



ACT
Government

DIRECTOR OF PUBLIC PROSECUTIONS
ANNUAL REPORT
2022-23



ACTDPP



Themis

Our office logo is the modernised Greek Titaness Themis (or Lady Justice). To add a local flavour, Themis is draped in a dress and sash in the colours of the ACT Government Crest and was drawn by a young artist from a local community organisation that uses art to overcome social and psychological challenges. We thank artist Kelsey Askew for her wonderful concept.

© Australian Capital Territory, Canberra 2023

This work is copyright. Apart from any use as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without written permission from:

ACT Government
Director of Public Prosecutions
GPO Box 595, Canberra ACT 2601
Telephone 13 22 81 Website www.act.gov.au

ISBN: 978-0-642-60764-5

Accessibility The ACT Government is committed to making its information, services, events and venues as accessible as possible.

If you have difficulty reading a standard printed document and would like to receive this publication in an alternative format, such as large print, please phone Access Canberra on 13 22 81.

If English is not your first language and you require a translating and interpreting service, please phone 13 14 50. If you are deaf, or have a speech or hearing impairment, and need the teletypewriter service, please phone 13 36 77 and ask for Access Canberra on 13 22 81.

For speak and listen users, please phone 1300 555 727 and ask for Access Canberra on 13 22 81.

For more information on these services visit www.relayservice.com.au

Contents

Abbreviations and Acronyms.	8
Glossary of technical terms	10
Contact sources.	24
Agency Contact Details	24
Annual report contact details:	25
A. Transmittal Certificate and Compliance Statement	26
A.1 Transmittal Certificate	26
A.2 Compliance Statement	27
Director's foreword	29
B. Organisational Overview and Performance	33
B.1 Organisational Overview.	33
B.1.1 The Role and Functions of the Office	33
B.1.2 Internal Accountability	34
B.1.2.1 Senior Executives and their responsibilities	34
Chief Crown Prosecutor	34
Deputy Director Criminal Practice.	35
Crown Prosecutors	35
B.1.3 Organisational Structure	36
B.1.4 ODPP Core Team	37
B.1.5 ODPP Working Committees	37
B.1.5.1 Executive Committee	37
B.1.5.2 Working Environment Group.	37
B.1.5.3 Continuing Professional Development - Ad hoc Committee	38
B.1.6 ODPP Stakeholders	38
B.2 Performance Analysis.	38
B.2.1 ODPP's Criminal Practice	38
Developments in the criminal practice	39
B.2.2 Magistrates Court.	40
B.2.2.1 MC Cases.	40
Police v Garang Mayen	40
Police v Carl Lyons.	41

	Police v Dale Goesch	41
	DPP v Celeski	42
B.2.3	Supreme Court	42
B.2.3.1	SC Cases	43
	DPP v Butkovic	43
	DPP v Williams	44
B.2.3.2	Drug and Alcohol Sentencing List.	45
B.2.4	Crown Chambers	46
B.2.4.1	Involvement with external criminal justice agencies	47
B.2.4.2	Notable Cases by Crown Chambers	47
	DPP v O’Connell	47
	DPP v Shay Murphy.	48
	DPP v Gary Taylor	49
	DPP v Sugimatatihuna Mena, Rebecca Parlov and Bradley Roberts	50
	KE	51
	In the matter of an application for parole by Axel Sidaros.	53
B.2.5	Appeals.	54
B.2.5.1	Supreme Court.	54
B.2.5.2	Court of Appeal.	54
B.2.5.3	High Court	55
B.2.5.4	Appeal cases	55
	Supreme Court.	55
	Kelly (a pseudonym) v Hucker	55
	Ji v Stone	56
	DPP v Whittle	58
	Mann v Tremethick	58
	Kilby v Carey	59
	Alexander v Bakes	60
	Court of Appeal.	61
	Okwechime v The Queen	61
	Booth v The Queen	62
	The Queen v Ashton (a pseudonym)	62
	McFarland v Van Eyle	63
	White v The Queen	64
	R v Tuifua	65

	Cooke (a pseudonym) v The Queen	66
	Warne v The King	67
	High Court	69
	Garay v The Queen	69
B.2.6	Sexual Offences Unit.	71
	B.2.6.1 Sexual Offences: Trials and Sentences in the Supreme Court – 1 July 2022 to 30 June 2023	72
	B.2.6.2 Breakdown of Sexual Offence matters in different courts – 1 July 2022 to 30 June 2023	73
	B.2.6.3 Sexual Offence Cases.	73
	R v Ayoub	73
	DPP v Bellette	73
	DPP v Naing	74
	DPP v Mitchell	74
B.2.7	Family Violence Unit.	76
	B.2.7.2 Breakdown of FV cases in different courts – 1 July 2022 to 30 June 2023	77
	B.2.7.3 FV Cases	77
	Police v JS	77
	Police v TH	77
	Police v N L	78
B.2.8	Witness Assistance Service	78
	B.2.8.2 Disability Liaison Officer.	80
	B.2.8.3 Breakdown of WAS matters – 1 July 2022 to 30 June 2023	81
B.2.9	Confiscation of Criminal Assets	82
	B.2.9.1 COCA Cases	83
	In the matter of an application under the Confiscation of Criminal Assets Act	83
	Op Montrose	84
	B.2.10 Work Safety	85
	B.2.10.1 WHS Cases.	85
	Hawker Roofing Pty Ltd.	85
	Agnew Building Supplies Pty Ltd	85
	B.2.10.2 Breakdown of WHS matters	86
B.2.11	Regulatory Matters.	86
	B.2.11.1 Breakdown of regulatory matters	86

B.2.12	Parking Matters	87
B.2.13	List Team	88
B.2.14	ODPP Statistics (from 1 July 2022 to 30 June 2023)	88
	B.2.14.1 Total matters finalised by jurisdiction	89
	B.2.14.2 Matters finalised disaggregated by matter type	90
	B.2.14.3 Committals to the Supreme Court	95
	B.2.14.4 Plea of Guilty after Committal for Trial	95
	B.2.14.5 Committals to the Supreme Court disaggregated by matter type	96
	B.2.14.6 Supreme Court Matters	97
	B.2.14.7 Appeals	97
B.3	Scrutiny	98
	B.3.1 Audit of Reviewable Decisions	98
B.4	Risk Management	98
B.5	Internal Audit	98
B.6	Fraud Prevention	99
B.7	Freedom of Information	99
	B.7.1 FOI Access Applications	101
B.8	Community engagement and support	102
B.9	Aboriginal and Torres Strait Islander Reporting	102
	B.9.1 Office Employment Diversity Statement	103
B.10	Work Health and Safety	103
	B.10.1 Notifiable incidents	104
B.11	Human Resources Management	104
	B.11.1 ARIns Reporting	105
	B.11.1.1 Agency profile	105
	B.11.1.2 FTE and headcount by gender	105
	B.11.1.3 Headcount by classification and gender	105
	B.11.1.4 Headcount by employment category and gender	106
	B.11.1.5 Headcount by Diversity Group	106
	B.11.1.6 Headcount by age group and gender	106
	B.11.1.7 Headcount by average years of service and gender	106
	B.11.1.8 Recruitment and Separation Rates	107
B.12	Ecologically Sustainable Development	107
	B.12.1 Sustainable development performance – current and previous financial year	107

C. Financial Management Reporting	109
C.1 Financial Management Analysis . . . . .	.109
C.2 Financial Statements . . . . .	.109
C.3 Capital Works . . . . .	.109
C.4 Asset Management . . . . .	.109
C.5 Government Contracting . . . . .	.110
C.6 Statement of Performance . . . . .	.111
D. Territory records	112
E. Appendices	113
Appendix A. . . . .	.113
Prosecution policy of the Australian Capital Territory . . . . .	.113
Appendix B. . . . .	.133
Director’s instruction no. 14.1 - Review of a decision to discontinue a prosecution. . . . .	.133
Appendix C. . . . .	.134
Director’s instruction no. 14.2 - Reviewable decisions to discontinue – contact with complainants, review processes and auditing . . . . .	.134
Appendix D. . . . .	.142
Audit report on legal compliance of procedures relating to reviewable decisions. . . . .	.142
Appendix E. . . . .	.143
Record of reviewable decisions - audit 2022–2023 . . . . .	.143
F. Index of cases	150
G. Index of tables and figures	152

Abbreviations and Acronyms

ABS	Australian Bureau of Statistics
ACAT	ACT Civil and Administrative Tribunal
ACT	Australian Capital Territory
ACTCS	ACT Corrective Services
ACTPS	ACT Public Sector
AFP	Australian Federal Police
AG	Attorney-General of the Territory
ANZSOC	Australian and New Zealand Standard Offence Classification
APIC	Audit Performance and Improvement Committee
ARIns	Attraction and Retention Incentives
ATSI	Aboriginal and Torres Strait Islander
AVL	Audio Visual Link
CA	Court of Appeal
CARHU	Child and Risk Health Unit
CASES	Criminal Advocacy Support and Enquiry System (this is the ODPP's Case Management System)
CJ	Chief Justice
CMTEDD	Chief Minister, Treasury and Economic Development Directorate
COCA	Confiscation of Criminal Assets
COVID-19	Corona virus disease 2019
CPD	Continuing Professional Development
CPS	Child and Protection Services
CRCC	Canberra Rape Crisis Centre
Cwlth	Commonwealth
CYPS	Child and Youth and Protection Services
DASL	Drug and Alcohol Sentencing List (DASL)
DATO	Drug and Alcohol Treatment Order
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
EAP	Employee Assistance Program
FAMSAC	Forensic and Medical Sexual Assault Care

FCPP	Fraud and Corruption Prevention Plan
FOI	Freedom of Information
FTE	Full Time Equivalent
FV	Family Violence
FVIP	Family Violence Intervention Program
FVEIC	Family Violence Evidence in Chief Interview
HC	High Court
ICMS	Integrated Court Management System
ICT	Information Communication Technology
JACSD	Justice and Community Safety Directorate
LGBTQIA	lesbian, gay, bisexual, transgender, queer or questioning, intersex, and asexual or allied
MC	Magistrates Court
NOI	National Offence Index
NSW	New South Wales
ODPP	Office of Director of Public Prosecutions
OEDS	Office Employment Diversity Statement
OMCG	Outlaw Motorcycle Gang
PTG	Public Trustee and Guardian
RCIRCSA	Royal Commission into Institutional Responses to Child Sexual Abuse
RSPCA	Royal Society for the Prevention of Cruelty to Animals
RORD	Record of Reviewable Decisions
SACAT	Sexual Assault and Child Abuse Team
SARP	Sexual Assault Reform Program
SC	Supreme Court
SES	Senior Executive Service
TD	Trial Directions
VSACT	Victim Support ACT
WAS	Witness Assistance Service
WEGIES	Working Environment Group
WHS	Work Health and Safety

Glossary of technical terms

A1 list	Criminal General List - Matters dealt with include adjournments, short sentences, uncontested or simple applications, uncontested committals, and case management will be dealt with in the morning and longer sentences will be listed in the afternoon.
A2 list	Criminal bail/sentence list - Matters dealt with include first appearances from custody; contested bail applications or variations and bail reviews; related issues which can be dealt with expeditiously, such as entry of a plea or ordering of reports unless the Magistrate forms the view that they are more appropriately moved to another list; applications for extradition pursuant to the <i>Service and Execution of Process Act 1992</i> (Cwlth); and Sentencing Administration Board warrants.
ACT Auditor-General	Refers to the ACT Auditor-General who conducts independent financial and performance audit on ACT Government agencies and those entities in receipt of ACT Government funding or resources. The results of these audits are reported to the ACT Legislative Assembly and ACT community.
ACT Bar Association	The professional body that regulates barristers in the ACT. It represents the interests of members who practise at the private bar.
ACT Bar Council	It manages the general business of the ACT Bar Association and is responsible for regulating the professional conduct, practice and etiquette to be observed by practising barristers.
ACT's Executive	The members of the Executive are the Chief Minister and such other Ministers as are appointed by the Chief Minister.
accused	person charged with an offence, usually an indictable offence.
<i>actus reus</i>	refers to the act or omission that comprise the physical elements of a crime as required by statute.
acquit	When the Magistrate, jury or appeal court finds that a person is not guilty of the crime.
adjournment	To ask the court to delay your court case until a later date. The delay is referred to as an adjournment. This is a break in legal proceedings, either for part of a day or put off until another day.
advocate	An individual who presents or argues another's case; one who gives legal advice and pleads the cause of another before a court or tribunal.
agencies	administrative units of the ACT Public Service.

aggravated burglary	where burglary is committed by two or more people; or during the burglary, an offensive weapon is used.
aggravated robbery	where a person commits robbery in a group with one or more people or commits robbery whilst having a weapon in their possession.
aggravating factors	Circumstances that make an offence much more serious. Facts or details about the offence, the victim and/or the offender that tend to increase the offender's culpability and the sentence they receive.
alcohol use disorder	Alcohol use disorder (includes alcoholism) is alcohol use that involves problems controlling one's drinking, being preoccupied with alcohol, continuing to use alcohol even when it causes problems, having to drink more to get the same effect, or having withdrawal symptoms when one rapidly decreases or stops drinking.
antecedents	Refers to the life history and previous convictions of a defendant in a criminal case. This information is given to the court before sentence is given. The criminal history of the convicted plays a role in the frame of the punishment.
appeal	To take a case to a higher court in order to challenge a decision. The person who appeals is the appellant. Not all decisions can be appealed.
appellant	The party appealing a court's decision. This can be the defendant or the prosecution.
appellate	Relating to appeals; reviews by superior courts of decisions of inferior courts.
Attorney-General of the Territory	The Minister who has the responsibility for the administration of justice in the Territory.
Attraction and Retention Incentive ('ARIn')	An ARIn may be offered where a position is deemed critical to the operation of the Directorate or its business unit; requires employees with specialist qualifications or specialist or high level skills; the skills required by the position are in high demand in the marketplace, or the position would incur significant costs to replace. An ARIn may contain enhanced pay rates, provision for privately plated vehicles or other terms and conditions of employment where the Director-General and Head of Service considers there is a clear, unambiguous and exceptional need.

audio visual link ('AVL')	The AVL facility is a form of video conferencing using cameras and television screens, that allows two-way communication to a remote location. AVL may be used to take evidence from witnesses not able to attend the location, e.g. for witnesses who are interstate or overseas. Using AVL for bail hearings reduces unnecessary transportation of prisoners to and from Court, especially to regional locations and increases the security for court users.
B list	Children's Court general list.
bail	The release of a defendant into the community until a court decides the charge(s) against the person. Bail orders always include a condition that the defendant must attend court hearings. Additional conditions such as a requirement to live at a certain address or report to police may be added to a person's bail undertaking.
beyond reasonable doubt	This is the level to which the prosecution in a criminal proceeding must prove that the accused person committed the alleged offence.
brief of evidence	Refers to the things that make up the case against a person if they have been charged with a crime. This can include the charge sheet, the informant's statement, their criminal record and other documents the police have about their matter.
callover	Cases often appear in the court's lists several times before there is a hearing, or before sentencing occurs. These court appearances are known as 'callovers' or 'mentions'. They are used to find out how one will plead, and how much time the court will need to allocate for a hearing.
common assault	where a person has either threatened to harm another person or where unlawful force has been used without the persons consent.
common law	The law based on previous court decisions and customs as distinct from statute law created by Parliament.
case management	This is an active judicial intervention in matters before the Court, intended to decrease resolution times and ensure the efficient use of Court resources.
charge	A statement giving the details of a crime an accused person is claimed to have committed.
child	A person below the age of 12 years.
Childrens Court	A court that hears offences committed by children and young people. The Childrens Court is a special court of the Magistrates Court..

closing address	The closing statement by counsel to the trier of facts, after all parties have concluded their presentation of evidence.
Code	<i>Criminal Code 2002 (ACT).</i>
committed for sentence	The magistrate can commit the defendant to a superior court for sentencing if: <ul style="list-style-type: none"> › it is an indictable offence; or › if there is not the required consent; or › the magistrate is of the opinion that the interests of justice require committal to a superior court.
committed for trial	Where a magistrate determines that there is a case to answer, the matter will be committed for trial in the Supreme court. The term committed for trial means sending the matter to one of the higher court jurisdictions.
community service work	This is an alternative to prison and involves the offender doing voluntary work in the community. The offender may be ordered to do work such as plant trees, remove graffiti, work with homeless people, or anything else the supervising officer deems suitable.
complainant	person against whom it is alleged a crime has been committed, usually used in the context of sexual assault.
concurrent sentence	Individual sentences for each offence that are ordered to be served at the same time. This means the shortest sentence is subsumed into the longest sentence (also called the 'head sentence').
controlled drug	A drug or other substance that is tightly controlled by the government because it may be abused or cause addiction. The control applies to the way the substance is made, used, handled, stored, and distributed. Controlled substances include opioids, stimulants, depressants, hallucinogens, and anabolic steroids. In the ACT illegal drugs are called 'drugs of dependence' or 'controlled drugs' or 'prohibited substances'.
conviction	A determination of guilt made by a court.
co-offender	Co-offending is defined as the act of committing crime alongside one or more accomplices.
count	Each separate statement in a complaint which states a cause of action which, standing alone, would give rise to a lawsuit, or each separate charge in a criminal action.

core conditions	Conditions that one on a good behaviour order ('GBO') will have e.g. to not commit any more crimes while on a GBO; to tell the court of a change of address or other contact details within two days; to tell the court if charged with a new crime within two days; to go to court if asked by the police to do so; and to follow any other conditions set by the courts.
coronavirus	Coronaviruses are a large family of viruses that cause respiratory infections. These can range from the common cold to more serious diseases like SARS (severe acute respiratory syndrome), MERS (Middle East respiratory syndrome) and the more recent coronavirus disease (COVID-19).
coroner	Coroners hold inquests into violent, sudden, or suspicious deaths. Coroners investigate deaths, fires and explosions, helped by police and a team of their own investigators.
Court of Appeal	The Supreme Court is known as the Court of Appeal when exercising its appellate jurisdiction.
COVID19	Coronavirus disease 2019 is an infectious disease caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).
criminal case conferencing	Refers to negotiations between the prosecution and defence to discuss issues in dispute in order to bring about an early resolution to proceedings. Such negotiations may result in the amendment, substitution or withdrawal of charges and/or the agreement as to a factual basis of sentence and submissions on the sentence range.
Criminal Central Listing callover	The list will be called over before a Judge. Parties will advise the Court on matters which could affect the hearing, including whether the matter is to proceed by trial by jury or a trial by judge alone, whether there are any pre-trial applications or hearings in the matter, any prospects of the matter resolving without the need for a trial, counsel and witness unavailability during the sitting time, the expected duration of the trial, any requirement for CCTV, video conferencing or the recording of evidence, etc.
criminal history	A record of the offences a person has been convicted of.
Crown	In higher courts the prosecution may be referred to as the Crown that is, representing the Queen in the rights of the Commonwealth.
Crown Prosecutor	the prosecutor in the Supreme Court or Court of Appeal.
cumulative sentence	Individual sentences for each offence that are ordered to be served one after the other.
defendant	a person charged with an offence.
Deputy Director	Deputy Director of the Office of the Director of Public Prosecutions.

Director	Director of Public Prosecutions.
directorates	administrative units 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 <i>Public Sector Management Act 1994</i> .
evidence	Material presented to a court to prove or disprove a fact. It can include what witnesses say as well as documents and other objects.
evidence-in-chief	Questioning of a witness by the party who called the witness to give evidence, other than questioning re-examination.
evidential burden	The burden of adducing evidence that suggests a reasonable possibility that the matter exists or does not exist.
excluded offences	Refers to the excluded offences laid out in Part 2.2 of Schedule 2 (Trial by Judge Alone - excluded offences) in the <i>Supreme Court Act 1933</i> .
exhibit	A document or object that is provided as evidence in a court case or referred to in a sworn statement.
ex officio indictment	Even if committal proceedings have not taken place, or if a magistrate has found during committal proceedings that there is insufficient evidence for a trial, the DPP may file a special information or indictment, called an <i>ex officio information/indictment</i> , against the offender and they must then stand trial in the normal manner in the Magistrates Court or Supreme Court.
FI list	This refers to the Family Violence List in the Family Court. Defendants charged with family violence offences are to appear in the FI list.
FOI Act	<i>Freedom of Information Act 2016</i> .
forcible confinement	A person who unlawfully confines or imprisons another person.
FV Unit	Family Violence Unit.
good behaviour order	A good behaviour bond is a period of time when the offender must show good behaviour to avoid jail. It comes with numerous conditions such as participating in drug and alcohol counselling, staying away from certain people, and reporting to the supervising officer. Failure to follow the conditions may lead to harsher penalties ranging from simple warnings to imprisonment.

ground rules hearing	This is a pre-trial process that involves the parties and judge to address issues, including the manner and content of cross-examination, and the comprehension capacity and communication needs of vulnerable witnesses and assisting parties to plan their questions. It will be required in criminal proceedings in any matter in which an intermediary has been appointed.
guilty	When a defendant enters a plea of guilty, they accept responsibility for the offence. When a defendant pleads not guilty, a jury will determine the guilt of the defendant if the matter proceeds as a trial in a higher court. Where a defendant pleads not guilty in the Magistrates Court, the magistrate determines the guilt of the defendant.
Head of Service	person appointed to head the ACT Public Service under Division 3.2A of the <i>Public Sector Management Act 1994</i> .
head sentence	The total period of imprisonment imposed. A person will usually be released on parole or a suspended sentence before the entire head sentence is served.
hearing	A proceeding where the evidence is presented to the court after an accused or defendant has pleaded not guilty.
High Court	Refers to the High Court of Australia. The highest court in the Australian judicial system. The High Court only deals with legal matters of wider public importance and is not a sentencing court.
historical offences	a term used to describe offences that have occurred in the distant past.
hung jury	An outcome where the jury cannot agree whether the accused is guilty or not.
incarceration	confinement in a jail or prison.
indictable offence	an offence required or able to be dealt with in the Supreme Court.
indictment	A formal accusation of the commission of a criminal offence in Supreme Court proceedings.
Industrial Court	Refers to the ACT Industrial Court. The Court has jurisdiction to deal with industrial or work safety matters.
inter alia	amongst other things.
intermediary	Intermediaries are skilled communication specialists who assist vulnerable witnesses to give their best evidence. Their role is to help communication with the witness and to assist the witness to give evidence to police and in court.

intermediary program	The ACT's Intermediary Program commenced in January 2020 and is actively providing intermediaries to assist police and courts' engagement with vulnerable witnesses in criminal matters.
judicial review	The court's review of an administrative decision on the basis of a legal error in the decision-making process.
jury	A group of (usually) 12 people chosen at random from the general community who are tasked with the responsibility of determining whether the defendant is guilty on the evidence presented in a criminal trial.
leave to appeal	A defendant must first seek permission to appeal before their appeal can be heard by the Court of Appeal. The leave to appeal argument will be heard before a single judge in the Supreme Court.
Legislative Assembly	Refers to the Legislative Assembly for the ACT, i.e. the parliament for the nation's capital. It was established after self-government in 1989. It performs both territory and local level functions and makes decisions that impact the lives of those who live and work in the ACT.
lockdown	During the COVID-19 pandemic, the term lockdown was used for actions related to mass quarantines or stay-at-home orders.
LSD	LSD, also known colloquially as acid, is a hallucinogenic drug. The effects of the drug include altered thoughts, feelings, and awareness of one's surroundings.
Magistrate	The person who hears the case and decides the sentence in the Magistrates Court or the Childrens Court.
Magistrates Court	The first tier of the ACT courts system. Most criminal cases are heard in this court in some form.
manslaughter	The act of causing another person's death without the intent to do so.
mental health order	Where a person does not have decision-making capacity or where their mental illness/disorder is placing them or the community at significant risk, involuntary measures may be required to provide them with the necessary assessment, treatment, care or support. There are a number of mental health orders that ACAT can make under the <i>Mental Health Act 2015</i> including: Psychiatric Treatment Orders; Community Care Orders; Restriction Orders; Forensic Psychiatric Treatment Orders; and Forensic Community Care Orders.
mental impairment	This includes senility, intellectual disability, mental illness, brain damage and severe personality disorder.

mention	This is where the case appears in court for a brief time, usually to deal with a procedural matter and is not the 'hearing' of the matter. This includes setting dates and deciding bail.
methamphetamine	Methamphetamine is a powerful, highly addictive stimulant that affects the central nervous system. It is also known as meth, blue, ice, and crystal.
miscarriage of justice	This is a reference to an outcome in a judicial proceeding that is unjust; especially an error made in a court of law that results in an innocent person being punished or a guilty person being free.
model litigant	<p>The model litigant policy is founded upon the concepts of behaving ethically, fairly and honestly to model best practice in litigation. The model litigant rules are about fair play, about the prosecution conducting its case, about ensuring that the community has good reason to trust the ODPP and the way its prosecutors conduct the prosecution.</p> <p>The model litigant guidelines apply to civil rather than criminal proceedings and are therefore not directly applicable to the work of the Office. 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. Like the origins of the model litigant principles, that policy reflects the higher standards of behaviour and disclosure required of the Crown.</p>
non-conviction order	Where the offender is found guilty, the court may make an order directing the charge to be dismissed if satisfied that it is not appropriate to impose any punishment, or a good behaviour order. (Section 17 of the Crimes (Sentencing) Act 2005).
non-parole period	The time a person serves in prison before being released on parole or becoming eligible to apply for release on parole.
notice of appeal	A written document filed by the appellant with the court and a copy of which is sent to the respondent. This is the initial step in the appeals process. It informs the court and the party in whose favour a judgment or order has been made that the unsuccessful party seeks a review of the case.

notifiable instrument	<p>A statutory instrument that is declared to be a notifiable instrument by an Act, subordinate law, disallowable instrument or another notifiable instrument. As with disallowable instruments, this 'declaration' is generally included in the provision that authorises the making of the instrument.</p> <p>If a primary law gives power to do something by notifiable instrument, then: (a) if the thing is done, it must be done by instrument; and. (b) that instrument is a notifiable instrument.</p> <p>Examples of notifiable instruments include notices of road closures and declarations about public holidays.</p>
Objective seriousness of the offence	<p>The outer limits of a sentence depend on the gravity of the offence in light of its objective circumstances. A court must make a 'real assessment of the objective criminality of the offending'.</p> <p>Objective seriousness is how serious the particular instance of the offence is. A case may fall at the lower end of seriousness for an offence and attract a very minor penalty, or it may be towards the most serious example of the offence and attract close to the maximum penalty. To determine the objective seriousness of an offence, the judge must take into account the facts and circumstances of the offence, the maximum penalty that can be ordered for such an offence, as well as any aggravating factors (factors that make the offence more serious) and mitigating factors (factors that may reduce the sentence).</p>
offender	A person who has been found guilty of an offence, or who has pleaded guilty to an offence.
offence	A criminal act.
Office	Office of the Director of Public Prosecutions. The Office consists of the Director and the members of the staff of the office.
on the papers	If a decision is to be made 'on the papers', the court will usually make orders for one to file their written evidence or submissions in relation to that particular decision before it is scheduled to be handed down.
onerous	excessively burdensome or troublesome; causing hardships.
onus of proof	The responsibility to prove a case in court. In criminal trials, the prosecution must prove its case, leaving no reasonable doubt about it.

oral hearing	A person and their representative can attend, or their representative can attend the hearing without them. This is a hearing in which all the participants are physically present in the same place, receiving the same information at the same time.
paralegal	An individual who is employed or retained by a lawyer, law office, corporation, governmental agency, or other entity and who performs specifically delegated substantive legal work for which a lawyer is responsible. Paralegals perform tasks requiring knowledge of the law and legal procedures.
parole	The conditional release of a person from prison. When a person is released on parole, they serve the unexpired portion of their prison sentence in the community under supervision.
physical distancing	This is the practice of maintaining a greater than usual physical space between oneself and other people or of avoiding direct contact with people or objects in public places during the outbreak of a contagious disease in order to minimize exposure and reduce the transmission of infection.
plaintiff	The person who initiates or files a case with a court.
plea	The response by the accused to a criminal charge — ‘guilty’ or ‘not guilty’.
practice direction	Practice directions are procedural guidelines issued by judges of the Supreme Court. The directions are designed to complement existing legislation, rules and regulations and may refer to issues including the use of the court precinct, appearances by practitioners and parties, and case management.
practising certificate	Once admitted as a lawyer in Australia you must hold a practising certificate before you can practise law in any Australian jurisdiction. Different bodies issue practising certificates in different jurisdictions.
pre-sentence report	This report is prepared by ACTCS based on interviews with the offender and information on the reasons for offending; the offender’s attitude to the offence, including whether they are remorseful; any history of offending; any history of drug and alcohol misuse or mental health concerns; their prospects for rehabilitation; and their risk of reoffending. The pre-sentence report also sets out the available sentencing options and indicates the offender’s suitability for these various options.

proofing	A victim of crime or witness for the prosecution may be asked to attend a meeting, or number of meetings, at the ODPP. 'Proofing' is a meeting with the prosecutor who has conduct of the prosecution case involving the accused.
Reading program	This is a mandatory stage of the qualification process for barristers, in which a trainee barrister must appear with a qualified barrister for a specified period.
remote witness room	The remote witness room enables vulnerable people, complainants and sexual offence witnesses in prescribed sexual offence proceedings to give evidence by means of closed-circuit television facilities or other technology that enables communication with the courtroom. Witnesses are also entitled to have a support person with them in the remote witness room which is considered to be part of the court. For the safety of witnesses their location is confidential.
resentence	To impose a new or revised sentence or punishment on someone who has already been sentenced for a crime.
respondent	The party responding to an appeal or application before a court.
restraining order	A court order that prohibits someone from doing something.
probation	Probation allows a person convicted of a crime the chance to remain in the community instead of going to jail. Probation requires that one complies with certain court-ordered rules and conditions under the supervision of a probation officer. Typical conditions may include performing community service, meeting with one's probation officer, refraining from using illegal drugs or excessive alcohol, avoiding certain people and places, and appearing in court during requested times.
search warrant	search warrants involve the right of police to enter someone's home and search the premises for the purpose of investigating matters. Search warrants are issued by magistrates on the basis of information provided on oath by police officers.
self-represented	A person who does not have a lawyer to appear for them in court and who presents their case to the court themselves.
sentence	The penalty that the court imposes on a person who has been found guilty of an offence.
sentencing proceedings	A person who pleads guilty, or is found guilty, may wish to call evidence in mitigation of the penalty. Matters considered at sentencing include age, good character, previous good record, and the circumstances of the offence.

shutdown	temporary closure of services or business.
Silk	A Silk lawyer is the colloquial name given to a Senior Counsel who is selected by an independent panel committee due to their knowledge, experience and skill. Senior counsels are colloquially known as “silks” because their robes include a gown made of silk. (Junior counsels wear gowns made of cotton.)
SC Registrar’s TD List	Supreme Court Registrar’s Trial Directions List.
SO Unit	Sexual Offences Unit.
submission	The opinion, argument, etc. put forward by a party in a court case.
subpoena	This is a document that is served on any party in proceedings to require that documents relevant to the court case be produced to the court. People can also be subpoenaed to appear in court to give evidence.
suicidal ideation	Suicidal ideation, also known as suicidal thoughts, is thinking about, considering, or planning suicide. The range of suicidal ideation varies from fleeting thoughts, to extensive thoughts, to detailed planning.
summary offences	This is an offence that is punishable by two years imprisonment or less (section 190 of the <i>Legislation Act 2001</i>). As a general rule, there is no statute of limitations for an offence punishable by more than 6 months imprisonment, meaning that most summary offences can, be prosecuted outside of a 12 month-time frame (section 192 of the <i>Legislation Act 2001</i>).
Supreme Court	The highest state court in ACT. It comprises the trial division and the Court of Appeal.
suspended sentence	A sentence of imprisonment that is not served, unless there is a breach of an attached good behaviour order.
social distancing measures (COVID-19)	These measures include not shaking hands, or exchanging physical greetings, and wherever possible, staying at least 1.5 metres away from others.
special leave to appeal	Where an appeal decision is denied by the Court of Appeal, special leave may be made to the High Court. This can only be done in exceptional circumstances and must involve a ‘question of law of general importance’.
statement of facts	A brief outline of the allegations.
statutory limitation	The period within which time court proceedings must be issued.
stay the proceedings	An order that a particular legal action stop. A stay may be for a fixed period, until certain events occur, or permanent.

tendency evidence	This is evidence 'of the character, reputation or conduct of a person, or a tendency that a person has or had', adduced to prove that the person 'has or had a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind'.
Territory	Refers to the ACT. The ACT is established as a body politic under the Crown by the name of the ACT.
the Act	the <i>Director of Public Prosecutions Act 1990</i> .
the financial year	Refers to the 2022–2023 financial year or reporting year.
trial	A hearing in a court where all evidence is heard, and a final decision is made.
trial directions	Orders made by the registrar in relation to the conduct of a proceeding. Before the trial or hearing of a matter, a registrar may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
upholding an appeal	A court finding in favour of the appellant.
verdict	The decision of a jury in a criminal trial as to whether an accused is guilty or not guilty of an offence.
victim	A person who has suffered harm directly because of a criminal offence, or a family member or dependant of a person who has died or suffered harm because of a criminal offence.
victim impact statement	A statement written by a victim that may be read or presented to a court after an offender has been found guilty and before they are sentenced. The VIS informs the court about the harm suffered by the victim as a result of the offence. In sentencing, the court is required to consider a number of factors including the injury, loss or damage to a victim, resulting from the offence.
Victims of Crime Charter	This is a charter embodying a raft of victim's rights provided for in the <i>Victims of Crimes Act 1994</i> and the <i>Human Rights Act 2004</i> .
witness	A person who appears in court to give direct information about something relevant to the case the court is hearing.
young person	A young person is a person who is 12 years old or older, but not yet an adult. An adult is as a person who is at least 18 years old.

