DIRECTOR OF PUBLIC PROSECUTIONS
ANNUAL REPORT 2009-2010

ACT DPP
OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS

DIRECTOR OF PUBLIC PROSECUTIONS
ANNUAL REPORT 2009-2010

ETHOS: THE SPIRIT OF THE COMMUNITY

The great Australian sculptor Thomas Dwyer Bass (6 June 1916 – 26 February 2010) passed away this year at the age of 93.

The DPP logo is based on the statue of 'Ethos' by Tom Bass which stands in Civic Square in front of the Legislative Assembly. Ethos was conceived by its creator as representing the spirit of the community of Canberra. It is a particularly appropriate symbol for the DPP, which acts for, and represents, the community.

ISBN-978-0-642-60541-2

GPO Box 158, Canberra City ACT 2601.

Produced by Publishing Services for the:
Office of the Director of Public Prosecution

Enquiries about this publication should be directed to:
GPO Box 595 Canberra City,
ACT 2601
Phone 6247 3800
www.dpp.act.gov.au

Publication No 10/0951

http://www.act.gov.au
Telephone: Canberra Connect 132 281

CONTENTS

ACT DPP

23 September 2010

Mr Simon Corbell MLA
Attorney General
Legislative Assembly
CANBERRA ACT 2601

Dear Attorney,

ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2010.

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

I hereby certify that the attached Annual Report is an honest and accurate account, that all material information on the operations of my Office during the period 1 July 2009 to 30 June 2010 has been included and that it complies with the Chief Minister's Annual Report Directions.

I also hereby certify that fraud prevention has been managed in accordance with Public Sector Management Standard 2, Part 2.4.

Please note that section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you cause a copy of the Report to be laid before the Legislative Assembly within 3 months of the end of the financial year.

Yours faithfully

Jon White
Director of Public Prosecutions

ACT DIRECTOR OF PUBLIC PROSECUTIONS
Reserve Bank Building 20–22 London Circuit CANBERRA CITY ACT 2601
Phone +61 2 6207 5399 I Fax +61 2 6207 5428 I GPO Box 595 CANBERRA CITY ACT 2601 I DX 5725

GLOSSARY

ACRONYMS

ACTPS	Australian Capital Territory Public Service
AFP	Australian Federal Police
CASES	Name of the case management system of the Office
CPSU	Community and Public Sector Union
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
DNA	deoxyribonucleic acid
FOI	freedom of information
FV	family violence
FVIP	Family Violence Intervention Program
JACS	Department of Justice and Community Safety
ODPP	Office of the Director of Public Prosecutions
RJ	restorative justice
SARP	Sexual Assault Reform Program
WAS	Witness Assistance Service

TECHNICAL TERMS

accused	person charged with an offence, usually an indictable offence
adult	a person aged 18 years or above but excluding such a person when dealt with by the Childrens Court
chief executive	controlling officer of a Department
complainant	person against whom it is alleged a crime has been committed, usually used in the context of sexual assault
Crown	the prosecutor in the Supreme Court or Court of Appeal is sometimes referred to as such
defendant	a person charged with an offence
Director	the Director of Public Prosecutions
indictable offence	an offence required or able to be dealt with in the Supreme Court
juvenile	a person under 18 years, or a person aged 18 or above dealt with by the Children's Court
Office	the Director and staff assisting the Director
summary offence	an offence which must be dealt with in the Magistrates Court
victim	a person who suffers harm arising from an offence

DIRECTOR'S OVERVIEW

I am now coming to the end of my second year as Director. It is a great privilege to lead an Office of such dedicated and talented staff.

My Office dealt with many issues this year, and many of these are referred to in the body of this report. I want to highlight two in particular – court delays, and the issue of security in our courts.

Backlogs in the Supreme Court have been much discussed this year, in both the profession and the general community.

One response was the convening of the Supreme Court Working Group, comprised of those with a direct interest in the workings of the courts, including my Office. Based on our experience in the system, my Office put forward a number of suggestions, including: the establishment of a sentence list in the Supreme Court to allow a number of sentences to be listed together and assist in the streamlining of the present sentencing process; reform to bail procedures; the abolition of face to face pre-arraignment conferences; placing all pre-trial applications in a directions list; a mechanism to increase defence participation in pre-trial forums; and the abolition of arraignment lists.

Had they been adopted these solutions would have made a real difference to the business of the Supreme Court. Unfortunately our suggestions did not find favour, most being consigned to the bureaucratic ignominy of being placed under "active consideration".

The government is now consulting with the profession about the Supreme Court backlog. Clearly something needs to be done. While the Supreme Court has long waiting lists, the Magistrates Court has no such problems, and if anything is under utilised.

Our Supreme Court judges enjoy a status and position similar to Supreme Court judges in other jurisdictions. However, a significant proportion of the work they do is carried out in other jurisdictions by lower level courts. In the criminal area, Supreme Court judges in most jurisdictions are confined to dealing with serious indictable only matters. In the ACT on the other hand, a significant proportion of the work done in the Supreme Court comprises comparatively straight forward matters such as aggravated assaults. Typically these are matters which involve disputes of fact and which are appropriate to be dealt with by magistrates, particularly magistrates of the quality we have in the ACT.

A way needs to be found to restrict the work of the Supreme Court to matters of a complexity and seriousness which become the status and resourcing of a Supreme Court judge, while at the same time getting the most out of our bench of magistrates.

One solution would make an immediate difference. Consideration could be given to increasing the criminal jurisdiction of the Magistrates Court to all matters involving imprisonment up to 5 years. The Magistrates Court already has jurisdiction in such matters by consent. This increase in the summary jurisdiction of the Magistrates Court would ensure that matters such as aggravated assaults, breaches of protection orders and minor drug matters could be dealt with expeditiously by the Magistrates Court, without clogging the Supreme Court. This would free the Supreme Court to concentrate on more serious and complex matters.

In last year's Annual Report I wrote about delay in sexual assault cases. I wrote of the reforms to the committal process which took effect in 2009 but noted that the positive aspects of those reforms were countered by the effect of delays in the Supreme Court, in particular the delay caused by the pre trial application procedure. On a positive note I indicated that I looked forward to working with the criminal justice community to find solutions.

Unfortunately there has been no improvement in the situation and the delays that bedevil the Supreme Court continue to have a significant impact in the area of sexual assault.

The chronic problem of delay is evidenced by the number of sexual assault matters listed for the second half of 2011. For example there are 12 sexual assault trials set down for trial from July 2011. Some of these matters were committed for trial as far back as mid 2009. While not all matters are delayed by pre trial applications, where there are such applications (and they are common in sexual offence proceedings) the delays are exacerbated.

This sort of delay in sexual matters is undesirable and runs counter to the intention of the SARP and committal reforms. There are ways of tackling such delay. For example in last year's Annual Report I wrote of Victorian legislation which requires child sexual assault matters to be heard within 3 months of committal. A similar approach – perhaps encompassing all sexual assault matters – could be considered here. I would also urge a rethink of how pre trial applications are dealt with in the Supreme Court to ensure they are dealt with as expeditiously as possible, especially for sexual assault matters. I hope that the coming year will see relevant agencies in criminal justice working together to tackle this issue in a constructive way.

The most concerning issue facing the Office this year was undoubtedly that of security in the courts. Following a number of concerning incidents, some of which involved members of my staff in court or on the way to court, I have been pressing for reform in this area.

There is no doubt that security for courts is a more pressing issue than in the past. Security screening has only recently been introduced at the entrances of our courts. However the security environment within ACT courts is far from ideal. Our courts were not designed with security in mind, nor are there in place comprehensive procedures to deal with security breaches. There are issues with both the physical layout of the courts and the delineation of responsibility for security.

I am reliant on others to provide a secure working environment for my officers for much of their working day. The court rooms, the court buildings and the environs of the courts are part of the work place of my officers, but are areas over which I have no control.

Following one serious incident, a Report on Workplace Safety recommended amongst other things that that the Department of Justice and Community Safety commission a suitable expert to undertake a security review of the ACT Courts and associated systems. I strongly endorsed that recommendation and continue to do so. However to date no such review has been commissioned.

There have been a series of meetings on this difficult issue but I have to report that progress has been frustratingly slow.

One suggestion of merit has been that creation of a position of head of court security, with appropriate authority both of the court and the executive to act decisively on security matters. I hope this solution can be speedily adopted.

So far as the workings of the Office are concerned there are two matters of particular importance - the introduction of a computerised case management system, and pressure on the resources of the Office.

The commissioning of the computerised case management system foreshadowed in the last report is now well advanced. The introduction of such a complex and challenging reform would not have been possible without considerable efforts by many people. It seems unfair to single out individuals when so many contribute so much to this Office, but I must mention some outstanding contributions in this area. Cam Tang has guided the introduction of the new system with patience and insight. Drawing on his experience as a paralegal and his considerable abilities with computer systems, he has been the leading light without whom the project could not have been realised. Catherine Zaal has also played a key role. Catherine has given loyal and trusted service to this Office for many years. Her encyclopaedic knowledge of Office systems and court processes has been invaluable. Two senior lawyers, Shane Drumgold and Margaret Jones, have also worked unstintingly and enthusiastically on making the system work.

The ACT community can be assured that staff of this Office work tirelessly in the public interest. They work long hours, routinely going beyond the call of duty. Their efforts are largely unsung and sometimes unfairly pilloried. Yet they render to the ACT community a prosecution service which is effective, fair and fiercely independent.

It seems that there are always proposals under discussion to change the criminal law and procedure. Almost inevitably, those changes involve my Office in stretching already tight resources even further. Every additional police officer on the beat; each increase in population; every new offence; every change in procedure, inevitably leads to pressure on already tightly stretched prosecutorial resources.

Of course this is not to say that such changes should be avoided - this Office has been instrumental in the success of many recent welcome initiatives. But it must be acknowledged that such changes do create pressure on resources.

Indeed experience shows us that the work of my Office will never decline – on the contrary it is destined perpetually to increase. This is a fact of life that must be accepted when the resourcing of the Office is being discussed.

With this in mind, I will propose to government in the next budget round that a funding model be developed which allows for automatic increases in funding for the Office – whether tied to increase in population or increase in police numbers – so that resourcing of this vital community service can be put on a sure footing.

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

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

The devastating effect that crime has on victims and loved ones can sometimes be overlooked, but it is something that prosecutors experience every day. An illustration of this is provided by the sad case of the death of Anna Hardwick which concluded this year with the acquittal of the man accused of her murder. A comprehensive report of the case is included herein. Anna Hardwick's parents Rosemary and John have endured unimaginable torments while this case made its way through the courts. Having seen the first jury convict the accused, they then saw the first appeal court overturn the verdict, on grounds the High Court later ruled were erroneous. They then had to endure another appeal, which ordered a new trial, although on grounds that later proved to be irrelevant to the way the case was run at the second trial. Then they saw a judge sitting alone come to a different conclusion from that of the jury in the first trial.

When asked about his experience of the criminal justice system, John Hardwick commented that during the long years of the original trial and appeals, he felt as though he was in a tunnel, but at least there was light. Now he said, he felt he was still in the tunnel, but there was no longer any light.

The stoic dignity with which John and Rosemary Hardwick have conducted themselves during this ordeal is humbling. These are the sorts of experiences that inspire us as prosecutors to continue to do the best we can.

Jon White
Director of Public Prosecutions

SECTION A

PERFORMANCE AND FINANCIAL MANAGEMENT REPORTING

A.1 THE ORGANISATION

The Office of the Director of Public Prosecutions was established by the *Director of Public Prosecutions Act 1990* ("the Act") to institute, conduct and supervise prosecutions and related proceedings. The Act provides that the Office be controlled by the Director, an independent statutory officer appointed by the Executive.

The current Director, Jon White, was appointed for a seven year term commencing on 15 September 2008.

The Director makes prosecutorial decisions independent of political influence or control. Although the Director reports to and through the Attorney General, the Director has complete independence in relation to the operations of his Office. The Director has the powers of a chief executive in relation to staff of the Office.

The Act requires the Director and Attorney General to consult with each other, if required, concerning the functions and powers of the Director. The Attorney General may give directions to the Director, but any such directions must not be given without prior consultation; must be in writing and be presented to the Legislative Assembly; and be of a general nature only and not refer to a specific case. Any such direction or guideline is a notifiable instrument.

The Attorney General gave one such direction, relating to fireworks, during the period covered by this report. It is Notifiable Instrument NI2009-411.

