporate Services
Phone: 02 6207 5399

C.4 Asset Management

The Office is located in the Reserve Bank Building, adjacent to the Supreme Court and Magistrates Court buildings.

The current utilisation rate is 20.3m². In February 2013 the office commenced occupation of a section of the second floor in the Reserve Bank building. This was necessary to deal with the additional space required for staff involved in responding to the Eastman Inquiry. The utilisation rate is based on a benchmark of 15.9m² per employee. Seventy Nine staff occupied a total floor space of 1,600m². Factors relevant to the utilisation rate include the need to provide facilities such as witness interview

rooms, waiting rooms for vulnerable witnesses, a conference room, the criminal law resource centre, areas for professional staff undertaking sensitive and confidential work, and areas for confidentially dealing with acutely personal and intimate issues.

Energy reduction opportunities are limited due to the building being leased. However, strategies for reducing energy consumption are being pursued wherever possible.

The assets of the Office are mainly comprised of the Office fit out (partitioning and cabling) and the criminal law resource centre. Total replacement costs are estimated at \$2m.

C.5 Government Contracting

For year ending 30 June 2015, the following suppliers of goods, services and works with a value greater than \$25,000 were contacted:

Output Class	Name of Contractor	Description or Reason for Contract	Expenditure 2014-15	Date services commenced	Procurement Type
1.4	Mr Thangaraj	External Counsel	\$168,170.45	01 Dec 2014	Single Select
1.4	Mr Kirk	External Counsel	\$52,561.10	01 July 2014	Single Select
1.4	Itec Pty Ltd	Case Management System	\$50,000.00	1 July 2014	Single Select

C.6 Statement of Performance

The following is extracted from the audited JACS financial statements for 2014-5:

Output Class 1 Justice Services

Output 1.4 Public Prosecutions

Description: Prosecution of summary and indictable matters, at first instance on appeal, provision of assistance to the Coroner, and provision of witness assistance services.

	2014-15 Original Target	2014-15 Amended Target	2014-15 Actual	YTD Variance
Total Cost (\$'000)	10,444		11,328	8%
Government Payment for Outputs (\$,000)	9,948		10,074	1%
Accountability Indicators				
Percentage of cases where court timetable is met in accordance with Courts' rules	80%		82%	3%
Average cost per matter finalised	\$2,632		\$2,538	-4%

Variances given are from amended targets (where present) or from original targets (where no amended target exists).

Explanation of Material Variances ($\geq 10\%$) - No variance $\geq 10\%$

APPENDIX

Pursuant to section 12(4) of the *Director of Public Prosecutions Act 1990* the Annual Report must include a copy of each direction or guideline given by the Director pursuant to section 12 of the Act that is in force at the end of the reporting period. This appendix includes the Prosecution Policy. There are no further guidelines at present.

Prosecution Policy

1. INTRODUCTION

- 1.1 On 1 July 1991 the *Director of Public Prosecutions Act 1990* (the Act) came into effect. It established an Office of the Director of Public Prosecutions (DPP) controlled by the Director of Public Prosecutions (the Director) for the Australian Capital Territory.
- 1.2 The Act ensures the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. While under section 20 of the Act the Attorney-General may give directions or furnish guidelines to the Director in relation to the performance or exercise by the Director of his or her functions or powers, such a direction or guideline must be of a general nature and must not refer to a particular case. Further, the Attorney-General must not give a direction or furnish a guideline unless he or she has consulted with the Director. Any such direction or guideline is a notifiable instrument and must be presented to the Legislative Assembly.
- 1.3 The Act also ensures that the prosecutor's role will be independent of police and other investigative agencies. Of course, in practice, there will need to be cooperation and consultation between the respective bodies. Nonetheless, once an investigation has culminated in a prosecution, any decision as to whether or not it should proceed will be made independently by the DPP. In the ACT that independence extends to summary prosecutions as well.
- 1.4 The Director's functions are also carried out independently of the courts: as the High Court has said, "*our courts do not purport to exercise control over the institution or continuation of criminal proceedings, save where it is necessary to do so to prevent an abuse of process or to ensure a fair trial*".
- 1.5 The purpose of a criminal prosecution is not to obtain a conviction; it is to lay before a court what the prosecution considers to be credible evidence relevant to what is alleged to be a crime. Accordingly, prosecutors have strikingly been called "ministers of justice". A prosecutor represents the community: as Deane J has observed, he or she must "*act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one*".
- 1.6 Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution's case firmly, fearlessly and vigorously, with, it has been said "*an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings*".