Contact sources

Agency Contact Details

Agency	Website / Contact Details
Access Canberra	https://www.accesscanberra.act.gov.au/
ACT Audit Office	https://www.audit.act.gov.au/
ACT Bar Association	https://www.actbar.com.au/
ACT Corrective Services	http://www.cs.act.gov.au/
ACT Environment Protection Authority	https://www.accesscanberra.act.gov.au/app/answers/detail/a_id/3149/~environment-protection
ACT Health	https://health.act.gov.au/
- Alcohol and Other Drug Service	https://www.health.act.gov.au/services/alcohol-and-drug-services
ACT Integrity Commission	https://www.integrity.act.gov.au/
ACT Ombudsman	https://www.ombudsman.act.gov.au/
ACT Policing	https://police.act.gov.au/
ACT Policing's Family Violence Coordination Unit	https://police.act.gov.au/safety-and-security/family-violence
ACT Policing Victim Liaison Office	Victims Liaison Office Telephone: (02) 6245 7441 Email: Victims-Liaison-Office@afp.gov.au
Alexander Maconochie Centre	http://www.cs.act.gov.au/custodial_operations/types_of_detention/alexander_maconochie_centre
Australian Bureau of Statistics	https://www.abs.gov.au/
Australian Federal Police	https://www.afp.gov.au/
Canberra Rape Crisis Centre	https://www.crcc.org.au/
Chief Minister, Treasury and Economic Development Directorate	https://www.cmtedd.act.gov.au/
Child and Youth Protection Service	https://www.communityservices.act.gov.au/ocyfs/children/child-and-youth-protection-services

Agency	Website / Contact Details
Child at Risk Health Unit	https://www.health.act.gov.au/services-and-programs/women-youth-and-children/children-and-youth/child-risk-health-unit
Domestic Animal Services	https://www.cityservices.act.gov.au/pets-and-wildlife/domestic-animals/dogs/about-das
Domestic Violence Crisis Service	https://dvcs.org.au/
Forensic and Medical Sexual Assault Care (Canberra Hospital)	https://www.health.act.gov.au/hospitals-and-health-centres/canberra-hospital
Human Rights Commission	https://hrc.act.gov.au/
Justice and Community Safety Directorate	https://justice.act.gov.au/
Legal Aid Commission	https://www.legalaidact.org.au/
Legislative Assembly for the Australian Capital Territory	https://www.parliament.act.gov.au/home
Public Trustee and Guardian	https://www.ptg.act.gov.au/
Territory Records Office	https://www.territoryrecords.act.gov.au/home
Royal Society for the Prevention of Cruelty to Animals	https://www.rspca-act.org.au/
Victim Support ACT	https://www.victimsupport.act.gov.au/home
WorkSafe ACT	https://www.worksafe.act.gov.au/ https://www.accesscanberra.act.gov.au/app/home/workhealthandsafety/worksafeact

Annual report contact details:

Katie Cantwell
 Executive Officer
 Email: Katie.Cantwell@act.gov.au
 Website: www.dpp.act.gov.au

A. Transmittal Certificate and Compliance Statement

A.1 Transmittal Certificate



ACT Office of the Director of Public Prosecutions

6 October 2023

Mr Shane Rattenbury MLA
Attorney-General for the ACT
ACT Legislative Assembly
London Circuit
CANBERRA ACT 2601

Dear Attorney-General,

2022-23 DIRECTOR OF PUBLIC PROSECUTIONS ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2023. This report has been prepared in accordance with section 7(2) 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 information in the attached 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 Director of Public Prosecutions has been included for the period of 1 July 2022 to 30 June 2023.

I hereby certify that fraud prevention has been managed in accordance with the *Public Sector Management Standards 2006 (repealed)*, Part 2.3 (see section 113, *Public Sector Management Standards 2016*).

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you present the Report to the Legislative Assembly within 15 weeks after the end of the reporting year.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'A.W. Williamson', with a long horizontal flourish extending to the right.

Anthony Williamson SC
Acting Director of Public Prosecutions (ACT)

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

A.2 Compliance Statement

The 2022–2023 ACT Director of Public Prosecutions Annual Report must comply with the Annual Report Directions (the Directions) made under section 8 of the Annual Reports Act. The Directions are found at the ACT Legislation Register: www.legislation.act.gov.au.

The Compliance Statement indicates the subsections, under Parts 1 to 5 of the Directions, that are applicable to the Office of the Director of Public Prosecutions, ACT and the location of information that satisfies these requirements:

Part 1 Directions Overview

The requirements under Part 1 of the Directions relate to the purpose, timing and distribution, and records keeping of annual reports. The 2022–2023 ACT Director of Public Prosecutions Annual Report complies with all subsections of Part 1 under the Directions.

To meet Section 15 Feedback, Part 1 of the Directions, contact details for the Office of the Director of Public Prosecutions, ACT are provided within the 2022–2023 ACT Director of Public Prosecutions Annual Report to afford readers the opportunity to provide feedback.

Part 2 Reporting entity Annual Report Requirements

The requirements within Part 2 of the Directions are mandatory for all reporting entities and the Office of the Director of Public Prosecutions, ACT complies with all subsections. The information that satisfies the requirements of Part 2 is found in the 2022–2023 ACT Director of Public Prosecutions Annual Report as follows:

- A. Transmittal Certificate, see page 26
- B. Organisational Overview and Performance, inclusive of all subsections, see B.1 from page 33 to page 38 and B.2 from page 38 to page 97 respectively.
- C. Financial Management Reporting, inclusive of all subsections, see page 109 to 111.

Part 3 Reporting by Exception

The Office of the Director of Public Prosecutions, ACT has nil information to report by exception under Part 3 of the Directions for the 2022–2023 reporting year.

Part 4 Directorate and Public Sector Body Specific Annual Report Requirements

The Office of the Director of Public Prosecutions, ACT is not required to report under Part 4 of the Directions.

Part 5 Whole of Government Annual Reporting

All subsections of Part 5 of the Directions apply to the Office of the Director of Public Prosecutions, ACT. Consistent with the Directions, the information satisfying these requirements is reported in one place for all ACT Public Service directorates, as follows:

- › Bushfire Risk Management, see the annual report of the Justice and Community Safety Directorate (JACSD);
- › Human Rights, see the annual report of the JACSD;
- › Legal Services Directions, see the annual report of the JACSD;
- › Public Sector Standards and Workforce Profile, see the annual State of the Service Report; and
- › Territory Records, see the annual report of Chief Minister, Treasury and Economic Development Directorate (CMTEDD).

ACT Public Service Directorate annual reports can be found online at the following address:
http://www.cmd.act.gov.au/open_government/report/annual_reports

Director's foreword

The last financial year was an exceptionally busy time for the Office. I am incredibly proud of the ODPP's staff who have dealt with increased pressures to their workload.

There were 43 trials prosecuted in the Supreme Court, with prosecutors spending 305 days in trial. This amounts to an almost 102% increase in court days spent prosecuting trials, with there being 25 trials taking some 151 court days in the previous reporting period. The Office dealt with 76 appeals in the 2022–2023 financial year, up from 61 in the previous reporting period, representing a 25% increase.

Of the 215 matters committed to the Supreme Court (an increase of 32 from the last reporting period), 131 of these were committals for trial. This represents an increase of 24 trials, or 22% from two years ago, and an increase of 21 trials, or 19% from last year. Accordingly, the work of the office performed in the Supreme Court is expanding rapidly with increased workloads in the coming financial year. While slightly fewer Family Violence matters were commenced in the last reporting period (7%), the number of family violence matters completed significantly increased by 143 matters, representing an increase of 29%.

Sex offence prosecutions

The last financial year saw the highest number of alleged sexual offence matters referred to the ACT ODPP from ACT Policing. In total, 103 sexual assault prosecutions were commenced in the Magistrates Court, which is up from 88 in the previous reporting period (a 17% increase). There were 58 sexual assault matters commenced in the Supreme Court, up from 25 in the previous reporting period (a 130% increase).

The Office transitioned to utilising the new sexual offence provisions in the *Crimes (Consent) Amendment Act 2022*, concerning offences committed after 12 May 2022. It introduced a new 'communicative consent' model and abolished what was known as the '*Morgan* defence' whereby an accused would be entitled to an acquittal in relation to a sexual offence charge if it was accepted they honestly and genuinely, albeit unreasonably, believed the complainant was consenting.¹ The explanatory statement to the new law observed that it would "update the *Crimes Act 1900* to align with contemporary community understandings and expectations of consensual sexual activity." The impact of the new law has been immediate, with it having a material effect on the way in which a prosecution's 'reasonable prospects' test is applied to sexual offence matters.

The way in which sexual offence prosecutions are viewed by prosecutors in the Territory has also been informed by a seminal decision from the Court of Appeal in *Garay (No.3) v The Queen* [2023] ACTCA 2. In that decision, Chief Justice McCallum discussed myths and stereotypes to the effect that an 'oath-on-oath' sexual offence prosecution is an inherently weak case. Her Honour said the following at [92]:

¹ *DPP (UK) v Morgan* [1976] AC 182

... the sworn account of a person who claims personally to have experienced a sexual assault is capable, without more, of proving the assault beyond reasonable doubt. The perception that such an account is not adequately probative (or worse, inherently unreliable) and requires independent corroboration appears nevertheless to remain deeply embedded in the public psyche. To give effect to that perception in criminal proceedings for sexual assault at any level of the court hierarchy is wrong for several reasons. It perpetuates stereotypes and preconceptions in a legal system that claims impartiality as its hallmark. It subverts the legislative amendments to which I have referred. It puts complainants in sexual assault cases in a different class from the alleged victims of other kinds of offences and, in that way, suffers incoherence in the rule of law.

Homicide prosecutions

During the reporting period the Office dealt with seven separate murder cases involving eight people charged with murder. Four of those accused have entered pleas of guilty to murder. One was convicted of murder by a jury at trial. One entered a special verdict of not guilty by reason of mental impairment, which was accepted by the prosecution. Two of the accused are awaiting trials likely to commence in early 2024.

Murder prosecutions require a very high investment of resources and time. They take an emotional toll on those who deal with them and absorb a significant number of resources for a relatively small prosecution office such as ours. The fact that five accused entered pleas of guilty to murder is a testament to the incredibly hard work and long hours invested by the prosecutors and police officers who held carriage of these matters.

I would like to acknowledge, in particular, Detective Sergeant Christopher Watson and the dedicated team of detectives who assisted him to bring a number of people before the court in relation to the shooting murder of Glenn Walewicz. On 10 June 2021 Mr Walewicz was at his home in Mansfield Place, Phillip. Three males approached his front door with their faces covered. They intended to commit a home invasion whereby they would steal money and/or drugs. However, they went to the wrong unit. Mr Walewicz was not their intended target. One of the accused knocked on the front door. The deceased opened the door and was shot in the neck. He died shortly thereafter.

Detective Sergeant Watson and his team engaged in a meticulous investigation during which they narrowed a list of potential suspects by reviewing thousands of pages of mobile phone tower data. From there, they obtained telecommunication interception and surveillance device warrants, which lead to the execution of multiple search warrants on residential premises. The police investigation culminated in the arrest of five people, two of whom were charged with murder, and the others with other serious indictable offences. Gary Taylor and a juvenile (who cannot legally be named) have entered pleas of guilty to murdering Mr Walewicz.

Misleading Territory Courts

A matter of continuing concern to me as acting Director has been the number of accused people and offenders submitting false and misleading information to Territory courts. This is usually done with a view to being granted bail or receiving a community-based sentence order as opposed to a sentence involving actual imprisonment. Such orders involve the court placing a considerable degree of trust in an accused or offender.

If the bail or sentencing order is predicated on false or misleading information, it tends to undermine public confidence in the justice system. For every instance of such conduct that is detected, there would be many more that go undetected.

Together with police, Territory prosecutors have been increasingly vigilant to 'fact check' the information being put before Territory courts where possible. In the reporting period, 25 administration of justice offence charges (i.e. perverting the course of justice and similar offences) were initiated, up from 14 in the previous reporting period, representing a 78% increase.

Resourcing pressures

There are ever increasing resourcing pressures on the Office. Canberra is one of the most rapidly expanding population centres in Australia. With a growing population comes an anticipated growth in crime. The above figures demonstrate this reality.

In a welcome move, a sixth resident Supreme Court judge has been appointed for the Territory. An increase in the Supreme Court's capacity will see in an increase in the call for prosecutors to be available to deal with the growth in the court's workload. Further, with an additional 126 police officers expected to come online over the next five years, there will be an increase in ACT Policing's investigative capacity and the number of people charged and brought before the court. This too will see a significant increase in pressure on the Office's resources.

The Office has received a small amount of additional funding to specifically cope with the expansion of the Drug and Alcohol Court, recognising both the significant increase in volume as well as the resource intensive nature of that work. However, the Office has also seen a significant increase in the work of Galambany and Warrumbul court which to date has been unfunded and continues to place resourcing pressures on the Office. While the Office looks forward to the expansion of the Circle Sentencing for ATSI offenders into the Supreme Court, it is essential that the growth in this space in both the Magistrates and Supreme Courts is properly facilitated through appropriate funding, as well as additional funding to meet the increased volume of prosecutions generally.

Gender Diversity within the Office

I am proud that the ODPP continues to be a leading ACT government agency in terms of its commitment to gender diversity in the workforce. During the reporting period, 69% of the office's staff were female, with female staff occupying 57% of SES positions or equivalent. I project a similar trend in staffing ratios during the current financial year.

Acknowledgements

It would be remiss of me not to say something about the effect the Board of Inquiry into the Criminal Justice System has had on the Office. The inquiry has generated intense media interest which has put the operations of the ODPP under the spotlight, being a matter not lost on staff within the office. I am incredibly proud of the way in which all staff have continued to operate in a highly professional and diligent manner during what has been a difficult time.

I would like to acknowledge the efforts of the ACT Chief Police Officer, Neil Gaughan, and his executive team for their commitment to working collaboratively to strengthen the relationship between the ODPP and ACT Policing and improving outcomes for victims of crime and the ACT community.

I am particularly grateful to Deputy Director Joel Hiscox for the significant support and assistance he has given me during my time as acting Director. I would also like to acknowledge the work of Ms Leanne Thomas, the acting Office Manager, in modernising the office's financial management and procurement processes. I am also grateful to my Executive Officer, Ms Katie Cantwell, for her tireless work behind the scenes in making sure the Office runs smoothly.

B. Organisational Overview and Performance

B.1 Organisational Overview

B.1.1 The Role and Functions of the Office

The Office of the Director of Public Prosecutions ('ODPP') was established by the Director of Public Prosecutions Act 1990 ('the Act') to institute, conduct and supervise prosecutions and related proceedings. It comprises the Director of Public Prosecutions ('Director'), an independent statutory officer appointed by the ACT's Executive, and staff employed under the Public Sector Management Act 1994, to assist the Director.

The ODPP, an independent prosecution authority of and for the ACT, is solely under the control of the Director. The Director has complete independence in relation to the operations of the ODPP. Nevertheless, it is important to note that the ODPP works closely with the courts, the legal profession, police and other investigators, victims' representatives, and other government agencies. The current Director, Shane Drumgold SC, was appointed on 1 January 2019. The Director is aided by an Executive team in running the full operations of the ODPP. They are Chief Crown Prosecutor Anthony Williamson SC who is in charge of the Crown Chambers, Joel Hiscox who is the Deputy Director in charge of the Criminal Practice, Mercy Wilkie who is the Office Manager, and Katie Cantwell who is the Executive Officer.

The Director reports to the Attorney-General of the Territory. The Act requires the Director and the Attorney-General to consult with each other, if required, concerning the functions and powers of the Director. The Attorney-General may give directions of a general nature to the Director, however, such directions can only be given after prior consultation with the Director. The Attorney-General's directions should also be presented to the Legislative Assembly and be published as a notifiable instrument.

The Director makes prosecutorial decisions independent of political influence or control. 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. There were no such directions given in the 2022–2023 reporting period.

The principal duties of the Director include the following:

- › 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.

Some of the important statutory functions of the Director include the following:

- › 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.

Prosecutors are ‘ministers of justice’, a phrase which sums up the unique position of the prosecutor in the criminal justice system. Prosecutors act in accordance with the procedures and standards as provided by the law. They are also guided in their role by the Prosecution Policy and further directions and guidelines issued by the Director under the Act.

B.1.2 Internal Accountability

During the reporting period, the ODPP had six prosecutors holding executive positions at the Senior Executive Service (‘SES’) level. They were the Chief Crown Prosecutor, Mr Anthony Williamson SC, who heads the Crown Chambers, Deputy Director, Mr Joel Hiscox, who oversees the Criminal Practice, and four Crown Prosecutors attached to Crown Chambers, Ms Katie McCann, Ms Skye Jerome, Mr Trent Hickey and Ms Beth Morrisroe.

The responsibilities of the Senior Executives at the ODPP, as at 30 June 2023 are provided below.

B.1.2.1 Senior Executives and their responsibilities

Chief Crown Prosecutor

The Chief Crown Prosecutor is a Deputy Director who reports directly to the Director. The Chief Crown Prosecutor is primarily responsible for supervising and leading Crown Chambers, and is responsible for assisting the Director with the management of the ODPP. As such the Chief Crown Prosecutor recruits and manages a team of Crown Prosecutors, Crown Advocates and Advocates. The Chief Crown Prosecutor exercises discretion to initiate, vary and discontinue serious criminal charges and appeals. The Chief Crown Prosecutor conducts more complex litigation in the Supreme Court, including in relation to committals and trials on indictment, and appears in relation to more complex appeal matters. The position also develops policy and procedures relevant to the ODPP and ensures effective working relationships with criminal justice agencies within the ACT are maintained.

Deputy Director Criminal Practice

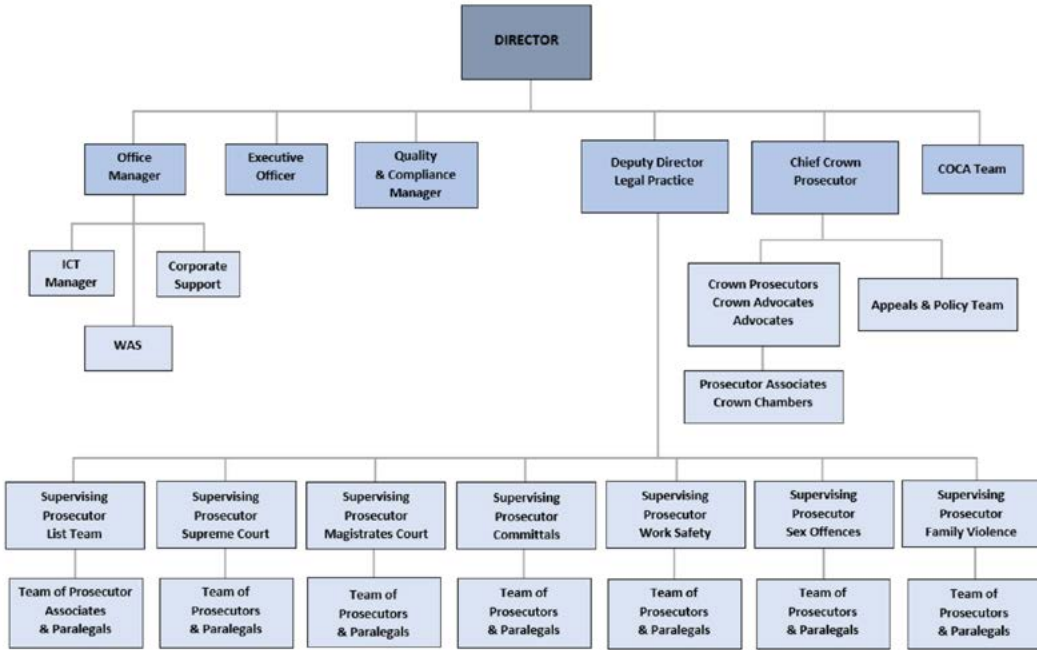
The Deputy Director manages the Criminal Practice at the Office and reports directly to the Director. The Deputy Director Criminal Practice provides the necessary leadership and support in both representing the Director and the ODPP, and effectively managing the caseload of the Office. The Deputy Director manages over 60 staff members and the bulk of the of recruitment requirements for the Office. The Deputy Director Criminal Practice is responsible for managing the allocation of prosecution work, including briefing into Crown Chambers, and for advising staff on evidentiary and procedural rules and providing advice to the police. The Deputy Director Criminal Practice role contributes to the training, mentoring and the performance management of prosecutors. As head of the Committals Unit, the Deputy Director Criminal Practice reviews and signs the majority of indictments filed in first instance. The role conducts complex prosecutions, appeals and related proceedings, including taking a lead in criminal case conferencing in the Supreme Court. The Deputy Director Criminal Practice also plays an active role in training and enhancing legal staff development within the Office and contributes to the development of policy and procedure.

Crown Prosecutors

Crown Prosecutors sitting in Crown Chambers report to the Chief Crown Prosecutor. They appear in the more complex matters including conducting trials and appeals in superior courts. They also provide high-level legal and policy advice and assist the Director in formulating internal policies, guidelines, directions, and manuals. They also represent the Director on committees and in forums dealing with criminal justice issues. The Director and Senior Executives are paid in accordance with the determinations of the ACT Remuneration Tribunal, and relevant laws and instruments including the *Public Sector Management Act 1994* and the *Public Sector Management Standards 2016*.

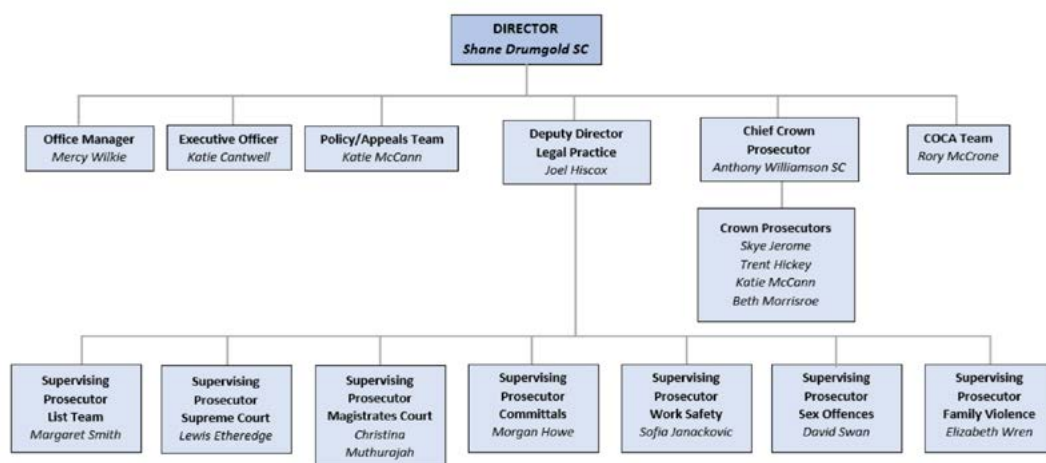
B.1.3 Organisational Structure

The Office structure as at 30 June 2023 is as follows:



B.1.4 ODPP Core Team

The ODPP core team structure as at 30 June 2023 is as follows:



B.1.5 ODPP Working Committees

A number of internal committees inform the work of the ODPP:

B.1.5.1 Executive Committee

The operations of the Office (both legal and administrative) are overseen by the Executive Committee comprising the Director, Chief Crown Prosecutor, Deputy Director Criminal Practice, Office Manager and the Executive Officer.² The Executive Committee is headed by the Director and its charter encompasses a wide range of issues including staff, policy (both legal and administrative), budget, resource allocation and legal matters. The Committee meets weekly to deal with immediate operational issues. At these meetings, Committee members provide advice and guidance to the Director on the strategic direction and management of activities.

B.1.5.2 Working Environment Group

The Office has a Working Environment Group (WEGies) which meets monthly to discuss matters affecting staff and their working environment. The WEGies Terms of Reference was reviewed and updated as at June 2023.

Membership is made up of representation from all areas within the ODPP.

The objectives of the WEGies is to:

- › Be an Advisory Group; to monitor, raise and escalate workplace health and safety concerns/risks to the DPP Executive for consideration and/or action;

² Refer to the Executive team mentioned in B.1.1 (The Role and Functions of the Office) on page 33.

- › Facilitate cooperation between the DPP senior leadership, employees and other parties in relation to workplace safety matters and health and wellbeing;
- › Disseminate information relating to issues affecting employment conditions, working environment and health and wellbeing at work to facilitate a spirit of cooperation for office activities such as fund raising and social function coordination; and
- › Be a Tier 3 WHS forum that further informs the Tier 1 JACSD WHS meetings held quarterly.

B.1.5.3 Continuing Professional Development - Ad hoc Committee

The Continuing Professional Development ('CPD') - Ad hoc Committee ('Ad hoc Committee') assists in the planning and delivery of CPD programs within the ODPP. The CPD - Ad hoc Committee is normally made up of the Director, Chief Crown Prosecutor, Deputy Director and Crown Prosecutors from Crown Chambers.³

The CPD program is a vital training tool for all legal staff that focuses on professional development of legal staff in the technical aspects of the criminal justice process and laws of evidence.⁴ A series of monthly sessions are presented, concentrating on practical issues, enhancing the skills and knowledge of prosecutors.

B.1.6 ODPP Stakeholders

The ODPP does not have clients because of its independent nature. However, it has a number of important stakeholders including the Supreme Court, the Magistrates Court, the Australian Federal Police ('AFP'), the Victims of Crime Commissioner, ACT Public Sector ('ACTPS') regulatory agencies and the legal profession.

B.2 Performance Analysis

B.2.1 ODPP's Criminal Practice

The work of the ODPP is performed between four jurisdictions, these being the Childrens Court, the Magistrates Court, the Industrial Court and the Supreme Court. The Childrens Court has jurisdiction to hear all juvenile matters except for an offence involving life imprisonment. The Magistrates court broadly has a jurisdiction to hear summary matters, and indictable matters where parties consent. The Magistrates Court broadly has a jurisdictional limit to impose sentences of up to five years imprisonment, whereas the Supreme Court has no jurisdictional limitations for indictable offences.