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

The principal duties of the Director are:

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

The Director has some important statutory functions, including:

- to institute a prosecution on indictment where there has been no committal for trial (known as an ex officio indictment);
- to decline to proceed further in a prosecution and bring it to an end;
- to take over and conduct, or discontinue, prosecutions instituted by another person (other than the Attorney General);

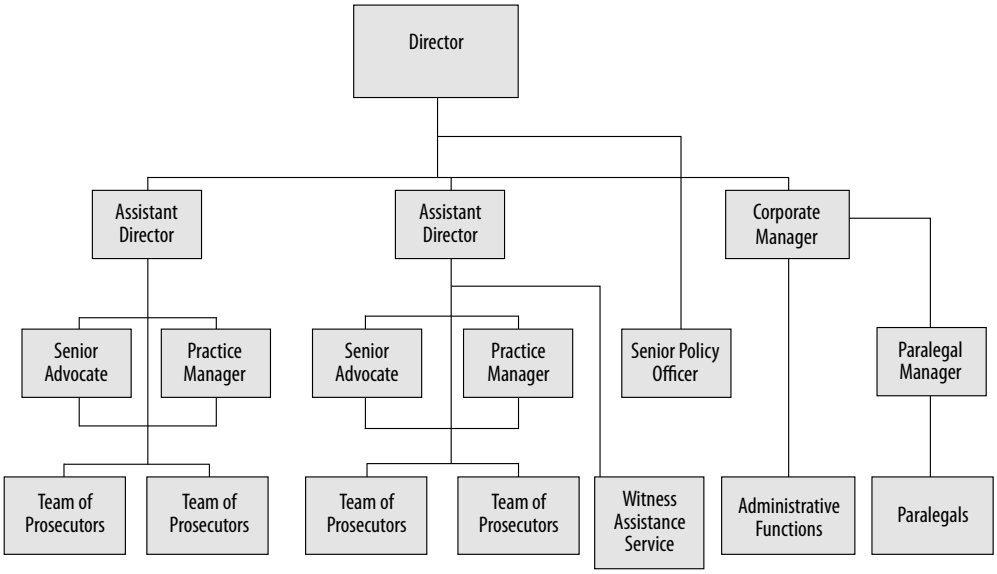
- to give to a person an undertaking that specified evidence will not be used against them, or that they will not be prosecuted for a specified offence or conduct; and
- to give directions or furnish guidelines to the chief police officer and other persons specified in the Act, including investigators and prosecutors.

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

In making decisions in the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed, and in particular by the Prosecution Policy promulgated by the Director. The Prosecution Policy is available on the website of the Office and is appended to this report.

Although the Office does not have clients as such, in performing its functions the Office works closely with the Courts, the legal profession, police and other investigators, victim's representatives and other government agencies.

A substantial restructure of the Office has been completed. The resulting structure is as follows:



A.2 OVERVIEW

The Office continues to perform its many roles and responsibilities (detailed later in this report) within tight budgetary confines. A great emphasis has been placed on training and performance management of staff, and changes have been made to make the management structure more responsive to the needs of a litigation practice.

Of course the essential business of the Office is criminal litigation. It is worth noting that the Office operates in an environment of externally imposed deadlines and very high work volumes. The statistics and case reports in the body of this report give some idea of this.

The acquisition of an electronic case management system will have far reaching implications for the way in which the business of the Office is conducted.

The physical office environment has also been changed with renovations to accommodate extra prosecutors and streamline the operations of the Office.

The executive of the Office comprises the Director, the Assistant Directors and the Corporate Manager. Weekly executive meetings also include the Practice Managers and the Paralegal Manager. There are weekly meetings of prosecutors at which legal and other matters are discussed, and regular meetings of paralegals.

There is high level liaison with both the AFP and the Courts Administration. There are a myriad of other liaison and consultation arrangements, many of which are detailed in this report.

A.3 HIGHLIGHTS

Noteworthy operational achievements during 2009-2010 were:

- the recruitment of additional prosecutors following the increase in budgetary allocation;
- the commissioning of an electronic case management system (known as CASES);
- the introduction of the positions of practice manager and senior advocate;
- the development of a dedicated sexual assault unit;
- the prosecution of a number of demanding, complex or significant cases;
- implementing a new performance management regime;
- revamping the paralegal structure to make it more responsive to the litigation priorities of the Office;
- developing a range of staff and legal policies;
- moving to electronic delivery of library services;

- entering into a long term lease renewal for the Office at its present location;
- renovating the office premises to accommodate the new prosecutors and modernise the internal fit out.

The major challenges facing the Office were:

- dealing with issues of security of staff outside the Office, specifically in Court and on the way to Court;
- delays in the finalisation of cases, particularly in the Supreme Court;
- retention of legal staff;
- maintaining staff development and training in the face of workload and budgetary pressures;
- contributing to legislative reform proposals within existing staffing and workload levels.

A.4 OUTLOOK

The key priority for the coming year will be to consolidate the gains made in litigation management. CASES, the new case management system will be fully implemented and its potential explored. This will require a wholesale reconsideration of existing work patterns, document templates, and records management. This is well under way. The training and mentoring of junior lawyers will continue to be a crucial, with competency based performance management and advocacy training receiving particular emphasis.

The classification/work value review requested by the CPSU will continue, an external report having now been obtained.

Consultations about the Supreme Court backlog will no doubt call for a major involvement of the Office.

The Office will continue to strengthen its relationship with the Australian Federal Police (AFP) with proposals for a new memorandum of understanding, and a redefining of communications necessitated by the move to CASES and away from reliance on the AFP's PROMIS system.

A significant issue for the Office is likely to be the retention and recruitment of legal staff, given workload pressures and remuneration levels.

As part of the efficiency dividend required by government, the Office has reduced the use of external counsel, and determined to prosecute most matters in house. The risks associated with this are the increased pressure on internal legal staff, and reduced flexibility leading to the possible unavailability of counsel for matters listed in court.

A.5 MANAGEMENT DISCUSSION AND ANALYSIS

The outcome for the 2009-2010 financial year was broadly in line with budget.

However anticipated cost pressures across a range of budget areas including witness expenses and IT costs will burden already tight budgets in future years. Anticipated reductions in funding by way of efficiency dividends will further add to these challenges in an environment of increasing workloads.

A.6 FINANCIAL REPORT

The financial transactions of the Office for the year ending 30 June 2010 are subsumed within the audited financial statements of the Department of Justice and Community Safety. The following are the operating costs of the Office for the reporting year and should be read in conjunction with those financial statements.

OUTPUT 1.4 – OFFICE OF THE DPP

Item	Budget $'000	Outcome $'000
Government Payment for Outputs	8,356	8,287
Employee Expenses	5,444	5,595
Superannuation Expenses	829	747
Supplies and Services	2,213	2,265
Depreciation and Amortisation	263	182
Borrowing Costs*	4	3
Other Expenses	-	-
TOTAL EXPENSES	**$8,752**	**$8,795**

Note: Total Expenses include allocated JACS Departmental overheads

A.7 STATEMENT OF PERFORMANCE

The following is extracted from the audited JACS financial statements for 2009–2010:

Output Class 1 : Justice Services			
Output 1.4 : Director Public Prosecutions			
Output Description			
Prosecution of indictable and summary offences, at first instance and on appeal, provision of assistance to the Coroner and provision of witness assistance services.			
Accountability Indicator	Original Target 2009–10	Actual Result 2009–10	Variance %
Total Cost ($'000)	8,752	8,795	0%
Government Payment for Outputs ($'000)	8,356	8,287	-1%

Note: For full Output 1.4, see audited JACS financial statements.

A.8 STRATEGIC INDICATORS

This is not a matter on which the Office is required to report.

A.9 ANALYSIS OF AGENCY PERFORMANCE

SUPREME COURT AND APPELLATE ACTIVITIES

Supreme Court

There has been a decease in the number of trials completed during the year, down to 30 from 37 last year – see Table 3. Against this, there has been an increase in the number of sentences completed in the Supreme Court. The decrease in completed trials and the significant increase in the last two years in matters committed for trial, have contributed to what is now a significant backlog in Supreme Court trials.

Bail

Bail hearings in the Supreme Court continue to place a significant workload on the Office. The problem with self represented applicants being allowed to proceed with their applications despite those applications not complying with the Court Procedures Rules

respecting such applications continues. As noted last year, this often leads to the Court requesting assistance from the prosecution in verifying information sought to be relied upon by applicants for bail. It also leads to matters being adjourned, sometimes on several occasions. This causes inevitable duplication of work in the Office, as it is often not possible to allocate the same prosecutor on the next occasion the matter is in court. It is still not uncommon for applications to be made for bail - and for bail to be granted - where an administrative arrangement with Corrective Services could have been entered into, such as applications for day bail to be allowed to attend medical appointments or funerals.

Appeals

There was a reduction in the number of finalised appeals – see Table 4. This is in line with historical trends from last year. More resources have been allocated to appeals within the Office with one paralegal and a team of three prosecutors regularly reviewing all appeals within the Office. Unrepresented appellants in custody continue to burden the office with the preparation of appeal books. The Office continues to encourage unrepresented appellants to prosecute their appeals in a timely manner.

MAGISTRATES COURT

Overall figures for number of charges were similar to last year (see Table 1). The number of people committed for trial and sentence to the Supreme Court was very similar to last year (312 this year, 313 last year, see Table 3). However, there has been a steadying in the number of charges committed for trial (456, down from 667 for last year, see table 2). This largely reflects the decline in common assaults committed to the Supreme Court, down from a total of 64 charges last year to just one this reporting period. Following legislative changes introduced at the beginning of the reporting period, common assaults are now purely summary matters.

As reported last year, a new Practice Direction for case management hearings is now in effect. Meeting the timetable in the Practice Direction is a constant challenge, as the Office is dependent upon the AFP to provide material in a timely manner.

CHILDRENS COURT

Total matters in the Childrens Court remained fairly steady (see Table 1). A new Childrens Court magistrate has been appointed.

Restorative Justice

Restorative Justice (RJ) is a process established by the *Crimes (Restorative Justice) Act 2004*. The process provides an opportunity for young offenders and victims to discuss in conference the harm caused by an offence and to work towards repairing that harm. Participation in RJ is voluntary, and designed to work alongside other criminal justice processes.

RJ is only available in the Childrens Court and only applies to those offences that can be dealt with summarily, and do not involve family or sexual violence. Matters that are referred to the Restorative Justice Unit (RJU) are assessed for suitability and, if appropriate, are facilitated through the process by the RJU.

For eligible matters, the RJU organises a conference between the victim and perpetrator of an offence. Conferences can be conducted either in person or indirectly, and are managed by the RJU.

Generally, conference participants come to an 'RJ agreement' through which the young offender is given an opportunity to make amends to the victim and demonstrate their remorse and understanding of the consequences of their behaviour.

RJ aims to provide the victim with an opportunity to express how an offence has affected them, while offering a young offender an opportunity to accept responsibility for their actions and repair the harm that their actions have caused.

This Office is very supportive of the RJ process. The DPP is one of six entities that have the power to refer matters to the RJU for a suitability assessment for participation in the RJ process. Nine offenders were referred by the Office during the reporting period. This is a marked decrease from previous years, and does reflect somewhat of a new approach by the Office. In previous years, there was a tendency to refer matters because the court suggested they be referred. This is no longer done. The Office will refer eligible matters to RJ where a prosecutor has formed the opinion that the objects of the Act would be served by such a referral, and in particular that the victim may benefit from the process.

Of course a number of other entities can refer matters for RJ at various stages of the criminal process. Indeed the Court itself frequently refers matters for RJ, after being assured by the prosecutor that a referral is appropriate.

While RJ is a proper sentencing consideration for the court, successful completion of the RJ process or agreement will not necessarily result in a discontinuation of the prosecution. As the *Crimes (Restorative Justice) Act 2004* makes clear, access to restorative justice does not substitute for the criminal justice system or change the normal process of criminal justice.

NGAMBRA CIRCLE SENTENCING COURT

The Ngambra Circle Sentencing Court (the Circle) commenced operation in 2004. It is available for indigenous offenders.

The Circle aims to:

- reduce barriers between Courts and the Aboriginal and Torres Strait Island communities;
- provide culturally relevant and effective sentencing options for indigenous offenders;
- involve Aboriginal and Torres Strait Islander communities in the sentencing process;

- provide offenders with support services that will assist them to overcome their offending behaviour;
- enhance the rights of victims in the sentencing process; and
- reduce repeat offending.

An offender who identifies as an Aboriginal or Torres Strait Islander and who pleads guilty to an offence may be referred to the Circle for sentencing. The offence must be one which can be dealt with summarily. Offenders with an unresolved addiction to certain illicit substances and those charged with sexual offences are not eligible for referral.

To participate in the Circle, an offender must be assessed as suitable by a panel of elders and respected community members from the local indigenous community. The Circle itself is presided over by a Magistrate and includes a panel of elders or respected community members.

The offender, their legal representative, and a prosecutor also participate. Corrective Services attend if they have supervised the offender during the remand period. The victim is invited to participate in the Circle and can be accompanied by a witness assistant from the Office or other supporter.