- 1.7 Further, the prosecution's right to be treated fairly must not be overlooked. Indeed, in the Australian Capital Territory, the Human Rights Act 2004, provides that everyone - the accused, members of the community and victims of crime - has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- 1.8 The ACT is a human rights compliant jurisdiction, and all staff of the DPP must be mindful of the principles underlying the Human Rights Act and its purpose, as they conduct the business of the DPP. In particular they are responsible for respecting, protecting and promoting the human rights that are set out in that Act.
- 1.9 This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Prosecutors must seek to resolve a wide range of issues with judgment, sensitivity and commonsense. It is neither practicable nor desirable too closely to fetter the prosecutor's discretion as to the manner in which the dictates of justice and fairness may best be served in every case.
- 1.10 From time to time, the Director may issue directions or furnish guidelines pursuant to section 12 of the Act. This policy supersedes the previous policy and guidelines and directions.

2. THE DECISION TO PROSECUTE

General criteria

- 2.1 It is not the case that every allegation of criminal conduct must culminate in a prosecution. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, he or she has merely committed an inadvertent or minor breach of the law. On the other hand, an inappropriate decision not to prosecute may mean that the guilty go free and the community is denied the protection to which it is entitled. It must never be forgotten that the criminal law reflects the community's pursuit of justice and the decision to prosecute must be taken in that context.
- 2.2 Further, the resources available for prosecution are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue, with appropriate vigour, those cases worthy of prosecution.
- 2.3 Whilst a number of general principles may be articulated, it is not possible to reduce such an important discretion to a mere formula. Plainly, the demands of fairness and consistency will be important considerations, but the interests of the victim, the accused and the general public must all be taken into account. (In this context the term "the accused" includes an alleged offender, a defendant and an accused.)
- 2.4 The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?

- 2.5 The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law, that a criminal offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a prima facie case. The evidence must provide reasonable prospects of a conviction. If it is not of sufficient strength any prosecution would be unfair to the accused and a waste of public funds.
- 2.6 The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.
- 2.7 The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:
- (a) Are the witnesses available and competent to give evidence?
 - (b) Do they appear to be honest and reliable?
 - (c) Do any appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?
 - (d) Do any have a motive for being less than candid?
 - (e) Are there any matters which may properly form the basis for an attack upon the credibility of a witness?
 - (f) What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?
 - (g) If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?
 - (h) Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?
 - (i) Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?
 - (j) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?
 - (k) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

- 2.8 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction, he or she must then consider whether it is in the interest of the public that the prosecution should proceed. In many cases the interests of the public will only be served by the deterrent effect of an appropriate prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed, and it will usually be appropriate that they be taken into account only in that manner. Generally, the more serious the offence the more likely it will be that the public interest will require that a prosecution be pursued.
- 2.9 Nevertheless, the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued. Many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive those factors may include the following:
- (a) the seriousness or, conversely, the triviality of the alleged offence;
 - (b) whether it is of a "technical" nature only;
 - (c) any mitigating or aggravating circumstances;
 - (d) the youth, age, physical health, mental health or special vulnerability of the accused, a witness or victim;
 - (e) the antecedents and background of the accused;
 - (f) the staleness of the alleged offence;
 - (g) the degree of culpability of the accused in relation to the offence;
 - (h) the effect on public order and morale;
 - (i) the obsolescence or obscurity of the law;
 - (j) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
 - (k) the availability and efficacy of any alternatives to prosecution;
 - (l) the prevalence of the alleged offence and need for deterrence, both personal and general;
 - (m) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
 - (n) whether the alleged offence is of considerable public concern;
 - (o) any entitlement of a person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
 - (p) the actual or potential harm occasioned to any person as a result of the alleged offence,
 - (q) the attitude of the victim of the alleged offence to a prosecution;
 - (r) the need to give effect to regulatory priorities;

- (s) the likely length and expense of a trial;
- (t) whether the accused is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;
- (u) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (v) whether the alleged offence is triable only on indictment; and
- (w) the need to maintain public confidence in such basic institutions as parliament and the courts.