The Magistrates Court of the Australian Capital Territory has an increased jurisdiction compared to other States who operate with a District court. Accordingly, while less serious matters are primarily dealt with in the Magistrates Court, serious matters are also prosecuted

³ Refer to B.2.4 (Crown Chambers) on page 4.

⁴ Refer to B.11 (Human Resources Management) on page 6

to finality within this jurisdiction. Grade 1-3 prosecutors regularly appear in the Magistrates Court, while prosecutors Grade 3 and above regularly appear in the Supreme Court.

Developments in the criminal practice

As with any organisation, our staff are our bedrock. In a difficult and challenging year, that staff of the ODPP have performed well, despite the testing environment they have been operating within. The staff of the ODPP are strongly committed to pursuing the community's interest and holding to account, according to law, the actions of individuals alleged to have committed criminal offences. This past financial year saw a lower turnover rate than the previous financial year.

Within the past financial year, the Office has again sought to improve its technological processes and advance efficiency savings. The ultimate vision is to be able to ultimately run a paperless office, however this is dependent upon the courts being willing and able to receive documents for filing and tender in an electronic form. The ODPP is keen to be at the forefront of that change and anticipate cost savings as well as creating efficiencies within the Office.

Following review of the gains made last financial year by the delivery of briefs using the Microsoft Sharepoint platform, the Office determined to move to the more powerful Microsoft Azure platform. This has directly saved the AFP, staff of the ODPP and members of the legal profession a significant amount of time in the uploading and downloading of data. Similarly, last year the ODPP was able to automate the updating of bail conditions, significant and comparable work has progressed in the criminal history space. I anticipate that in next year's report, we will be able to advise that the ODPP is effectively updating both the AFP and Criminal records of court outcomes in real time, enabling the updating of Criminal Histories mere minutes after the result is entered by the courts. The automation will again save time for both ODPP paralegals and AFP staff.

The ODPP has commenced to digitize its historical records. In the long term (the project will take some years to implement fully) this will save a significant amount of public money in both storage costs and time, as all records will be immediately accessible from our CASES file management system.

This year saw strong collaboration between AFP Forensics and the ODPP. Following consultations with Ms Annie Lam, the ODPP's Deputy Director Head of Criminal Practice presented to the multiple disciplines housed within AFP Forensics. Following from this, in a first for the ODPP, each of the AFP forensic disciplines are presenting to staff of the ODPP over the 2023 calendar year. We are halfway through this training, and it has been well received by our staff.

B.2.2 Magistrates Court

The Magistrates Court is the commencement point for all criminal matters prosecuted by the ODPP. While more serious charges will progress to the Supreme Court, the vast majority remain in the Magistrate's Court and are finalised either by way of pleas of guilty or defended hearings. These matters range in severity from parking infringements to aggravated robberies. Junior Prosecutors appear predominantly in the Magistrates Court, though more Senior Prosecutors, including members of Crown Chambers, may appear for complex matters or for matters in which there is particular media interest.

Critically, the Magistrates Court is called upon to determine whether persons charged with serious offences are granted bail. This occurs daily in what is called the 'A2 list'. Prosecutors who appear in this list are given the files for those persons in custody at around 8am and have to prepare for the bail applications which commence at 10am. After a 'busy' weekend (perhaps a full moon or one with blistering heat) this can involve up to 20 matters. There is normally a healthy contingent of media present during these lists ready to report on submissions made by the parties and the Magistrate's decision.

The Magistrates Court, so as to improve efficiency, will often list a large number of hearings within a condensed period, generally two weeks. This significant over-listing presents as a resourcing challenge to the ODPP. Often junior prosecutors will take carriage of multiple hearings that are listed on the same day. The court will, on occasion, proceed to hearing these matters which have been prepared by one prosecutor. In these instances, other prosecutors will need to pick up a hearing with minimal time to prepare, generally under an hour.

Whilst this is very challenging, it is a great opportunity for those appearing at short notice to test their advocacy skills and their ability to get across the key parts of a brief of evidence in a short timeframe. The ODPP also has a system by which hearings are prepared such that whoever takes on the matter can rely on and benefit from the preparation put into the matter by a different prosecutor.

B.2.2.1 MC Cases

The following are examples of Magistrate Court hearings run to conclusion.

Police v Garang Mayen

A police officer was dispatched to reports of a fight in Bunda Street. As the officer arrived at the scene, he saw the defendant slumped against a wall outside Fiction Nightclub. The officer decided to detain the defendant under the *Intoxicated Persons (Care and Protection) Act 1994*.

As police searched the defendant, they discovered a knife and a pair of knuckle dusters. The defendant was charged with possessing a knife in a public place and possessing a prohibited weapon. The defendant pleaded not guilty to both charges.

At hearing, the defendant argued that the officer's decision to detain him was unlawful and the evidence of the weapons should be excluded. The prosecution tendered recordings of police radio transmissions, CCTV, and the officer's body worn camera footage. The court held that the officer had reasonable grounds to exercise his power and convicted the defendant on both charges.

The defendant was required to complete 100 hours of community service within 12 months.

Police v Carl Lyons

The defendant was charged with two series of offending: the first series included an assault occasioning actual bodily harm and a common assault, the second series included an assault occasioning actual bodily harm and two attempted robberies. The offending happened on separate occasions and involved four victims, all unknown to the defendant. The defendant was on parole at the time he committed the offences and requested that his parole be cancelled shortly after he was remanded in custody on the charges.

Pleas of not guilty were entered to four of the five offences early on. The common assault was disputed on the facts, however, the defendant indicated a plea of guilty to the charge. The matter was listed for a one-day hearing. The prosecution served a notice to adduce tendency evidence on defence and filed the application with the court in relation to the two charges upon factoring in a history of violence. On the day of the hearing the defendant entered pleas of guilty to the charges. There was no notice, and all prosecution witnesses were at court.

The defence-initiated negotiations in relation to the second series. The negotiations were fruitful, and the matter resolved. The negotiations involved the withdrawal of the assault occasioning actual bodily harm as one of the attempted robberies adequately captured the assault and harm to the victim.

In terms of duration, the matter was drawn out; it is important to note that the defendant was represented by three different firms over the course of the matters which took approximately 11 months to finalise.

The defendant was sentenced in the Galambany Court to three months of imprisonment for the common assault, seven months of imprisonment for the assault occasioning bodily harm, 15 months of imprisonment for the attempted robbery upon the victim who occasioned actual bodily harm and 13 months of imprisonment for the attempted robbery against the other victim. The court afforded the defendant a degree of concurrency in the sentencing exercise in reaching the effective head sentence of 20 months of imprisonment. The court imposed a non-parole period of eight months after factoring in the time the defendant served on remand.

Police v Dale Goesch

The defendant was arrested after police followed him from a scrap yard in Mitchell, where the defendant had sold a stolen vehicle for \$400 cash. The defendant signed a declaration form stating that he had owned the vehicle, using a fake name.

While he admitted to driving a stolen motor vehicle, driving while disqualified and using numberplates that had not been properly issued, the defendant pleaded not guilty to a charge of obtaining a financial advantage by deception. At hearing, the defendant argued that the owner of the scrap yard had known the car was stolen, and therefore no deception had occurred.

The owner of the scrap yard gave evidence at hearing that he was unaware the vehicle was stolen. He stated that he would not risk his business or any detriment to his family for the sake of \$400. He agreed that he should have perhaps taken more care with the transaction, but that because it was a busy day and he didn't complete all of his usual practices. The magistrate concluded that the defendant had clearly used deception in completing the transaction, as he had used a false name and he knew the car was stolen.

Because the matter proceeded to hearing on the basis of this argument, the defendant was not entitled to any discount on sentence. For the offence of obtaining a financial advantage by deception, he was sentenced to two months imprisonment.

DPP v Celeski

The offender pleaded guilty to seven charges arising out of an incident at a licensed establishment in Mitchell. The offender became unconscious after consuming drugs at the premises and when paramedics attended the location to treat him, they located a large quantity of currency, substances suspected of being illicit drugs and a firearm in a bag belonging to the offender. The offender was charged with possessing a prohibited firearm, trafficking in heroin and methylamphetamine, supplying a declared substance, possession of property suspected of being proceeds of crime and possessing ammunition and a declared substance.

The offender had a lengthy criminal history involving multiple terms of imprisonment, generally for offences of dishonesty. He was subject to suspended terms of imprisonment at the time he committed these offences. He spent approximately nine months in custody prior to sentencing and was ultimately sentenced in November 2022 to a term of imprisonment of four years and nine months, with four years to be served by way of Drug and Alcohol Treatment Order. He was subsequently released from custody, however, in late December 2022 the offender was returned to custody after being charged with another drug trafficking offence. The offender has pleaded guilty to this charge and is awaiting sentencing which will result in the cancellation of his Drug and Alcohol Treatment Order.

B.2.3 Supreme Court

Following the COVID-19 pandemic, the Supreme Court has returned to operations with limited disruption. Matters have progressed through the Supreme Court as efficiently as possible throughout the 2022–2023 reporting period. This includes both trial matters and sentencing proceedings.

The Supreme Court Registrar's Trial Directions list addresses matters which have been committed for trial or sentence, return of subpoena matters and breach proceedings listed in the Supreme Court. This list provides the mechanism through which all pre-trial matters are listed; including pre-trial applications, applications for the appointment of intermediaries, listings for ground rules hearings, listings for pre-trial evidence, listings for Criminal Case Conferencing, progression to the Criminal Central Listing Callover, and, in the case of matters which have resolved to a plea, listings for sentence. The efficient management of this list throughout the reporting period has allowed matters to progress expeditiously following their committal to the Supreme Court.

There are four Criminal Central Listing Callovers in the court calendar year. At these callovers, matters committed for trial receive a trial listing date. The list is conducted by the Chief Justice, who receives assistance from the Registrar of the Supreme Court.

The Office was greatly assisted by the courts, court staff and the broader legal profession within the ACT in ensuring that matters continued to progress through the Supreme Court.

B.2.3.1 SC Cases

The following are examples of Supreme Court prosecutions which proceeded to sentence.

DPP v Butkovic

The offender pleaded guilty to one count of aggravated robbery in the company of four others and while armed with an offensive weapon.

The victim received calls and text messages from a male demanding the payment of an alleged debt. A female then lured the victim to her house under false pretences in order to aid the male in recovering the debt. The offender and three other males then arrived at the victim's house. The victim attempted to leave through the back door but was grabbed by the males and made to sit on a couch.

The offender was armed with a boxcutter. Another male was armed with a baseball bat. The members of the group commenced intimidating the victim and demanded that he pay the outstanding debt. The victim proceeded to transfer the funds into the account of the offender. One of the males then came out of the kitchen and threw a small object at the victim's face. He then struck the victim multiple times in the head. Another male then struck him with the baseball bat. In total, the victim transferred \$3,315.60 to the offender's account.

The offender had a criminal history with previous convictions for driving offences, trafficking a controlled drug, possession of a declared substance, assault and possession of weapon with intent. The offender had a history of illicit drug use, alcohol abuse and prescription medication abuse.

The sentencing judge described the offending as having "*occurred both in company and involved the possession of weapons. It was not sophisticated but it was clearly planned, the*

victim having been lured to the premises... Actual violence was inflicted upon the victim, resulting in injuries. The incident was not brief and took enough time for the various financial transactions to be arranged."

The offender was convicted and sentenced to imprisonment for 30 months (reduced from 33 months on account of the plea of guilty). The sentence was to be suspended after the offender had served 147 days imprisonment, upon giving an undertaking to comply with his good behaviour obligations for the balance of the term of imprisonment with the additional condition that he be on probation subject to the supervision of the Director-General and obey all reasonable directions.

DPP v Williams

The offender pleaded guilty to two offences, being unauthorised manufacture of a prohibited firearm, and unauthorised possession of firearms. The offender also pleaded guilty to a charge of possessing a prohibited article, a charge that had been transferred from the Magistrates Court.

The police, with the benefit of a listening device, heard the offender boasting about his manufacture of firearms. Early the next day a Subaru Forester was seen speeding in the ACT suburb of McKellar. The driver refused a police request to stop. Later the same day, the police located the same vehicle parked on a nature strip. A dismantled shotgun was found in the footwell. The offender had manufactured the shotgun.

Approximately two months later police executed a search warrant at the offender's residence. They found material possibly associated with other firearm manufacturing. A gun together with a replica Luger pistol were also found during the search. Two ammunition magazines were also found.

The sentencing judge summarised the offender's subjective circumstances as: "*The overall picture that emerges is of a man who is more than capable of living a responsible life, caring for a family, holding down a job and staying away from crime. This is to be contrasted to his criminal record which shows a consistent involvement in crime and a disregard for court orders.*"

In relation to the offences, the sentencing judge remarked "*The offences are serious. Guns hurt and kill people. Manufacturing them is attendant with risks both to the manufacturer and to the public. The absence of a licensing regime controlling the guns enables them to, as in this case, fall into the hands of other persons and to be unsecured in a home.*"

The offender was sentenced for the offence of unauthorised manufacture of a prohibited firearm to 18 months imprisonment (reduced from 24 months for the plea of guilty), for the offence of unauthorised possession of firearms, six months and 21 days imprisonment (reduced from nine months for the plea of guilty), for the transfer charge of possessing a prohibited article to four months and 14 days imprisonment (reduced from six months for the plea of guilty). The sentence was to be served by way of an intensive corrections order which

contained the condition that the offender attend drug relapse prevention treatment and counselling as directed by Corrective Services.

B.2.3.2 Drug and Alcohol Sentencing List

The Drug and Alcohol Sentencing List ('DASL') is a sentencing list that forms part of the Supreme Court that commenced operation in December 2019. It is a therapeutic sentencing option available for people whose drug and alcohol use has substantially contributed to their offending. Drug courts, in various forms, also exist in other Australian and international jurisdictions.

A Drug and Alcohol Treatment Order ('DATO') is a sentencing option available to offenders in the Supreme Court who have pleaded guilty to an offence/s and are eligible for such an order.

To be eligible, participants must:

- › be over 18 years and live in the ACT;
- › have entered or indicated a guilty plea;
- › likely to be imprisoned between one and four years;
- › have no other sentencing orders in place;
- › be dependent on alcohol or other drugs;
- › give informed consent to the order being made; and
- › not have committed a serious violence offence or a sexual offence.

A DATO enables offenders who meet the eligibility criteria to have their sentence of imprisonment fully suspended on condition that the offender agrees to complete a treatment program which is overseen by a judge. The DASL provides a therapeutic and holistic approach to justice and managing an offending participant's treatment plan.

Once an offender is sentenced to a DATO, their DATO is supervised in the DASL. The sitting judge is supported by the DASL treatment team which is comprised of:

- › the Director-General Justice and Community Safety, represented by a community corrections officer;
- › the Director-General ACT Health, represented by employees of the Alcohol and Other Drug Service;
- › the ODPP, represented by a prosecutor;
- › the Legal Aid Commission, represented by a solicitor from Legal Aid ACT;
- › the Chief Police Officer of the ACT, represented by an ACT police officer; and

The treatment team has also been assisted by representatives of ACT Housing.

A DATO enables offenders to not only address their drug/alcohol issues, but also provides the support and tools for offenders to reintegrate and become productive member of the community.

The DATO is split into three phases:

1. Stabilisation – abstinence from drugs/alcohol;
2. Consolidation – intensive treatment; and
3. Reintegration – preparation for independence and return to the community.

Graduation to each phase is dependent upon the successful completion of each phase, as recommended by the treatment team. The DATO is administered through a behavioural contract between the offender and the treatment team providing a framework for boundaries, accountability, rewarding of positive conduct and the sanctioning of negative conduct.

There are currently 27 offenders subject to a DATO, five of whom currently have outstanding warrants for breach of a DATO and five of whom are in custody for fresh offending. Of the active DASL participants, four are in a residential rehabilitation facility while the rest are in the community.

Ten offenders completed their DATO in the 2022–2023 reporting period, with six of them having graduated through all three phases.

Nine DATOs were cancelled for non-compliance with the program, and a further two cancelled when consent to the program was withdrawn by the offender. The non-compliance involved ongoing drug use and unsatisfactory engagement with the treatment program. For some of the offenders, the non-compliance also included fresh offending. Of these eleven offenders, two were re-sentenced to terms of full-time imprisonment, one was re-sentenced to a suspended term of imprisonment with a Good Behaviour Order and eight are yet to be re-sentenced.

B.2.4 Crown Chambers

In 2019 the Director established a Crown Chambers within the ODPP. Crown Chambers is an internal chamber within the Office, reserved for the most senior and experienced counsel. During the majority of the reporting period, it was comprised of the Chief Crown Prosecutor (the head of Crown Chambers), four Crown Prosecutors, three Crown Advocates (Grade 5 prosecutors) and five Prosecutor Associates that support them.

All prosecutors in Crown Chambers hold Barrister practising certificates and are members of the ACT Bar Association.

The prosecutors in Crown Chambers deal with the most complex and serious trials, sentencing and appellate matters. Its members appear predominantly in the ACT Supreme Court and the Court of Appeal. Crown Chambers has carriage of the prosecution of homicide matters, and the most serious charges of sexual offending, crimes involving personal violence, serious drug

trafficking matters, and prosecutions involving outlaw motor-cycle gangs (OMCGs). Crown Chambers also oversees referrals for prosecutions made by the ACT Integrity Commission. Crown Chambers has continued to assist in strategic litigation, appearing in matters in the Magistrates Court which have significant legal or public policy implications.

The Chief Crown Prosecutor, in consultation with chambers, also provides advice to the Director on matters of potential law reform affecting the administration of criminal justice in the Territory.

Crown Chambers takes a lead role in organising continuing professional development (CPD) for other prosecutors within the Office.

B.2.4.1 Involvement with external criminal justice agencies

The Act ODPP has again continued its involvement with criminal justice agencies in other jurisdictions.

ODPP prosecutors attend the NSW Public Defender's conference which assists in obtaining a valuable perspective from our colleagues at the other end of the bar table, as well as being kept apprised of the latest case law from NSW and around the country.

The Confiscation of Criminal Assets Unit are part of a multi-jurisdictional working group known as the National Proceeds of Crime Network (NPCN). The NPCN focuses on strategies to disrupt criminal networks across borders, as well as sharing intelligence and developments in case law concerning the confiscation of criminal assets.

B.2.4.2 Notable Cases by Crown Chambers

The following are some of the more noteworthy cases that the Crown Chambers prosecuted in the reporting period.

DPP v O'Connell

The offender, Michael O'Connell was tried before a jury for the murder of his on again/off again partner Danielle Jordan. The prosecution relied upon manslaughter as a statutory alternative. The prosecution case was that in the early hours of 15 April 2022 the offender was at Ms Jordan's home, along with a friend of Ms Jordan's who was 13 years old. The accused and Ms Jordan argued on a number of occasions. Sometime after 4am, the argument moved to the front of the property and Ms Jordan sat on the bonnet of the offender's vehicle - a 2016 Mitsubishi Triton dual cab utility - which was parked outside. The young witness was also outside and observed parts of the incident. The prosecution alleged that the accused drove his vehicle along Coutts Place and Alfred Hill Drive in Melba whilst Ms Jordan was on the bonnet. Ms Jordan fell from the vehicle and suffered catastrophic and ultimately fatal head injuries. The prosecution case was that in driving with Ms Jordan on the bonnet, the offender acted with reckless indifference to the risk of causing her death.

The offender took Ms Jordan to Calvary Hospital, where he had a number of conversations with staff and provided versions of events that Ms Jordan had fallen down some stairs. He also told that version to a number of friends and family members of Ms Jordan. The offender later provided a number of different versions to the police and in conversation with other civilian witnesses that Ms Jordan had climbed off the bonnet of his vehicle and unbeknownst to him had then climbed onto the rear tray of his vehicle.

The trial proceeded over 11 days. The jury heard evidence from a number of civilian, police and expert witnesses. A portion of the incident was captured on CCTV from a camera mounted on a nearby residence. Expert evidence included evidence of the speed the accused's car was likely to have been travelling at various times based on calculations made using the CCTV footage, driving tests conducted using the accused's vehicle and other measurements. The jury were taken on a view of the relevant area in Melba.

The jury found the offender guilty of murder. He is due to be sentenced in December. He has filed an appeal against the conviction.

DPP v Shay Murphy

Mr Murphy was charged with extremely serious family violence offending against four of his domestic partners over an approximately 10-year period.

In relation to his first partner, CH, Mr Murphy raped her when she was 16 years old and was still a virgin. He also directed her to cut herself with a razor blade.

In relation to the second complainant, AD, Mr Murphy assaulted her routinely throughout the course of their relationship. On one occasion, Mr Murphy pinned AD down on the hallway floor and delivered approximately 20 blows to her vagina, crotch, abdomen and thighs. The offending caused significant bruising, including a dark coloured purple bruise to her vaginal lip. Whilst Mr Murphy was assaulting AD he said to her "I hope you never have children", knowing that AD wanted to be a mother. On another occasion he forced AD to have a cold shower and raped her by pinning her down and penetrated her mouth with his penis whilst trying to urinate in her mouth. During another incident Mr Murphy 'waterboarded' AD by pinning her down, placing a towel over her face, and then pouring water on it to simulate a drowning sensation. On another occasion Mr Murphy anally raped AD whilst she was crying.

The offender pleaded not guilty to all charges on this indictment but was convicted by a jury on most.

Mr Murphy subsequently pleaded guilty to choking and assaulting another partner, EB. He accused EB of being a prostitute and cheating on him (neither was true) and yelled in her face that she was a "c..t" so loudly her ears were ringing. He then squeezed her throat with such force she could not scream; she could only make a gargling noise. He then threw her onto the concrete floor in the carport. On another occasion Mr Murphy spat in EB's face.

The offender also pleaded guilty to assaulting another partner, MM, occasioning her actual bodily harm. Mr Murphy became jealous and enraged when MM received a text message from another male. He accused her of being a slut and a “low value whore” who was cheating on him (she was not). As MM was leaving the unit Mr Murphy through her to the ground causing extensive bruising.

Mr Murphy was sentenced in August 2023 to a total of 14 years and two months imprisonment.

DPP v Gary Taylor

Gary Taylor pleaded guilty to the shooting murder of Mr Glenn Walewicz. He was in the company of two other men who attended Mr Walewicz’s premises in Mansfield Place in Philip on the evening of 10 June 2021. They went there with the intention of committing a home invasion in relation to people they believed were drugs dealers. They intended to steal illicit drugs and money. Unfortunately, Mr Taylor and the two other males went to the wrong unit.

Mr Walewicz was at home with his girlfriend. At 11:35pm the three males, including Mr Taylor, knocked on Mr Walewicz’s front door. One of the males was in possession of a .22 sworn-off Winchester pump-action rifle. Mr Taylor was carrying a small axe. Mr Taylor knocked on the front door. Mr Walewicz answered. One of the other males then shot the deceased. Mr Walewicz stumbled back from the door and fell to the ground.

Police and ambulance services arrived at Mansfield Place shortly after the shooting. Ambulance members immediately transported the deceased to The Canberra Hospital; however, he was unable to survive the injury. At 12:15am on 11 June 2021 Mr Walewicz was declared life extinct. Post-mortem results revealed the projectile struck the deceased in the neck striking the brachiocephalic artery, the lateral wall of the trachea, the upper lobe of the right lung and the fifth rib on the right causing a collapse of the right lung. The autopsy report lists the cause of death as a gunshot wound to the neck and chest.

Police then commenced a major investigation into the murder. They narrowed a list of potential suspects by reviewing thousands of pages of mobile phone tower data. From there, they obtained telecommunication interception and surveillance device warrants, which lead to the execution of multiple search warrants on residential premises. The police investigation culminated in the arrest of five people, two of whom were charged with murder, and the others with other serious indictable offences.

Mr Taylor was cooperative with police and assisted them with their investigation. He candidly admitted to police his involvement in the murder, and that of his co-offenders.

Mr Taylor pleaded guilty to murder by virtue of section 45A of the *Criminal Code 2002*. That is to say, the prosecution accepted that he did not shoot Mr Walewicz, nor did he intend to for him to die. Rather, he was reckless that during the course of the home invasion, one of his co-offenders could kill someone. On that basis, he was guilty of murder.

Mr Taylor was sentenced to 10 years and three months imprisonment, with a non-parole period of five years and six months. The sentencing judge allowed a 40% sentencing discount

on account of Mr Taylor's extensive assistance to police in building the case against the co-offender's and his early plea of guilty. The judge determined that, absent that assistance and early plea of guilty, he would have imposed a sentence of 17 years imprisonment.

A number of Mr Taylor's co-offenders are expected to be sentenced in the ACT Supreme Court in late 2023.

DPP v Sugimatatihuna Mena, Rebecca Parlov and Bradley Roberts

In the early morning of 11 Mar 2021, police received a phone call advising that a man had presented at Calvary Hospital, Bruce, with gunshot wounds to his arm, abdomen and jaw. He had told the Emergency Department nurses that he had been shot with a rifle and not to call the police. A short time later police arrived but were unable to speak to the man as he had been intubated, listed as being in an unstable and critical condition and placed in an induced coma. He was transferred to the Canberra Hospital where he underwent several surgical procedures for the gunshot wounds to remove bullet fragments including those to his jaw and neck. During the trial a medical expert gave evidence that the man was incredibly fortunate that the gunshot injuries were not fatal.

In the meantime, the hospital's closed circuit television cameras had captured the car the man was dropped off in and it showed him walking into the hospital. Police began reviewing the footage for anything of further interest. At about midday that day police had received information that the car which had taken the man to hospital had been seen parked at an address in Dunlop. Police obtained a search warrant for that address and spoke to Chris Parlov, who lived there. He told police that he had taken the man to hospital after picking him up from another house in Spence where he had been injured. Police obtained a search warrant for the Spence house, but when they arrived no one was present. Crime Scene investigators examined the house and found drops of apparent bloodstains in the kitchen and three spent cartridge shell casings in a cardboard box. However, it wasn't until a week later that the police had a breakthrough in the case when the man was woken from his medically induced coma. Police spoke to the man, and he told them what had happened. He and a woman had been driving around seeing a couple of other people in the early hours that morning. At about 3:00am they met Roberts in a carpark near the Gungahlin shops. Roberts recognised the man and stated that his friend, Mena, was going to whack him because they thought he was a 'kiddie fiddler'. During the trial police gave evidence that, of course, there was no substance to the allegation. But Robert told him to wait around the corner. However, the man and woman had something else to do and left the area. Over the next few hours Roberts didn't let it go and he and Parlov sent Facebook messages and calls demanding the man and woman meet them. By about 5:15am Parlov made a Facebook call to the woman which escalated into an argument. While she was on the call the woman heard a car pull up at the front of her house and the three offenders got out. They demanded that the woman open the door. Eventually they barged inside the house and into the kitchen area where the man was standing. Mena was the last to come through the doorway. He was wearing something covering his face from the nose down, and from about five meters away pulled out a sawn off .22 rifle from his waistband and shot the man in the stomach before reloading and shooting him in the

face. The offenders then immediately bolted and fled the location. Surprisingly the man did not die but staggered to the bathroom and tried to call and text people for help. The woman was scared and crying and tried to help the man by stopping the blood loss. About a week after speaking to the man, police located the woman and spoke to her. She confirmed what happened. Later police would arrest and charge the offenders.

In August 2022 the matter went to trial before a jury. During the trial, the offenders suggested that someone else was involved in the home invasion (not them) based on a series of text messages on the man's phone that suggested that at the time he may also have been being extorted for money. However, the jury also heard evidence of the Facebook messages and calls from the offenders to the woman before the incident, and messages that she sent immediately after the shooting identifying the offenders. The jury heard evidence from other witnesses including a firearms examiner who examined the cartridge cases and confirmed they had all been discharged using the same firearm. And from a textile damage and gunshot residue expert who confirmed that the firearm was at a range of about 0.5 to 3 metres when the victim was shot. However, this jury were unable to reach unanimous verdicts. In November 2022, the offenders were re-tried before another jury who convicted them of the charges. For attempted murder (and other related offences) Mena was sentenced to nine years and 10 months imprisonment with a non-parole period of five years and five months. Parlov, for her involvement (aggravated burglary) was sentenced to two years and six months imprisonment fully suspended (after taking into account nine months imprisonment as pre-sentence custody). Roberts (for aggravated burglary) was sentenced to three years and three months imprisonment with a non-parole period of nearly two years imprisonment. Mena and Roberts have appealed their convictions.

KE

On the afternoon of Sunday 30 January 2022, Leon Hemphill had just finished a bike ride around the Tuggeranong Lake. He was holding his bike and trying to get his keys ready when a young woman came out of the door of his unit complex, clearly in a panic. She was distraught and upset and hyperventilating and managed to get out the word 'police'. As he was calling police, Mr Hemphill noticed that she had an injured bottom lip that was quite swollen. At about that time, a man, KE, came around the corner of the building. The woman's agitation increased, and she became even more panicked. KE approached the woman and told her to come back upstairs but she moved away from him and went behind Mr Hemphill. The man told Mr Hemphill to hang up the call. Mr Hemphill thought he was going to be punched. At about that time Mr Hemphill noticed that the woman was only wearing a t-shirt and was trying to cover herself up.

A short time later police arrived and spoke to the woman and KE. The woman only told police a little of what had happened. Moments earlier she had, in fact, been violently assaulted by KE in their apartment including being choked and having a pillow put over her face and being dragged by her hair. Police arrested KE and charged him with domestic violence offences. However, he was later released on bail.

About three or four days later the woman moved back into the unit with KE. Initially the relationship was tense and by the end of Feb 2022 there was another incident where KE started to forcefully remove her underwear before forcibly making her engage in sexual activity with him. During the incident he choked her, dragged her by her hair, and hit her with a horse-riding whip, among other degrading conduct. Eventually, after it stopped and the accused fell asleep, the woman crept out of the apartment and got in her car. Initially she didn't know what to do but eventually drove herself to the hospital. She told hospital staff that she had been raped and was later seen by a doctor. However, while she was at the hospital KE, called her a number of times and was apologetic, causing her to change her mind about reporting what had happened. Over the next couple of weeks, the woman and KE stayed at his mother's house before returning to their apartment. The relationship returned to being somewhat normal, although there were periods of aggression by the accused.