Having heard the facts of the offence, information about the offender, and the impact of the offence upon the victim, the panel makes recommendations to the Magistrate concerning sentencing. The Magistrate then sentences the offender, taking into account the recommendations of the panel.

The Circle convened nine times in the reporting period with a total of fourteen offenders electing to have their matter determined at the Circle.

While this number may seem small, it must be recognised that the process of the Circle is one that is significantly longer and at times more complicated than the conventional sentencing process. It also involves a significant amount of resources from the courts and by this Office.

Circle, by its very nature, takes a more expansive approach than conventional sentencing as a wider range of subjective factors are considered to arrive at a sentence that promotes the rehabilitation of the offender but also takes into account the expectations of the community when considering justice in the wider sense.

Recently a report was commissioned by JACS on the operation of the Circle. Recommendations have been made to strengthen the court but as at the writing no recommended changes have been made.

CORONERS COURT

The Director's functions include the function set out in Section 6(1)(d) of the *Director of Public Prosecutions Act 1990* of "assisting a coroner in inquests and inquiries". Although this is not a function that is exclusive to the Office, in practice, the coroner is assisted by a prosecutor from the Office in most coronial enquires.

This year the Office's coronial practice was co-ordinated by a prosecutor, Mrs Siân Jowitt. This year it was decided that all prosecutors should be skilled in the unique coronial practice. The role of the co-ordinator has become one of a centralised information source and point of contact, rather than the primary counsel assisting the coroner. Coronial matters are now allocated within the Office as soon as they are reported to the coroner. This has a number of advantages: availability of counsel to assist the coroner where needed prior to any decision to hold a hearing; continuity of contact with family members; and a reduction in the number of reallocations.

The Coroners Court too has changed its practice. Deputy Coroner Dingwall now acts as a co-ordinator for the Coroners Court. The Australian Federal Police continue to have a dedicated coronial area. All this means that co-ordination between this Office, the Court and the AFP is improved. One key aspect of this new approach is fortnightly case tracking, which ensures that matters are progressed expeditiously.

Coronial proceedings are not part of the adversarial system but are rather investigatory in nature. Many coronial matters do not require a hearing of evidence. The coroner can often make findings in relation to the cause of death from statements and documents tendered in a short hearing. Where the cause of death is not clear, or where issues of public interest arise, the coroner can hear evidence from witnesses. Interested parties can also ask questions or be represented by counsel.

During the reporting period there were:

- 345 deaths reported as inquests
- 35 hearing inquests concluded
- 1568 inquests in total finalized
- 4 advice matters completed
- 138 court attendances

(The majority of "inquests finalised" related to fires that had been reported. This Office is not required to assist in the majority of fire matters.)

During the reporting period there was a range of types of deaths. There were a number of suicides and drug overdoses. A number of deaths in custody occurred (the Act defines a death in custody more broadly than simply in a jail). During this reporting period there was a death in the remand section of the Alexander Maconochie Centre. That inquest was finalised with a finding that the remandee died of nature causes.

There was also a well publicised four-fatality motor vehicle incident suspected of being during a police pursuit, which is awaiting a complete coronial brief and hearing.

The review into the *Coroners Act 1997* referred to in the last annual report continues.

There is an Office representative on the Coronial Review Steering Group and also the Coronial Review Working Group.

SEXUAL OFFENCES UNIT

In the reporting period, a new Sexual Offences Unit was created to allow specialisation in the prosecution of sexual assault matters. The aims of the Sexual Offences Unit include to:

- improve the way the office prosecutes sexual offences;
- provide early, sustained and appropriate contact with complainants;
- provide for continuity of prosecutor throughout proceedings;
- reduce delay in sexual offence matters;
- ensure maximum use is made of the special measures provided for as part of the recent legislative reforms.

The Unit comprises two full-time prosecutors and one prosecutor employed in both the Sexual Offences and Family Violence Units. The prosecutors of the Unit work closely with the members of the Witness Assistance Service (WAS) and the AFP Sexual Assault and Child Abuse Team (SACAT).

There are currently more than 70 sexual offence matters being prosecuted by the Office. Members of the Unit conduct most sexual assault prosecutions and retain some involvement where a prosecutor from outside the Unit has carriage of the matter. The head of the Unit has a say in all decisions on whether sexual offence prosecutions should be discontinued, or whether appeals should be lodged.

Relevant matters are allocated to a member of the Unit as soon as they come into the Office, and as far as possible, that prosecutor maintains involvement with the matter until it is concluded. This ensures consistency for complainants and avoids the need for complainants to re-tell their story when a change of prosecutor occurs. It also ensures that consideration can be given at an early stage to the sufficiency of evidence and the appropriateness of charges. Prosecutors endeavour to meet with complainants early on, and maintain contact with them during the course of proceedings.

Preliminary feedback provided to the WAS indicates that complainants have reacted positively to having one prosecutor consistently involved in the matter, and having early contact with that person.

In 2009, amendments were made to the *Magistrates Court Act 1930* and *Evidence (Miscellaneous Provisions) Act 1991* incorporating recommendations of the Sexual Assault Reform Program (SARP). These amendments change the way complainants in sexual assault matters give evidence. In particular, complainants in sexual assault matters are no longer be required to give evidence in committal proceedings. Child complainants in sexual assault matters can have their evidence pre-recorded and played as their evidence-in-chief, and can give evidence at a pre-trial hearing, reducing the harmful effect of excessive delay on the ability of children to give evidence. The formation of the Unit allows for the development of expertise in relation to these complex reforms.

Members of the Unit provide training to SACAT members and other AFP members to enable them to qualify as 'prescribed persons' for the purposes of conducting interviews with child complainants under the new provisions.

A wide variety of sexual offence matters have been finalised in the reporting period. Some of these matters are outlined below.

On 13 November 2009, JF was sentenced to three years six months imprisonment, to be suspended after serving 15 months of periodic detention on a count of sexual intercourse without consent. JF was convicted by jury after pleading not guilty to having sex with a guest at a party he was attending, who he assaulted while she was asleep on the couch. The matter is reported in more detail elsewhere in this Report.

On 21 April 2010, Bradley Hogno was sentenced for the act of sexual intercourse without consent on his estranged partner. Hogno was staying at his former partner's residence, came into her bedroom and forced her to engage in oral sex. He pleaded guilty and was sentenced to four years with a non-parole period of two years and three months.

On 16 April 2010, Lawrence Page pleaded guilty and was sentenced to 18 months imprisonment in relation to an act of indecency committed on a 14-year-old girl in the course of a home invasion. Page had been convicted in 2007 of sexual intercourse with a young person, as a result of his breaking into a motel room and assaulting an 11-year-old girl on a school excursion. The 2010 sentence was ordered to commence after three years of the initial sentence. This resulted in a total head sentence of six years six months with a non-parole period of four years six months.

Alex Pinto-Pedreirei was charged with sexual intercourse without consent in relation to his partner. At the time, there was a protection order in place against him. He pleaded guilty and was sentenced to two years' imprisonment in respect of the first count and three years six months in respect of the second count, cumulative on two months of a four month sentence for breaching the protection order, with a non-parole period of 15 months.

NR pleaded guilty to two counts of an act of indecency on his grand-daughter. He was sentenced to 18 months' imprisonment in relation to each count, suspended after serving three months full-time, followed by nine months of periodic detention. He was also ordered to participate in the Adult Sex Offenders' Program.

FAMILY VIOLENCE INTERVENTION PROGRAM

The Office continues to play an integral part in the ACT interagency Family Violence Intervention Program (FVIP). The FVIP was established to address family violence in our community, in particular the response of the criminal justice system to such violence.

The Family Violence (FV) team is a specialist unit within the Office. It has five prosecutors who appear in the majority of FV matters in the Magistrates Court and Supreme Court. In carrying out their duties, the FV prosecutors are greatly assisted and supported by the three witness assistants and specialist paralegals.

Having specialist prosecutors allows for a consistency of approach and for continuity for victims. Specialisation also enhances the relationships with other essential agencies - the police, the Office of Children and Youth and Family Support, the Domestic Violence Crisis Service and Victims Support ACT. The Office continues to develop our relationship with these agencies.

Family Violence prosecutors deal with domestic violence offences as defined in the *Domestic Violence and Protection Orders Act 2008* as a 'relevant relationship' where those offences have been committed within the relationship.

It was noted in last year's report the definition of 'relevant relationship' had widened and more matters were likely to fall within the responsibility of the FV team. Certainly there has been an increase in family violence matters generally, however, it would seem that this is not a reflection of the change in definition as we have only seem a small number of matters come into the FV team that we would not have been prosecuted as an FV matter under the old definition.

In addition to the increased numbers, we have also seen an increase in the number of female defendants. Whether this is an emerging trend, or just a spike, is still to be seen.

Changes to the *Evidence (Miscellaneous Provisions) Act 1991* regarding the use of CCTV for victims giving evidence have had an impact on the work of the FV team. Now almost all victims in FV hearings and trials involving assaults, sexual offences and serious offences of violence give evidence from a remote location. Victims tell us that they are less fearful when giving evidence this way. This has enabled victims to give clear and cogent evidence that they might otherwise have been unable to give in Court.

FV victims in serious offences such as burglary, contravention of protection orders and damage property are still required to give evidence in Court. These are some of the most common FV offences, and there is merit in considering whether the opportunity to give evidence remotely should be extended to victims in such cases.

Family violence charges are identified as such at the charging stage by the police, and once before the Magistrates Court, are transferred to a specialist family violence list. When children come before the Court on FV charges they are dealt with in the Children's Court by the Children's Court Magistrate.

We have improved our practices in dealing with children as both defendants and victims. These matters are often complex, and for this reason all FV children's matters are allocated to an FV prosecutor to case manage as soon as they come into the Court system.

FV matters with children as defendants present particular difficulties. Generally, parents call police as a last resort after having exhausted all other options. These victims - who are of course usually the defendant's carer – often feel a sense of guilt, regret and self blame. In other situations children are living in a dysfunctional relationship with their family, a factor which contributes to their offending. In these cases the child's need for care and protection can take precedence over criminal prosecution.

In dealing with children as defendants, FV prosecutors have to contend with conflicting factors - the child's best interest, the views of police, the views and interests of victims and the policy that informs the FVIP. Unfortunately there are limited options to deal with these situations both pre charge and after the matter has reached the Courts.

WITNESS ASSISTANCE SERVICE

The Witness Assistance Service (WAS) provides a range of services to meet the needs of victims and witnesses involved in matters prosecuted by the Office. The service aims to reduce the trauma associated with being a victim or witness of crime. The WAS is currently staffed by three professionally qualified workers.

The main role of the WAS is to provide information to victims and witnesses about the criminal justice system. Additionally, the WAS make referrals, prepare clients for court, support clients at court, and provide assistance after court. The WAS also assists prosecutors in dealing with victims and witnesses, and provides training to internal staff and external agencies in relation to supporting victims and witnesses of crime through the criminal justice system.

During the reporting period the WAS has continued to provide training to, and receive training from, the AFP, DVCS, Victim Support ACT and the Canberra Rape Crisis Centre. The WAS also attended the annual Family Violence Conference and the Sexual Assault Reform Program Training.

WAS officers also attend monthly wraparound meetings. These meetings are attended by various agencies for the purpose of ensuring every victim of sexual assault is supported. While the WAS ensures it has contact with all victims of sexual assault, these meetings are beneficial for referring clients to outside agencies for counselling and for the sharing of information.

As reported last year, WAS officers have continued to attend the following meetings for the purpose of referrals:

- monthly meeting with Victim Support ACT;
- weekly Family Violence case-tracking meetings;
- monthly meetings with the AFP Criminal Investigations Victim Liaison Officers;
- monthly meetings with the AFP Sexual Assault and Child Abuse team.

WAS Caseload

The WAS assisted 546 victims and witnesses during the reporting period. This was slightly up from 514 the previous year. Of these clients 215 were clients carried over from the previous year and 299 were new clients. The following table shows the numbers of clients WAS had from each charge type:

Offence type categories	Number of clients	Percent of clients
Family Violence	275	50.4
Sexual Assault	69	12.6
Child sexual assault	86	15.8
Historical sexual assault	25	4.6
Child pornography	1	0.2
Significant Trauma	51	9.3
Death	27	4.9
Other	12	2.2
TOTAL	**546**	**100**

While the WAS dealt with 32 more matters in this reporting period, the percentage in each offence type remained relatively similar.

It is important to note that of the 181 sexual assault matters, 48 (26.5%) of these were also classified as family violence. These clients are particularly vulnerable given the seriousness of the charges and fact that there is a pre-existing familial relationship between the client and the defendant.

Of the 546 clients the WAS dealt with in the reporting period 319 were finalised leaving 227 to carry on into the 2010 - 2011 period.