2.10 Plainly the decision to prosecute must **not** be influenced by:

- (a) the race, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the accused or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account as a matter of fairness to the accused);
- (b) any personal feelings concerning the alleged offender or victim;
- (c) any political advantage, disadvantage or embarrassment to the government or any political group or association; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

Prosecution of juveniles

2.11 Special considerations apply to the prosecution of juveniles. In this context a juvenile is a child (a person who is under 12 years old) or a young person (a person who is 12 years old or older, but not yet an adult). The best interests of the juvenile must always be considered. Juveniles should be encouraged to accept responsibility for their behaviour, and should be dealt with so as to provide them with the opportunity to develop in socially responsible ways. Prosecution of a juvenile must always be regarded as a severe step. Generally, a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the juvenile concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a juvenile who is a first offender in circumstances where the alleged offence is not serious.

2.12 Different considerations may apply in relation to traffic offences where infringements may endanger the lives of the young driver and other members of the community.

- 2.13 In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in paragraph 2.9 as appear to be relevant and to the following matters:
- (a) the seriousness of the alleged offence;
 - (b) the age, apparent maturity and mental capacity of the juvenile;
 - (c) the available alternatives to prosecution and their likely efficacy;
 - (d) the sentencing options available to the court if the matter were to be prosecuted;
 - (e) the family circumstances of the juvenile particularly whether those with parental responsibility appear willing and able to exercise effective discipline and control over the juvenile;
 - (f) the juvenile's antecedents including the circumstances of any previous cautions that he or she may have been given; and
 - (g) whether a prosecution would be likely to have an unduly harsh effect on the juvenile or otherwise be inappropriate, having regard to such matters as the vulnerability of the juvenile and his or her family circumstances.
- 2.14 Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

Prosecution of Corporations

- 2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.
- 2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.
- 2.17 As a general rule it is best to have all connected offenders - corporate and individual -prosecuted together at the same time.

- 2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.
- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.
- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at paragraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
- (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
 - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;
 - (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
 - (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
 - (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
 - (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;
 - (g) failure to report wrongdoing within a reasonable time of the offending coming to light;
 - (h) a genuinely proactive approach adopted by the corporate management team involving self-reporting and remedial actions, including the compensation of victims;
 - (i) the availability of alternative civil or regulatory remedies that are likely to be effective and more proportionate;
 - (j) whether the offending represents isolated actions by individuals, for example by a rogue director;
 - (k) the fact that the offending is not recent in nature, and the corporation in its current form is effectively a different body to that which committed the offences;
 - (l) whether the corporation is in administration, liquidation or receivership.

Discontinuing a prosecution

2.21 Generally the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the Director. However, wherever practicable, the views of the police (or other referring agency) and the views of the victim will be sought and taken into account in making that decision. Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the Director is contemplating discontinuing the prosecution. It will be for the Director to decide on the sufficiency of evidence. On the other hand, if discontinuance on public interest grounds is contemplated, the views of the police or other referring agency, and the views of the victim will have greater relevance.

3. OTHER DECISIONS IN THE PROSECUTION PROCESS

Choice of Charges

- 3.1 In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 3.2 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.
- 3.3 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the Crimes Act or Criminal Code unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.
- 3.4 There is a particular need for restraint in relation to conspiracy charges. Whenever possible, substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where conspiracy charges are laid against a number of accused jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the accused.
- 3.5 Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