In mid-March 2022, there was an occasion where KE pushed the woman off the couch and tried to force her into the bedroom by her hair. She managed to get away and grab a knife from the kitchen, so he stopped. Later that night he sexually assaulted her. A couple of days later KE and the woman were again in the bedroom when KE became angry and grabbed her by the throat and started choking her. Again, he sexually assaulted and degraded her. Afterwards she started to pack her belongings to leave but did not complete this. The next morning the woman continued packing. KE told her he loved her and didn't want her to leave. However, a short time later he pushed her onto the bed and again violently and sexually assaulted her multiple times. During the incident he also tied her wrists, gagged her and whipped her with the horse-riding whip. During the trial, a medical expert who examined the woman gave evidence that some of the patterned bruising that was found on her body was consistent with being whipped.

After the incident with the whip, the woman was depressed and trying to think of ways to get out of the apartment and away from the accused. Later that afternoon, her opportunity came when KE told her to drive him to a drug dealer's house to buy cannabis. When they arrived, the accused got out of the car and the woman, seeing her opportunity, drove off leaving him there. She drove to her parent's house and the next morning went to the hospital where she was medically examined and told a doctor what had happened. It took her a couple of days, however, by late March 2022 she had developed the courage and resolve to report the abuse to police.

In March 2023 the matter went to trial before a jury. During the trial the jury heard from the woman, family members she had complained to and the medical doctors who had examined her. KE also gave evidence. He denied the offences. His lawyers suggested that the woman fabricated the incidents. They suggested her previous mental health care and treatment for depression and anxiety undermined her credibility, and that she had a financial motive to be untruthful because she had been to meetings with KE and his accountant where they had discussed his trust investments. The jury rejected this and found KE guilty of all the charges including nine charges of sexual intercourse without consent and four charges of choking, among other offences.

KE is waiting to be sentenced.

In the matter of an application for parole by Axel Sidaros

Axel Sidaros (the offender) was convicted in relation to a shooting and arson at the Canberra home of Peter Zdravkovic (the victim), occurring on 28 June 2018. The incident was related to ongoing conflict between the Comancheros Outlaw Motorcycle Gang and Mr Zdravkovic.

The offender was one of four offenders involved in the incident where there was an exchange of gunfire at the rear of the victim's property. Two shots were fired by two of the intruders causing Mr Zdravkovic, who returned fire, to lose a finger. The intruders set fire to the three cars at the property before fleeing the scene as the victim fired more shots at them.

The offender was convicted following a judge alone trial at the ACT Supreme Court. He was found not guilty of attempted murder but was convicted of six offences including intentionally inflicting grievous bodily harm, aggravated burglary, and arson. A conviction for attempted arson with intent to endanger life was overturned on appeal.

The sentence imposed, following the appeal, was an effective term of seven years imprisonment, commencing 30 August 2018, with a non-parole period of three years and 11 months, expiring on 29 July 2022.

Prior to his release on parole, the DPP filed written submissions opposing the grant of parole on the grounds that it was not in the public interest that the offender be released into the community. Reasons cited by the DPP included his poor behaviour whilst in prison, specifically, involvement in more than 30 incidents where warnings were issued, or privileges lost – including acts of violence and drug use. The DPP also submitted there was a high risk the offender would continue associating with OMCG members if released on parole.

On 3 August 2022 the offender was released on parole with strict conditions including a night-time curfew, compliance with drug testing, and a condition prohibiting association with OMCG members.

In October 2022, a Breach of Parole Report recommended a formal warning after the offender was captured on CCTV footage at 12:30am (breach of curfew) at the Capital Men's Club with a known OMCG member.

In November 2022, police executed a search warrant at the offender's parole address and allegedly located a gel blaster rifle and OMCG "soft colours" clothing. Mr Sidaros was subsequently charged in relation to the firearm and the matter is listed for hearing at the ACT Magistrate's Court in November 2023. After being charged, Mr Sidaros was released on bail to comply with Parole Order conditions.

In December 2022, Mr Sidaros tested positive to methylamphetamine. In January 2023, the Sentence Administration Board issued a formal warning for his use of illicit substances and the OMCG clothing located at his home during the search warrant in November.

The offender's parole was eventually cancelled on 2 February 2023, after he was charged and convicted of a speeding offence that had occurred on 25 January 2023. On that occasion

he was stopped by police at 9:05pm (in breach of curfew). He was also charged and later convicted for an offence relating to a knife found in his possession at the time.

During 2022 and 2023 the DPP appeared at a series of parole hearings in relation to alleged breaches of the conditions of parole. At a parole hearing in May 2023, the DPP opposed the grant of parole, again citing risk factors linked to associations with OMCG members. The DPP submitted there was a clear risk of non-compliance given the previous breaches and his unsatisfactory behaviour to date. Following the hearing in May 2023, the offender was again released on parole. On 15 June 2023, he tested positive to methamphetamine and was again issued a formal warning for breaching a parole condition not to use prohibited substances.

B.2.5 Appeals

The area of appeals and criminal justice policy sit within Crown Chambers and consists of one prosecutor led by a Crown Prosecutor. The unit is under the direction of the Director and Chief Crown Prosecutor. The appeals unit has been brought within Crown Chambers to recognise that our appellate lawyers remain part of the broader Chambers team.

The ODPP conducts appeals in the ACT Supreme Court, Court of Appeal and High Court of Australia as both respondent and appellant. Appeals are conducted by the Director, Chief Crown Prosecutor, Deputy Director Criminal Practice, Crown Prosecutors and Crown Advocates within the ODPP. The unit also assists in issues of criminal justice policy, including engaging with various stakeholders on issues of legislative reform. Further, a significant part of the unit's workload consists of research and continuing legal education to ensure the Office is equipped with the most up-to-date case law and legislative amendments.

B.2.5.1 Supreme Court

The majority of appeals lodged in the Supreme Court are against the severity of sentences imposed in the Magistrates Court. In accordance with the principles which apply to Crown appeals, ODPP instituted appeals are rare and are limited to cases of public importance, correction of legal errors and manifestly inadequate sentences. The ODPP also responds to judicial review applications from the Magistrates Court.

The total number of appeals in the Supreme Court for 2022–2023 was 39 appeals, consisting of 33 defence appeals (sentence and conviction) and six prosecution appeals.

B.2.5.2 Court of Appeal

The majority of appeals lodged in the Act Court of Appeal are against convictions (jury verdicts) and severity of sentence. Appeals in the Court of Appeal are often very complex, particularly appeals against conviction. Typically, the Director, Chief Crown Prosecutor, Crown Prosecutors appear in the Court of Appeal.

The Crown has no right of appeal against verdict acquittal. Crown appeals to the Court of appeal are rare and generally are against sentences considered to be erroneous and manifestly

inadequate. Occasionally, the Crown may institute a reference appeal relating to the correction of legal error or settling of legal principle. A reference appeal does not change the outcome but is reserved to ensure the application of correct legal principles in furtherance of the administration of justice.

The total number of appeals in the Court of Appeal for 2022–2023 was 35. These figures consisted of 24 defence appeals (against sentence and conviction) and 11 prosecution appeals predominantly against inadequacy of sentence.

B.2.5.3 High Court

Appeals to the High Court are less frequent. Appeals in this jurisdiction are highly complex. The majority of these cases involve responses to applications for special leave to appeal by offenders. The circumstances in which the High Court will grant special leave are exceptional and are guided by the criteria found in s 35A of the *Judiciary Act 1903* (Cth). In criminal matters, applicants must usually demonstrate a point of general principle to be considered, that the decision is demonstrably wrong or that the administration of justice requires intervention to avoid a miscarriage of justice.

Applications for special leave to appeal may be dealt with on the papers or proceed to an oral hearing before a court of three justices. Where an appeal is granted, the proceedings are heard before a bench of either five or seven justices. The Director typically appears in the High Court assisted by another senior prosecutor.

In the period of 2022–2023, the ODPP has responded to two applications for special leave to appeal. One was dismissed and the second went to full hearing on 8 and 9 February 2023.

B.2.5.4 Appeal cases

Supreme Court

Kelly (a pseudonym) v Hucker

The appellant was charged with a number of offences arising out of an attack upon the victim who was his teenage son. The prosecution case was that on an evening in February 2022, the appellant approached the victim, took hold of his neck with one hand and pushed him against a cupboard. At the same time, the appellant used his other hand to punch the victim in the chest and arms. After letting go of the victim, the appellant then took hold of his head and slammed it down onto a bench. As a result of the incident, the victim had marks on his neck, chest and arms.

The appellant disputed the version of events given by the victim, claiming that he believed the victim was going to knee him in the groin, so put his hand out and touched the victim's chest. He further claimed the victim intentionally hit his head on the bench.

Following a defended hearing before a magistrate, the appellant was found guilty of two offences of common assault, contrary to s 26 of the *Crimes Act 1900* (ACT), and one offence of

choking contrary to s 28(2)(a) of the *Crimes Act 1900* (ACT). He appealed his convictions to the ACT Supreme Court, claiming the findings were unreasonable.

The appeal was heard by Mossop J who, after reviewing the record, concluded the findings of guilt were “clearly open” to the magistrate (at [96]). His Honour noted at [83] that there was nothing unbelievable about the victim’s version of events “in a brief, highly charged incident where the principal event was his father putting his hand around his neck”. Further, his Honour observed that the version put forward by the appellant was appropriately rejected by the magistrate and that it was clearly open to the magistrate to conclude beyond reasonable doubt that the appellant had pushed the victim down so that his head struck the bench and had intended or had been reckless as the result.

The appeal was dismissed. The appellant filed an appeal against the decision of Mossop J to the ACT Court of Appeal, however, later withdrew that appeal. The appellant was eventually convicted and sentenced to a total term of 15 months imprisonment, to be served by way of an Intensive Corrections Order.

Ji v Stone

The appellant, Mr Ji, was charged with one offence of common assault, contrary to s 26 of the *Crimes Act 1900* (ACT), and one offence of choking, contrary to s 28(2)(a) of the *Crimes Act 1900* (ACT). The offences related to an incident on 14 October 2019 in student accommodation at the Australian National University (ANU), where the appellant and the victim were both studying. At the time of the offences, the appellant had been in an intimate relationship with the victim for about a month. During this time, and initially unbeknownst to the victim, the appellant was also in a relationship with another woman who was living in China.

On the morning of 14 October 2019, the appellant came to the victim’s room and told her that he no longer wanted to continue his relationship with her. The victim became distressed. After the appellant left the victim’s room, she contacted an ANU counsellor and told her that she was distressed and that she wanted to self-harm. The victim also contacted the woman in China and revealed her relationship with the appellant. The appellant found out about this call and returned to the victim’s room. The appellant entered the room, approached the victim and took her mobile phone. The victim tried to retrieve her mobile phone when the appellant grabbed her arms with his right hand and pushed the victim backwards onto the bed. The appellant then grabbed the victim’s neck and applied pressure to the point the victim felt like she couldn’t breathe and was going to die.

The ANU counsellor arrived at the victim’s student accommodation within minutes of the alleged incident. She observed that the victim was pale and that she had red marks on her neck. A residential manager that attended shortly after also described seeing pink finger marks on the complainant’s neck.

The appellant gave an account to police and agreed that he went to the victim’s room and told her that he wished to break up with her. He said that shortly after he left the victim’s room, he received a message from her which said “*I didn’t want to take revenge. You forced me.*” The appellant became aware that the complainant had contacted the woman in China.

The appellant returned to the victim's room. He said that he grabbed the victim's phone and pushed her onto the bed with his hand "braced" on the complainant's neck. The appellant denied that he applied pressure to her neck. He said that he was acting in self-defence because he feared that the complainant may attempt to harm him or self-harm with a knife.

The appellant pleaded not guilty to both charges. The proceedings were heard before Magistrate Stewart. At the conclusion of the hearing, the magistrate delivered an *ex tempore* judgment in which he found the appellant guilty of both offences.

The appellant appealed against the findings of guilt on various grounds. Primarily, he contended the findings of guilt were unreasonable. He further contended the magistrate had demonstrated actual or apprehended bias by showing disdain for him because he was in two relationships. The bias was said to have arisen from a comment made during the prosecutors closing address during the hearing:

PROSECUTOR: Your Honour, the defendant loved his girlfriend, Ms Fan –

HIS HONOUR: Which one?

PROSECUTOR: [Ms Yang] from China and not the complainant...

The appellant argued that the magistrate made this comment in a sarcastic tone and demonstrated that the magistrate felt "sympathy" for the victim and "antipathy" toward the appellant.

The appeal was heard by Baker J who dismissed all grounds. Her Honour found the findings of guilt were well open on the evidence. As to the claim that the magistrate was biased, her Honour observed that it was not possible to ascertain from the transcript whether the magistrate asked the question relating to the appellant's girlfriend in a sarcastic manner. It was however telling that no objection was made by the appellant at the time. Further, given it was not in dispute that the appellant had been in two relationships during the weeks leading up to the alleged offences, it was understandable the magistrate may have wished to clarify who the prosecutor was referring to. Her Honour concluded that "bias, whether actual or apprehended, could arise from such an inquiry."

In any event, her Honour concluded that even if said in a sarcastic manner, this would not be sufficient to demonstrate a claim of actual or apprehended bias. Her Honour noted that whether a decision maker has displayed actual or apprehended bias requires consideration of the whole of the proceedings. It is "*not enough that the decision maker displayed irritation or impatience or even used sarcasm*" citing *Sun v Minister for Immigration and Ethnic Affairs* [1977] FCA 1488; (1997) 81 FCR 71; [1977] FCA 148881 FCR 71 at 123 (Wilcox J); see also *Galea v Galea* (1990) 19 NSWLR 263 at 283B.

The appellant was later convicted and sentenced by the magistrate to four months imprisonment, fully suspended upon entering a good behaviour order for a period of 12 months.

DPP v Whittle

This was a reference appeal on a question of law brought by the prosecution. The question of law related to the jurisdiction of the Magistrates Court to hear a charge that the defendant, Mr Whittle, possessed three prohibited firearms contrary to s 42(1)(a)(ii) of the *Firearms Act 1996* (ACT). The maximum penalty of that offence is 14 years imprisonment and is an indictable offence.

Section 375 of the *Crimes Act 1900* (ACT) permits indictable offences to be heard by a magistrate in various circumstances. In particular, where an offence “relates to money or other property” and the maximum penalty does not exceed 14 years, a defendant may consent to the offence being heard and determined by a magistrate, rather than being committed for trial to the Supreme Court.

The question of law to be determined was whether the offence to which Mr Whittle was charged was an offence which related to “money or other property”. The magistrate at first instance concluded the offence fell within s 375 and that he had jurisdiction to deal with it.

On appeal, Mossop J traced the history of the relevant provision and noted at [17] that the interpretation of the expression “relates to money or other property” in s 375 (1)(b)(i) and the expression “relates to money, or to property other than a motor vehicle” in s 375(4)(b) was not obvious.

However, after considering the competing arguments of the parties, his Honour concluded the offence in s 42 which referred to the possession of items are within the definition of property i.e. prohibited firearms. Accordingly, the offence was not excluded from the scope of s 375(1)(b)(i). Because the offence was one that arose from possession of property of a particular type, that was itself sufficient for it to be within the scope of the expression “relates to... other property” in s 375(1)(b)(i). His Honour concluded that the magistrate was correct to determine that he had jurisdiction to hear the offence.

Mann v Tremethick

The appellant had pleaded guilty to numerous driving offences in the ACT Magistrates Court, including aggravated dangerous driving, driving with a prescribed drug in oral fluid and driving whilst disqualified. He was sentenced to a total effective sentence of 22 months imprisonment with a non-parole period of 14 months.

The most serious offence with which the appellant was sentenced was the offence of aggravated dangerous driving. The offence related to events on 14 July 2022 when police attempted to conduct a traffic stop of a car driven by the appellant in Wanniasa. The appellant did not stop for police and a pursuit ensued. At the time, the appellant had a passenger in the vehicle. The appellant drove at various speeds up to 200 km/h in a 100 km/h zone, and 170 km/h in a 60 km/h zone. The 60 km/h zone was a residential area where other vehicles were driving. During the pursuit, the appellant ran two red lights and drove on the

incorrect side of the road into oncoming traffic. The pursuit finally came to a stop when police successfully deployed tyre deflation devices.

The magistrate at first instance found the offence to be of considerable objective seriousness. The appellant was ultimately sentenced to a term of 18 months imprisonment for that offence. He then appealed this sentence to the ACT Supreme Court, alleging that it was manifestly excessive.

The appeal was heard by McWilliam AsJ (as her Honour then was). Her Honour concluded that the magistrate gave proper consideration to all the relevant factors of sentencing and that she was right to conclude the offence was of considerable objective seriousness. Her Honour noted the circumstances of the offence was of “a most serious kind” (at [32]). Her Honour concluded the magistrate had not otherwise erred in the exercise of her sentencing discretion and the sentence was not unreasonable or unjust when considered against the objective gravity and other relevant factors of sentencing. Accordingly, the appeal was dismissed.

Kilby v Carey

The appellant was found guilty of several serious offences of family violence committed on his former partner. The offences related to two incidents. The first in March 2022, when the appellant became angry at the victim for using her mobile phone. The appellant approached the victim and tried to grab the phone out of her hands, at which point she hit a cupboard and fell onto the lounge. The appellant jumped on top of her and grabbed her by the throat and began choking her. The appellant also began punching her head and face, before choking her using two hands around her neck. The victim described the pressure as an 8 out of 10 and felt as though she could not breathe. Photographs taken after the incident revealed bruising and swelling to the victim’s face, arms and knees.

The second incident occurred on 6 July 2022. The appellant was verbally abusing the victim, yelling at her, and calling her stupid”, “useless” and “dumb”. The appellant approached the victim who was in the bathroom of the house. He then threw her into the wall, causing her to fall heavily into the bathtub. The appellant began attacking the victim who was in the “foetal position” in the bathtub. The appellant kicked the victim and smashed her head against the side of the bath, before repeatedly beating the victim in the head. The appellant then dragged the victim out of the bathtub and stomped on her lower back. The appellant then picked the victim up and strangled her, using two hands around her neck and pushing her body up against the towel rack. The appellant let the complainant go before hitting her again in the face. As a result of this incident, the victim suffered a non-displaced acute fracture in the first coccyx, as well as other bruising and swelling to her body.

On 6 March 2023, the appellant was sentenced for various offences of assault and choking arising out of the above incidents. At the time of the offences, the appellant was subject to three suspended sentences, some of which were for other family violence offending. The appellant was sentenced to a total effective sentence of four years and six months’ imprisonment. A non-parole period of two years was imposed.

The appellant appealed to the ACT Supreme Court alleging the total sentence imposed was manifestly excessive, and that the magistrate had not applied the principle of totality.

In dismissing the appeal, Mossop J observed that questions of concurrency and accumulation are discretionary matters for the sentencing judge and, therefore, there are a variety of acceptable ways that the totality principle may be given effect in any particular case.

His Honour noted that whilst the magistrate did not make any express reference to the principle of totality in his sentencing reasons, it was clear that he had regard to the relevant principle when sentencing the appellant. His Honour further concluded that when regard is had to the objective gravity of the offences, it could not be said that the aggregate sentence of four years and six months was manifestly excessive. Rather, it was well within the scope of the magistrate's discretion, having regard to the nature of the offending and to the offender's prior history of offending, particularly for family violence.

Alexander v Bakes

After a five-day hearing in the Magistrates Court, the appellant was found guilty of 65 charges of theft contrary to s 308 of the *Criminal Code 2002* (ACT). The magistrate found the appellant not guilty on five charges. The charges related to the appellant's role as president of the Gungahlin United Football Club. For some time, the club operated without a treasurer, with the appellant performing that role. During that time, from September 2017 until June 2018, the appellant operated the club's main bank account. He also had possession of a debit card attached to a separate club account.

The charges related to a number of transactions performed by the appellant. First, nine electronic transfers of money from the club's main account to Macquarie Leasing which represented lease payments for the appellant's private motor vehicle. The appellant was found guilty in relation to all nine of the charges in this category. Second, debit card transactions by which purchases were made using money from one of the club's bank accounts. The appellant was found guilty in relation to all charges under this category except for one. Third, electronic funds transfers from the club's bank account to one of the appellant's accounts. The appellant was found guilty in relation to all charges in this category. Fourth, cash withdrawals from the club's bank accounts. The appellant was acquitted of all charges in this category.

The appeal was heard by Berman AJ. The appellant alleged a number of errors. Firstly, he contended the magistrate had erred in permitting the prosecution to amend the charges. The appellant submitted that at hearing, his solicitor (who also appeared on the appeal) had a "killer point" with regards to some of the charges. Unfortunately, the magistrate permitted the amendment of the charges which killed this killer point. It was submitted on the appeal that had he known the magistrate would allow the amendment, his solicitor may have focused on looking at the other evidence.

This ground was ultimately rejected.

His Honour considered several other grounds which he also rejected. However, his Honour allowed the appeal in part. The appellant contended his convictions were unreasonable and

should be set aside. His Honour ultimately found that in respect of some of the charges, the magistrate ought to have held a doubt, and accordingly set those convictions aside. The remaining convictions were confirmed.

Undeterred, the appellant has sought to appeal this judgment to the Court of Appeal which will be heard at a later date.

Court of Appeal

Okwechime v The Queen

The offender was charged with four counts of sexual intercourse without consent, and one count of choking. The offender had met the victim during a night out in Civic. The offender and the victim danced, drank and socialised. The victim also consumed cocaine together with some of the offender's associates. Around 4am the offender and the victim left Civic together, returning to the residence of the offender's associate. When they arrived, the offender's associate retired to his room with a female companion.

This left the offender and the victim alone in the living area. The victim wanted to leave. The offender started kissing her. She told him to stop. He digitally penetrated her and performed cunnilingus on her. The victim continued to verbally protest.

The offender then manoeuvred the victim in to one of the bedrooms, where he digitally penetrated her anus. The offender then bit and sucked her neck before penetrating her vagina with his penis. The victim was crying and telling the offender to stop. The offender then placed both hands around her neck and applied pressure, telling her, "stop saying that, I hate you telling me to stop."

The offender let go and the victim crawled away from him. She escaped with her clothing and ran to a neighbour's residence. She reported that she had been raped. Police were called and she was taken to hospital by ambulance. A number of injuries were identified, and biological evidence was obtained. The evidence of the injuries and the biological evidence were presented to the jury, and they were supportive of the victim's account.

The offender gave evidence that the sexual activity was wholly consensual.

The jury returned guilty verdicts in relation to three counts of sexual intercourse without consent (digital penetration of the vagina, and penile-vaginal intercourse) and choking. The offender was sentenced to a head sentence of five years, three months' imprisonment.

The offender appealed the conviction and sentence. In dismissing the conviction appeal, the Court of Appeal noted, "Nothing about the complainant's earlier conduct in talking to and flirting with the accused, going back to [his friend]'s apartment or her conduct in the car indicates an intention to have sexual intercourse with the appellant or consent to any of the acts which were alleged or admitted to have subsequently occurred." The appeal against the sentence was also dismissed.

Booth v The Queen

The appellant was tried jointly with others for the offence of aggravated burglary. Following a jury trial, the appellant was acquitted of the charge of aggravated burglary but found guilty of the summary charge of minor property damage. This offence was determined by the trial judge sitting without a jury pursuant to the procedure for summary related offences, pursuant to ss 68CA and s 68E(1) of the *Supreme Court Act 1933* (ACT). The appellant sought an order for a permanent stay of the minor property damage charge, arguing that considering the jury's acquittal on the aggravated burglary, the continuation of the proceeding was an abuse of process that controverted the jury's acquittal. The application for a stay was refused by the trial judge. His Honour determined that there were multiple issues left to the jury that could have been the reason for the acquittal. One was that the appellant was not present at the front door at the time of the incident. The primary Judge declined to grant a permanent stay because there was no "necessary inconsistency" between the verdict of the jury and the prosecution of the related charge. That is, the verdict did not necessarily require the jury to conclude that the appellant was not at the door and there were other reasons that the jury could have acquitted.

The appellant appealed against the refusal to issue the stay to the ACT Court of Appeal. The Court had cause to review a number of High Court and intermediate appellate court authorities relating to the principle of incontrovertibility. Following this review, the Court concluded that the "guiding principle" was set out by the High Court in the decision of *Garrett v The Queen* (1997) 139 CLR 437 that is, "the acquittal may not be questioned or called in question by any evidence which, if accepted, would overturn or *tend to overturn* the verdict".

In this case, the Court held that a conviction on the property damage charge could be reconciled with the acquittal on the aggravated burglary charge if that acquittal was taken to be based on one, rather than the other, of the possible bases. It was held the primary judge erred as a matter of legal principle in regarding the critical issue as whether there was any "necessary inconsistency" between a verdict of guilty on the property damage charge and the earlier acquittal. The Court concluded that a verdict of guilty on the property damage charge was inconsistent with a finding upon which it was clearly possible that the jury's verdict had been based upon more than one basis. The prosecution on that charge therefore called the verdict into question, or had a tendency to overturn it, in the sense mentioned in *Garrett*. The appeal was allowed, and the minor property damage charge was permanently stayed.

The Queen v Ashton (a pseudonym)

This was an appeal brought by the Director of Public Prosecutions against a sentence imposed for an offence of engaging in a sexual relationship with a child under special care, contrary to s 56 of the *Crimes Act 1900* (ACT). That offence carries a maximum penalty of imprisonment for 25 years.

The offending in question related to the respondent engaging in sexual intercourse and other sexual acts with his daughter over a period of eight years, from 1 January 2013 to 17 February 2021. During this period the victim was aged between six and 14 years, while the respondent was aged between 29 and 38 years respectively.

The respondent and mother of the victim had separated when the victim was two. They remained amicable and agreed that she should live primarily with her mother but see her father as requested by him, which was generally every fortnight. When she was younger, she would stay with his parents to facilitate those access visits. By the time she was six, the offender was living in a share household with another man. That is when the victim began sharing a bed with the offender and that is when he began sexually assaulting her.

The seriousness of the sexual assaults escalated over time, beginning with indecent touching in bed at night and progressing over time to full sexual intercourse of all different kinds. The assaults continued repeatedly and frequently, every time the child was with the offender until she was 14. The sentencing judge calculated that there were approximately 76 instances of penile penetration of the victim alone – although it was likely this was a significant underestimate.

The respondent pleaded guilty and was sentenced by Norrish AJ. His Honour characterised the offending as “below the worst category of this type of offending but just below that category...” The respondent was sentenced on 4 February 2022 to a term of imprisonment of 12 years, and a non-parole period of seven years and six months.

The prosecution appealed this sentence to the Court of Appeal contending the sentence was manifestly inadequate. The Court of Appeal agreed and allowed the appeal. Chief Justice McCallum noted at [17] that the offending was of significant seriousness involving the respondent’s repeated rape of his young daughter over many years and that “he of all people ought to have been ensuring that he nurtured and protected her. Instead of doing that, he repeatedly traumatised her over a period of eight years and condemned her to a life of psychological suffering”. Elkaim J concluded at [56] that:

...there can be little argument that the sentence was disproportionate to the offending. The victim will suffer for the rest of her life with the mental impairment that must flow from such persistent offending, emphasised by the offender having been the victim’s father and the person to whom she should have been able to look to for care and protection. He provided the precise opposite.

The respondent was re-sentenced. The Court of Appeal concluded a starting point of 20 years imprisonment was appropriate. After deducting 25% for the plea, the respondent was sentenced to a term of imprisonment for 15 years with a non-parole period of nine years and four months.

McFarland v Van Eyle

The respondent was found guilty by a magistrate of one count of committing an act of indecency without consent, contrary to s 60(1) of the *Crimes Act 1900* (ACT). The act of indecency that was found to be proved was the touching, by a masseur, of the breasts and nipples of a client during the course of a massage. The respondent appealed against his conviction to a judge of the Supreme Court on the ground that the magistrate had given insufficient reasons and the verdict was unreasonable. The appeal judge rejected the claim of inadequate reasons but allowed the appeal on the ground that the verdict was unreasonable

or could not be supported. The appeal judge entered a verdict of not guilty and ordered the appellant to pay the respondent's costs of the proceedings in the Magistrates Court.

The prosecution appealed to the ACT Court of Appeal on the basis that the appeal judge erred in her application of the legal principles relating to whether a verdict is unreasonable. In other words, she did not perform the task that was required in an appeal asserting an unreasonable verdict. Rather, the appeal judge approached the matter on the basis that, if having regard to the evidence, she had a reasonable doubt as to the guilt of the accused, then that alone was sufficient to require the decision of the magistrate to be overturned.

The Court of Appeal agreed with the prosecution and allowed the appeal, finding the appeal judge did not correctly approach her task when considering whether the magistrate's verdict ought to be overturned. The Court noted that the prosecution was entitled to have the appeal determined in a manner consistent with the High Court's decision in *M v The Queen* (1994) 181 CLR 48 and that was not done in the present case. The Court allowed the appeal and remitted the respondent's appeal to the Supreme Court to be heard by a different judge.

White v The Queen

The appellant was tried before a jury in the ACT Supreme Court and found guilty of one offence of perjury, contrary to s 703 of the *Criminal Code 2002* (ACT).

The case against the appellant concerned evidence he had given during a hearing in the ACT Magistrates Court on 23 July 2015. That hearing involved the appellant's de facto partner, Sarah Jane Parkinson, who was charged with making false accusations to police about a sexual assault allegedly committed by Ms Parkinson's former boyfriend. The particulars of the offence concerned evidence given by the appellant about the use of condoms in the context of his relationship with Ms Parkinson. During cross-examination by Ms Parkinson's lawyer at the hearing, the appellant gave the following sworn evidence:

You at a point in time commenced a sexual relationship with Ms Parkinson? -- That's correct.

In relation to that relationship did you use condoms? - - No.

Are you certain in relation to that? - - Yes.

How are you able to be so certain in relation - - - ? - - - I had a vasectomy in 2007 and we've never used condoms at all.