WAS officers spend a substantial amount of time on the phone to clients giving updates and information and making referrals. They also spend a lot of time having face to face contact.

Type of face to face contact	Amount in hours
Court Support	162
Proofings and meetings with Prosecutors	136
WAS meeting with client alone	61
TOTAL	**359**

The above table shows the amount of time the WAS spent with clients in the reporting period. This amounts to approximately 19% of time spent in face to face contact with clients. It is also important to note that a substantial amount of this time is spent with the Prosecutor present. This is in addition to a Prosecutor's time spent in court and in preparation for court.

Sexual Offences Unit

As detailed elsewhere in this report, a Sexual Offences Unit has now been established in the Office. For complainants of sexual offences this has made a considerable difference to their interactions with the Office. A specialist prosecutor is allocated to these matters at the outset meaning victims in sexual assault matters are being introduced to prosecutors at a much earlier stage. The feedback from clients on these changes has been positive - they feel that they are an important part of the process, and that they are being heard. There is active collaboration between the Sexual Offences Unit and the WAS, with weekly meetings being held to discuss sexual offence matters.

SARP Legislation Reforms

The SARP legislation reforms have now been in place for over 12 months. They embody some very positive changes for victims of sexual and violent offences. Sexual offence matters are now being committed for trial much faster and without the complainant having to give evidence.

The legislation changes have also meant that a greater number of victims and witnesses are entitled to give their evidence remotely. The ability to give evidence from a remote location allows people to feel less intimidated, as they will not have to be in the same room as the defendant. The following table illustrates those who would have been entitled to give their evidence from a remote location before the reforms and those who were actually entitled to give their evidence from a remote location in the reporting period. It also illustrates how many people were entitled to give evidence early at a pre-trial hearing.

SARP entitlement	Number	Percentage
Pre-legislation remote evidence	235	43%
Post legislation remote evidence	466	85.30%
Pre-Trial recording	78	14.30%

As can be seen in the above table, of the 546 clients the WAS dealt with in this reporting period, only 43% of them would have been eligible to give evidence remotely before the SARP legislation reforms. With the reforms in place 85.3% of them were entitled to give evidence remotely. In addition to this, 14.3% of clients were eligible to give their evidence at a pre-trial recording. This meant that they could get their evidence out of the way earlier and would no longer have the prospect of giving evidence at trial hanging over their head for many more months.

Length of time in the system for sexual offences

In the last annual report, the WAS looked at the amount of time sexual offence matters were taking to proceed through the criminal justice system. The below table compares the last reporting period to this reporting period in terms of ongoing sexual offence matters.

Ongoing sexual assault matters	Number in 08/09	Percentage in 08/09	Number in 09/10	Percentage in 09/10
Ongoing for less than 12 months	55	53.4	55	43.3
Ongoing between 12 and 24 months	34	33	36	28.4
Ongoing between 24 and 36 months	11	10.7	24	18.9
Ongoing more than 36 months	3	2.9	12	9.4
TOTAL	**103**	**100**	**127**	**100**

It is concerning that there has been an increase in the number of sexual offence matters that have been ongoing for over 24 months. It is important to note that 7 of those clients who have been waiting for a conclusion to their matter for over 36 months are victims of one accused person. Of the remaining matters that have been ongoing for more than 36 months most have completed the trial but are awaiting a decision from the Supreme Court. It is hoped that in the next reporting period, the amount of time taken for sexual assault matters to be completed will decrease due to the SARP reforms being in effect when the matter is commenced in the criminal justice system, and also by the appointment of acting Judges to reduce a backlog of cases in the Supreme Court.

The following table indicates the comparison of sexual offence matters that were finalised during this reporting period and last year.

Finalised sexual assault matters	Number in 08/09	Percentage in 08/09	Number in 09/10	Percentage in 09/10
Finalised in less than 12 months	38	69.1	23	42.6
Finalised between 12 and 24 months	12	21.8	24	44.4
Finalised between 24 and 36 months	2	3.6	3	5.6
Finalised after more than 36 months	3	5.5	4	7.4
TOTAL	**55**	**100**	**54**	**100**

It can be seen that in this reporting period that fewer matters are being finalised in less than 12 months but more are being finalised between 12 and 24 months. The majority of matters that are finalised in under 12 months are due to the matter not proceeding (21 were discontinued in the 08/09 period and 17 in the 09/10 period). Where a matter is discontinued the complainant may feel - understandably but incorrectly - that they have not been believed or have done something wrong. WAS officers and prosecutors talk this through with the complainant so that the complainant understands the reasons for the discontinuation, and do not feel that they are responsible.

CONFISCATION OF CRIMINAL ASSETS

The *Confiscation of Criminal Assets Act 2003* provides an additional significant strategy to address criminal activity in the Territory. During the reporting period, there has been an increase of matters being referred to the Office and being dealt with by the Court. The AFP and the Office have drafted an agreement to ensure that all matters capable of referral come to the attention of the Office.

During the reporting period the following activity took place.

Number of matters referred by the AFP	36
Value referred	$204,779
Value of restrained property	$126,295
Value of forfeited property	$47,849
Applications to restrain property	28
Application for conviction forfeiture orders	4
Application for Buy Back Order	nil
Application for unclaimed tainted property	5

SENTENCE ADMINISTRATION BOARD

The Sentence Administration Board is established under the *Crimes (Sentence Administration) Act 2005*. The Board has functions in relation to parole, periodic detention and release of offenders on licence. One of the functions of the Director is to attend meetings of the Board to make submissions in relation to specific matters, especially in relation to the law on sentencing and the interpretation of applicable legislation. Senior prosecutors from the Office appear regularly before the Board.

LIBRARY

The Library has undergone considerable change during the year with the appointment of Rick Clarke as librarian and the installation of a new library management system. The library catalogue gives staff improved access to the collection with filters set up to restrict a search to specific areas such as sentencing and CLE papers.

A new method of providing access to legislation was put in place with staff able to quickly download to their notebook computers up-to-date Acts and Regulations in pdf format. Training on the use of notebook computers in court was provided. The electronic copy of legislation has replaced hard copies, the maintenance of which was time consuming and otherwise inefficient.

CASE REPORTS

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

R v Forbes

Benjamin James Forbes was charged with engaging in sexual intercourse with a young woman without her consent knowing that she did not consent. The offence was committed late one evening in March 2005 on a bicycle path in Lyneham. The complainant had left her job at a restaurant in Dickson and was walking home when Forbes held a knife to her and forced her to perform a sexual act on him.

At the trial DNA evidence was adduced to the effect that three sites of biological evidence were obtained from the young woman's clothing. Two of those sites were from her bra, the outer surface and the inner surface. A third site was on the upper front thigh of her trousers. The location of the DNA on the three sites corresponded with the complainant's description of how the offence had been carried out.

When the DNA was tested it was ascertained that the sample obtained from the trousers was single source male sample and the samples from the bra were mixed sources. The profile obtained from the trousers matched the profile obtained from a sample taken from Forbes and when a statistical analysis was undertaken it was determined that there was a point estimate of 1 in 20 billion that Forbes was the source of the crime scene sample (being that taken from the front of the trousers) rather than an individual selected at random from the general ACT population.

However after a discussion between the Crown and Forbes' lawyers it was agreed that instead of having the point estimate given in evidence, a verbal scale would be used. That verbal scale had been developed to try to assist judges and juries understand the significance of the point estimate. In this case the verbal scale was that:

> when considered in isolation from other information (it) provide(s) extremely strong evidence to support the contention that the donor of the DNA reference sample relating to Forbes is the source of the DNA profile obtained from the trousers.

At his trial Forbes was convicted and was sentenced to a term of imprisonment for 8 years. He will be eligible for parole at the end of 2010.

Forbes appealed against his conviction to the ACT Court of Appeal. The grounds of the appeal included an attack on the DNA evidence. The notice of appeal asserted that the verdict was unjust or unsafe in particular having regard to "the nature of the DNA evidence, as the only evidence identifying the appellant, made the verdict totally reliant upon a statistical analysis which could not operate to remove all reasonable doubt."

The Court of Appeal unanimously dismissed the appeal observing:

> In this case, the appellant does not suggest that there has been a failure to observe any conditions essential to a satisfactory trial. He does not challenge any ruling on evidence or any aspect of the trial judge's summing up. His case on appeal is that the verdict is unjust or unsafe because there are features of the case raising a substantial possibility that the jury may have been misled or mistaken.
>
> No doubt there are a number of matters which may affect the admissibility and weight of DNA evidence … but that does not mean that DNA evidence cannot be highly probative evidence in an appropriate case.
>
> The DNA evidence called by the prosecution was very powerful evidence and none of the matters advanced by the appellant, considered either individually or as a whole, lead us to the conclusion that it was not open to the jury to be satisfied beyond reasonable doubt of the appellant's guilt of the offence with which he was charged.

Forbes sought special leave from the High Court to challenge the decision of the Court of Appeal. He proposed that special leave be given to answer three questions:

1. Whether the verdict was unjust or unsafe because the DNA evidence standing alone was not capable of proving beyond reasonable doubt that the applicant was the person who committed the offence.

2. Whether the verdict was unjust or unsafe having regard to the exculpatory evidence when the only evidence identifying the applicant was the DNA evidence.

3. Whether DNA evidence alone is capable of proving beyond reasonable doubt the identification of a person who committed an offence.

The High Court heard the special leave application on 18 May 2010.

The applicant argued that there is a particular class of evidence, DNA evidence, which regardless of its particular content, should be held legally insufficient to support a conclusion that a disputed proposition of fact is established beyond reasonable doubt. This, the applicant said was not a rule of inadmissibility – the applicant conceded such evidence was admissible – but rather what was termed "a question of adequacy".

However the Court in argument posed the question: What is the point of letting in evidence that cannot do anything? In other words, on the applicant's case, DNA evidence could never support a finding beyond reasonable doubt.

The High Court unanimously refused special leave. The Chief Justice noted:

> At trial in this matter the parties acquiesced in the statistical conclusions drawn from the evidence relating to DNA profiles being expressed qualitatively rather than quantitatively. More particularly, they acquiesced in the expression of the statistical conclusions drawn from analysis of material taken from the complainant's clothing

being compared with the applicant's DNA profile as comprising "strong" or "extremely strong" evidence in support of the contention that the applicant was the source of the material taken from the complainant's clothing without the jury being told that the particular conclusions made by the witness in the case had yielded a figure of greater than one in 10 billion.

It was open to the jury to conclude from the evidence that was led at trial that the applicant was guilty beyond reasonable doubt. In light of the way the parties conducted the trial this is not, in our opinion, a suitable case to consider the larger question which the applicant seeks to agitate.

R v Hillier

The body of Anna Hardwick was discovered in the bedroom of her house at Isabella Plains by her parents on the morning of Wednesday 2 October 2002. There was evidence of a fire in the bedroom, but she had not died in the fire. As the investigation revealed, she had been murdered, with the murderer setting the fire to cover the murderer's tracks.

After a lengthy investigation Steven Hillier, Anna Hardwick's former partner, was charged with her murder. Mr Hillier was found guilty by a jury of the charge in 2004, but that finding was overturned by the Court of Appeal by majority in 2005. The Crown appealed against that decision to the High Court and in 2007, the High Court ruled that the Court of Appeal had erred. However, the High Court remitted the matter to the Court of Appeal, which directed that a new trial take place. After considerable delay the matter was listed for trial in early 2010, Mr Hillier having elected to be tried by judge alone. At the conclusion of that trial the judge found Mr Hillier not guilty.

The Crown case against Mr Hillier was in essential respects the same at each trial, and it is necessary to outline this briefly to set the context for a discussion of the case.

First, the Crown contended that Anna Hardwick had been murdered and that the murderer had attempted to cover the murderer's tracks by setting a fire in the bedroom where her body was found.

Secondly, the Crown contended that the evidence established that the murder had been planned, and the Crown argued that this pointed to a person having a motive to murder rather than a random or impulsive attack. The lack of fingerprints and material from which DNA could be extracted (although there was some DNA evidence, see below) was said by the Crown strongly to support the inference that the murder was planned and that the murderer took steps to avoid leaving DNA or fingerprints.

Thirdly, the Crown alleged that Mr Hillier had a motive for the murder of his former partner. There was evidence that there had been an intense custody dispute in relation to the young children of the deceased and Mr Hillier. Mr Hillier had originally had custody of the children, but Anna Hardwick had shortly before her death been granted custody by the Family Court.

Fourthly, the Crown contended that Mr Hillier had the opportunity to commit the murder.

Fifthly, there was evidence that on the inside of the collar of the pyjamas that the deceased was wearing at the time of her death there was found a trace of DNA which matched the DNA profile of Mr Hillier.