Mode of trial

- 3.6 Summary disposition usually provides the speediest and most efficient disposition of justice. In relation to some indictable offences, the prosecution has the power to elect whether those matters are dealt with summarily. In other cases the consent of the prosecution may be required before an indictable matter can be dealt with summarily.
- 3.7 In making the election or giving or withholding consent for summary disposal, each case is to be considered on its merits. The over-riding consideration is to achieve justice. The principal matter to be considered will be whether in the circumstances the Magistrates Court can adequately deal with the matter should it proceed to sentence. In turn, that will depend on:
- the nature and circumstances of the alleged offending;
 - any other matters that a court would have to consider in sentencing the alleged offender, were the offence to be proved; and
 - the criminal history if any of the alleged offender.
- 3.8 Other factors to be considered are:
- whether the alleged offence is part of a series of related alleged offences, and if so whether it is appropriate to deal with those alleged offences summarily;
 - whether there are any co-offenders of the alleged offender, and if so whether it is appropriate for the alleged offender to be dealt with together with the co-offenders; and
 - any delay, increased costs or adverse effects upon witnesses likely to be occasioned by proceeding on indictment.
- 3.9 Under no circumstances will the election be made, or consent given or withheld, for tactical reasons.

Consent to prosecution

- 3.10 The Director has been authorised to give consent to the prosecution of a number of offences. This is to ensure that prosecutions are not brought in inappropriate circumstances. The reason for the requirement for consent is a factor which should be taken into account in deciding whether to prosecute. For example, consent may be required to ensure that mitigating factors are taken into account, or to prevent prosecutions in trivial matters. In such cases the question of consent is really bound up in the decision whether to prosecute. Other cases may involve a use of the criminal law in sensitive or controversial areas, such as conspiracy, or may involve important considerations of public policy, such as administration of justice offences.

Charge negotiation

- 3.11 Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to a fewer number of charges, or to a less serious charge or charges, with the remaining charges either being not being proceeded with or being taken into account on a schedule. It may also result in agreement for matters to be dealt with summarily. In some cases it may involve agreement about the content of the statement of facts to be put before the court.
- 3.12 There are obvious benefits to the criminal justice system from a plea of guilty. The earlier it is achieved, the greater will be the benefits accruing to the accused, the victim, witnesses and the community. Accordingly, negotiations between the defence and the prosecution are to be encouraged. They may occur at any stage and may be initiated by the prosecution or the defence. Charge negotiations must be based on principle and reason, and not on expediency. A clear record of the negotiations must be kept in the interests of transparency and probity.
- 3.13 A plea of guilty may be accepted following appropriately authorised plea negotiations if the public interest is satisfied on consideration of the following matters:
- (a) whether the plea reasonably reflects the essential criminality of the conduct and provides an adequate basis for sentencing;
 - (b) whether it will save a witness, particularly a victim or other vulnerable witness from the stress of testifying in a trial;
 - (c) the desirability of prompt and certain dispatch of the case;
 - (d) the need to avoid delay in the dispatch of other pending cases;
 - (e) the time and expense involved in a trial and any appeal proceedings;
 - (f) any deficiencies in the available evidence;
 - (g) in cases where there has been a financial loss to any person, whether the defendant has made restitution or arrangements for restitution;
 - (h) the views of the police or other referring agency; and
 - (i) the views of the victim, where those views are available and if it is appropriate to take those views into account.
- 3.14 An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused asserts or intimates that he or she is not guilty of an offence to which he or she is offering to plead guilty.
- 3.15 Sentencing of offenders is a matter for the court. It is not to be the subject of agreement or purported agreement between the prosecution and defence.

Jury selection

- 3.16 In exercising the right to challenge or stand aside prospective jurors the prosecution must not attempt to select a jury which is not representative of the community including as to age, sex, ethnic origin, marital status or economic or social background.

Retrials

- 3.17 Where a trial has ended without a verdict, prompt consideration should be given to whether or not a retrial is required. Factors to be considered include:
- (a) the reason the trial ended, that is, whether the jury was unable to agree or other reason;
 - (b) whether or not another jury would be in any better or worse position to reach a verdict;
 - (c) the seriousness of the alleged offence;
 - (d) the cost to the community;
 - (e) the cost to the accused;
 - (f) whether the accused has spent time in custody;
 - (g) the views of the victim.
- 3.18 Where two juries have been unable to agree upon a verdict, a third or additional trial will be directed only in exceptional circumstances.