The prosecution case was that the statements made above were false against the background of previous statements made to the contrary and the appellant's awareness of the significance of the use of condoms in the investigation of the alleged sexual assault of Ms Parkinson. At trial, the appellant did not deny (nor could he have) that he gave the above evidence, or that it was untrue, but that he was not reckless as to whether the evidence was false and/or that he had a reasonable but mistaken belief the evidence he gave was not false.

Following the jury returning a guilty verdict, the appellant appealed his conviction to the Court of Appeal, alleging that the jury could not be satisfied beyond a reasonable doubt the appellant was reckless as to the evidence being false. The Court of Appeal has unanimously dismissed the appeal. Chief Justice McCallum held based on her examination of the evidence at trial that it was well open to the jury to find the appellant's statement was simply false. The evidence relating to his state of mind was "damming". Their Honours Mossop and Collier JJ held that the appeal was without merit. Their Honours held that it was clearly open to the jury to convict for perjury; the appellant's background as a police officer heightened his awareness of the need to give truthful and accurate evidence before the Court; a witness cannot decide what is relevant; and the possibility the appellant was mistaken was rejected.

R v Tuifua

The respondent pleaded guilty and was sentenced in the ACT Supreme Court for offences of murder and intentionally inflicting grievous bodily harm. The offences in question arose out of a brawl in the Kokomos nightclub in Civic. The two victims were members of the Comanchero outlaw motorcycle gang. The deceased was the Commander of the Canberra Comanchero gang. On 18 July 2020, the deceased, Mr Robb and other members of the gang went to Kokomos. Shortly after they arrived, the respondent was in a Toyota motor vehicle which parked outside the nightclub. The respondent entered with a knife in his right hand.

At about midnight, a brawl ensued in which assorted persons physically engaged with each other. The respondent kept to the side of the participants. The deceased tried to separate them. Mr Robb was one of the participants. The respondent then became involved. With the deceased's back towards him, the respondent touched him with his left hand. He then raised the knife above shoulder height and stabbed the deceased just below his right ear. The deceased bled profusely and stumbled away. The fighting continued and the respondent again, approaching from behind, stabbed Mr Robb in the left upper thigh.

Shortly after midnight the respondent left the club holding the knife. The deceased was staggered behind him, still bleeding. The door of the club closed on the deceased and struck his head. He managed to exit the club and crossed the road before falling to the ground. The police arrived shortly afterwards and saw the deceased lying in the gutter on Genge Street. An ambulance arrived but paramedics were unable to save the deceased. His death was witnessed by a number of patrons who had not been involved in the events that had just transpired.

At the sentencing hearing before Elkaim J, the prosecution declined to suggest the attack was gang related. Rather, Elkaim J found the circumstances "difficult to discern". He noted the respondent had suggested that he was "fearful that night" and that the fatal stabbing was not intentional; rather the knife was being carried for self-defence and was usually with him in case circumstances required such a defence.

At the time of the offences, the respondent was 26 years of age and did not have any relevant criminal history. Elkaim J sentenced the respondent to a total sentence of 20 years, 19 years of

which was attributable to the offences of murder and inflicting grievous bodily harm. A non-parole period of 10 years was imposed.

The prosecution appealed against the sentence on the basis that the sentence for murder and inflicting grievous bodily harm was inadequate, and that the total effective sentence and non-parole period were inadequate. The prosecution contended that Elkaim J's conclusions on the objective seriousness of the offences did not appropriately reflect the seriousness of the offending and moral culpability of the respondent; that placed too much weight on the sentencing purpose of rehabilitation; that undue weight was placed on the remorse shown by the respondent; and that the non-parole period was unusual and inappropriately low.

The Court of Appeal has dismissed the prosecution's appeal. The Court held that any criticism of the Elkaim J's reasons must go beyond disagreeing with the assessment made and conclusions reached; error must be established. In these circumstances, the Court found that the sentence imposed was not inadequate, let alone manifestly so, and that there was no proper basis for concluding that Elkaim J was otherwise than fully aware of all the facts and circumstances of the offending set out in evidence and the competing submissions of the parties.

Cooke (a pseudonym) v The Queen

The appellant was sentenced for a single count of act of indecency with a person under the age of 10 years, contrary to s 61(1) of the *Crimes Act 1900* (ACT) (*Crimes Act*). The offending related to an instance where the appellant was caring for the victim and his own child at the home he lived in with the victim's mother. The victim referred to the appellant as her stepfather. On 26 April 2021, while caring for the victim, the appellant touched the victim's vagina with his finger for about 20 seconds. The victim later reported the incident to her mother who confronted the appellant. The appellant subsequently admitted to the victim's mother that he had touched the victim's vagina. The appellant later participated in a police interview where he made statements regarding the incident, including stating that his finger was on the victim's vagina for about 20 seconds.

The appellant was sentenced for the offence in the Supreme Court. The starting point for the sentence was 28 months which was reduced by "approximately" 18% on account of the offender's plea of guilty. This resulted in a sentence of imprisonment of 23 months. A non-parole period of 18 months, representing approximately 78 per cent of the head sentence being imposed.

The appellant appealed to the Court of Appeal contending his sentence was manifestly excessive, including the non-parole period. He also contended the sentencing judge erred in not affording him a 25 per cent discount for his plea of guilty by inappropriately taking into account the strength of the prosecution case.

The Court of Appeal concluded the sentencing judge had erred in relation to the discount for the plea of guilty and accordingly allowed the appeal. After considering the relevant authorities relating to s 35 of the *Crimes (Sentencing) Act 2005* (ACT), the strength of the prosecution

case against an offender is only relevant where a submission is made pursuant to s 35(4). That provision requires that no significant discount be given for a plea of guilty where the court finds the prosecution case was “overwhelmingly strong”. The Court held that unless a submission to this effect was made and accepted, the strength of the prosecution case is not a relevant factor to be considered when determining the appropriate discount for a plea of guilty.

The Court of Appeal noted in the appellant’s case that no submission was made, and the sentencing judge did not apply s 35(4). Accordingly, it was an error to take into account the strength of the case and reducing the level of discount for the plea on that basis.

The Court of Appeal proceeded to re-sentence the appellant. It was noted the appellant had entered a plea of guilty to the charge early in the proceedings and was entitled to a discount of 25 per cent. This reduced the head sentence to 21 months imprisonment. The Court of Appeal considered a non-parole period of 13 months was appropriate in all the circumstances.

Warne v The King

The appellant was charged with offences of aggravated burglary, damage property and theft, committed in the company of two other offenders, Mr Andy and MC. The offences arose out of an incident on 3 September 2020. At about 9:50 am on 3 September 2020, the victim was at her home in Taylor with her two daughters, who were then aged seven and one. The victim was in the kitchen when she heard smashing noises coming from her front door. When she looked down the hallway, she saw that the glass panel beside the front door was smashed and four people holding sticks or baseball bats were there. Glass had flown into the home which reached the point where her children were sitting.

The victim recognised two of the people who were now entering her house through the broken panel. One was Mr Andy, a relative of a former partner whom she had known for about two years. The other was the appellant with whom she had been in a prior relationship. The victim did not know the third man, but it was established this was MC who was a relative of Mr Andy. The three men entered the house. The victim grabbed her younger daughter in her arms and ran outside through the back door, directing her older daughter to do the same. She went through the garage and out onto the front driveway, with the men following her and screaming threats and abuse. One of the men threw an item—a baseball bat or something similar—at the victim who was still holding her younger daughter. She hid behind some parked cars. Her older daughter ran to a woman who was waiting at the bus stop across the road and asked her to call the police.

The three men went back into the victim’s house and proceeded to damage both the house itself and property inside it, including two televisions, crockery, a toilet seat, wall tiles, various internal doors and walls, and glass windows. They opened her fridge and threw food on the kitchen floor. They stole two small items: an Xbox gaming console and a glass bong. They then drove away in a vehicle that was registered in the name of Mr Andy.

In August 2021, Mr Andy pleaded guilty to charges of aggravated burglary, property damage and theft by joint commission. In February 2022, he offered to provide assistance to the authorities. He provided a statement and then gave evidence at the trial of the appellant and his co-accused, MC.

The appellant and MC were tried before Walmsley AJ and a jury of 12, between 21 February and 3 March 2022. On 3 March 2022, the jury returned its verdict, finding the appellant guilty of the offences of aggravated burglary and damage property. On 1 June 2022, the primary judge sentenced the appellant to an aggregate term of two years and six months' imprisonment with a non-parole period of 15 months. The appellant appealed against his convictions and sentence to the Court of Appeal.

In relation to the appeal against sentence, the appellant contended that the jury's verdict was unreasonable because they ought to have had a doubt about the reliability of the victim's identification of the appellant. The appellant contended that whilst the victim may have been honest in her evidence, there were several factors which affected the reliability of the evidence such that the jury ought to have entertained a reasonable doubt. Those factors included, amongst other things, the limited opportunity and obstructed view of the appellant during the offences and the panicked and stressful circumstances in which she saw him.

In rejecting the appeal against conviction, the Court of Appeal noted that in appellant's case, the victim had recognised the appellant as someone previously known. Whilst this factor did not of itself remove the difficulties and risks associated with identification evidence, this was a significant factor. The Court observed that "[t]he face of a person seen for the first time is likely to be very hard to commit to memory and recognise later; whereas most people will take only a moment to recognise a friend or acquaintance." When all the circumstances were considered, the Court found it was open to the jury to act upon the victim's evidence which was honest and reliable. Further, when regard was had to the "careful and detailed direction explaining why it should consider that evidence very carefully before accepting it", the Court was satisfied the verdict was open.

In relation to the appeal against sentence, the appellant contended firstly, that he suffered a justifiable sense of grievance when his sentence was considered against that which was imposed on Mr Andy. Secondly, he contended that the sentencing judge erred in his consideration of whether the appellant's sentence should have been served by way of an intensive corrections order.

As to the first issue, Mr Andy was sentenced before Chief Justice Murrell prior to the appellant's trial. On two counts which corresponded to the charges against the appellant (aggravated burglary and damaging property), the Chief Justice adjourned the hearing to 4 February 2022 to allow for consideration of whether his sentence should be served under a drug and alcohol treatment order. Her Honour indicated that she would have imposed a sentence of 28 months' imprisonment (reduced from 33 months) on the aggravated burglary count and 12 months' imprisonment (reduced from 15 months) on the property damage count. A degree of concurrency would have been ordered, making the total sentence two years and six months,

with a non-parole period of 15 months. Mr Andy's sentence was finalised on 23 March 2022, after the appellant's trial in which he had given evidence for the prosecution. It was accepted by the prosecution that, but for his assistance, a conviction would not have been obtained. In recognition of this assistance, rather than impose a drug and alcohol treatment order, the Chief Justice imposed sentences of full-time imprisonment as contemplated in September 2021 and ordered that the sentence be suspended.

In rejecting this ground, the Court of Appeal observed the different basis upon which Mr Andy and the appellant were sentenced. Whilst Murrell CJ did not find in terms that the appellant was the principal offender, the agreed facts tendered in Mr Andy's sentence painted a different picture of Mr Andy's involvement, and accordingly of his and the appellant's relative levels of culpability, from the findings of the judge made in the appellant's case. Mr Andy, having pleaded guilty and had a chance to negotiate agreed facts with the prosecution, was sentenced on the basis that he was not the principal offender. The appellant, having gone to trial, was sentenced on the basis of evidence which showed Mr Andy to have been the instigator of the offending. The Court of Appeal noted that the appellant could not use the sentence imposed on Mr Andy (which appears lenient compared to his role as found at the trial) as a benchmark in order to argue that having played a lesser role, he had to receive a lesser sentence.

As to the second issue, the Court of Appeal rejected the argument the sentencing judge erred with respect to the consideration of whether the sentence should be served by way of intensive correction order. There was no error in the sentencing judge considering the objective seriousness of the offences as too serious as to warrant such a disposition.

High Court

Garay v The Queen

On 27 January 2023, the Court of Appeal dismissed an appeal against conviction brought by the appellant with respect to various convictions for historical child sexual abuse. The appellant was tried by judge alone on an indictment containing 18 counts of sexual offences alleged to have been committed when the complainant, a boy, was of or above the age of 10 years but under the age of 16 years. Verdicts of guilty and not guilty were returned. For the offences for which he was found guilty, the appellant was sentenced to a term of imprisonment for five years with a non-parole period of three years.

The prosecution case was that between 1986 and 1988, the appellant sexually abused a young boy. The victim had known the appellant, who is fourteen years his senior, his whole life. The appellant was a family friend. The appellant would often visit the victim's family and through these visits, he and the appellant "struck up a friendship". The victim gave evidence that the appellant began indecently assaulting him from an early age and that the first indecent assault occurred at the appellant's address near the grandmother's house. At some point the appellant moved to an address further away but still within a short drive of the grandmother's house. The victim said that he continued to visit the appellant at the new house, but as it was

no longer within walking distance, he had to be driven there. He said the appellant indecently assaulted him several times at that address.

In February 1986, the appellant moved to Canberra for work. The victim and the appellant remained in contact. The victim travelled to Canberra several times during school holidays, staying at the appellant's house for periods of several days or, as he recalled, up to a week. It was the victim's evidence that, on all but one of the nights he stayed with the appellant at the Canberra address, he slept in the appellant's bed and was indecently or sexually assaulted by him. All of the counts on the indictment were based on acts alleged to have been committed at that address.

The appellant gave evidence at the trial. He accepted that the victim had come to stay with him at the Canberra address and that they had engaged in many of the social activities such as going to movies, going to "Wonderland" and on one occasion going skiing. He agreed that the victim had stayed at his house in Canberra several times. The appellant admitted that the victim had slept with him in his bed, however, he denied that there was any sexual contact between them.

The victim did not approach police in relation to the offences until 2018, when he was 44.

The appellant's trial for the offences was heard by Loukas-Karlsson J. The appellant appealed his convictions to the ACT Court of Appeal contending the verdicts of guilty were unreasonable, and that the trial judge had given inadequate reasons. Each member of the Court of Appeal dismissed the ground relating to the unreasonableness of the verdicts, holding that it was open to the trial judge to be satisfied beyond reasonable doubt that the appellant was guilty of the counts on which he was convicted. Additionally, the Court concluded the trial judge had not erred with respect to certain legal directions.

However, the Court was divided as to the ground that the reasons were inadequate. McCallum CJ, with whom Collier J agreed, held that, while the structure of the judgment was not one to be imitated, the reasons were adequate to meet the minimum requirement of the statutory obligation. In the event that conclusion was wrong, her Honour held that the proviso should apply. Elkaim J (dissenting) found that the ground alleging inadequate reasons was made out. His Honour held that the reasons were inadequate in the consideration of the evidence and how conclusions were reached, particularly concerning the credibility of witnesses. His Honour would have allowed the appeal and ordered a new trial.

The appellant sought special leave to appeal in the High Court. The sole issue was whether the majority of the Court of Appeal were correct to find the trial judge's reasons were not inadequate. The High Court (Gageler and Gleeson JJ) proceeded to determine the application without an oral hearing. Their Honours concluded that the application did not raise a question of public importance concerning the proper interpretation of s 68C(2) of the *Supreme Court Act 1933* (ACT), or the adequacy of reasons for the verdict of a judge in criminal proceedings. Their Honour's concluded that "the proposed ground of appeal does not enjoy sufficient prospects of success to warrant a grant of special leave to appeal" and accordingly the application was dismissed.

B.2.6 Sexual Offences Unit

The Sexual Offence Unit ("SOU") is made up of a specialist team of prosecutors experienced in the preparation and prosecution of sexual offence matters within the ACT. The SOU is led by a supervising prosecutor, two senior prosecutors and two junior prosecutors. The SOU also works closely with senior members from Crown Chambers.

The SOU continue to work collaboratively with the Sexual Assault and Child Abuse Teams (SACAT) of ACT Policing. The SOU Leader meets on a monthly basis with the SACAT Leaders to discuss current issues and ensure optimum service is delivered to victims of sexual offences. SOU Prosecutors regularly provide advice to SACAT regarding the admissibility of evidence and extradition matters. SOU Prosecutors deliver training to SACAT groups and biannual training to the new recruits at the AFP College.

There have been several significant legislative changes over the last few years which have had a positive impact prosecuting sexual offences in the ACT. For example, special measures such as the introduction of intermediaries being available for witnesses who have a communication difficulty pursuant to chapter 1A *Evidence (Miscellaneous Provisions) Act 1991* and the automatic recording of any sexual offence complainant's evidence, pursuant to s69 *Evidence (Miscellaneous Provisions) Act 1991*. The title of s56 *Crimes Act* has changed to Persistent Sexual Abuse of Child or Young Person Under Special Care. The change of title was brought about by victim survivors advocating the importance of language in charging abusers. On 12 May 2022 the *Crimes (Consent) Amendment Act 2022* introduced the affirmative consent laws. It has, in part, significantly changed the law in relation to sexual offences. In Part 3 of the *Crimes Act 1900*, for example, it is a communicative model of consent, consent is not presumed and negated consent laws have been updated in accordance with community standards. SOU have excelled in implementing the new legislative changes.

The SOU prosecutors continue to work closely with the Office's Witness Assistance Service ("WAS) to engage with complainants, their families and other vulnerable witnesses as early as possible, to inform them of their rights and the relevant special measures available throughout the court process. The SOU prosecutors regularly engage with the special provisions available in the *Evidence (Miscellaneous Provisions) Act 1991*, which are designed to reduce the trauma associated with giving evidence and enhance the witness's ability to give their best evidence. SOU Prosecutors understand the importance of timely meetings with complainants and are always available to answer questions about the court process and the rights of the victim. Within the first four weeks of receiving a file, the SOU prosecutor will arrange a meeting with the complainant to explain the process, identify possible special measures and make timely applications to the courts.

In July 2021, the ACT Government established a Sexual Assault Prevention and Response Program (SAPRP) to coordinate the community, the service sector, unions and relevant stakeholders on responses to sexual assault in the ACT. A senior member of the SOU was an active member of the SAPR Law Reform Working Group which recommended several justice system reforms and legislative amendments, including the affirmative communicative model

of consent. The Steering Committee accepted all of the recommendations made by the SAPR Law Reform Working Group and the *'Listen. Take Action to Prevent, Believe and Heal Report'* (the report) was presented to Government on 13 December 2021. The report made 24 recommendations to improve how the ACT prevents and responds to sexual violence in our community.

In May 2022, recommendation 15, which was the establishment of an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, was implemented by the ACT Government. This recommendation was made in response to the alarmingly low number of sexual offence complaints (2.8%) that proceed to charge in the ACT. The Director and two senior members of Crown Chambers have participated in the cross-agency taskforce and are committed to identifying the systemic issues leading to the low number of sexual assault reports proceeding to the point of charge and to identify ways that victim rights can be better upheld, including ways to reduce the re-traumatisation that many victims experience when they engage with the justice system.

The ODP's prosecution statistics for sexual offences for the financial year are provided below.

B.2.6.1 Sexual Offences: Trials and Sentences in the Supreme Court – 1 July 2022 to 30 June 2023

Description	Matters
Trials	
Trials	20
Trial Days in Court	145
Trial Outcomes	
Guilty Verdicts	9
Not Guilty Verdicts	4
Other	7
Awaiting verdict	
Sentencing Proceedings	
Accused sentenced after committal for sentence or after committal for trial/ changed plea or re-sentenced after breach	18
Notices declining to proceed further	9

B.2.6.2 Breakdown of Sexual Offence matters in different courts – 1 July 2022 to 30 June 2023

The table below represents the number of sexual offence matters which were commenced and finalised in the financial year.

Description	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual Offence matters commenced	94	9	58	161
Sexual Offence matters completed	42	1	33	76
Sexual Offence matters proved	26	1	22	49
Sexual Offence matters discontinued	7		9	16
Sexual Offence breach matters	5		4	9

B.2.6.3 Sexual Offence Cases

R v Ayoub

This matter resulted in an eight-day trial in the Supreme Court, which involved the offender attending a brothel in Mitchell. The complainant, a sex worker, joined the offender at the counter. The offender booked time with the complainant and paid for the 'standard' service, namely a massage, oral sex being performed on him using a condom and penile-vaginal sexual intercourse with a condom. The pair went into the room where the complainant first carried out the usual 'health check' of the offender. This ultimately led to the accused complaining to the receptionist by presenting to her his penis. The offender returned to the bedroom. The jury found the offenders following conduct beyond reasonable doubt, true, as they convicted him of choking the complainant with the intention of sexual intercourse with her, sexual intercourse without her consent, and common assault.

At sentence, the offender was 38 years old. He had left the formal education system in Year 9. He had a history of illicit drug use, starting with cannabis from the age of 13, then cocaine from the age of 15 and methamphetamine from 20 years of age. The offender's methamphetamine use was ongoing. Prior to entering custody, he had ceased taking his mental health medication and instead relied upon methamphetamine. He did not have prior convictions for sexual offences. He was sentenced to a head sentence of two years and six months, suspended after 18 months and 22 days.

DPP v Bellette

In the early hours of 5 March 2021, the offender attended the Mooseheads establishment in the city of Canberra. At trial, the female complainant alleged that while she was on the dancefloor in close engagement with a fellow student whom she had met a little earlier, the offender

manoeuvred himself behind her, placed his hand in the proximity of her anus and inserted his fingers into her vagina. The victim alleged that there had also been digital penetration of her anus. The sentencing judge at paragraph [10] stated “the jury clearly was not satisfied beyond reasonable doubt that this had occurred. At first sight, this result (guilty on Count 1 but not guilty on Count 3) seems to be contrary to the victim’s evidence that on the following day she felt pain in her anus, but she made no complaint of pain in her vagina.”

At sentence, defence counsel urged the court to impose an Intensive Correction Order and the prosecutor asked for a period of imprisonment. At paragraph [42], the sentencing judge stated the following: “I have given serious consideration to an ICO. The subjective factors are real and compelling. However ultimately the overwhelming criminality of an offence to a member of the public, when that person was totally unknown to the offender, and the offence was committed in the most brazen of circumstances compels me to impose a sentence of imprisonment.”

The offender was sentenced to 20 months imprisonment, suspended after three months.

DPP v Naing

This matter resulted in a two-week jury trial and involved allegations of sexual offending against two sisters who were both between the ages of 10 and 16. The offender was a close family friend of the sisters. The sisters considered the offender to be an ‘uncle’ figure.

The trial alleged six counts of act of indecency of a person between 10 and 16 years. The prosecution led tendency evidence which alleged that the offender and a tendency to have a sexual interest in the two sisters, and a tendency to act upon that interest. The evidence of both victims was recorded, and both were assisted by an intermediary in both evidence in chief and cross-examination. Evidence of the complaint was given by relatives and friends of both victims, and the prosecution led evidence from an expert witness who testified as to the dynamics of child and adolescent behaviour in child sexual abuse cases. The offender was convicted of five out of the six counts on the indictment. The offender was acquitted of one of the counts on the indictment.

Sentence is to be handed down in August 2023.

DPP v Mitchell

The offender pleaded guilty to various child-sex offences committed against six victims between 1994 and 2008. The offending against each child was summarised at paragraphs [60] to [65] of the judgment.

Offending against A

[60] In relation to A the relationship was for a period of three years. The victim was only 11 at its commencement. The offender obtained access to her by being friends with her parents. The offending involved the abuse of a position of trust which she had been placed in by her parents as a result of this friendship. The sexual acts occurred frequently. The victim was encouraged to behave in a manner so as to avoid detection of the relationship.

Offending against B

[61] The offending against B involved a sexual relationship of approximately three years. Once again, the offending occurred after the offender had procured a relationship of trust as a result of discussions with her parents. There was grooming conduct prior to the commencement of the sexual activity. The sexual activity involved inappropriate touching, including pressing his erect penis against her and masturbation in her presence including to ejaculation. It also involved masturbation to ejaculation using her feet. It is distinct from the offending against A in that it involved the role of rock climbing coach. However, it also involved a long and close relationship. It is also in the mid-range of objective seriousness.

Offending against C

[62] The offending in relation to C occurred in the context of a relationship of coach and student. It involved a breach of trust. The acts involved were serious ones involving close masturbation to the point of ejaculation on the skin of the victim. The nature of the acts and the context in which they occur mean that this is at the upper end of the mid-range of objective seriousness for an act of indecency.

Offending against D

[63] The relationship occurred over four years. It obviously involved a breach of trust. The offending was preceded by grooming. It involved masturbation in her presence and lifting of her clothes so as to view her. On one occasion it involved masturbation until ejaculation in her immediate presence when she was clearly awake. Having regard to the length of the relationship, the sexual acts were not as frequent as they might have been. This offending is, once again, in the mid-range of objective seriousness for this offence. The facts disclose somewhat less emotional closeness between offender and victim than in relation to A and B.

Offending against E

[64] Rather than a single incident, the act of indecency in relation to E involved a course of conduct as referred to in s 66B of the *Crimes Act*. It involved inappropriate touching during the course of gym training, pressing his erect penis into her back and inappropriate touching during the course of rock climbing training. The conduct took place over an 18-month period. It obviously involved a breach of trust arising from the coach-student relationship. The individual acts are less serious than the act of indecency in relation to C, but, given the course of conduct it is still in the mid-range of objective seriousness.

Offending against F

[65] This involves a course of conduct over a period of four years. The victim was particularly vulnerable, being a young child away from home staying at the offender's residence or otherwise in his custody. The acts involved inappropriate touching while in the car, hugging and pressing his penis against her and pressing his erect penis against her when she was stretching. The duration of the conduct and the breach of trust involved means that it is in the mid-range of objective seriousness for this offence.

The offender was 56 years old at sentence and did not have a criminal history. He was sentenced to a head sentence of 13 years imprisonment with a non-parole period of nine years.

B.2.7 Family Violence Unit

During the 2022–2023 reporting period, the Office continued to maintain a specialist family violence unit ('FV unit'), responsible for conducting and overseeing prosecutions of offences committed in the context of family relationships. This includes offences of personal violence, contraventions of family violence orders and damage to property.

The FV Unit includes a supervising prosecutor, a senior prosecutor, six prosecutors and three paralegals. Prosecutors appear in weekly family violence lists held in the Magistrates Court. In January 2023, the frequency of these lists increased from one to two lists per week, with an additional FV sentencing list on Friday afternoons. The FV list deals with mentions, pre-hearing mentions, committals to the Supreme Court and sentencing proceedings. Prosecutors in the FV Unit also maintain caseloads of hearing matters that proceed in the Magistrate's Court, and some serious offences that will ultimately be committed to the Supreme Court. Family violence hearings continued to be heard in bulk listing periods throughout the year.

Since the last reporting period, there have been significant legislative amendments impacting family violence offences in the ACT, including increases to maximum penalties for a number of offences (now referred to as 'aggravated' offences), and additional protections regarding access to counselling communications ('protected confidences') of family violence complainants.

The FV Unit strives to provide a consistent approach to FV matters which is achieved by reviewing files at a very early stage of the proceedings prior to the first mention, and by the early allocation of FV matters to a prosecutor immediately following a plea of not guilty. This process can often identify vulnerable complainants, which allows the unit to engage with them early to ensure they're supported throughout the court process. The FV Unit continues to work closely with and be supported by the Office's Witness Assistants, who regularly provide updates to complainants in family violence matters.

The FV Unit also continues to work closely with external agencies, including ACT Policing's Family Violence Coordination Unit, Domestic Violence Crisis Service, Child and Youth Protection Services and Victim Support ACT. A prosecutor from the FV Unit attends a weekly meeting with these external stakeholders ('case tracking') to ensure that relevant information is shared between agencies. The FV Unit is also involved in provision of training to ACT Policing in relation to conducting Family Violence Evidence in Chief Interviews and other matters specific to the prosecution of family violence offences.

The Office recognises the significant public interest in prosecuting offences involving family violence, and this informs many of the decisions taken in respect of family violence proceedings prosecuted by the FV Unit in accordance with the Prosecution Policy.

B.2.7.2 Breakdown of FV cases in different courts – 1 July 2022 to 30 June 2023

The table below represents the number of matters which were commenced and finalised in the financial year.

Description	Magistrates Court	Childrens Court	Supreme Court	Total
FV matters commenced	546	29	29	604
FV matters completed	578	34	16	628
FV matters proved	416	14	10	440
FV matters discontinued	51	3	1	55
FV breach matters	86	4	1	91

B.2.7.3 FV Cases

Police v JS

JS pleaded guilty to stalking his young child after loitering outside her school on one occasion and approaching her at a sports game on another. The offence occurred against the background of Family Court orders prohibiting the offender from having any contact with the child at all due to his concerning behaviour against her and her mother. This behaviour included registering his child as a business entity and attempting to sell merchandise with his child's image printed on it, tracing the child's mother using a tracking device, and taking the child from a supervised visit without permission.

He had previously been convicted of stalking on two prior occasions, as well as contravening family violence orders relating to his child and ex-partner. In relation to this offence, the defendant minimised his offending and blamed the Family Court process for his offence, demonstrating little insight.

The defendant was sentenced to a term of imprisonment of nine months, suspended after serving four months and 15 days upon entering into a good behaviour order for a period of two years.

Police v TH

The defendant was charged with choking his partner. When police attended the victim's residence on the date of the offence, she participated in an interview known as a 'family violence evidence in chief interview,' detailing how the offender had choked her. The offender was initially remanded in custody, and while in custody the relationship between the victim and the defendant re-commenced. Following this, the victim advised police and the DPP she did not want to proceed with the matter and that the injuries had been occasioned to her during a consensual encounter with the defendant.

Consistent with the Office's policy in relation to family violence matters, notwithstanding her desire for the matter to be discontinued, it was determined that the serious nature of the incident meant it remained in the public interest to continue the prosecution. The offender pleaded not guilty, and the matter proceeded to hearing in May 2023.

During the course of the hearing, the victim stated that while the offender had been in custody, he had pressured her to change her original statement. She gave evidence at the hearing that notwithstanding her earlier statements, she had been untruthful to police, she was in fact telling the truth about him having choked her. He was found guilty of the choking charge and sentenced to 11 months imprisonment. After this hearing, the offender pleaded guilty to other serious allegations of violence against the same victim which had occurred while he was on bail for the above matter. He is awaiting sentence on those matters.