Lastly, the Crown relied on a category of evidence relating to what the Crown alleged as unusual conduct of Mr Hillier following a request made of him to supply fingerprints and a DNA buccal swab. Mr Hillier presented himself for the fingerprinting with damaged fingers. The Crown relied on the damage to the fingers, and his various explanations about it, as evincing a consciousness of guilt on the part of Mr Hillier.

Mr Hillier gave evidence at the first trial and vigorously denied that he had anything to do with the death.

Mr Hillier, having been found guilty at his first trial, appealed to the Court of Appeal. A majority of that Court upheld that appeal, holding that "there is a real possibility that another person was responsible for [Anna Hardwick's] death and we have been left with substantial doubt as to the guilt of the appellant". Justice Spender dissented from the majority judgement, stating, " … setting aside the jury's verdict in the circumstances of this case and on the material that was before them, in my respectful opinion, is a usurpation of the jury's proper function, and constitutes a grave miscarriage of justice".

The Crown obtained special leave to appeal to the High Court against the Court of Appeal's judgement. The High Court upheld the appeal, set aside the orders of the Court of Appeal and remitted the matter to a differently constituted Court of Appeal for rehearing.

In the joint judgement delivered in the High Court, the reasoning of the majority in the Court of Appeal was found to be "erroneous", the essence of the error being that the Court of Appeal had considered the significance of circumstantial evidence consistent with Mr Hillier's evidence in isolation from other evidence. The joint judgement concluded: "Where, as here, the verdict of a jury has been quashed by an intermediate court of appeal, and it is demonstrated, as here, that that court reached its order by a path that was not in accordance with proper principle, it is in the interests of the administration of justice, both generally and in this particular case, that the error be corrected."

A differently constituted Court of Appeal did hear the matter on remitter from the High Court. However, the second Court of Appeal ordered a new trial in the matter on the basis of a new ground relating to what was termed "further evidence". This was a document contained in the AFP forensic file labelled 15C7+, which included the results of further testing by AFP forensics. Defence witness Dr Brian McDonald (put forward as an expert in DNA) asserted at the appeal that 15C7+ had significantly changed his opinion of the DNA evidence.

15C7+ had been provided to the defence by the Crown prior to the first trial, but somehow the supposed significance of the chart was overlooked. The Court of Appeal was nevertheless prevailed upon to order a new trial, notwithstanding that the Crown had done all it could to bring relevant material to the notice of the defence. The Court commented: "It is indeed unfortunate that this situation has arisen. The cases must be few where failures on the part of an accused's legal representatives, or his witnesses, will lead to a new trial. Nonetheless, in an appropriate case, this Court will not shrink from its duty to ensure that the accused has that to which the law entitles him or her, namely a fair trial."

In the new trial, the Crown called further evidence which confirmed the results of the DNA testing led at the first trial. That evidence was not challenged, and no further evidence was called from Dr McDonald.

After considerable delay the retrial took place in early 2010. Mr Hillier this time elected for a judge alone trial, the ACT legislation giving the Crown no right in relation to this election. Judges trying cases alone have two roles – the legal role played by a judge in a jury trial, and the role of acting as jury (ie making determinations on the facts).

The trial judge found Mr Hillier not guilty.

The trial judge found that Anna Hardwick was murdered and did not die by sexual misadventure, which had been a suggestion made by the defence. The judge also found that Mr Hillier had the motive the Crown had identified. He also found that Mr Hillier had the opportunity to murder Anna Hardwick at the time the Crown contended she had died, although the evidence of how access to the house was gained by the murderer was not clear.

However the judge found that in relation to the DNA material, he could not exclude contamination or indirect transfer as a reasonable possibility. Of particular importance to this finding was the fact that the analysis of the pyjamas could not be replicated by further tape lifts (indicating that only a small amount of DNA was originally present). Further the judge was not satisfied that the damage to Mr Hillier's hands had been caused deliberately, and therefore evinced a consciousness of guilt.

DPP v Edwin Nair

Edwin Nair was charged with seven counts of assaulting his de-facto partner and one count of unlawfully confining her. Mr Nair was driving his de-facto partner and a friend home following an evening of nightclubbing in 2006. During the car trip Mr Nair became angry with his de-facto partner and allegedly assaulted her – including stopping the car and dragging her out of the car. Mr Nair eventually drove his de-facto home where it was alleged further assaults took place.

At trial the prosecution lead evidence from the friend, Ms Cooke, about the assault in the car. However, Ms Cooke's evidence at the trial was quite different from the information she provided in her police statement. In giving evidence she left out any mention of an assault. The prosecutor sought leave to cross-examine Ms Cooke as an unfavourable witness pursuant to s 38 of the *Evidence Act 1995*. The trial judge was satisfied that Ms Cooke's

evidence was unfavourable, but he refused leave to the Crown to cross-examine her on the basis that he was not satisfied that Ms Cooke was unwilling to tell the truth. Ultimately the jury returned verdicts of not guilty to all charges.

The prosecution instituted a reference appeal against the trial judge's ruling on s 38 *Evidence Act 1995*. A reference appeal allows the Crown to appeal a point of law, but does not change the result of the trial.

The Court of Appeal unanimously held that the trial judge had erred in requiring, as a consideration of whether to grant leave, a requirement that there be evidence of a motive or reason for the witness to give untruthful evidence. This is a significant decision in the Territory in providing guidance on the use of the unfavourable witness provision in the *Evidence Act* – particularly for family violence prosecutions.

R v JF

On New Years Eve 2007, the complainant, a single mother of two travelled to her friend's home to celebrate the New Year. The complainant and her friend had met as mothers whose children attended preschool together. The complainant's friend invited her to come over with her children and spend the night celebrating with the friend's family. This family included her husband and two of his brothers, as well as JF, her 17-year-old nephew.

At the end of the evening, the complainant said goodnight to everyone, tucked her youngest child in a spare cot, snuggled with her second child on the lounge and fell into a deep sleep.

She awoke in the early hours of 1 January 2008 to find JF having sexual intercourse with her. She immediately screamed causing JF to run from the house. The police were called. JF was apprehended when he returned shortly afterwards to the house. He was taken back to the City Watch house.

A doctor attended the Watch house, examined JF and recommended that police not interview him for six hours and that he be allowed to sleep. After sleeping for six hours JF was interviewed by police. JF claimed to have been too intoxicated to remember anything that happened during the previous evening.

The trial of this matter was one of the first in the ACT to be conducted using the new CCTV technology, with the complainant giving evidence from a remote location beamed to the court room via a telephone line, appearing before the jury on a large TV screen in the court room.

After four days of evidence the jury retired to consider its verdict. They returned several times with questions that tested the application of many of the complex legal issues that surround sexual assault matters including provisions in the *Evidence (Miscellaneous Provisions) Act* requiring a direction that a mistaken belief of consent be reasonably held, and the test of reckless inadvertence to consent.

The jury found JF guilty of the single count of engaging in sexual intercourse without consent.

The Court noted the offender's age and lack of prior criminal history and sentenced him to three years six months imprisonment to be served by way of 15 months periodic detention with the remainder being suspended upon the offender entering a good behaviour order.

R v WA

WA was charged with engaging in sexual intercourse without consent with the complainant in 2009. The complainant was the partner of WA's son and had gone to WA's house to get help for WA's son.

WA told the complainant to wait for the return of another son before he provided the assistance. While they waited, WA got a knife from another room and told the complainant that she was going to perform oral sex on him. She refused, pointing out to him that she saw herself as his daughter-in-law. WA held the knife briefly near the complainant's neck and then forced her to have vaginal sex with him. Afterwards, WA warned her not to tell anyone, and threatened to shoot her, his son and their three children if she did.

WA pleaded not guilty. He admitted to having sexual intercourse with the complainant (his DNA was relevantly detected during a medical examination of the complainant) but claimed it was consensual in exchange for money.

At his trial WA was found guilty by a jury of sexual intercourse without consent.

He was sentenced (on that charge and another charge of trafficking cannabis) to a head sentence of five years with a non parole period of three years. WA has since lodged an appeal against the jury's verdict. The matter is yet to be determined by the Court of Appeal.

R v Craig Aaron Donellan

On the evening of Tuesday 20 October 2007, 20 year old Craig Aaron Donellan was at the Cotter Reserve with four friends smoking cannabis and drinking alcohol. At about 11.30pm, Senior Constables Brian McAlonan and Adrian Roff set up a random breath testing station on the eastern side of the Cotter Bridge, about 200 meters from the Reserve. Senior Constable Roff sat in the car ready to activate the flashing lights and Senior Constable McAlonan put on a bright yellow reflective vest and gloves and prepared the breath testing machine. Several minutes later, Mr Donellan and his four friends returned to the car to drive back to Canberra. Although Mr Donellan only held a learner's permit and none of the other drivers held a full licence, he chose to drive the car.

As Mr Donellan drove onto the Cotter Bridge, Senior Constable Roff turned on the flashing lights, and Senior Constable McAlonan moved onto the road and directed Mr Donellan to pull over. Mr Donellan initially slowed, but suddenly accelerated sharply and tried to drive around the random breath testing station. When he saw this, Senior Constable McAlonan started to run towards the side of the road but he was struck by the car on his right side, firstly striking his knee then throwing him onto the bonnet with his head striking the

windscreen right in front of Mr Donellan. Senior Constable McAlonan was thrown over the car and fell unconscious onto the road.

Senior Constable Roff immediately called for assistance and sat with Senior Constable McAlonan until the ambulance arrived. The impact had caused serious injuries to Senior Constable McAlonan, including a 9 cm gash to his head with serious bruising to that area. He also suffered injuries to his face, elbows and his spine, and permanent injuries to his knees which both needed to be surgically replaced.

Realising what had just occurred and the likely injuries to Senior Constable McAlonan, particularly since his head had just shattered the windscreen right in front of him, Mr Donellan nevertheless continued driving away from the scene. As the car continued, the group in the car yelled at Mr Donellan demanding that he stop, and after some distance he eventually did. The group got out of the car.

After a brief discussion, Mr Donellan said he was leaving, got back in the car and drove off. He drove for a distance along the Cotter Road towards Canberra past Uriarra Road, did a U turn and turned back into Uriarra Road and drove along this road for some distance. He eventually struck an embankment then got out of the car, ripped the number plates off and walked off, throwing them deep into the bush.

He made his way along the river, and camped by the river bank overnight. The next morning he handed himself into the Woden Police station and made full admissions. He was charged with using an offensive weapon likely to endanger life, intentionally harming a public official, and leaving the scene of an accident, and was released on bail.

Mr Donellan entered a plea of not guilty. On the first day of the trial he pleaded guilty to the charge of leaving the scene of an accident, and the jury was seized of the other two counts. On the second day of the trial, following discussions with the defence, the Crown offered a new count of culpable driving causing grievous bodily harm, and the offender entered a plea of guilty to this charge in full satisfaction of all charges.

On 17 June 2010 Mr Donellan was sentenced by the Supreme Court. He had no prior criminal history. In sentencing him, the Supreme Court acknowledged his conduct was an impulse action, however also acknowledged the dangerous and often thankless task of policing. The Court emphasised the need to protect those who protect the community, and sentenced Mr Donellan to 22 months imprisonment with a non parole period of 12 months.

R v James Thorn

Mr Thorn already had a significant criminal history when he went on what can best be described as a burglary spree and was ultimately charged with 41 counts (mixture of burglaries, thefts and related offences) having been committed over a period of approximately 2 years. The burglaries were primarily domestic and large amounts of property were taken.

He was first charged in relation to these matters in October 2007. He continued to offend, but he was repeatedly released on Supreme Court bail over a period until July 2009. The consistent position of the Crown was that bail should be refused in order to prevent reoffending. Each time he was released he committed further offences of burglary and theft.

Thorn was granted Supreme Court bail on five occasions, each ending when he committed further offences. He was also granted 'day bail' on four occasions by the Supreme Court, with Thorn consistently failing to comply and on one occasion returning to the remand centre with concealed illicit substances. Bail applications made by Thorn were adjourned seven times to allow Thorn to obtain better evidence and/or for the Crown to conduct inquires to counter the unsupported claims.

Ultimately the court agreed with the Crown that Thorn was too great a risk of reoffending and refused bail.

Thorn initially pleaded not guilty to all charges. He changed his pleas to guilty in mid 2009 in the face of a strong Crown case. The evidence was substantially reliant on forensic evidence located at each burglary.

Thorn was called for sentence in September 2009 and was sentenced to a four years six months head sentence. Twelve month sentences were imposed for the majority of the burglaries and the majority of the terms of imprisonment were made concurrent with each other. The sentence was suspended after serving two years, which had the effect of Thorn being released immediately taking into account periods he had spent in custody.