Sentence

- 3.19 The prosecution has an active role to play in the sentencing process.
- 3.20 As the High Court has said, a prosecutor should draw to the attention of the court what are submitted to be the facts that should be found, the relevant principles that should be applied and what has been done in other (more or less) comparable cases. It is not the role of the prosecutor to proffer some statement of the specific result he or she considers should be reached, or a statement of the bounds within which that result should fall.
- 3.21 If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, the prosecutor may make submissions on that issue. This will be particularly so if, where a custodial sentence is appropriate, the court is contemplating a non-custodial penalty, or where a conviction is appropriate, the court is contemplating a non-conviction order.
- 3.22 Where facts are asserted on behalf of an accused which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues, if the resolution of such disputed facts is in the interests of justice or is material to sentence.
- 3.23 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing. On no

occasion will it be appropriate for material such as police testimony as to an accused's assistance to authorities, to be handed directly to the court. Such material should be given to the prosecutor and tendered to the court by the prosecutor at the prosecutor's discretion.

- 3.24 Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.
- 3.25 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate).

4. DISCLOSURE

4.1 The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:

- to be relevant or possibly relevant to an issue in the case;
- to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
- to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.

4.2 The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:

- a relevant previous conviction or finding of guilt;
- a statement made by a witness which is inconsistent with any prior statement of the witness;
- a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
- evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;
- any physical or mental condition which may affect reliability;
- any concession which has been granted to the witness in order to secure the witness's testimony for the prosecution.

4.3 The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.

4.4 In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is

relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.

- 4.5 The prosecution duty of disclosure does not extend to disclosing material:
- relevant only to the credibility of defence (as distinct from prosecution) witnesses;
 - relevant only to the credibility of the accused;
 - relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
 - for the purpose of preventing an accused from creating a forensic disadvantage for himself or herself, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.
- 4.6 The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.
- 4.7 Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.
- 4.8 Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with that witness's previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.
- 4.9 The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.

5. THE UNREPRESENTED ACCUSED

- 5.1 Particular care must be exercised by a prosecutor in dealing with an accused without legal representation. The basic requirement, while complying in all other respects with this policy, is to ensure that the accused is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused's interests.
- 5.2 So far as practicable, oral communications with an unrepresented accused should be witnessed. Communications should be promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused.

Prosecutors may also, where appropriate, communicate with the accused through the court.

- 5.3 A prosecutor has a duty to ensure that the trial judge gives appropriate assistance to the unrepresented accused.
- 5.4 While a prosecutor has a duty of fairness to an accused, it is not a prosecutor's function to advise an accused about legal issues, evidence, inquiries and investigations that might be made, possible defences, or the conduct of the defence.

6. PRIVATE PROSECUTIONS

- 6.1 Not all prosecutions are initiated by police officers or other officials acting in the course of their public duty. The right of a private individual to institute a prosecution has been described as "*a valuable constitutional safeguard against inertia or partiality on the part of authority*". Nevertheless, the right is open to abuse and to the intrusion of improper personal or other motives. Further, there may be considerations of public policy why a private prosecution, although instituted in good faith, should not proceed, or at least should not be allowed to remain in private hands. Consequently, section 8 of the Act enables the Director to take over the conduct of prosecutions initiated by another person. Thereafter the prosecution may be continued or brought to an end.
- 6.2 Section 13 of the Act provides that where the Director has taken over the conduct of a private prosecution or is considering doing so the informant must provide to the Director a full report of the circumstances giving rise to the prosecution together with copies of the statements of any witnesses and other documentary evidence, and furnish any further information the Director requires. In addition, section 14 enables the Director to seek police assistance in investigating the matter. These provisions enable a full assessment to be made of the prosecution case before any decision is made or, alternatively, after the matter has been taken over.
- 6.3 Given the large range of circumstances which may give rise to a private prosecution it is impracticable to lay down inflexible rules as to the manner in which the discretion will be exercised. In general, however, a private prosecutor will be permitted to retain the conduct of the proceedings unless:
 - (a) there is insufficient evidence to justify the continuation of the prosecution, that is to say, there is no reasonable prospect of a conviction being secured on the available evidence;
 - (b) the prosecution is not in the public interest;
 - (c) there are reasons for suspecting that the decision to institute a private prosecution was actuated by improper motives or otherwise constituted an abuse of the prosecution process; or

- (d) it would not be in the interests of justice for the conduct of the prosecution to remain within the discretion of a private individual having regard to the gravity of the offence and all the surrounding circumstances.