Police v N L

This matter involved two separate instances of family violence committed against the defendant's partner. The first incident involved a charge of choking and of assault occasioning actual bodily harm. The victim sustained significant bruising to her arms, legs and face. The second incident took place some months later, and the defendant was charged with choking the victim, damaging property and two charges of assault occasioning actual bodily harm. On that occasion, the defendant slapped, punched and choked the victim before ultimately stomping on her back while she lay in the bathtub. This resulted in a fracture of her coccyx, injuries to her spine as well as bruising.

All charges proceeded to a defended hearing in the Magistrate's Court in December 2022. The victim and a forensic medical officer gave evidence in the prosecution case. The defendant was ultimately found guilty of all charges except the damage property charge. He was sentenced to a total term of imprisonment of four years and six months, with a non-parole period of two years. He subsequently appealed the conviction and the sentence, however, later abandoned the conviction appeal. The appeal against sentence was dismissed.

B.2.8 Witness Assistance Service

The Witness Liaison Officers (WLOs) of the Witness Assistance Service (WAS) at the ODPP assists the Director in engaging with victims of crime and witnesses. The WAS meet the Director's obligations under the *Victims of Crimes Act 1994*, acting as a bridge between prosecutors and vulnerable witnesses and their family members.

The WAS can contact and provide information on the criminal justice system, update vulnerable witnesses at significant milestones of the court process, assist with referrals to support services and the Intermediary Program, act as a liaison point between prosecutors and witnesses, assist in preparing witnesses for court, and assist with preparing victim impact statements. The WAS also provide court support as a last resort when other supports are unavailable.

The WAS however primarily focuses on assisting vulnerable witnesses in sexual offences and matters where children are required to give evidence. When referred by a prosecutor, the WAS

may also assist with some family violence matters, matters that involve serious crimes such as murder, complex matters with multiple vulnerable witnesses, and other crimes where victims and vulnerable witnesses require support and assistance. Where the WAS is involved, the WLO is often the consistent liaison point between the vulnerable witness and the prosecutor throughout the criminal court process.

WAS continued to provide information sessions for prosecutors and prosecutor associates new to the ODPP. Also in April 2023, the Family Violence Supervising Prosecutor conducted a training session on Family Violence prosecutions (sexual and gender-based violence) for the Pacific law and justice agencies and police officers, as part of the Pacific Legal Policy Champions Program, which was facilitated through the Australian Government Attorney General's Department (AGD's). The WAS attended and presented on the role of Witness Assistance Service and the supports available within the ACT.

The WAS continue to liaise and collaborate with other major stakeholders and support agencies such as ACT Policing VLO (Victim Liaison Officers), VSACT (Victim Support ACT), DVCS (Domestic Violence Crisis Service), CRCC (Canberra Rape Crisis Centre), to ensure victims are offered the relevant support.

The WAS continues to provide updated relevant information for the weekly Family Violence Case Tracking meeting as part of ODPP's involvement in the FVIP (Family Violence Intervention Program). The forum ensures that assistance is offered to those identified as not receiving or engaging support throughout the court process.

Throughout the reporting period there have also been additional responsibilities for WAS, including record and maintain the register of victim's complaints, contacting victims when matters are dealt with in pursuant to s309, and increased communication with ACT Policing.

In accordance with subdivision 3A.7.2 of the *Victims of Crimes Act 1994* (ACT) (VOC Act), the justice agency complaint information is available on the ODPP website. A justice agency complaint is defined in s 18D of the VOC Act. A victim can complain if they believe the DPP has not complied with their victims' rights, or if a victim is otherwise dissatisfied with the DPP's service in relation to victims' rights. Justice agency complaints by a victim are referred to WAS and to the appropriate prosecutor to review the matter. The WAS maintain a register of complaint matters. Nil matters were referred to the Victim Complaints Register for the 2022–2023 financial year.

As of November 2022, when a defendant is dealt with in pursuant to s309 in the Magistrates Court, the PAL notify the WAS, for the ODPP to update the FV victim that the matter was in court, but the defendant was not in a position to make a bail application, and the matter will return to court in the coming days.

Effective as of May 2023, WAS increased communication with police informants and the ACT Policing VLO. This provides confirmation that WAS has provided relevant updates and information to the sexual offence victim, or advice that contact attempts were unsuccessful.

B.2.8.2 Disability Liaison Officer

In May 2021, a Disability Liaison Officer (DLO) was recruited in accordance with the Disability Justice Strategy, to ensure people with a disability have access to appropriate resources and information and feel recognised throughout their interactions within the justice system.

Throughout the 2023 – 2023 reporting period, the role of DLO has continued as an important part of the Witness Assistance Service (WAS). During this time, the DLO role has grown along with the case load. This has included;

- › Making support referrals to outside agencies;
- › Ensuring victims are up to date with Court proceedings;
- › Supporting victims at hearings or trials;
- › Assisting victims in writing Victim Impact Statements;
- › Making reasonable adjustments for victims with disabilities within the criminal justice space;
- › Attending disability awareness training; and
- › Creating and translating information on the DPP website to be accessible.

Alongside the practical element of the role, the DLO has been working on systemic change and improving Office functions within the DPP. Last year, the DLO translated a large amount of information for victims available on the DPP website to a Plain English format. The DLO also created a DPP specific ‘Social Script’, a resource useful for Autistic people that uses storytelling techniques to explain new and potentially stressful experiences. Since then, several more were created for different scenarios including giving evidence in Court. Due to the content of these scripts, they can be accessed by upon request to the DPP WAS team directly.

Improvements and software upgrades to CASES continue, with data capturing, consistency in information sharing and identification of disability all contributing to the DPP’s commitment to the pillars of the Disability Justice Strategy.

Throughout the reporting period, the DLO has continued to provide reasonable adjustments for victims and witnesses, including on-site meetings for those who are not physically able to travel to the DPP office, and extra support managing complex matters. Therapy and fidget toys have been provided to young witnesses or those with sensory disabilities to ensure a comfortable, inclusive, and accessible environment.

The creation of a Disability Action and Inclusion Plan (DAIP) began mid-2022, with DPP members of staff attending masterclass workshops on how to research and create a DAIP for the Office. The DAIP is a working document designed to ensure that the Office has a roadmap to improving the justice system for people with disabilities. The DAIP continues to be developed and written.

The DLO continues to meet every fortnight with other DLOs from criminal justice agencies in a Community of Practice, supported by the Disability Justice Strategy team and Office for Disability staff.

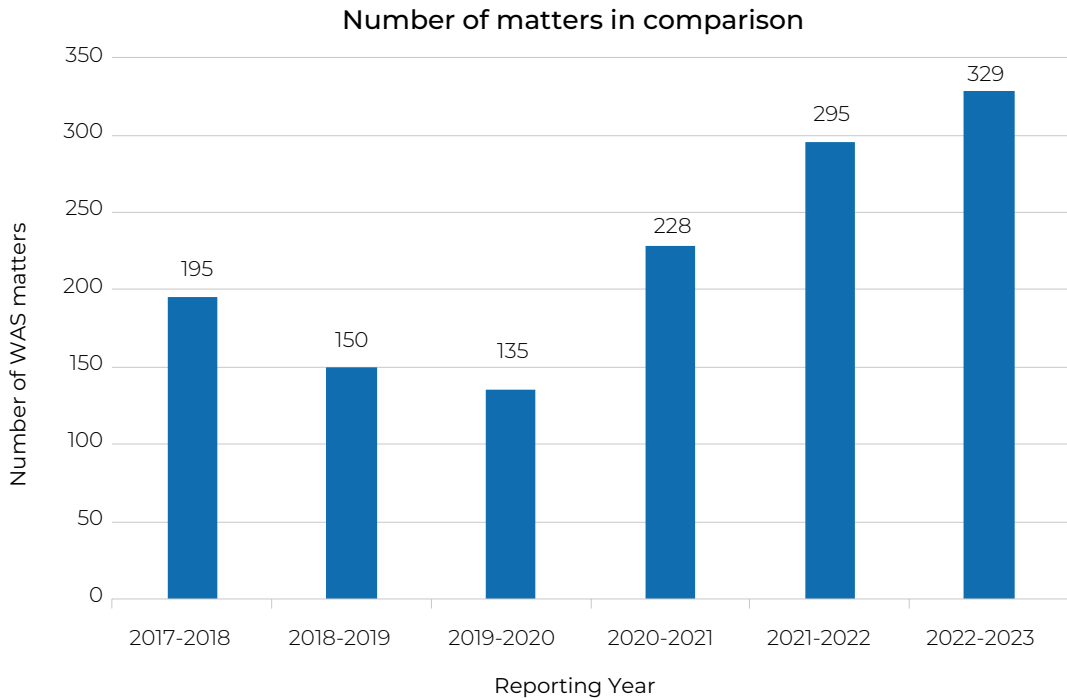
B.2.8.3 Breakdown of WAS matters – 1 July 2022 to 30 June 2023

A breakdown of all matters involving the WAS in the reporting year is provided below:

Offence type Categories	Number of WAS matters	Percentage*
Adult Sexual Assault	106	32.2
Child Sexual Assault	89	27.1
Historical Sexual Assault	36	10.9
Less Serious Violence Offences (adult)	7	2.1
Less Serious Violence Offences (child)	2	0.6
Serious Violence Offences (adult)	30	9.1
Serious Violence Offences (child)	1	0.3
Child Pornography	2	0.6
Other	46	14
Significant Trauma	1	0.3
Death	8	2.4
TOTAL	328	99.6

*Figures have been rounded up after the first decimal point.

WAS continues to assist with increasingly complex matters, the below graph outlines the increase in WAS matters over the last six financial years:



B.2.9 Confiscation of Criminal Assets

The Director's powers under the *Confiscation of Criminal Assets Act 2003* ('COCA Act') remain effective tools in combatting serious and organised crime. The COCA Act is founded on the core tenet of public policy that a person should not be enriched by the commission of an offence. To this end, the ODPP pursues the restraint and forfeiture of property where there is clear evidence the property was either used in the commission of an offence or the property is the proceeds of crime. The restraint and forfeiture of assets also acts as a key deterrent to criminal activity.

The ODPP administers the Director's powers under the COCA Act by initiating confiscation proceedings in both the Magistrates Court and Supreme Court. The Office has a team of specialised lawyers dedicated to working on confiscations proceedings (COCA Team). In such proceedings, the Court may order the restraint or forfeiture of property derived from, or used in the commission of, an offence. The Court may also order the defendant pay the Territory the value of benefits they derived from the offence. These proceedings ensure that no person is enriched by engaging in criminal activity and deprives persons of any property used, or intended to be used, in the commission of an offence. By initiating restraint, forfeiture and penalty order proceedings on behalf of the Director, the ODPP confiscations team facilitates the administration of the COCA Act.

The COCA Team also enables the effective use of auxiliary information gathering functions provided for by the COCA Act. The COCA Team applies to the Courts for examination orders for persons suspected to have information or documents relating to ongoing criminal investigations. They then oversee the production of documents and compulsory examinations of offenders and their associates under the examination orders. The COCA Team works closely with the AFP's Criminal Assets Investigations Team (CAIT) and representatives from the Public Trustee and Guardian in carrying out their functions under the COCA Act.

Over the reporting period, the COCA Team expanded with the addition of a Senior Lawyer. Confiscation proceedings are complex and resource and time intensive. The addition of the Senior Lawyer provides an opportunity for the COCA Team to proactively pursue unexplained wealth proceedings under Pt 7A of the Act which have presented resourcing challenges to date.

In addition to the expansion of the COCA Team, CAIT successfully recruited a forensic accountant. Expert accounting opinions are vital to the work of the COCA Team in respect of both bringing and maintaining confiscations proceedings, the absence of a dedicated forensic accountant has limited the applications brought by the COCA Team to date. The addition of a dedicated forensic accountant has also expanded CAIT's investigative ability which will allow the COCA team to target more complex types of crime derived property.

Over the reporting period, the COCA team used the Act's compulsory examination powers more than in any other reporting period. Due to the nature of these proceedings, they cannot be reported on in detail in this report. The exercise of compulsory examination powers are both resource and time intensive, however, they are an invaluable tool in disrupting serious and organised crime. The expansion of the COCA Team will allow more compulsory examinations to take place whilst maintaining the operation of the rest of the confiscations practice.

Over the reporting period, the ODPP restrained property with an estimated accumulated value of \$3.9M.⁵ Property that was restrained during the financial year included four residential properties, five motor vehicles, one bank account and 10 seizures of cash totalling \$203,464. Within the reporting period, the Public Trustee and Guardian distributed a total of \$2,285,826.54⁶ from the Criminal Asset Trust, being the net proceeds of forfeited property and penalty orders. It is worth noting, however, that the object of the Act is not to raise money but to take away the profits from criminal activity.

B.2.9.1 COCA Cases

In the matter of an application under the Confiscation of Criminal Assets Act

The Defendant in this matter was the owner of a residential property in suburban Canberra. The house had been renovated such that it comprised of three self-contained units. The

⁵ Estimated value of restrained property is gross value only and does not take into account the value of any encumbrances.

⁶ Distributions from the Criminal Assets Trust were made in September 2022 and March 2023. Accordingly, distributed funds may include funds from assets that were forfeited outside of the reporting period.

Defendant and his family resided in one unit and rented out one unit to a tenant. In the third unit, the Defendant was operating a sophisticated cannabis grow house.

The Defendant was charged with cultivating a trafficable quantity of a controlled plant contrary to section 616(5) of the *Criminal Code 2002* (ACT). The Director subsequently applied for a restraining order over the Defendant's residential property on the basis that it was tainted and liable for forfeiture.

The Defendant was convicted of the trafficking offence and sought to exclude the property from forfeiture on the basis that it was not tainted. The Defendant's spouse also brought a separate exclusion order application, claiming that the Defendant held half of the property on constructive trust for her, based on financial and non-financial contributions made by her during their relationship.

The Director opposed both applications. The Defendant's application was opposed on the basis that as the property was used in the commission of the offence as it had been modified to facilitate and conceal the cannabis grow house. The spouse's application was opposed on the basis that the circumstances of her relationship with the Defendant did not give rise to a constructive trust.

The matter resolved without a hearing, on a non-admissions basis, with the Defendant agreeing to pay a penalty order equal to his equity in the property and the spouse purchase the whole of the property for market value.

The resolution of the proceedings saw the Defendant lose his interest in property and represented a gain to the Territory of \$407,403.

Op Montrose

The Defendant in this matter came to the attention of Police following investigations into drug trafficking in the Territory. Police executed a search warrant on the Defendant's vehicle and a connected box trailer, in which they discovered 400g of cocaine, with a street value of between \$122,000 and \$163,000.

The Defendant was charged drug trafficking contrary to s 603(7) of the *Criminal Code 2002* (ACT). The Director applied for a restraining order over the vehicle and box trailer on the basis that they were tainted property and restrained the Defendant's interest in a residential unit for the purposes of enforcing a penalty order for the value of the cocaine.

The Defendant was convicted of the trafficking offence in August 2022. The Defendant subsequently brought an application to exclude his interest in the unit from forfeiture. The Director gave notice that he would oppose the exclusion order on the basis that the unit was required to satisfy a penalty order for the value of the cocaine, which was equal to the value of the Defendant's interest in the unit. The Defendant ultimately withdrew his exclusion order application and the interest in the unit was forfeited to the Territory. The matter resulted in the forfeiture of approximately \$140,000 worth of property.

B.2.10 Work Safety

The Office has a Work Safety Unit which is dedicated to prosecuting offences against the *Work Health and Safety Act 2011* (ACT) and *Work Health and Safety Regulation 2011* (ACT), and which works closely with WorkSafe ACT in relation to matters proceeding to prosecution before the courts.

Work safety breaches can be dealt with in various ways including through out-of-court mechanisms such as enforceable undertakings or the issuing of infringement notices which carry substantial financial penalties. However, where such avenues of compliance are either inappropriate or have been exhausted, prosecutions will be instituted by this Office in the ACT Industrial Court.

B.2.10.1 WHS Cases

Hawker Roofing Pty Ltd

The defendant company was undertaking roof repairs at a pre-school in Hughes. It had a safe work method statement which required its workers to use fall protection when working from heights. In July 2022, a worker was engaging in repairs on the roof of a building at a height of 2.93m without a harness or any other form of fall prevention device.

The defendant did not pay an infringement notice issued by WorkSafe ACT for failing to comply with its safe work method statement. A prosecution was instituted against the defendant in the ACT Industrial Court. Subsequently, the defendant paid the infringement notice penalty and the court proceedings against it were discontinued.

Agnew Building Supplies Pty Ltd

The defendant company operated a business in the supply of building material. It owned a truck which had a vehicle mounted crane installed. The crane had operating controls on both the driver side and the passenger side to enable the crane operator to stand on the opposite side of the truck from which the crane boom and the load were moving. The crane's operating controls on the driver side became broken. In April 2021, a worker used the crane to lift a timber load weighing over 800kg. The worker was using the operating controls at the passenger side such that he was working underneath the suspended load. The load gave way and fell on top of the worker. The worker suffered bleeding between the brain and the skull, and sustained fractures to his eye socket, ribs and spine.

The Director prosecuted the defendant for failing to, amongst other things, provide safe plant to its workers. The defendant pleaded guilty to a Category 2 charge (Failure to comply with health and safety duty) and was convicted and fined \$300,000 (reduced from \$400,000 due to its guilty plea) by the ACT Industrial Court.

B.2.10.2 Breakdown of WHS matters

The table below reflects the WHS matters prosecuted by the ODPP in the reporting period.

Act	Matters (No.)	Proved/Fine Paid
<i>Work Health and Safety Act 2011</i>	4	2 (proved)

B.2.11 Regulatory Matters

As well as prosecuting the typical criminal offences that occur in the ACT, the ODPP also has responsibility for prosecuting offences which relate to the contravention of various regulations. These regulations are created to ensure that appropriate health, safety and protection standards are adhered to in the ACT. These matters cover a diverse range of regulatory offences; and they are referred to our Office from various regulatory agencies – such as offences relating to the neglect or mistreatment of animals, referred by the RSPCA; offences relating to improper handling or preparation of food sold by restaurants or cafes, referred by ACT Health; offences relating to noise pollution by home-owners, referred by the ACT Environment Protection Authority; or offences relating to the construction of buildings in the ACT, referred by Access Canberra.

B.2.11.1 Breakdown of regulatory matters

The below table sets out the number of regulatory matters that were finalised by the ODPP during the reporting year, and the regulatory agencies that referred them to us:

- › The RSPCA
- › Access Canberra
- › Transport Canberra and City Services (TCCS)

Act	Matters (No.)	Proved/Fine Paid
<i>Animal Welfare Act 1992</i>	2	1 (proved) 1 (dealt with under the mental health provisions)
<i>Agents Act 2003</i>	1	1 (proved)
<i>Public Unleased Land Act 2013</i>	5	3 (proved)
<i>Litter Act 2014</i>	1	1 (proved)
<i>Litter Act 2004</i>	2	2 (not proved)
Total	11	6 (proved)

When a regulatory matter is referred to our Office, the regulatory agency ordinarily provides a Brief of Evidence relating to the potential offence or offences alleged to have occurred.

Often this agency will also provide our Office with a recommendation as to what potential charges it believes arise from the facts. The ODPP then carries out a review and assessment of this evidence. Following this, and in consultation with the relevant regulatory agency, our Office determines whether a prosecution should commence – and (if so) what charges are warranted.

There are certain types of regulatory offences that are commonly referred to the ODPP, such as matters relating to animal cruelty or animal neglect. These are referred to our Office by the RSPCA and TCCS. In some of these RSPCA cases, the defendants can have significant mental health issues and challenges which sometimes contributed to their offending conduct. In one such recent RSPCA matter, the Court determined that the best way forward was to refer the defendant to the ACT Civil and Administrative Tribunal for mental health assessment and treatment, rather than dealing with the matter within the normal criminal jurisdiction. There are many other types of regulatory matters referred to the ODPP. One example of this was a recent matter where the defendant, who was a real estate agent, was charged under the *Agents Act 2003* (ACT) with using trust monies deposited by clients of the real estate agency for the defendant’s own personal use. In this matter, the defendant ultimately paid back the money to the clients. The defendant also appeared to express genuine contrition for this unlawful and unauthorised conduct. In this particular case, the defendant was convicted and ordered to pay a fine of \$1,500.

B.2.12 Parking Matters

The ODPP also prosecutes parking infringements.⁷ As shown in the table below, there were a total of 423 parking matters completed in the financial year. This was inclusive of 48 convictions, five dismissed charges and 16 charges proven but no convictions recorded. For the majority of the remaining parking infringements there was no evidence offered by the prosecution. Often this happens because the offender has responded to the infringement notice and paid the fine before the hearing date.

Parking matters managed by the ODPP in the reporting period are reflected below.

	Matters
Conviction	48
Proved no conviction	16
Dismissed	5
Withdrawn	5
No evidence to offer	349
Total	423

⁷ Infringements are issued by Access Canberra and the AFP for breaching the current *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Safety and Traffic Management) Act 1999*.

B.2.13 List Team

The list team is currently comprised of seven prosecutor associates, a senior prosecutor and a supervising prosecutor. The team also includes three paralegals who assist in the administrative preparation of files and provision of material to defence practitioners. Prosecutor associates are junior lawyers, and the list team is generally their first advocacy role.

The prosecutor associates in the list team appear in the Magistrates Court A1 general list and A2 bail list. The A1 list sits four days a week and the A2 list sits every day. The list team also appears in the Childrens Court list, which deals with bail applications, sentences, mentions and other applications in relation to young people charged with criminal offences. Nearly all criminal matters in the ACT commence in one of these lists, so the work of the list team is critical to the operation of the office.

In 2023, the list team has also continued to appear in the Galambany Bail Court. The Galambany Bail Court sits weekly to hear applications from eligible Aboriginal or Torres Strait Islander defendants who wish their bail application to be heard in that court rather than the A2 bail list. Prosecutor associates appear in two to three substantive lists per week.

Given the volume and wide range of matters in which the prosecutor associates appear (including bail applications, complex sentences, forensic procedure applications, extraditions and committals to the Supreme Court) they gain skills and experience quickly. This prepares them well for future career opportunities within the Office.

B.2.14 ODPP Statistics (from 1 July 2022 to 30 June 2023)

The statistics used in this Annual Report are generated from the ODPP's Criminal Advocacy Support and Enquiry System ('CASES'). These statistics comply with the Australian Bureau of Statistics ('ABS') standards for the characteristics of defendants dealt with by criminal courts.⁸ A fundamental aspect that is different, is that the ABS standard reports against defendants rather than charges.

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 matters 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.

⁸ See *Criminal Court, Australia - National statistics about defendants dealt with by criminal courts including demographic, offence, outcome and sentence information* at <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release> (previously referred to as catalogue 4513.0).

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 by ABS 4513.0,⁹ 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.

Other matters may be reported as being conducted rather than completed, which would capture matters that have been prepared and argued in court, and are awaiting the court handing down its judgment, that can sometimes take a number of months.

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 16 divisions used for the classification of offences for statistical purposes within the ANZSOC are set out in ABS 1234.0.¹⁰ Where tables refer to matters being “disaggregated by matter type”, this is a reference to the ANZSOC divisions. The National Offence Index (‘NOI’)¹¹ is a ranking of all ANZSOC groups and supplementary ANZSOC codes.¹² 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.

B.2.14.1 Total matters finalised by jurisdiction

Description	Matters
Childrens Court	273
Magistrates Court	4251
Industrial Court	4
Supreme Court	203
Court of Appeal	28
High Court	1
Total	4760

*Note: Childrens 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.

9 See *Criminal Court, Australia - National statistics about defendants dealt with by criminal courts including demographic, offence, outcome and sentence information* at <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release> (previously referred to as catalogue 4513.0).

10 See *catalogue 1234.0, Australian and New Zealand Standard Offence Classification (ANZSOC)*, 2011 at <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0>.

11 See *1234.0.55.001 - National Offence Index, 2018* at <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0.55.001>

12 The NOI has been developed by the ABS as a statistical tool to enable the output of nationally comparable offence information within the field of crime and justice statistics. The NOI is a tool which provides an ordinal ranking of the offence categories in the ANZSOC according to perceived seriousness in order to determine a principal offence. The purpose of the NOI is to enable the representation of an offender by a single offence in instances where multiple offences occur within the same incident or where defendants have multiple charges in criminal cases.

B.2.14. Matters finalised disaggregated by matter type

Description	Matters
Homicide and related offences	
Childrens Court	3
Magistrates Court	6
Industrial Court	
Supreme Court	14
Court of Appeal	1
High Court	
Sub Total	24
Acts intended to cause injury	
Childrens Court	81
Magistrates Court	558
Industrial Court	
Supreme Court	21
Court of Appeal	3
High Court	
Sub Total	663
Sexual assault and related offences	
Childrens Court	3
Magistrates Court	105
Industrial Court	
Supreme Court	39
Court of Appeal	9
High Court	1
Sub Total	157
Dangerous or negligent acts endangering persons	
Childrens Court	9
Magistrates Court	141

Description	Matters
Industrial Court	
Supreme Court	12
Court of Appeal	
High Court	
Sub Total	162
Abduction and related offences	
Childrens Court	6
Magistrates Court	107
Industrial Court	
Supreme Court	15
Court of Appeal	2
High Court	
Sub Total	130
Robbery, extortion and related offences	
Childrens Court	42
Magistrates Court	52
Industrial Court	
Supreme Court	25
Court of Appeal	1
High Court	
Sub Total	120
Unlawful entry with intent/burglary, break and enter	
Childrens Court	20
Magistrates Court	102
Industrial Court	
Supreme Court	28
Court of Appeal	6
High Court	

Description	Matters
Sub Total	156
Theft and related offences	
Childrens Court	38
Magistrates Court	236
Industrial Court	
Supreme Court	9
Court of Appeal	
High Court	
Sub Total	283
Deception and related offences	
Childrens Court	1
Magistrates Court	24
Industrial Court	
Supreme Court	4
Court of Appeal	
High Court	
Sub Total	29
Illicit drug offences	
Childrens Court	1
Magistrates Court	100
Industrial Court	
Supreme Court	14
Court of Appeal	3
High Court	
Sub Total	118
Weapons and explosives offences	
Childrens Court	11
Magistrates Court	90
Industrial Court	

Description	Matters
Supreme Court	8
Court of Appeal	
High Court	
Sub Total	109
Property damage and environmental pollution	
Childrens Court	19
Magistrates Court	149
Industrial Court	
Supreme Court	4
Court of Appeal	
High Court	
Sub Total	172
Public order offences	
Childrens Court	9
Magistrates Court	66
Industrial Court	
Supreme Court	2
Court of Appeal	
High Court	
Sub Total	77
Road traffic and motor vehicle regulatory offences	
Childrens Court	22
Magistrates Court	2210
Industrial Court	
Supreme Court	3
Court of Appeal	
High Court	
Sub Total	2235

Description	Matters
Offences against justice procedures, government security and government operations	
Childrens Court	7
Magistrates Court	283
Industrial Court	
Supreme Court	3
Court of Appeal	1
High Court	
Sub Total	294
Miscellaneous offences	
Childrens Court	1
Magistrates Court	22
Industrial Court	
Supreme Court	1
Court of Appeal	
High Court	
Sub Total	24
Coronial	
Childrens Court	
Magistrates Court	
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	0
Total	4753

*Notes: Parking and traffic camera matters were previously counted under the 'MIS-Miscellaneous' category but are now counted in the 'TRA-Traffic' category so there is a reduction in matters in the 'MIS' category and an increase in matters in the 'TRA' category.

B.2.14.3 Committals to the Supreme Court

Description	Matters
Childrens Court	8
Magistrates Court	207
Industrial Court	
Total	215

B.2.14.4 Plea of Guilty after Committal for Trial

Description	Matters
Plea of guilty after committal for trial	39
Plea of guilty after trial listed	18
Total matters subpoenas issued	17
Plea of guilty on day of trial	4
Plea of guilty within one week of trial	3
Plea of guilty within 2-4 weeks of trial	4
Plea of guilty more than 4 weeks before trial	7

B.2.14.5 Committals to the Supreme Court disaggregated by matter type

Description	Childrens Court		Magistrates Court		Industrial Court		Total
	Trial	Sentence	Trial	Sentence	Trial	Sentence	
Homicide and related offences		2	5	1			8
Acts intended to cause injury			11	8			19
Sexual assault and related offences	2		46	13			61
Dangerous or negligent acts endangering persons			7	10			17
Abduction and related offences		1	12	4			17
Robbery, extortion and related offences		3	22	9			34
Unlawful entry with intent/burglary, break and enter			17	11			28
Theft and related offences			2	10			12
Deception and related offences				2			2
Illicit drug offences			4	3			7
Weapons and explosives offences			2	3			5
Property damage and environmental pollution				2			2
Public order offences				1			1
Road traffic and motor vehicle regulatory offences							0
Offences against justice procedures, government security and government operations			1	1			2
Miscellaneous offences							0
Total	2	6	129	78	0	0	215

B.2.14.6 Supreme Court Matters

Description	Matters
Trials	
Trials	43
Trial Days in Court	312
Trial Outcomes	
Guilty Verdicts	19
Not Guilty Verdicts	9
Other**	13
Awaiting verdict	2
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/ changed pleas or re-sentenced after breach	95
Notices declining to proceed further	17

*Note: This includes trials which resulted in a hung jury or were aborted. Such matters are not "finalised" for the purposes of the table on 'Total matters finalised by jurisdiction' at B.2.14.1 at page 89 and the table on 'Matters finalised disaggregated by matter type' at B.2.14.2 on page 90.

B.2.14.7 Appeals

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	33	6	39
Court of Appeal	24	11	35
High Court	2		2
Total	59	17	76

*Note: The calculation of these figures has changed. These figures only include those matters which the appeal was heard during the reporting period, or the appeals were discontinued, withdrawn, or in respect of which leave to appeal was refused. Instances where an appeal was heard in the previous financial year and reserved, with a decision handed down in the financial year are not counted in the above figures.