The Crown appealed on the ground that the sentence was manifestly inadequate. Before the paperwork could be served on Thorn he committed further offences of dishonestly and was remanded in custody again. The Court of Appeal dismissed the Crown appeal on the basis that the overall sentence imposed by the sentencing judge did not appear outside the range open to him for the admittedly serious course of criminal offending engaged in by the respondent, although it may well be said to be at the lower end.

Thorn was breached on the suspended part of his sentence, as well as sentenced for the fresh offences, and is now a sentenced prisoner.

R v AM

This office regularly prosecutes matters involving children as victims of crime. One such matter involved the prosecution of AM for tying his five-year-old stepson up with sticky tape and leaving him home alone. AM was charged with neglecting his stepson on the basis that he had ill-treated him. AM pleaded not guilty to the charge. The young boy and his mother gave evidence. They told the court that on 20 March 2009 AM had been called to the boy's school because he was being disobedient. AM was angry that he was forced to abandon his plans for the day to care for the boy. He took his stepson home. Once there AM bound the boy's ankles and wrists with sticky tape and left him alone in the residence until his mother returned sometime in the afternoon to find the boy still tied up with sticky tape.

The Magistrate found AM's explanation that the boy tied himself up with sticky tape as 'ludicrous' and he was found guilty of neglecting his stepson in the way the boy and his mother had described. AM was convicted and sentenced to six months imprisonment for the neglect.

At the same time the Magistrate convicted and sentenced AM to 18 months imprisonment for two other offences to which he had pleaded guilty (i) breaching a domestic violence order and (ii) assaulting the boy's mother and occasioning to her actual bodily harm in July 2009.

These convictions placed AM in breach of a good behaviour order on which he was placed for a previous assault on the boy's mother. He was resentenced for that offence to four months and eight days imprisonment.

AM will be eligible for release from prison on 16 November 2011.

AM has lodged an appeal against his conviction and sentence in relation to neglecting his stepson.

Constable Stephen Dzido v Matthew Windle

The defendant, Matthew Jon Windle, was charged with one count of drink-driving following a road-side screening test and a breath analysis carried out at the City Police Station. When the matter came to the Magistrates Court, the defendant pleaded not guilty on the following grounds:

(1) The Drager Alcotest 7110 MKV Breath Analysing Instrument (the Drager) was not authorised by the Minister as being an instrument to be used for carrying out a breath analysis, since the actual Drager machine was stamped with the German trade-name "Dräger" (ie with an umlaut above the letter "a" in "Drager") but the Notifiable Instrument by which the Minister had approved the Drager machine depicted the name as "Drager" (ie without the umlaut).

(2) The Informant, Constable Dzido, was not, at the relevant time the breath analysis was carried out, authorised by law to carry out this analysis.

At the hearing before Special Magistrate Cush, the Defence produced a German language expert to give evidence about the significance of the umlaut and how it could change the meaning of some German words. However, the court also heard evidence that the term "Drager" did not have an actual meaning in the German language, and that the presence or absence of an umlaut in a German name, such as a trade-name, may only impact on the pronunciation of the word.

The Prosecution submitted that the presence or absence of an umlaut in the term "Drager" did not create any confusion since there was only one machine (whether it was called a "Drager" or a Dräger) used by police to conduct a breath analysis of potential drink-drivers. Also, the Prosecution submitted that the use of the umlaut may only change the

pronunciation of the term "Drager", but would not change its meaning - since the term "Drager" was a trade-name and, therefore, had no actual meaning.

The Magistrate ultimately found for the defendant on the second ground advanced. However he dismissed the first ground, holding that absence of the umlaut in the word "Drager" in the relevant statutory instruments did not cause any confusion, and it was clear that the Minister had intended to authorise the Drager machine for the purposes of carrying out a breath analysis.

Anthony Noakes v Michael Smith

This was a regulatory prosecution on behalf of ACT Work Cover.

Mr Smith was charged under s 47 *Occupational Heath and Safety Act 1989* for failing to comply with a safety duty – that is not ensuring he took all reasonable steps to ensure the brakes were activated when he got out of his bus.

Mr Smith was employed by ACTION as a bus driver. On 22 May 2008 he was assigned bus 997 (a Renault PR 100-3). The bus has 3 braking systems, the foot brake, the short-stop brake and the hand brake. The short-stop brake is automatically activated when the doors are open. The handbrake operates when the driver activates it. The handbrake must be on for the bus to be turned off. Once the doors are closed on exiting the bus the only thing holding it in place is the handbrake.

When Mr Smith parked the bus at the Kippax shops he sat in the bus for approximately one minute before exiting the bus. The bus was switched off but when he got out of the bus he did not check that the handbrake was activated. Once the doors closed there was nothing holding the bus in place and it rolled down a hill colliding with the Kippax Medical Centre. No one was hurt. Mr Smith re-entered the bus and activated the hand brake. The incident was captured on CCTV in the bus.

Following a two day hearing, which included lengthy expert evidence that the bus was mechanically sound, and a viewing of Bus 997, Magistrate Campbell determined that the only explanation for the bus rolling down the hill was a failure to comply with a safety duty on the part of Mr Smith. She found the offence proved beyond a reasonable doubt.

While the offence was proved Mr Smith was able to take advantage of his previous, and long standing, good character. Pursuant to s 17 *Crimes (Sentencing) Act 2005* no conviction was recorded.

STATISTICAL TABLES

The following tables are illustrative of aspects of the work of the Office. They are generally (other than Table 5) based on statistics provided by the courts. They relate to matters completed within the reporting period.

As the Office moves to a computerised case management system it is anticipated that the statistics available to the Office will change. In particular it is hoped that future reporting will be in line with the Australian Bureau of Statistics standards for the characteristics of defendants dealt with by criminal courts (see ABS 4513.0). A fundamental aspect that will be different is that the ABS standard reports against defendants rather than charges.

TABLE 1: TOTAL CHARGES BY JURISDICTION

DESCRIPTION	2008/2009		2009/2010	
	Charges	Proved	Charges	Proved
Childrens Court	1,484	892	1,392	966
Magistrates Court	9,677	6,041	8,506	5,479

TABLE 2: COMMITTAL COUNTS

Description	Trial	Sentence	Total
Offences Against the Person			
Homicide/Murder/Attempted Manslaughter	9	-	9
Threat to Kill/Inflict Grievous Bodily Harm	20	1	21
Unlawfully confine/abduct/kidnap	21	1	22
Serious Assault	51	12	63
Common Assault	1	-	1
Assault/Hinder/Resist Police	9	1	10
Culpable driving	-	7	7
Acts endangering life/health	9	-	9
Demands accompanied by threats	-	-	-
Other	8	3	11
Sub total	**128**	**25**	**153**
Sex Offences			
Sex Offences Against Adults	35	1	36
Sex Offences Against Children	55	7	62
Offences involving Child Pornography	12	12	24
Sub total	102	20	122
Property Offences			
Theft/Attempt Theft	38	48	86
Robbery (including armed robbery)	30	24	54
Burglary/Attempt Burglary	47	51	98
Receive/handle stolen property	2	3	5

TABLE 2: COMMITTAL COUNTS (continued)

Description	Trial	Sentence	Total
Unlawful possession	4	4	8
Take vehicle without authority	9	11	20
Damage property (including arson)	21	15	36
Offences involving computers	-	-	-
Fraud/Make/Use False Instrument	19	12	31
Other	15	10	25
Sub Total	**185**	**178**	**363**
Drug Offences			
Traffic/Cultivate Cannabis	9	1	10
Cultivate cannabis for sale/supply	-	-	-
Possess trafficable/commercial quantity of cannabis for sale/supply	-	-	-
Possess Prohibited substances (incl. cannabis/heroin)	-	1	1
Possess for sale, sell, supply or manufacture Prohibited substance (not cannabis)	-	-	-
Possess/manufacture/sale/supply drugs of dependence	1	-	1
Possess drug of dependence	-	-	-
Other	23	3	26
Sub total	**33**	**5**	**38**
Offences concerning the administration of justice			
Perjury/pervert justice	-	1	1
Breach bond/order/sentence	-	-	-
Contravene protection or restraining order	7	6	13
Other	1	4	5
Sub total	**8**	**11**	**19**
Traffic			
Drive disqualified/suspended	-	-	-
Negligent/careless/unsafe driving	-	1	1
Fail to obey police direction	-	2	2
Negligent driving causing death/GBH	-	-	-
Sub total	**-**	**3**	**3**
TOTAL	**456**	**242**	**698**

Note to Table 2: This table records matters committed from the Magistrates Court to the Supreme Court.

TABLE 3: SUPREME COURT MATTERS

Description	2008/9	2009/10
Committals to the Supreme Court for Trial or Sentence		
Accused	313	312
Counts	988	698
Trials		
Accused	40	30
Counts	83	58
Trials	37	30
Trial Dispositions		
Guilty Verdicts	13	10
Not Guilty Verdicts	23	19
Other	4	1
Sentencing Proceedings		
Accused sentenced after committal for sentence or after committal for trial/changed plea	178	191
Notices Declining to Proceed Further		
Accused	14	11
Counts	30	25

Note to Table 3: This table records completed matters in the Supreme Court.

TABLE 4: APPEALS

Description	2008/9	2009/10
High Court Special leave to Appeal	-	1
Appeals to Supreme Court	70	53
Appeals to Court of Appeal	19	12

Note to Table 4: This table records finalised appeals.

TABLE 5: REGULATORY MATTERS

DESCRIPTION	2008/09		2009/10	
	Charges	Proved	Charges	Proved
Animal Welfare Act 1992	0	0	4	2
Classifications (Publications, Films & Computer Games) (Enforcement) Act 1995	10	2	2	0
Criminal Code 2002	2	2	1	0
Dangerous Substances Act 2004	4	0	0	0
Domestic Animal & Dog Control Acts	6	2	4	1
Electoral Act (Fail to Vote) 1992	1	0	7	0
Environment Protection Act 1992	0	0	0	0
Litter Act 2004	0	0	0	0
Liquor Act 1975	18	18	4	4
Long Service Leave (Building and Construction Industry) Act 1981	18	13	0	0
Long Service Leave (Contract Cleaning Industry) Act 1999	1	0	0	0
Nature Conservation Act 1980	2	2	0	0
Occupational Health & Safety Act 1980	1	0	6	4
Prostitution Act 1992	0	0	0	0
Road Transport (Public Passenger Services) Act 2001	0	0	11	0
Sale of Motor Vehicle Act 1997	0	0	0	0
Security Industry Act 2003	1	0	0	0
Tree Protection Act 2008	1	0	0	0
Utilities Act 2000	3	1	6	3
Workers Compensation Act 1951	2	1	0	0
Other	31	16	132	52
TOTAL	**101**	**56**	**177**	**66**

Notes to Table 5:

1. Regulatory matters relate to prosecutions of a regulatory nature referred by ACT Government agencies or the RSPCA in respect of legislation which those agencies administer.
2. Most of the legislation administered by the regulatory agencies provides for matters to be dealt with by way of infringement notices. Prosecutions are instituted as a result of infringements being disputed or remaining unpaid. Many infringements are paid prior to Court which generally results in the prosecution being withdrawn in the public interest, as enforcement has been achieved. This explains to a significant extent the difference between charges brought and charges proved.