6.4 Where a private prosecution is instituted to circumvent an earlier decision of the Director not to proceed with a prosecution for the same offence, it will usually be appropriate to take over the prosecution with a view to bringing it to an end.

7. UNDERTAKING THAT A PERSON WILL NOT BE PROSECUTED

7.1 The Director has a power under the Act to give an undertaking that a person will not be prosecuted for a specified offence or in respect of specified acts or omissions. Where such an undertaking has been given, no proceedings may subsequently be instituted in respect of the offence or conduct so specified. The undertaking may be given subject to such conditions (if any) as the Director considers appropriate.

7.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who have participated in the commission of offences or who have guilty knowledge of their commission. It is obviously a grave step to grant, in effect, immunity from prosecution to someone apparently guilty of a serious offence. However it has long been recognised that exceptional cases do arise in which the interests of justice demand that such a course be pursued.

7.3 As a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. If tried and convicted or acquitted with respect to the offences in issue, the person will then be a compellable witness for the prosecution, without the need for the issuing of an undertaking. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate.

7.4 The central issue in deciding whether to give an accomplice an undertaking under the Act is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of his or her own involvement in the crime in question should be foregone in order to secure that person's testimony in the prosecution of another. The factors to be considered include:

- (a) the importance of the evidence which may be obtained as a result of the undertaking;
- (b) the extent of the criminal involvement of the person seeking the undertaking compared with that of the accused;
- (c) whether the person seeking the undertaking has given a full and frank statement of his or her prospective evidence, including an acknowledgement of his or her own role in the offences in issue;
- (d) the character, credibility and previous criminal record of the person concerned;
- (e) whether any inducement has been offered to the person to give the evidence sought; and

- (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under section 9(1) or section 9(4) of the Act.

7.5 Any undertaking given by the Director will generally be subject to the condition that the recipient of the undertaking will give evidence as and when called to do so, and that any evidence the person is called upon to give will be given truthfully, accurately and on the basis that the person will withhold nothing of relevance.

7.6 Requests for consideration of the giving of an undertaking will usually come from the police. Where such a request is made, the Director should be provided with a full copy of the brief of evidence against the principal offender, a copy of the brief or other material against the proposed witness, a full and frank statement signed by the proposed witness, and a comprehensive report adverting to each of the standard indemnity criteria, as listed above. Given that undertakings will rarely be given, it is prudent for investigators to consult with the Director as soon as practicable if they intend requesting an undertaking for a potential witness in criminal activity under investigation.

7.7 Where an accomplice receives any concession from the Director in order to secure his or her evidence, for example, whether as to choice of charge, or the grant of an undertaking under the Act, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court and to the defence.

8. VICTIMS OF CRIME

8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the *Victims of Crime Act 1994*.

8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses, and be given an explanation of the outcome of criminal proceedings, including of any sentence and its implications. Victims must be informed of the outcome of finalised court proceedings in a timely fashion.

8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.

8.4 A number of agencies which exercise a function in the administration of justice are responsible for ensuring these principles are adhered to, including the DPP, police, and victim support agencies. Those agencies must work together in a complementary way.

8.5 Consideration must be given in the early stages of contact with the victim, and/or their families, to involvement in the case by the witness assistance service of the DPP. In all appropriate cases, victims should be advised of the service and where necessary referred to it.

- 8.6 Victims may make victim impact statements pursuant to Part 4.3 of the *Crimes (Sentencing) Act 2005*. Prosecutors should ensure that the opportunity to prepare an adequate victim impact statement has been given, and that when one is prepared it contains relevant material to assist the court in the sentencing process. They must also ensure that victims are aware of their right to present the statement as a written statement or a statement given orally in court.

9. PUBLICATION OF REASONS

- 9.1 Where the Director decides to exercise the power conferred by the Act to decline to proceed further with a prosecution, reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the community through the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there will generally be no objection to the reasons for any decision not to proceed with such a trial being made public.
- 9.2 However reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused, or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.
- 9.3 Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing, because to do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified.

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