B.3 Scrutiny

The ODPP is subject to scrutiny from the ACT Auditor-General, the ACT Ombudsman and the Integrity Commission. There were no relevant reports during the financial year. From time to time, the Director appears before various committees of the Legislative Assembly. During the financial year, the Director appeared at Estimates on 18 July 2023, and Annual Report Hearings on 8 November 2022.

B.3.1 Audit of Reviewable Decisions

Pursuant to the recommendations in the *Criminal Justice Report* of the RCIRCSA,¹³ *Director's Instruction No. 14.1*¹⁴ and *Director's Instruction No. 14.2*¹⁵ were issued. These Director's Instructions are in relation to decisions to discontinue prosecutions, and the review of such decisions. *Director's Instruction 14.2* specifically provides that an audit is to be conducted on decisions that have been subject to review during the financial year. This is to ensure that the relevant procedures have been complied with by the Office in relation to the reviews of decisions to discontinue prosecutions. Thus, an Audit Committee was formed at the end of the financial year to look into all the automatically reviewable decisions during the 2022–2023 financial year. The *Audit Report* and its accompanying *Record of Reviewable Decisions - Audit 2022–2023* are located in Appendix D (page 142) and E (page 149) respectively.

B.4 Risk Management

The ODPP's risk management arrangement is primarily managed under the broader risk management framework of the Justice and Community Safety Directorate to provide a more consistent, holistic and synergistic approach to risk management. The approach emphasises that the management of risk is the responsibility of all employees within the Office. This methodology underpins the Office's governance framework and provides strategies that are linked to the nature, aims and objectives of ODPP and reflect a risk management approach to business.

B.5 Internal Audit

The ODPP's internal audit arrangements are primarily managed under the broader enterprise risk management framework of the JACS Directorate. The focus of internal audit within ODPP is to review and provide opportunity for business operations and controls as part of the ODPP's governance framework and continuous improvement.

13 Refer to recommendations 40-43 of the Royal Commission into Institutional Responses to Child Sexual Abuse (*Criminal Justice Report*, Parts III to VI, 2017).

14 Refer to Appendix B on page 133 for *Director's Instruction No. 14.1 - Review of a Decision to Discontinue a Prosecution*.

15 Refer to Appendix C on page 134 for *Director's Instruction No. 14.2 - Reviewable Decisions to Discontinue - Contact with Complainants, Review Processes and Auditing*.

The JACS Directorate's responsibility under the *Financial Management Act 1996* includes the maintenance of an Audit Performance and Improvement Committee ('APIC') to consider governance structures as outlined in the ACT Government's Internal Audit Framework. The APIC is an integral part of the governance arrangements of the JACSD, with particular emphasis being placed on better practices, continuous improvement, internal control mechanisms, risk management strategies, internal audit and ethical behaviour and integrity. Details of the APIC's arrangements can be found in the JACS Directorate's 2022–2023 Annual Report¹⁶.

B.6 Fraud Prevention

The ODPP has a number of measures in place to ensure guard against fraud and corruption. These include:

- › A conflict of interests register;
- › Strict accounting and recording procedures in relation to cash payments;
- › The requirement that at least two people be involved in the approval process for the expenditure of any money; and
- › A prohibition on prosecutors discontinuing a matter which they have carriage of. Where a prosecutor wishes to discontinue a matter they have carriage of, approval is required by a more senior lawyer.

The ODPP's fraud and corruption measures are also integrated into the JACSD's Fraud and Corruption Prevention Plan, which provides the framework for raising awareness of, and reducing and managing instances of fraud and corruption in the JACS Directorate.

There have been one report or allegations of fraud or corruption received and/or investigated during the financial year. It does not relate to a prosecution the office has had carriage of. The matter is still under investigation.

B.7 Freedom of Information

The *Freedom of Information Act 2016* ('FOI Act') commenced on 1 January 2018, replacing the *Freedom of Information Act 1989*.

Under the FOI Act, the ODPP must make information proactively available via an open access scheme. If the information is not available on the Open Access Website,¹⁷ the person seeking information is encouraged to contact the ODPP before resorting to the more formal FOI procedure. In many cases it may be possible to access information more quickly and efficiently

¹⁶ <https://www.justice.act.gov.au/about-us/annual-reports>

¹⁷ <https://www.act.gov.au/open-access>

through such an approach. However, if a formal access application is necessary under the FOI Act, then the application must include:

- › a clear description of the documents requested
- › an email or postal address of the applicant
- › evidence of identity if seeking personal information
- › authority for an agent to act if the applicant has engaged a lawyer or is represented by a third party

The FOI application may be sent in writing to the ODPP postal address or by email to foiactdpp@act.gov.au. Further information on FOI applications can be found on our website at <https://www.dpp.act.gov.au/publications/freedom-of-information>

The ODPP is also required to maintain a disclosure log¹⁸ in accordance with section 28 of the FOI Act. Information provided to an applicant through an FOI request is published on the disclosure log between three and 10 working days after the decision notice has been sent out to the applicant. The disclosure log includes the following information:

- › the FOI application
- › the decision notice
- › the documents / information released pursuant to the request

Nevertheless, applications for personal information will not be published on the disclosure log. If the information requested is of a highly sensitive nature, this too will not be published on the disclosure log.

¹⁸ <https://www.dpp.act.gov.au/publications/freedom-of-information>

B.7.1 FOI Access Applications

Information about freedom of information access applications made under the FOI Act during the financial year is provided below.

Access Applications	Total
On hand at the beginning of the financial period	1
Received during the financial period	9
Finalised / completed	7
On hand at the end of the financial period	2
Decided within timeframe (section 40)	7
Decided outside timeframes but within extended timeframes agreed to with the applicant (section 40)	0
Decided outside timeframes but within extended timeframes agreed to with the Ombudsman (section 40)	0
Not decided within the statutory timeframes in the FOI Act, i.e. deemed decisions.	0
Where a fee or charge was applied	0
For Ombudsman review (section 74)	0
Applications made to ACAT	0
Decisions confirmed through Ombudsman review (section 82(2)(a))	0
Decisions varied through Ombudsman review (section 82(2)(b))	1
Decisions set aside and substituted through Ombudsman review (section 82(2)(c))	0
Where a decision gave full access (section 35(1)(a)).	2
Where a decision gave partial access (section 35(1)(c)).	2
Where a decision refused access (section 35(1)(c)).	2
Decisions to publish open access information (section 24(1))	3
Decisions not to publish open access information (section 24(1))	2
Decisions not to publish a description of open access information withheld (section 24(1))	0
Requests made to amend personal information	0

B.8 Community engagement and support

The ODPP is not typically involved in consultation with the community on policy issues or prosecutorial decisions. It does, however, consult and interact with the AG, legal profession, AFP and ACTPS regulatory agencies on the development of policies, procedures and protocols. The ODPP's contribution to public policy is primarily through the JACSD. In addition, the Office does consult the victims about proposed decisions not to prosecute particular matters.

The following sponsorship was provided by the Director during the year ending 30 June 2023.

Organisation/Recipient	Project Purpose	Summary	Amount
University of Canberra	Sponsorship of prize in Criminal Law	Promotes excellence in criminal law studies, highlights the Office as a centre of excellence in the criminal law and contributes to the quality of criminal lawyers in the ACT	\$500 Engraved medal and cash prize

B.9 Aboriginal and Torres Strait Islander Reporting

In 2019 (calendar year), the ODPP launched its Office Employment Diversity Statement ('OEDS'), which aims to have a workforce commensurate with the community most impacted by its functions. The goal for the Office was to increase the number of indigenous staff to more than 5% of the workforce, to match the demographic representation of the broader population in Australia. We have exceeded this target.

Also in 2019, the Office initiated a 'work experience placement program' with the University of Canberra, aimed at indigenous students studying law at its Canberra Law School. The ODPP received a good response upon launching the placement program and hosted its first student on a 12-month placement from September 2019.

We are currently working with both the ANU and University of Canberra Law Schools to identify our next cohort of aboriginal or Torres Strait Islander law students. This result reflects our proactive measures in attracting and retaining aboriginal or Torres Strait Islander lawyers at all levels and either retaining them or preparing them for legal practice outside of the Office, and is an achievement not replicated in any other jurisdiction to my knowledge. This is the first program of its type in this Office and aims to get more indigenous lawyers appearing in court in gowns and wigs.

B.9.1 Office Employment Diversity Statement

The ODPP's OEDS is as follows:

- › This ODPP aims to promote employment equality, diversity and inclusion for those of all ages, colours, races, ethnic or national origins, sexual orientation, marital and parental status, physical impairment, disability and religious beliefs.
- › The ODPP recognises, respects, promotes and celebrates the value of diversity and adopts inclusive policies and strategies, and aims to have diversity within the ODPP workforce commensurate with the community most impacted by its functions.
- › The ODPP aims to have the number of indigenous staff not less than 5% of staff.
- › The ODPP aims to be an inclusive environment for LGBTQIA people, people of all religions, all races, and disabled people.
- › The ODPP will report annually on the percentage of its staff identifying with the following criteria;
 - (a) English not first language for self or at least one parent.
 - (b) Self or at least one parent born overseas.
 - (c) Identifies as Aboriginal or Torres Strait Islander.
 - (d) Identifies as LGBTQIA.
 - (e) Identifies as possessing a disability.

B.10 Work Health and Safety

The ODPP's Health and Wellbeing Policy outlines its commitment to the provision of a healthy and safe workplace.

Due to the challenging nature of work at the ODPP, staff are encouraged to utilise the Employee Assistance Program (EAP) available to them.

The Office works proactively with staff to prevent work related injuries, by offering ergonomic workstation assessments, and ergonomic office equipment, ensuring that staff are set up at their respective workstations or offices in a safe and correct manner. Further, the ODPP's WEGIEs¹⁹ is used as a forum to raise and escalate workplace health and safety concerns/risks to the DPP Executive for consideration and/or action.

The Office attends the JACSD Director-General Tier 1 Safety Health and Wellbeing Committee on a quarterly basis. This committee comprises representation from Senior Executives, Health and Safety representatives and unions. The Office had two elected Health and Safety representatives in the reporting period.

¹⁹ Refer to B.1.5.2 (Working Environment Group) on page 37

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

- › Health and wellbeing checks;
- › Mental Health First Aid training;
- › ACT government-funded influenza vaccine;
- › Fire Warden training;
- › First Aid training;

B.10.1 Notifiable incidents

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

The Office encourages the reporting of workplace incidents. Figures shown in the following table are based on data provided by the CMTEDD's Workplace Injury Performance Unit.

Events Notified to WorkSafe	*Total Incidents	Total Worker Incidents	Harassment Contacts
0	6	6	0

B.11 Human Resources Management

The ODPP has continued to support its staff wellbeing in a variety of ways including health and wellbeing initiatives and other professional training opportunities.²⁰ The Office has maintained its focus on supporting staff in dealing with the complex, challenging and confronting nature of work.

The health and wellbeing initiatives at the Office, inclusive of the Employee Assistance Program (EAP) and counselling sessions with specialist psychologists, has continued from previous years. These health and wellbeing sessions are optional, and staff are regularly encouraged to make full use of these services. The sessions afford an opportunity for staff to debrief and have personal and confidential discussions about any work-related stresses or personal issues.

During the reporting period, 18 staff at the Office participated in Mental Health First Aid training in addition to 98% of the Office in the previous year. The course covered the signs and symptoms of common and disabling mental health problems in adults, how to provide initial help, where and how to get professional help, what help has been shown by research to be effective, and how to provide first aid in crisis situations. Vicarious trauma training was also provided to staff with 69 staff completing this training.

²⁰ Refer to B.10 (Work Health and Safety) on page 103.

Legal staff also had the opportunity to participate in the training and seminar sessions organised as part of the ODPP's CPD program.²¹

B.11.1 ARIns Reporting

Three (3) ARIns were provided during the reporting year of which two (2) were terminated due to internal promotions.

B.11.1.1 Agency profile

Branch/Division	FTE	Headcount
Director of Public Prosecutions	97	103
Total	97	103

B.11.1.2 FTE and headcount by gender

	Female	Male	Non-Binary	Total
FTE by Gender	66.4	30.6	0	97.0
Headcount by Gender	71	32	0	103
% of Workforce	68.9%	31.1%	0%	100.0%

B.11.1.3 Headcount by classification and gender

Classification Group	Female	Male	Non-Binary	Total
Administrative Officers	7	1	0	8
Executive Officers	3	3	0	6
Legal Support	23	8	0	31
Prosecutors	34	18	0	52
Senior Officers	4	1	0	5
Statutory Office Holders	0	1	0	1
Total	71	32	0	103

²¹ Refer to B.1.5.3 (Continuing Professional Development - Ad hoc Committee) on page 38.

B.11.1.4 Headcount by employment category and gender

Employment Category	Female	Male	Non-Binary	Total
Casual	0	1	0	1
Permanent Full-time	54	26	0	80
Permanent Part-time	10	0	0	10
Temporary Full-time	7	5	0	12
Temporary Part-time	0	0	0	0
Total	71	32	0	103

B.11.1.5 Headcount by Diversity Group

	Headcount	% of Total Staff
Aboriginal and/or Torres Strait Islander	3	2.9%
Culturally & Linguistically Diverse	10	9.7%
People with a Disability	4	3.9%

B.11.1.6 Headcount by age group and gender

Age Group	Female	Male	Non-Binary	Total
Under 25	7	3	0	10
25-34	40	16	0	56
35-44	15	6	0	21
45-54	8	6	0	14
55 and over	1	1	0	2

B.11.1.7 Headcount by average years of service and gender

Gender	Female	Male	Non-Binary	Total
Average years of service	4.9	5.9	0	5.2

B.11.1.8 Recruitment and Separation Rates

Classification Group	Recruitment Rate	Separation Rate
Total	23.8%	14.7%

B.12 Ecologically Sustainable Development

The ODPP is committed to the principles of ecologically sustainable development, and whilst opportunities for significant contributions in this regard are limited, the following continuing efforts and waste reduction initiatives are maintained at the Office:

- › a recycling program with each member of staff having a separate recycling container and larger containers located throughout the Office;
- › the use of recycled paper and toner cartridges;
- › purchasing consumable items with recycling properties;
- › a policy of 'double sided' photocopying;
- › electricity conservation by maintaining a lights-off policy after hours or when staff are absent from work; and
- › minimising power by ensuring computers are turned off at the end of each day.

B.12.1 Sustainable development performance – current and previous financial year

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Stationary energy usage				
Electricity use	Kilowatt hours	129,839	107,782	20.5%
Natural gas use (non-transport)	Megajoules	N/A	N/A	N/A
Diesel use (non-transport)	Kilolitres	N/A	N/A	N/A
Transport fuel usage				
Electric vehicles	Number	N/A	N/A	N/A
Hybrid vehicles	Number	N/A	N/A	N/A
Hydrogen vehicles	Number	N/A	N/A	N/A
Total number of vehicles	Number	N/A	N/A	N/A
Fuel use – Petrol	Kilolitres	N/A	N/A	N/A

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
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)	Gigajoules	N/A	N/A	N/A
Water usage				
Water use	Kilolitres	Unavailable	Unavailable	
Resource efficiency and waste				
Reams of paper purchased	Reams	2,978	2,637	12.93%
Recycled content of paper purchased	Percentage	100%	100%	0%
Waste to landfill	Litres	30,960	37,440	-17.31%
Co-mingled material recycled	Litres	30,480	37,440	-17.31%
Paper & Cardboard recycled (incl. secure paper)	Litres	72,720	87,360	-16.76%
Organic material recycled	Litres	0	0	0%
Greenhouse gas emissions				
Emissions from natural gas use (non-transport)	Tonnes CO ₂ -e	N/A	N/A	N/A
Emissions diesel use (non-transport)	Tonnes CO ₂ -e	N/A	N/A	N/A
Emissions from transport fuel use	Tonnes CO ₂ -e	N/A	N/A	N/A
Total emissions	Tonnes CO ₂ -e	0	0	0%

Notes:

1. Please note that some data reported in the table above may differ slightly from figures reported in the Annual Report. These are due to updates to agency occupancy and historical consumption data. Where actual data is not available, the Enterprise Sustainability Platform provides estimations using an accrual function. Accruals are calculated from the average annual daily consumption of the most current 12-month period applied for the number of days of missing data.
2. No water consumption data is captured in the ESP for the ODPP's occupancy. The ACT Government is not formally billed for its water consumption as it is factored into the landlord's rent.
3. Emissions reported for stationary energy and transport fuels include Scope 1 and Scope 2 emissions only. Scope 1 are direct emissions from sources owned and operated by the government including; emissions from transport fuel and natural gas use. Scope 2 are indirect emissions from mains electricity.

C. Financial Management Reporting

C.1 Financial Management Analysis

Financial reporting obligations under the *Financial Management Act 1996* is reported by the JACS Directorate. ODPP is a downstream agency.

C.2 Financial Statements

The financial transactions of the Office for the year ending 30 June 2023 are subsumed within the audited financial statements of the JACSD. Any data that is provided below should be read in conjunction with the JACSD financial statements.

For information related to the budget outcomes please refer to the JACSD's audited financial statements for 2022-23 (Output 1.4).²² It should be noted that total expense in Output 1.4 include the JACSD's allocated overheads.

C.3 Capital Works

During the 2022–2023 reporting period, the Office undertook no capital works.

C.4 Asset Management

The Office managed assets with a total net book value of \$1.507m as at 30 June 2023. This comprised both leased and owned assets.

C.4.1. Assets Managed

Assets managed include:

Asset Category	Ownership	Qty
Leasehold Improvements	Owned	1
Plant and Equipment	Owned	3
Computer Software	Owned	1
Motor Vehicle Lease	Leased	3
Leasehold Improvements – Make Good	Leased	2

²² Refer to C.6 (Statement of Performance) on page 111.

During 2022-23, a Kodak Alaris i4250 scanner and a motor vehicle were added to the ODPP asset register.

During 2022-23, a motor vehicle was disposed of.

On 30 June 2023, the Office had no properties not being utilised or identified as surplus.

C.4.2 Asset Upgrades and Maintenance

Assets upgrades completed during 2022-23 include:

The expenditure on repairs and maintenance was \$29,675.05 which represents less than two (2) percent of the asset replacement value.

In 2022-23, the Office conducted no audits for building fit-out condition or hazardous materials.

C.4.3 Office Accommodation

The ODPP is in leased premises of the Reserve Bank building, adjacent to the Supreme Court and Magistrates Court buildings. The location is strategic being near where the Office conducts most of its core business. One hundred and three (103) staff occupied a total floor space of 1,974m². The current utilisation rate is 19.16m² per employee which is a decrease from 19.74m² in the last period.

C.5 Government Contracting

For year ending 30 June 2023, the online ACT Government Contracts Register records contracts with suppliers of goods, services and works, with a value of \$25,000 or more. Following are the suppliers of services with a value greater than \$25,000 recorded on the Register:

Output Class	Name of Contractor	Description or Reason for Contract	Expenditure 2022-2023	Date services commenced	Procurement Type
1.4	Thomson Reuters	Research Resources	\$73,977.95	01 July 2021	Single Select
	Itec Software Pty Ltd	Case Management System	\$50,000	01 July 2018	Single Select

These contracts do not address the Aboriginal and Torres Strait Islander Procurement Policy. Further information on this can be found in the 2022-2023 JACS Annual Report.

C.6 Statement of Performance

The following is extracted from the JACSD's audited financial statements for the financial year:

Output Class 1 Justice Services - Output 1.4 Public Prosecutions

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

	2022-23 Original Target	2022-2023 Actual	YTD Variance
Total Cost (\$'000)	16,439	18,961	15%
Controlled Recurrent Payments (\$,000)	15,763	16,210	3%
Accountability Indicators			
a) Average cost per matter finalised	\$3,000	\$3,987	33%
b) The percentage of cases where the brief is served within two weeks of it being received from the ACT Police	80%	86%	8%
c) The percentage of cases where the indictment case statement and questionnaire are filed within the timeframes specified at directions in the Supreme Court	80%	87%	9%

The higher than target total cost and average cost per matter finalised is mainly attributable to higher employee expenses as a result of backfilling of staff on leave, overtime, and termination payments and higher legal (external counsel) and witness expenses.

D. Territory records

The ODPP has a current Records Management Program (“the Program”) that has been approved by the Director. A copy has been provided to the Director of Territory Records. Records Management Procedures have been created and implemented throughout the office in accordance with the Program. Appropriate training and resources are available to staff to put the Program into effect.

Pursuant to section 19 of the *Territory Records Act 2002*, the Director of Territory Records approved the Records Disposal Schedule - Public Prosecution Records for the Office. Refer to *Territory Records (Records Disposal Schedule – Public Prosecutions Records) Approval 2018 (No 1)* being Notifiable Instrument NI2018—710, effective 14 December 2018.

The ODPP’s policy and procedures include specific arrangements for preserving records containing information that may allow people to establish links with their ATSI heritage. The Office is working on improving the process for established links via our case management system, CASES.

The ODPP has responded to the commencement of Part 3 of the *Territory Records Act 2002* which refers to ‘accessing an agency’s records’. Nevertheless, the Director of Territory Records has not made any section 28 declaration under Part 3 of the *Territory Records Act 2002*. The section 28 declaration is in relation to the application of provisions of the FOI Act.

E. Appendices

Appendix A

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 of the Australian Capital Territory.

Prosecution policy of the Australian Capital Territory

1. Introduction

1. On 1 July 1991 the *Director of Public Prosecutions Act 1990* ('the *DPP 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 ('the ACT').
 - 1.1 The *DPP 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 *DPP Act* the Attorney-General may give directions or furnish guidelines to the Director in relation to the performance or exercise by the Director of their 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 they have consulted with the Director. Any such direction or guideline is a notifiable instrument and must be presented to the Legislative Assembly.
 - 1.2 The *DPP 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.
 - 1.3 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*".
 - 1.4 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, they 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".

- 1.5 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*".
- 1.6 Further, the prosecution's right to be treated fairly must not be overlooked. Indeed, in the ACT, 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.
- 1.7 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.
- 1.8 This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Where law or policy ends, discretion begins. Prosecutors must seek to resolve a wide range of issues with judgement, sensitivity and common sense. It is neither practicable nor desirable to fetter the prosecutor's discretion too much because the demands of justice and fairness will vary from case to case.
- 1.9 From time to time, the Director may issue directions or furnish guidelines pursuant to section 12 of the *DPP Act*. This policy supersedes the previous policy and guidelines and directions, save for the Director's disclosure guideline which came into effect on 3 August 2020 and remains in effect.

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, they have 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?

- (i) 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?
- (j) 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?
- (k) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?
- (l) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

1.8 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction, they 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.

1.9 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 they have 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 – see for example subparagraphs 3.26-3.27);
- (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 subparagraph 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; 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;
 - (e) the juvenile's antecedents including the circumstances of any previous cautions that they may have been given; and
 - (f) 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 their 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 subparagraph 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 1900* or *Criminal Code 2002* 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 they are not guilty of an offence to which they are 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 they consider 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 noncustodial 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).

Sentencing indigenous offenders

- 3.26 The DPP recognises the overrepresentation of indigenous offenders in custody in Australia, including in the ACT. The High Court has said that the "*high rate of incarceration*" of indigenous offenders must not be taken into account when sentencing an indigenous offender. However, an offender's indigenous identity may explain or throw light on the offending and the circumstances of the offender.
- 3.27 A prosecutor should, as far as practicable, draw the court's attention to any relevant matters associated with or related to the offender's indigenous background. Without purporting to be exhaustive, this may include the following:
 - (a) the socio-economic circumstances in which the offender has been raised, including the absence of educational and employment opportunities;
 - (b) that the offender has experienced social exclusion or discrimination;

- (c) that the offender has been raised in a community surrounded by substance abuse and/or violence;
- (d) that the offender has been separated from their birth parents and/or community, for example by placement in foster care;
- (e) that the offender has suffered physical, sexual or emotional abuse;
- (f) that a lengthy term of imprisonment may weigh more heavily on the offender by reason of culture factors.

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 their 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's 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 themselves, 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 their 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.
- 4.10 Where known, in accordance with Director's disclosure guideline which has been in effect since 3 August 2020 (see Annexure 1), the prosecution is under a duty to disclose the existence of:
- (a) Relevant protected material that is subject of a claim of privilege or immunity;
 - (b) Relevant material that is subject of a statutory publication restriction;
 - (c) Relevant unprotected material that is not subject to a claim of privilege or immunity or a statutory publication restriction.

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 *DPP 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 *DPP 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 of the *DPP Act* 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 *DPP 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 they are 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 *DPP Act* is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of their own involvement in the crime in question should be foregone in order to secure their 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 their prospective evidence, including an acknowledgement of their 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 subsection 9(1) or subsection 9(4) of the *DPP 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 advertent 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 their evidence, for example, whether as to choice of charge, or the grant of an undertaking under the *DPP 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* as well as the Director's Instruction Nos. 1, 2, 7, 13, 14.1 and 14.2 outlining victim's rights in relation to particular prosecutorial decisions.

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 from 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 this 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 as a statement to be given orally in court.

9. Publication of reasons

- 9.1 Where the Director decides to exercise the power conferred by the *DPP 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.

10. Prosecutor's duties under the ACT Bar rules

- 10.1 Crown Prosecutors and Senior Prosecutors will hold Practising Certificates issued by the ACT Bar Association. This policy incorporates aspects of the ACT Bar rules.
- 10.2 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
- 10.3 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 10.4 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 10.5 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 10.6 A prosecutor must disclose material in accordance with paragraph 4 ('Disclosure') of this policy.
- 10.7 A prosecutor who has decided not to disclose material to the opponent, as required under subparagraph 10.6 of this policy, must consider whether:
 - (a) the defence of the accused could suffer by reason of such nondisclosure;
 - (b) the charge against the accused to which such material is relevant should be withdrawn; and
 - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 10.8 A prosecutor must call as part of the prosecution's case all witnesses:
 - (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;
 - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
 - (c) whose testimony or statements were used in the course of any committal proceedings; and
 - (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case unless the opponent consents to the prosecutor not calling a particular witness;
and except where:-
 - (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused;

- (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or
- (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused; provided that:-
- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g) together with the grounds on which the prosecutor has reached that decision.

10.9 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:

- (a) inform the opponent if the prosecutor intends to use the material; and
- (b) make available to the opponent a copy of the material if it is in documentary form.

10.10 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.

10.11 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.

10.12 A prosecutor who has informed the court of matters within subparagraph 10.11 of this policy, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.

10.13 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

- (a) must correct any error made by the opponent in address on sentence;
- (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
- (c) must assist the court to avoid appealable error on the issue of sentence;
- (d) may submit that a custodial or non-custodial sentence is appropriate; and
- (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority

10.14 A barrister who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with subparagraphs 10.2, 10.4 and 10.5 as if the body were the court referred to in this policy and any person whose conduct is in question before the body were the accused referred to in subparagraph 10.4.

Appendix B

Director's instruction no. 14.1 - Review of a decision to discontinue a prosecution

Background

Under applicable instructions,²³ a decision to discontinue a prosecution or significantly amend a statement of facts must not be taken without first consulting the complainant (with child complainants, this includes the parent or guardian).

In relation to matters involving an identifiable victim, such consultations should take place unless there are compelling reasons not to do so.

It must be recognised that a decision to discontinue in particular a sexual offence is a matter of potentially great moment for a complainant. Specific rules apply therefore for discontinuing an entire proceeding involving an identifiable victim (as to which, see Director's Instruction 14.2 - Reviewable Decisions to Discontinue – Contact with Complainants, Review Processes and Auditing).

Procedure for review of a decision to discontinue

In such cases, if a decision to discontinue is in prospect, the prosecutor must not only consult the complainant but also advise the complainant that if they are dissatisfied with a decision to discontinue a matter, they can ask that the decision be **reviewed** by the DPP.

The procedure is:

- › The prosecutor consults the complainant and records their views.
- › If the complainant is opposed to the discontinuation of the matter, the prosecutor is to inform the complainant that, if a decision is made to discontinue, they may ask that the decision be reconsidered by the DPP.
- › The prosecutor prepares a recommendation on discontinuance to the Deputy Director or Assistant Director, which sets out all material matters including the views of the complainant.

²³ Director's Instruction No. 1: Discontinuing Prosecutions and significantly amending Statements of Facts in the Supreme Court; and Director's Instruction No. 2 - Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court.

- › If a decision is made to discontinue the matter, then a record of the decision and the reason for it is made.
- › If a complainant has indicated dissatisfaction with the decision, then the matter will be reviewed by the Director (this may be an automatic review or a review at request: see Director's Instruction 14.2 - Reviewable Decisions to Discontinue – Contact with Complainants, Review Processes and Auditing).
- › In reviewing the decision, the Director will take into account the views of the complainant, the reason for the decision and any other material matters that are relevant including any matters relevant from the brief of evidence.

Audit of compliance

A record must be taken of each of the steps in the process on the Record of Reviewable Decisions form (RORD). At the completion of each financial year a RORD audit will be conducted in relation to each matter discontinued in that year, to establish whether the procedure set out in this instruction has been complied with.

The audit will be undertaken by an audit committee appointed by the Director. The results of the audit will be published in the annual report of the Director for the year in question.

Appendix C

Director's instruction no. 14.2 - Reviewable decisions to discontinue – contact with complainants, review processes and auditing

Aim of Instruction

The purpose of this Instruction is to ensure compliance with recommendations 40-43 of the Royal Commission into Institutional Responses to Child Sexual Abuse (*Criminal Justice Report*, Parts III to VI, 2017):

DPP complaints and oversight mechanisms

40. *Each Australian Director of Public Prosecutions should:*

- a. *have comprehensive written policies for decision-making and consultation with victims and police*
- b. *publish all policies online and ensure that they are publicly available*
- c. *provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.*

41. *Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.*
42. *Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.*
43. *Each Australian Director of Public Prosecutions should publish the existence of their complaints mechanism and internal audit processes and data on their use and outcomes online and in their annual reports.*

It must be recognised that a decision to discontinue in particular a sexual offence is a matter of potentially great moment for a complainant. Specific rules therefore apply for discontinuing an offence with an identifiable complainant.