A.10 TRIPLE BOTTOM LINE REPORT

	INDICATOR	2009–10 Result	2008-09 Result	% Change
ECONOMIC	**Employee Expenses**			
	• Number of staff employed (head count, not FTE)	66	58	13.8%
	• Total employee expenditure (dollars)	$5,595,000	$5,110,000	9.5%
	Operating Statement			
	• Total expenditure (dollars)	$8,795,000	$7,989,000	10.1%
	• Total own source revenue (dollars)	0	0	10.1%
	• Total net cost of services (dollars)	$8,795,000	$7,989,000	
	Economic Viability			
	• Total assets (dollars)	$2,000,000	$2,000,000	0%
	• Total liabilities (dollars)	Refer JACS Financial Statements	Refer JACS Financial Statements	
ENVIRONMENTAL	**Transport**			
	• Total number of fleet vehicles	Nil	Nil	N/A
	• Total transport fuel used (kilolitres)	N/A	N/A	N/A
	• Total direct greenhouse emissions of the fleet (tonnes of C02e)	N/A	N/A	N/A
	Energy Use			
	• Total office energy use (megajoules)	153,460	Unavailable	Unavailable
	• Office energy use per person (megajoules)	Unavailable	Unavailable	Unavailable
	• Office energy use per m2 (megajoules)	Unavailable	Unavailable	Unavailable
	Greenhouse Emissions			
	• Total office greenhouse emissions – direct and indirect (tonnes and C02e)	44.16	Unavailable	Unavailable
	• Total office greenhouse emissions per person (tonnes of C02e)	0.67	Unavailable	Unavailable
	• Total office greenhouse emissions per m2 (tonnes of C02e)	0.04	Unavailable	Unavailable

A.10 TRIPLE BOTTOM LINE REPORT (coninued)

	INDICATOR	2009–10 Result	2008-09 Result	% Change
ENVIRONMENTAL (continued)	**Water Consumption**			
	• Total water use (kilolitres)	Unavailable	Unavailable	Unavailable
	• Office water use per person (kilolitres)	Unavailable	Unavailable	Unavailable
	• Office water use per m2 (kilolitres)	Unavailable	Unavailable	Unavailable
	Resource Efficiency and Waste			
	• Total co-mingled office waste per FTE (litres)	267.2L	Unavailable	Unavailable
	• Total paper recycled (litres)	16800	Unavailable	Unavailable
	• Total paper used (by reams) per FTE (litres)	28.7	Unavailable	Unavailable
	• Percentage of paper recycled (%)	126%	Unavailable	Unavailable
SOCIAL	**The Diversity of Our Workforce**			
	• Women (Female FTE's as a percentage of the total workforce)	67%	65.7%	1.3%
	• People with a disability (as a percentage of the total workforce)	3.2%	1.8%	1.4%
	• Aboriginal and Torres Strait Islander people (as a percentage of the total workforce)	3.2%	3.7%	-0.5%
	• Staff with English as a second language (as a percentage of the total workforce)	6.8%	7.3%	-0.9%
	Staff Health and Wellbeing			
	• OH&S Incident Reports	2	2	0%
	• Accepted claims for compensation (as at 31 August 2010)	1	0	100%
	• Staff receiving influenza vaccinations	10	16	-37.5%
	• Workstation assessments requested	1	3	-66%

SECTION B

CONSULTATION AND SCRUTINY REPORTING

B.1 COMMUNITY ENGAGEMENT

The Office consults with and interacts with the Attorney General, the Department of Justice and Community Safety, the AFP, other ACTPS agencies, and the legal profession, on policy matters. The Office is not typically involved in direct consultation with community groups on matters of policy. The Director does however make presentations to community groups, and participates in forums, about the role of the DPP. The Director also engages with law students from both ACT universities, most notably by organising a mooting competition held during Law Week between students from each of the universities for the "DPP Plate".

B.2 INTERNAL & EXTERNAL SCRUTINY

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

B.3 LEGISLATIVE ASSEMBLY COMMITTEE INQUIRIES AND REPORTS

There were no inquiries by the Legislative Assembly Committee that relate to the operations of the Office during the reporting period.

B.4 LEGISLATION REPORTS

The Office does not have responsibility in accordance with the Administrative Arrangements Orders for legislation.

SECTION C

LEGISLATIVE AND POLICY BASED REPORTING

C.1 RISK MANAGEMENT AND INTERNAL AUDIT

RISK MANAGEMENT

The DPP risk management arrangements are part of the risk management framework partnership with the Department of Justice and Community Safety.

This approach emphasises that the management of risk is the responsibility of all employees within the Office and is incorporated in the JACS Business Risk Management Plan 2007-2009. DPP has completed an updated risk assessment to be incorporated into the JACS Business Risk Management Plan 20010- 2012 currently being finalised.

INTERNAL AUDIT

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

C.2 FRAUD PREVENTION

The Office has a Fraud and Corruption Prevention Plan 2010 -2012, prepared in accordance with the requirements of the ACT Integrity Policy. The Plan has been circulated to all staff.

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

C.3 PUBLIC INTEREST DISCLOSURE

Under the *Public Interest Disclosure Act 1994,* the Office is responsible for providing a mechanism by which people can report wrongdoing in the ACT public sector. The procedures for public interest disclosures are outlined in the Public Interest Disclosure Procedures of the Office. These are available through the DPP website.

The Procedures cover the following:

- how to make a public interest disclosure;
- receiving public interest disclosures;
- declining a disclosure;

- referral to another agency/authority without investigation;
- referral to another agency/authority after preliminary investigation;
- no referral where there is a risk of unlawful reprisal;
- investigation process;
- action on completion of investigation;
- relocation of officers subject to unlawful reprisals;
- civil claims;
- confidentiality;
- false or misleading information;
- protection for the person making the public interest disclosure; and
- progress reports and reports on disclosure.

The Office did not receive any disclosures during the year ending 30 June 2010.

C.4 FREEDOM OF INFORMATION

Under Sections 7, 8 and 79 of the *Freedom of Information Act 1989* (the FOI Act) the Office must report on the FOI requests they receive and handle during the reporting year.

SECTION 7 STATEMENT

The following statement made pursuant to section 7 of the FOI Act is correct as at 30 June 2010 and replaces all previous statements.

The functions and operations of the Director are described elsewhere in this Report.

Prosecution decisions and the conduct of proceedings are guided by the Prosecution Policy and guidelines issued by the Director. The policy and guidelines are reviewed from time to time and professional legal bodies and criminal justice agencies are consulted during the review process. Public comment is also considered in the review.

The following are categories of documents maintained in the possession of the Office:

- case files;
- legal advices;
- policy files;
- administrative and financial records.

The following documents available upon request without charge:

- Annual Reports;
- Commitment to Service Statements (pamphlets);
- Prosecution Policy.

Facilities for the inspection of documents (where appropriate) and preparation of copies or extracts (if required) are available at the Office. Requests may be sent to the Director, Office of the Director of Public Prosecutions, Reserve Bank Building, 20-22 London Circuit, Canberra ACT 2601 (GPO Box 595). Business hours are 8:00am to 5:00pm Monday to Friday (public holidays excepted).

SECTION 8 STATEMENT

Section 8(1) of the FOI Act applies, in respect of an agency, to documents that are provided by the agency for the use of, or are used by, the agency or its officers in making decisions or recommendations for the purposes of an enactment or scheme administered by the agency. The documents that fall within this description are the Prosecution Policy and guidelines, which are available to the public.

SECTION 79 STATEMENT

During the reporting year:

- there were 8 applications made during the reporting year to access documents. Of these applications:
  - full access to the documents was granted in 5 cases;
  - access was refused to all documents in 2 cases; and
  - a decision is still pending in one case;
- there were no applications made during the reporting year for the internal review of decisions under section 59;
- there were no applications made during the reporting year to the Tribunal for the review of decisions;
- there were no charges or application fees collected during the reporting year in relation to FOI requests and other applications made under the FOI Act; and
- there were no requests received during the reporting year to amend records under section 48.

C.5 INTERNAL ACCOUNTABILITY

The organisation chart of the Office is set out in Section A.1 of this report.

There are two senior executives employed in the Office, John Lundy and Alyn Doig. Each is employed as an Assistant Director, having the responsibility of assisting the Director with the management of the Office, with particular emphasis on providing a high degree of leadership of the Office's staff and ensuring the effective deployment of resources; conducting more complex litigation; providing high quality legal advice to the Director; achieving effective and productive relationships with the courts, investigators, criminal justice agencies and the legal profession; and representing the Director in forums and meetings.

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

The operations of the Office are overseen by an Executive Management Committee comprising the Director, Assistant Directors and the Corporate Manager. The Committee meets weekly. The Committee consults the Practice Managers and Paralegal Manager weekly.

Legal staff meet weekly to discuss matters of current concern, including legal and procedural issues, and administrative matters. Regular meetings of paralegal staff are held.

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

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

C.6 HR PERFORMANCE

This year the focus has been on completing the implementation the new staffing model after the Office undertook a significant re-organisation in 2008-2009, and finalising recruitment activities under the new structure.

This year has also seen a focus on updating and developing a range of policies and procedures to provide better direction and support to staff.

A new performance management scheme was implemented for both legal and non legal staff with a view to improving the link between organisational goals and staff development needs.

At the request of the Community and Public Sector Union, the office is currently undertaking a work value review in relation to prosecutors.

Seven employees worked part-time during the reporting period. While the office continues to look for opportunities to provide flexible working arrangements this continues to present a challenge in the face of inflexible court schedules.

Retention rates of legal staff, although somewhat stabilised from before the current Director assumed office, continue to be of concern. The major factor influencing rates of retention are wage rates and work loads for legal staff.

C.7 STAFFING PROFILE

The statistics provided in the following tables includes employees in receipt of salary as at 30 June 2010. The figures are expressed in full time equivalent terms.

FTE & Headcount

	Male	Female
FTE by Gender	23.0	39.7
Headcount by Gender	24	42
% of Workforce	36%	64%

Employment Type

Permanent	Temporary	Casual
50	16	

Classifications

Classification Group	Female	Male	Total
Administrative Officers	10	4	14
Executive Officers		3	3*
Legal Support	10	2	12
Professional Officers	3	1	4
Prosecutors	18	12	30
Senior Officers	1	1	2
Statutory Office Holders		1	1
TOTAL	**42**	**24**	**66**

NB. Administrative Officers include Paralegal Officers.

*While the DPP has 2 executives at the point when the data was generated, an executive who separated during the financial year received a payment. As a result of the accounting rules, this record was included

Employment Category by Gender

Employment Category	Female	Male	Total
Casual			
Permanent Full-time	29	18	47
Permanent Part-time	3		3
Temporary Full-time	10	6	16
Temporary Part-time			1
TOTAL	**42**	**24**	**66**

Average length of Service by Gender

Average Length of Service	Female	Male	Total
0-2	24	7	31
2-4	9	5	14
4-6	2	1	3
6-8	2	3	5
8-10	1	3	4
10-12	1	1	2
12-14	2	2	4
14+ years	1	2	3

Total Average Length of Service by Gender

Gender	Average length of service
Female	3.3
Male	6.1
TOTAL	**4.3**

Age Profile

Age Group	Female	Male	Total
<20	1		1
20-24	5		5
25-29	14	5	19
30-34	8	6	14
35-39	3	2	5
40-44	5	1	6
45-49	3	1	4
50-54	1	6	7
55-59	2	1	3
60-64		2	2
65-69			
70+			0

Agency Profile

Branch/Division	FTE	Headcount
	1	1
Corporate	4.61	5
Executive	4	5
Legal Support	19.6	21
Prosecutors	29.47	30
Witness Assistance	4	4
TOTAL	**62.68**	**66**

The statistics exclude staff not paid by the ACT Public Service and people on leave without pay. Staff members who had separated from the ACT Public Service, but received a payment have been included.

Agency Profile by Employment Type

Branch/Division	Permanent	Temporary	Casual
	1		
Corporate	5		
Executive	2	3	
Legal Support	12	9	
Prosecutors	27	3	
Witness Assistance	3	1	
TOTAL	50	16	0

Equity and Workplace Diversity

	A	B	C		
	Aboriginal and/or Torres Strait Islander Employment	Culturally & Linguistically Diverse (CALD) Employment	Employment of people with a disability	Number of employees who identify in any of the Equity & Diversity categories (A, B, C)*	Women
Headcount	2	4	2	8	42
% of Total Staff	3.0%	6.1%	3.0%	12.1%	63.6%

C.8 LEARNING AND DEVELOPMENT

The learning and development needs of staff are incorporated into individual personal achievement and development plans. Further, for legal staff, there is a Competency Based Performance Training Checklist which provides a detailed checklist of the key legal competencies to be achieved for each respective classification.

Training initiatives focus on the professional development needs of staff.

All staff participated in at least one training activity during the reporting period with about half completing two or more. Overall this is a significant increase on previous years, and marks the commitment of the Office to staff development.

For lawyers, there is a particular emphasis on advocacy and continuing legal education. Advocacy workshops are held regularly, with more intense advocacy training also taking place. Continuing legal education focuses on the professional development of legal staff in the technical aspects of the criminal justice process and laws of evidence, with regular sessions concentrating on practical issues being part of the weekly lawyers' meeting.

The Office administers a Studies Assistance Policy, which aims to balance the operational and strategic needs of the Office with the employees' needs for skills development. The policy provides for paid study leave and / or financial assistance for staff who satisfy the requirements of the policy. During the reporting period three employees received assistance of one sort or another under the policy.

The Office also assists in the delivery of training as appropriate. In particular prosecutors take part in the training of members of the AFP in various courses, including as part of the FVIP.

C.9 WORKPLACE HEALTH AND SAFETY

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

SUMMARY OF INCIDENTS

Section 38 notifiable incidents	Incidents without injury	Minor injuries	Total all incidents
1	0	1	2

Note to table: Dates of incidents is in the range 1/07/2009 to 30/06/2010

One incident report [which resulted in a claim] was notified to WorkSafe ACT under section 38 of the *Work Safety Act 2008*.

WORKPLACE HEALTH STRATEGIC PLAN 2008-2012

The Office focussed on the following broad areas:

1. Leadership:

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

- training to deal with difficult and aggressive clients;
- the opportunity to participate in flu vaccinations and hepatitis B vaccinations; and
- first aid training.