This Instruction should also be read in line with:

- › Decisions to Discontinue Prosecutions – Victims’ Right of Review Director’s Guideline*;
- › The ACT DPP Prosecution Policy*;
- › Director’s Instruction No. 1: Discontinuing prosecutions and significantly amending Statements of Facts in the Supreme Court*;
- › Director’s Instruction No. 2: Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court and Children’s Court*;
- › Director’s Instruction No.7: Charge negotiations in the Supreme Court*;
- › Director’s Instruction No. 13: Guidelines for contact with complainants in sexual offence matters*;
- › Director’s Instruction No.14.1: Review of a decisions to discontinue a prosecution*;
- › Internal RORD Audit Form; and
- › Template: email to complainant re right of review.

**These documents are available on the ODPP website.*

Application

This Instruction outlines the procedure to be followed when making a reviewable decision in a prosecution involving an identifiable complainant.

A **reviewable decision** means a decision to discontinue the entirety of a prosecution involving an identifiable complainant. This includes:

- › a decision to withdraw all charges or discontinue proceedings involving the complainant (including by filing a Notice Declining to Proceed Further in a Prosecution);
- › a decision to offer no evidence (NETO) in proceedings involving the complainant.

A reviewable decision **does not** include:

- › a decision to significantly amend a Statement of Facts;
- › a decision to reduce a charge/s to less serious charge/s, or to a fewer number of charges, in satisfaction of an indictment or information.

A reviewable decision does not include a decision not to bring proceedings involving a complainant. However, where the Office has provided an opinion to an investigative agency that no charge/s are to be laid in a matter, that opinion is a reviewable decision subject to the agency requesting a review in its own right, or on behalf of a complainant.

For the purposes of this Instruction, a complainant is a complainant in a prosecution conducted by the DPP, and also includes:

- › a close family member or partner of a deceased person in homicide cases; and
- › where appropriate the views of a child complainant should be sought directly, however if not appropriate, a parent or guardian of a child complainant.

After a reviewable decision has been made, there are two types of review process available:

- › review at request; or
- › automatic review.

A decision that is subject to **automatic review** means that the decision will be reviewed without requiring the complainant to request a review. A decision that is subject to **review at request** will be reviewed only when a request for review is made by the complainant, in accordance with this procedure.

The type of review process available depends on the charge for which the prosecution will be discontinued. If a decision is made to discontinue more than one charge, the review process available will be the one which applies to the most serious charge.

Type of prosecution	Type of review available
Homicide offence ²⁴	
Sexual offence ²⁵	Automatic review
Serious violent offence ²⁶	
Less serious violent offence ²⁷	
Any other offence against an identifiable complainant named in the information	Review at request

24 A 'homicide offence' includes any offence where the death of a person has occurred.

25 The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 41.

26 The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 40.

27 The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 39.

Recommending a Discontinuance

1. Prosecutor with carriage of a matter considers that a reviewable decision should be made. This can be at own initiative, following defence representations, or a request by the complainant or informant.
2. Prosecutor fills out a **RORD** (Record of Reviewable Decisions) on CASES.

At this point, the prosecutor should contact the complainant to ascertain the complainant's views unless there are compelling reasons not to do so. If there are compelling reasons not to contact the complainant, these should be documented in the RORD.

Contact with the complainant may be made through the Witness Liaison Officer or the informant. A file note should be created and saved in Folder 22 on CASES, documenting contact with the complainant and recording their views. If the complainant is unable to be contacted, reasonable attempts at contacting them must be documented in the file note.

The prosecutor should not only consult the complainant, but also advise them that if they are dissatisfied with a decision to discontinue a matter they can ask that the decision be reconsidered by the DPP.

3. Prosecutor saves all supporting documentation for RORD into Folder 22 on CASES.
4. Prosecutor sends RORD to supervising lawyer:
 - › For FV offences – FV supervising lawyer;
 - › For sexual offences – SO supervising lawyer;
 - › For all other matters – supervising lawyer of team.
5. Supervising lawyer records recommendation in RORD, and sends this document by email (copying in the prosecutor) to:
 - a. for strictly indictable matters²⁸ – the Deputy Director (or, if unavailable, the Assistant Director);
 - b. for summary/indictable matters, or summary-only matters²⁹ – the Assistant Director (or, if unavailable, the Deputy Director).
6. Deputy Director or Assistant Director records decision in RORD, including the reason/s for the decision.
7. Deputy Director or Assistant Director sends email to prosecutor and supervising lawyer, advising of decision and obligation on prosecutor to contact the complainant, informant, defence, court and witnesses in accordance with this Instruction.

²⁸ See *Crimes Act 1900*, section 375.

²⁹ See *Crimes Act 1900*, section 375 and *Legislation Act 2001*, section 190.

8. If the decision is to proceed, the prosecutor must advise the informant and the complainant.
9. If the decision is to discontinue, and the decision is subject to automatic review, go to 'Reviewing a discontinuance'.
10. If the decision is to discontinue, and the decision is subject to review at request, the prosecutor must advise the informant and the complainant of the decision. First contact with the complainant should be made by phone, and a file note should be made of this conversation.

The prosecutor should explain to the complainant the reasons for the decision, as well as the right to seek a review. When giving reasons for the decision, the prosecutor should be mindful that the decision may be overturned on review. The prosecutor should ensure that any reasons given would not interfere with the conduct of a future trial, if it were to proceed.

Immediately after advising the complainant by phone, the prosecutor should send a follow-up email to the complainant. This email should set out the decision, the right to seek an internal review, how to apply for a review and how the review process works, including the right to seek written and oral reasons following review.

11. The file should be marked **SUBJECT TO REVIEW** on the front cover, and kept until the end of the review period. As far as possible, the prosecutor should refrain from communicating the decision to discontinue to the court or defence until the complainant has positively communicated that they will not request a review, or 7 days have elapsed since the decision was communicated to the complainant.

Reviewing a discontinuance

1. If the decision is subject to automatic review, go to step 3.
2. If the decision is subject to review at request, the complainant has 7 days to request a review of the decision from the time they were first informed of the decision.³⁰ The complainant may request a review either over the phone or by email.

The prosecutor should send an email to the complainant, acknowledging receipt of the request and advising of a timeframe for when the complainant will be notified of the outcome of review.

3. If the matter calls for an automatic review, or a review is requested in accordance with this Instruction, this must be brought to the attention of the Director³¹ **as soon as possible**. The prosecutor should provide the Director with the CASES reference (with all relevant documentation saved therein) and a copy of the brief of evidence.

³⁰ Depending on the court timetable, this timeframe may be shorter. If the request is received outside of this timeframe, the prosecutor should immediately raise this with the Director for further consideration.

³¹ If the Director is unavailable, the matter should be reviewed by either the Deputy Director or the Assistant Director, depending on who made the original decision.

4. The Director has 7 days to review the decision (depending on the timeframe of the matter),³² having regard to the documents saved on Folder 22 in CASES (including the file note documenting the complainant's views, the RORD and supporting documents and any request for review by complainant) and the brief of evidence. The decision will be considered in accordance with the Prosecution Policy.

The Director must consider the case afresh, by examining all the evidence and the views of the complainant, and forming an independent view of the sufficiency of the evidence, the prospects of conviction and the public interest considerations, before scrutinising the approach taken by the original decision-maker, including the reason/s for the decision.

The Director may ask police to obtain additional evidence or refer to legal authorities not considered by the original decision-maker.

5. Once the review is complete, the Director should record in the RORD whether the original decision is endorsed/not endorsed and notify the prosecutor and Deputy/Assistant Director of the outcome.
6. The prosecutor must then contact the complainant to explain the outcome of review. If the decision to discontinue is endorsed, the prosecutor should inform the complainant prior to informing the court, and should offer the complainant the right to both:
 - a. discuss the reasons for the decision with the Director in person (in the presence of a Witness Liaison Officer or support person, if desired);and
 - b. receive a letter containing the Director's written reasons for the decision (which must be requested within **14 days** of the final decision being communicated to the complainant).³³
7. If written reasons are requested for the decision, the Director should:
 - a. Provide written reasons to the complainant within **14 days**;
 - b. Consult with any allocated Witness Liaison Officer prior to providing written reasons to the complainant;
 - c. Ensure that written reasons are not provided in circumstances where:
 - i. statutory or other restrictions prohibit or limit the release of such information;
 - ii. the giving of reasons may affect a related case (for example, the prosecution of a co-offender) which is before the court.
 - d. If the circumstances in 7(c) are present at the time of the request, the request should remain under active review, so that if and when the circumstances are no longer applicable, further consideration may be given to the provision of reasons at that time.

32 If a trial is listed to commence within 7 days of a decision to discontinue, the request for review must be made as soon as possible, as the timeframe for the review process will be shorter. In some cases, it may not be possible to review the decision before notice of the decision is communicated to the court. In those circumstances, the decision will be still be reviewed by the Director, but the matter may not be able to be prosecuted.

33 If the request is received outside of this timeframe, the prosecutor should immediately raise this with the Director for further consideration.

8. Following the giving of reasons for the decision, the Witness Liaison Officer should follow up with the complainant to ensure that they are referred to agencies for further support as required.

Audit of compliance

A record must be made of each of the steps in the above process on the RORD. At the end of each financial year, an audit will be conducted in relation to reviewable decisions in that year, to establish whether the procedures set out in this Instruction have been complied with, and to target areas of non-compliance for future training and monitoring.

Auditing of compliance will be conducted based on the following records on CASES:

- › Document: RORD (Record of Reviewable Decisions) – Discontinuing a matter involving an identifiable complainant
- › Document: File note – complainant contact re discontinuance
- › Document: Email to complainant – right to review
- › Document: Letter providing reasons for discontinuance

It is therefore **crucial** that each of the above documents be saved and entered into CASES by the prosecutor, the Deputy Director / Assistant Director, and the Director.

The audit will be undertaken by an Audit Committee, appointed by the Director towards the end of the financial year. The Audit Committee should hold at least 3 meetings for the purpose of auditing reviewable decisions and recording compliance with the procedures set out in this Instruction.

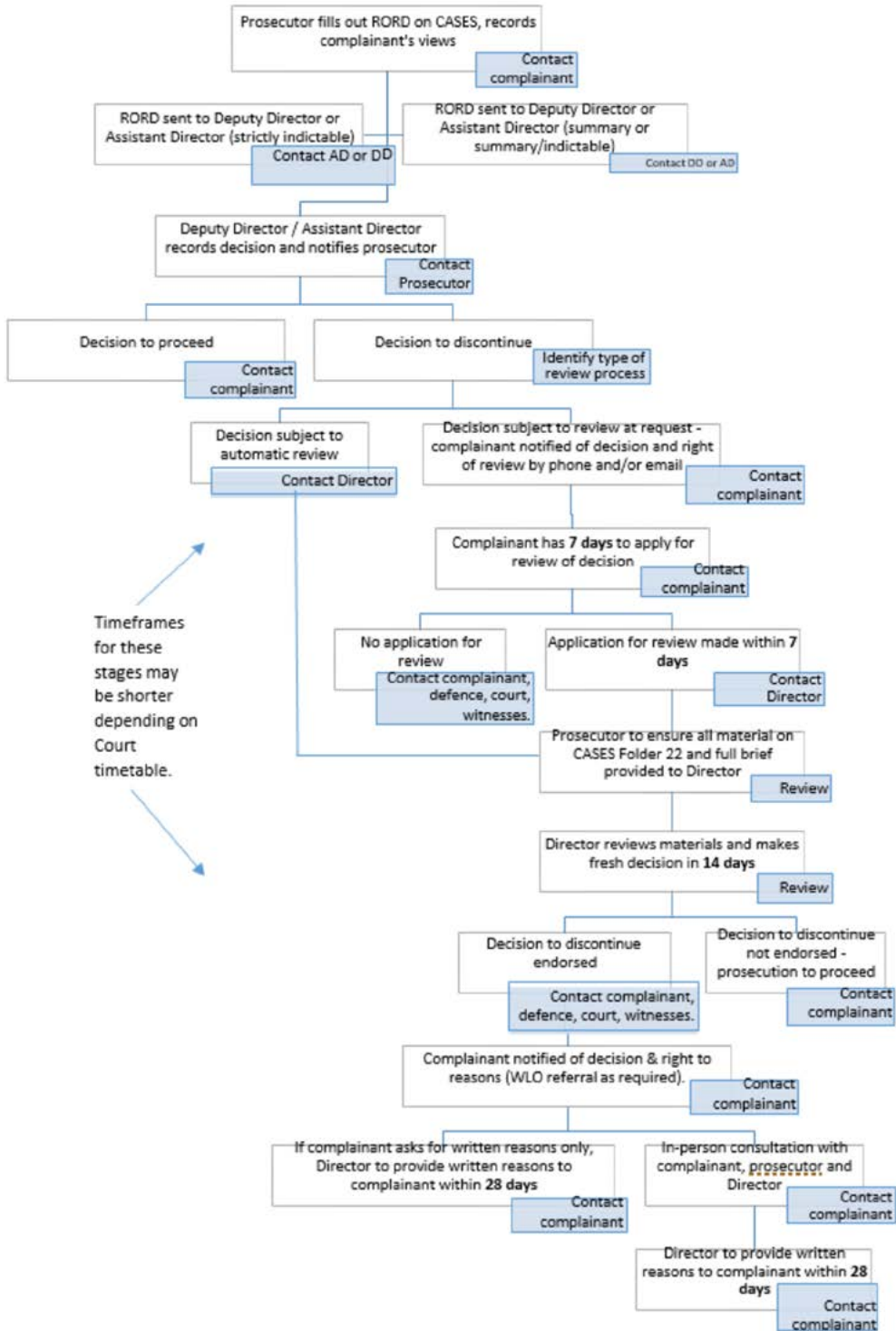
The results of the audit should be recorded on the 'Internal RORD Audit Form', which must be placed on the file. If, during the audit, it is discovered that the procedure undertaken in relation to a reviewable decision was not followed in accordance with this Instruction, the Audit Committee must review and consider the basis of that decision.

At the end of the financial year, the Audit Committee must provide copies of all completed Internal Audit Forms to the Director, and raise any areas of persistent non-compliance with the Director. The Audit Committee must also prepare a short annual report for the Director outlining relevant information, including:

- › the number of files audited;
- › the types of matters audited (e.g. 'sexual offence');
- › the level of compliance with the procedures in this Instruction;
- › a breakdown and summary of any compliance issues, and suggested measures for addressing those issues in the Office.

The results of the audit will be published in the annual report of the Director for the year in question.

Reviewable decisions flow-chart



Appendix D

Audit report on legal compliance of procedures relating to reviewable decisions³⁴

Audit Report on Legal Compliance of Procedures relating to Reviewable Decisions

Anthony Williamson SC
A/g Director of Public Prosecutions, ACT

Pursuant to *Director's Instruction 14.2 on Reviewable Decisions*, an audit committee comprising of Madison Fieldus, Bwalya Chifuntwe and Emma Roff, conducted an internal audit of the records of all reviewable decisions to discontinue prosecutions made between 1 July 2022 to 30 June 2023.

We conducted the audit in accordance with the requirements laid out in *Director's Instruction 14.2*. In performing our tests of compliance, we examined whether the procedures set out in *Director's Instruction 14.2* have been complied with.

The attached document, the *Record of Reviewable Decisions - Audit 2022-2023*,

- shows that there were 109 reviewable decisions in the financial year ended June 2023;
- describes the type of offences of these reviewable decisions;
- the level of compliance with the procedures in *Director's Instruction 14.2*;
- provides a breakdown and summary of any compliance issues if any;
- compliance/all options explored were met in 108 matters;
- Non compliance occurred in 2 matters – for these two matters, it was a training issue and that has since been rectified.

The following is a breakdown of the type of matters that made up the audit for the 2022-2023 financial year:

- 23 x Assault matters
- 32 x family violence matters
- 34 x theft/property/robbery/damage matters
- 17 x sexual assault matters
- 1 x drug matter
- 2 x personal violence matters

This Audit Report is prepared solely for the purposes of the Office of the Director of Public Prosecutions' 2022-2023 Annual Report.

For the purposes of this Audit Report, the Audit Committee was appointed by the A/g Director at the end of the 2022 - 2023 financial year on 20 July 2023 and held three separate meetings on 21 July 2023, 7 August 2023 and 17 August 2023 to conduct the required examination of documents against the relevant procedures in *Director's Instruction 14.2*.



Madison Fieldus

Audit Team Leader

Office of the Director of Public Prosecutions

17 August 2023

³⁴ This audit report refers to the record of decisions that have been automatically reviewed by the ODPP over the financial year.

Appendix E

Record of reviewable decisions - audit 2022–2023³⁵

No.	Defendant	Offence type	Compliance with Director's Instruction 14.2	Status of Prosecution
1.	AA	Aggravated AOABH	YES	Matter finalised
2.	AA	Stalking, aid and abet contravene FVO	YES	Matter finalised
3.	HA	Sexual intercourse w/out consent x 2	YES	Matter finalised
4.	JA	Dangerous drive, unlawful possession of stolen property, drive under the influence, drive motor vehicle at police x 2, fail to stop m/v for police, possess prohibited weapon, drive whilst disqualified, possess plate calculated to deceive	YES	Matter proceeding on other charges
5.	SA	Common assault	YES	Matter finalised
6.	WB	FV Use carriage service to menace/ harass	YES	Matter finalised
7.	JB	FV Aggravated AOABH, aggravated property damage	YES	Matter finalised
8.	JB	Assault police x 3	YES	Matter finalised
9.	CB	Take m/v W/out authority, ride/drive M/V w/Out consent, Drive prescribed drug, damage property, drive m/v at police, damage police vehicle, unlicensed – never held	YES	Matter proceeding on a number of other charges.
10.	BB-G	FV – Damage property under \$5000	YES	Matter finalised
11.	AB	Contravene PPO	YES	Matter finalised
12.	AB	Attempt robbery, attempt agg robbery, common assault	N/A	Matter is proceeding
13.	GB	FV Aggravated property damage	YES	Matter finalised
14.	MB	FV – Choke/suffocate/strangle, common assault, AOABH	YES	Matter finalised

³⁵ This is a record of decisions that have been automatically reviewed by the ODPP over the financial year.

No.	Defendant	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
15.	T B	FV - Act of indecency w/out consent, 2 x common assault, fail to provide food, water, shelter and exercise	NO	Matter proceeding on other charges
16.	Q B	FV - Aggravated common assault x 4, choke/suffocate/strangle x 2, aggravated intentional threat to kill, demand of person accompanied by threat x 2, aggravated threat to inflict GBH	YES	Matter finalised
17.	S C	Ride/drive m/vehicle w/out consent	YES	Matter finalised
18.	M C	Receiving stolen property, blackmail	YES	Matter proceeding on other charges not relating to this complainant
19.	B C	Unlawful confinement	YES	Matter finalised
20.	S C	Ride/Drive m/vehicle w/out consent	YES	Matter finalised
21.	D C	FV – Choke/suffocate/strangle, contravene FV order x 2, AOABH, Sexual intercourse w/out consent x 2	YES	Matter proceeding on contravene FV order x 2
22.	A M	Receiving stolen property, blackmail	YES	Matter proceeding on other charges not relating to this complainant
23.	J D	Ride M/V w/out consent, joint commission arson	YES	Matter finalised
24.	L E	Minor theft	YES	Matter finalised
25.	P F	AOABH	YES	Matter finalised
26.	T F	Ride/drive m/v w/out consent, joint commission aggravated robbery, unlicensed.	YES	Matter finalised
27.	A F	Aggravated burglary, choke/suffocate/strangle, threat to kill, possess offensive weapon, drive while disqualified, use unregistered vehicle	YES	Matter finalised
28.	I F	FV Forcible confinement, damage property, common assault, AOABH x 2	YES	Matter finalised
29.	M F	FV - Contravene FV order x 2	YES	Matter finalised

No.	Defendant	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
30.	J G	FV – Choke/suffocate/strangle, aggravated assault	N/A	Matter finalised
31.	R G	Sexual intercourse without consent	YES	Matter finalised
32.	M G	AOABH, Common assault	YES	Matter finalised
33.	S G	Common assault	YES	Matter finalised
34.	H G	Sexual intercourse without consent	YES	Matter finalised
35.	M G	FV Forcible confinement x 2, neglect child, obstruct public official x 2	YES	Matter proceeding on 2 x obstruct public official
36.	A G	FV Aggravated common assault, aggravated AOABH x 2, aggravated property damage, reckless threat to kill	YES	Reps received - proceeded by way of counter offer/ finalised
37.	N G	Assault police	YES	Matter finalised
38.	T H	FV AOABH	YES	Matter finalised
39.	R H	Ride/Drive m/vehicle w/out consent	YES	Matter finalised
40.	A H	FV – Common assault	YES	Matter finalised
41.	S H	Act of indecency on person under 10 x 9, incest with person under 10 x 2, attempt incest under 10	YES	Matter proceeding on other charges
42.	X H	Aggravated sexual assault w/out consent	YES	Matter finalised
43.	D H	FV – Contravene FVO, use carriage service to harass/ menace	YES	Matter finalised
44.	J H	Ride/drive M/vehicle w/out consent	YES	Matter finalised
45.	J H-W	Agg robbery	YES	Matter finalised
46.	J H	FV – contravene family violence order, obstruct police	YES	Matter proceeding on obstruct police charge
47.	S H	FV – Damage property, AOABH, Common assault	YES	Matter finalised

No.	Defendant	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
48.	M I	Minor theft	YES	Matter finalised
49.	T J	FV Aggravated property damage	YES	Participating in RJ – matter to be withdrawn
50.	R J	Aggravated act of indecency w/out consent x 6	YES	Matter finalised
51.	C J	Aggravated burglary intent to steal, aggravated burglary intent to damage, damage property, unlawful possession of stolen property, number plate/regro not properly issued, unlicensed driver	YES	Matter proceeding on other charges
52.	J K	Sexual intercourse without consent	YES	Matter finalised
53.	O K	Assault police	YES	Matter finalised
54.	V L	FV – Use carriage service to menace/harass	YES	Matter finalised
55.	E M	FV – Contravene family violence order x 6	YES	Matter finalised
56.	J M	FV – Common assault	YES	Matter finalised
57.	H M-S	Joint commission damage property	YES	Matter finalised
58.	A M	Sexual intercourse w/out consent x 2	YES	Matter finalised
59.	W M	Theft, Burg x 2, attempt burg, Take M/V w/out authority, ride/drive M/V w/out consent, possess stolen property suspected of being POC	YES	Matter proceeding to sentence on 1 x burg, 1 x attempt burg, 1 x ride/drive M/V w/out consent
60.	S M	Sexual intercourse w/out consent x 2, act of indecency w/out consent x 3	YES	Matter finalised
61.	E M	Damage property x 3, common assault x 2	YES	Matter finalised (proceeded on 1 x damage property)
62.	G M	Common assault x 2	NO	Matter finalised
63.	J M	FV Contravene FVO	YES	Matter finalised
64.	J M	Attempt agg robbery, AOABH	YES	Matter proceeding on AOABH charge

No.	Defendant	Offence type	Compliance with Director's Instruction 14.2	Status of Prosecution
65.	D M	FV Common assault	YES	Matter proceeded
66.	K M	Minor theft, joint commission minor theft, joint commission destroy/damage property x 2	YES	Matter finalised
67.	J N	Unlawful confinement	YES	Matter finalised
68.	N N	Act of indecency w/out consent	YES	Matter proceeded on an alternative charge of offensive behaviour in a public place
69.	B O	Affray, Aid/abet AOABH	YES	Matter finalised
70.	T P	AOABH, intentional threat to kill	YES	Matter finalised
71.	Z P	FV – AOABH, Common assault x 2	YES	Matter finalised
72.	A P	Ride/Drive m/vehicle without consent	YES	Matter finalised
73.	M P	FV Contravene FVO	YES	To be sentenced
74.	M P	Sexual intercourse w/out consent	YES	Matter finalised
75.	T P	Common assault x 3	YES	Matter finalised
76.	B Q-B	10 x use child to produce child exploitation, 2 x possess child exploitation	YES	Matter finalised
77.	W Q	Sexual intercourse without consent	YES	NDTP filed after a hung jury
78.	L R	Act of indecency on person btw 10-16 yrs	YES	Matter finalised
79.	P R	FV – AOABH, common assault	YES	Matter finalised
80.	J R	Theft, agg burg, ride/drive m/v w/out consent	YES	Matter finalised
81.	B R	Theft, Robbery	YES	Matter finalised
82.	D R	FV – aggravated common assault	YES	Matter finalised
83.	C S	Make off without payment	YES	Matter to be NETO'd
84.	L S	Damage Property	YES	Matter finalised

No.	Defendant	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
85.	V S	FV – Aggravated common assault, aggravated threat to kill	YES	Matter proceeded on charge with different complainant
86.	K S	Common assault	YES	Matter finalised
87.	B S	Groom young person x 2, provide false name and address	YES	Proceeding on other charge
88.	D S	Receive stolen property, drive mv w/ out consent, aggravated reckless driving, fail to stop, exceed speed limit, drive whilst licence suspended, use numberplate issued for another vehicle	YES	Proceeding on alternative charges
89.	J S-P	Ride M/V w/out consent, joint commission arson	YES	Matter finalised
90.	A S	FV Contravene FV order	YES	Matter finalised
91.	J S	Act of indecency x 13, Stalking x 2	YES	Matter is proceeding on 12 x act of indecency and 2 x stalking
92.	C T	Sexual intercourse w/out consent x 8, act of indecency w/out consent x 2, forcible confinement, sexual assault in the 2 nd degree	YES	Matter finalised
93.	L T	Aggravated common assault x 2	YES	Matter finalised
94.	H T	Attempt murder, recklessly inflict GBH	YES	Matter finalised
95.	L T	Arson	YES	Charge NETO'd
96.	S T	Common assault	YES	Matter finalised
97.	R V	Aggravated common assault, aggravated intention threat to kill, possess offensive weapon with intent	YES	Matter finalised
98.	J V	FV – Forcible confinement x 2, choke / suffocate/strangle, AOABH	YES	Matter finalised
99.	S W	Common assault x 2, AOABH	YES	Matter proceeding to sentence on 1 charge of common assault
100.	K W	FV Common assault	YES	Matter finalised

No.	Defendant	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
101.	K W	Minor theft, joint commission minor theft, joint commission destroy/damage property x 2	YES	Matter finalised
102.	A W	Minor theft, joint commission minor theft, joint commission destroy/damage property x 2	YES	Matter finalised
103.	D W	Ride/drive m/vehicle without consent	YES	Matter finalised
104.	D W	Ride/drive m/vehicle without consent	YES	Matter finalised
105.	C W	Unlawful possession of stolen property, supply a declared substance, obstruct territory official, possess/sale/ supply drug of dependence, possess a declared substance	YES	Matter finalised
106.	A W	Handle stolen property	YES	Matter finalised
107.	D W	Damage property	YES	Matter finalised
108.	N W	Aid/Abet AOABH	YES	Matter finalised
109.	J W	Joint commission minor theft	YES	Matter finalised

F. Index of cases

F.1 Magistrates Court

Police v Garang Mayen	40
Police v Carl Lyons	41
Police v Dale Goesch	41
DPP v Celeski	42

F.2 Supreme Court

DPP v Butkovic	43
DPP v Williams	44

F.3 Crown Chambers

DPP v O'Connell	47
DPP v Shay Murphy	48
DPP v Gary Taylor	49
DPP v Sugimatatihuna Mena, Rebecca Parlov and Bradley Roberts	50
KE	51
In the matter of an application for parole by Axel Sidaros	53
Kelly (a pseudonym) v Hucker	55
Ji v Stone	56
DPP v Whittle	58
Mann v Tremethick	58
Kilby v Carey	59
Alexander v Bakes	60

F.4 Appeals

Okwechime v The Queen	61
Booth v The Queen	62
The Queen v Ashton (a pseudonym)	62
McFarland v Van Eyle	63
White v The Queen	64
R v Tuifua	65
Cooke (a pseudonym) v The Queen	66
Warne v The King	67
Garay v The Queen	69

F.5 Sexual Offences

R v Ayoub	73
DPP v Bellette	73
DPP v Naing	74
DPP v Mitchell	74

F.6 Family Violence Unit

Police v JS	77
Police v TH	77
Police v N L	78

F.7 Confiscation of Criminal Assets

In the matter of an application under the Confiscation of Criminal Assets Act	83
Op Montrose	84

F.8 Work Health and Safety

Hawker Roofing Pty Ltd	85
Agnew Building Supplies Pty Ltd	85

G. Index of tables and figures

G.1	Organisational Structure	3
G.2	ODPP Core Team	3
G.3	Sexual Offences: Trials and Sentences in the Supreme Court	72
G.4	Breakdown of Sexual Offence matters in different courts	73
G.5	Breakdown of FV cases in different courts	77
G.6	Breakdown of WAS matters	81
G.7	Breakdown of WHS matters	86
G.8	Breakdown of regulatory matters	86
G.9	Parking matters	87
G.10	Total Matters Finalised By Jurisdiction	89
G.11	Matters Finalised Disaggregated By Matter Type	90
G.12	Committals to the Supreme Court	95
G.13	Plea of Guilty after Committal for Trial	95
G.14	Committals to the Supreme Court disaggregated by matter type	96
G.15	Supreme Court Matters	97
G.16	Appeals	97
G.17	FOI Access Applications	101
G.18	Community engagement and support - sponsorships	102
G.19	Office Employment Diversity Statement	103
G.20	WHS notifiable incidents	104
G.21	Agency profile	105
G.22	FTE and headcount	105
G.23	Classifications	105
G.24	Employment category by gender	106
G.25	Equity and workplace diversity	106
G.26	Age profile	106
G.27	Average years of service by gender	106
G.28	Recruitment and Separation Rates	107
G.29	Sustainable development performance - current and previous financial year	107
G.30	Suppliers of goods, services and works	110
G.31	Financial Statement	109

dpp.act.gov.au