2. Injury Prevention:

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

3. Injury Management:

The Office's OH&S responsibilities are encapsulated in the *Work Safety Act 2008*. The Office OH&S policy, which reflects the principles of this legislation, outlines our commitment to the provision of a healthy and safe workplace. Because of the nature of work in the Office, staff are encouraged to avail themselves of counselling services whenever necessary. The Office had one elected Work Safety Representative for the entire year.

No incidents or notices were given under section 171 and 172 of the *Work Safety Act 2008* and no directions were issued during the reporting period.

C.10 WORKPLACE RELATIONS

The office operates within the framework of the Department of Justice and Community Safety Union Collective Agreement 2007/2010, which includes a requirement for a joint staff – management consultation process.

AWA/SEA REPORTING

During the reporting period one member of staff was employed pursuant to the terms of an Australian Workplace Agreement (AWA).

Four members of staff were remunerated pursuant to the terms of a Special Employment Agreement (SEA) during the year.

Information on the remuneration payable under AWA/SEA agreements has not been disclosed due to the small number of AWA/SEA's in operation within the Office and the need to retain the confidentiality requirements of these agreements.

C.11 STRATEGIC BUSHFIRE MANAGEMENT PLAN

The Office is neither a manager of unleased Territory Land nor an owner (ie: lessee or occupier) of Territory Land and does not have reporting requirements under the *Emergencies Act 2004* (Section 85).

C.12 STRATEGIC ASSET MANAGEMENT

The Director's office is located in the Reserve Bank Building, adjacent to the Supreme Court and Magistrates Court buildings.

The current utilisation rate is 19.8m^2 per employee which is a marked decrease from 23.8m^2 in 2008/2009. This is largely as a result of an increase in staff numbers due to additional budgetary allocation during the year. The utilisation rate is trending downwards towards the benchmark of 17m^2 per employee. Sixty-six staff occupied a total floor space of 1,308m^2. Factors such as the need to provide for witness interview and waiting rooms for vulnerable witnesses, a conference room, a specialist criminal law library, and the need for professional staff undertaking sensitive and confidential work, and dealing with acutely personal and intimate issues to be appropriately accommodated, are all relevant to the utilisation rate.

Energy reduction opportunities are limited due to the building being leased. However, strategies for reducing energy consumption are being pursued wherever possible and are outlined in the segment dealing with ecologically sustainable development.

The assets of the Office are mainly comprised of the Office fitout (partitioning and cabling) and the library. Total replacement costs are estimated at $2m.

C.13 CAPITAL WORKS

The following capital works projects where completed by the Office during the reporting period.

Capital Project	Original Estimated Budget	Actual Cost	Projected Completion Date	Actual Completion
Accommodation Works	241	244	Jun 2010	Jun 2010
Case Management System	250	247	Jun 2010	Jun 2010

There were no works still in progress at year end.

CONTACT DETAILS CAPITAL WORKS OFFICER:

Leeanne Hollow
Corporate Manager
Phone: 02 6207 5399

C.14 GOVERNMENT CONTRACTING

EXTERNAL SOURCES OF LABOUR AND SERVICES

During the year ending 30 June 2010 provision of external sources of labour and services where minor in nature and did not meet the reporting requirement of $20,0000 either individually or in total with the exception of external legal counsel as shown below.

External Counsel	Amount
Peter Hastings QC	$36,854

CONSULTANCY AND CONTRACTOR SERVICES

For year ending 30 June 2010, no consultancy services were engaged.

C.15 COMMUNITY GRANTS/ASSISTANCE/ SPONSORSHIP

The following sponsorship was provided by the Director during the year ending 30 June 2010.

No.	Organisation/ Recipient	Type	Outcomes	Amount
1	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	Engraved Medal and cash prize up to a total value of $250
2	Australian National University	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	Engraved Medal and cash prize up to a total value of $250
3	The DPP Plate	Perpetual trophy awarded annually to best mooting team in a contest between the two ACT universities	Promotes excellence in advocacy, highlights the Office as a centre of excellence in advocacy, and contributes to the quality of criminal advocates in the ACT	Engraving costs

C.16 TERRITORY RECORDS

The Office 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 throughout the Office to put the Program into effect.

The Director of Territory Records has approved a Records Disposal Schedule for the Office, *Territory Records (Records Disposal Schedule – ACT Director of Public Prosecutions Records) Approval 2008 (No 1)*, being Notifiable Instrument NI2008—60, effective 4 March 2008.

No records containing information that may allow people to establish links with their Aboriginal or Torres Strait Islander heritage are created within the Office.

The Office has responded to the commencement of Part 3 of the *Territory Records Act 2002*. The Director of Territory Records has not made any declaration under section 28 of the Act.

C.17 HUMAN RIGHTS ACT 2004

Prosecutors are defenders of human rights. As "ministers of justice", they are obliged to ensure as far as they can that the criminal justice system respects the human rights of those involved in its processes. This traditional role of the prosecutor is re-enforced by the *Human Rights Act 2004*.

The *Human Rights Act 2004* guarantees everyone involved in the criminal process – accused persons, the community (on whose behalf the Director prosecutes), victims and others – the right to a fair trial.

The Director has taken the following steps to respect, protect and promote human rights:

- during training sessions and continuing legal education presentations, prosecutors are reminded of the ethics and obligations of the prosecutor and, in particular, the terms of the *Human Rights Act 2004*;
- the DPP's library has a collection of material relevant to human rights that is available as a resource to assist prosecutors in the discharge of their duties, and in particular to inform themselves on the legislative scrutiny process;
- prosecutors ensure that the trials of persons alleged to have committed criminal offences are fair and accord with human rights law;

- the employment of witness assistants in the Office recognises the need to ensure that the rights of victims are respected;
- the Director publicly promotes human rights values.

The Office does not initiate new legislative proposals; however officers are aware of the legislative scrutiny process. Similarly the Office has no formal role in reviewing legislation; however, officers are alert to the human rights implications of the operation of legislative provisions.

C.18 COMMISSIONER FOR THE ENVIRONMENT

There are no matters to be reported under section 23 of the *Commissioner for the Environment Act 1993* for the reporting period.

C.19 ACT MULTICULTURAL STRATEGY 2010 – 2013

The criminal justice system environment is non discriminatory and the people who come in contact with it, including witnesses, victims and accused persons are from diverse backgrounds. The Office ensures (in line with the ACT Government's Multicultural Strategy 2010 – 2013) that those people have access to a range of services so as to receive fair treatment by the justice system.

The Office uses a range of services to accommodate the needs of people who become involved in matters prosecuted by the Office including the Domestic Violence Crisis Services, the Migrant Resource Centre and the Interpreter Service.

As mentioned elsewhere in this report, the Office's Witness Assistance Service provides help to victims and vulnerable witnesses. This service caters for people from non-English speaking backgrounds and those who do not have a good understanding of the criminal justice system.

C.20 ABORIGINAL AND TORRES STRAIT ISLANDER REPORTING

The Office does not have clients as such. As noted elsewhere in this report the Office has a key role in the operation of the Ngambra Circle Sentencing Court. The operation of the Court is making a positive difference to the lives of Aboriginal Canberrans.

C.21 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

	Indicator as at 30 June	Unit	2009–10	
	General			
A	Occupancy – office staff full-time equivalent	Numeric (FTE)	66	
	Occupancy – total staff full-time equivalent (including non-office)	Numeric (FTE)	N/A	
B	Area office space – net lettable area	Square metres (m2)	1308.50	
	Area non-office space – net lettable office area	Square metres (m2)	N/A	
	Electricity use (total)	Kilowatt hours	54,483.00	
X	Electricity use (office)	Kilowatt hours	N/A	
Y	Renewable energy use (GreenPower)	Kilowatt hours	11,856.00	
	Percentage of renewable energy used (Y / X x 100)	Percentage	21.76	
	Gas use (total)	Megajoules	Unavailable	
	Gas use (office)	Megajoules	Unavailable	
C	Total office energy use	Megajoules	153,460	
	Energy intensity per office FTE (C / A)	Megajoules / FTE	2325.15	
	Energy intensity per square metre (C / B)	Megajoules / m2	117.28	
	Transport Energy		**Office**	**Other**
D	Total number of vehicles	Numeric	0	0
	Transport fuel (Petrol)	Kilolitres	N/A	N/A
	Transport fuel (Diesel)	Kilolitres	N/A	N/A
	Transport fuel (LPG)	Kilolitres	N/A	N/A
	Transport fuel (CNG)	Kilolitres	N/A	N/A
	Transport fuel (Aviation)	Kilolitres	N/A	N/A
E*	Total transport energy use	Gigajoules	0	0
	Water use (total)	Kilolitres	Unavailable	
F	Water use (office)	Kilolitres	Unavailable	
	Intensities (office)			
	Water use per office FTE (F / A)	Kilolitres / FTE	Unavailable	

C.21 Ecologically Sustainable Development (continued)

	Indicator as at 30 June	Unit	2009–10
	Water use per square metre floor area (F / B)	Kilolitres / m2	Unavailable
	Reams of paper purchased (	Reams	1800
	Recycled content of paper purchased	Percentage	0
	Estimate of general waste (based on bins collected)	Litres	5280
	Estimate of comingled material recycled (based on bins collected)	Litres	11500
	Estimate of waste paper recycled (based on bins collected)	Litres	16800
	Estimate of secure paper recycled (based on bins collected)	Litres	10080
*	Direct greenhouse gas emissions (Scope 1)	Tonnes CO_2-e	N/A
*	Indirect greenhouse gas emissions (Scope 2)	Tonnes CO_2-e	39.19
*	Other indirect greenhouse gas emissions (Scope 3)	Tonnes CO_2-e	4.97
G*	Total office greenhouse gas emissions (All Scopes)	Tonnes CO_2-e	44.16
*	Direct greenhouse gas emissions (Scope 1)	Tonnes CO_2-e	N/A
*	Indirect greenhouse gas emissions (Scope 2)	Tonnes CO_2-e	N/A
*	Other indirect greenhouse gas emissions (Scope 3)	Tonnes CO_2-e	N/A
H*	Total transport greenhouse gas emissions (All Scopes)	Tonnes CO_2-e	N/A
	Office greenhouse gas emissions per person (G / A)	Tonnes CO_2-e / FTE	0.67
	Office emissions per square metre (G / B)	Tonnes CO_2-e / m2	0.04
	Transport greenhouse gas emissions per person (H / A)	Tonnes CO_2-e / FTE	N/A

Notes:

1. * = calculated with information entered into the Online System for Comprehensive Activity Reporting (OSCAR).
2. Waste figures are based on number of bins collected.
3. As the Office occupies a multi tenanted building; individual water and gas usage information is not available.

C.22 ACT WOMEN'S PLAN 2010-2015

The work of the Director actively improves the status of women and girls in the following ways:

- the Office plays a leading role in the delivery, policy review and governance of the Family Violence Intervention Program;
- the Office prosecutes persons alleged to have committed violence against women and applies consistent policies to such prosecutions, in order to work to eliminate violence against women and their children and protect and support victims of crime;
- as reported elsewhere in this report, the Witness Assistance Service of the Office works to ensure that victims of crime and witnesses are informed and supported throughout their involvement with the criminal justice system;
- the Office promotes policies addressing discrimination, harassment, equal employment opportunity and industrial democracy in the workplace; and
- the Office employs a significant number of women, and provides a family friendly working environment.

C.23 MODEL LITIGANT GUIDELINES

The model litigant guidelines apply to civil proceedings rather than criminal 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.

ANNUAL REPORT CONTACT DETAILS:

First point of contact:
Leeanne Hollow
Corporate Manager
Phone: 6207 5399

Website address for annual report: **www.dpp.act.gov.au**

APPENDIX

Pursuant to section 12(4) of the *Director of Public Prosecutions Act 1990* the Annual Report must include a copy of each direction or guideline given by the Director pursuant to section 12 of the Act that is in force at the end of the reporting period. This appendix includes the Prosecution Policy and guidelines for prosecutors.

PROSECUTION POLICY

1 INTRODUCTION

1.1 On 1 July 1991 the Australian Capital Territory acquired its own Office of the Director of Public Prosecutions. The ODPP, as the Office is known, was created by the *Director of Public Prosecutions Act 1990*. That Act, in effect, transferred the responsibility for prosecutions relating to alleged breaches of the laws of this Territory from the corresponding Commonwealth Office to its ACT counterpart.

1.2 The Commonwealth Act, passed in 1983, had made significant changes to the institution and conduct of prosecutions. In particular, it had removed the whole process from the political arena by creating an independent Office of the Director of Public Prosecutions. The Attorney-General retained the right to give guidelines and directions but only after consultation with the Director. Even then the Act required that any such directions or guidelines be published in the *Gazette* and tabled in Parliament. The ACT Act ensures similar independence.

1.3 The Act also ensures that the prosecuting role will be independent of the police. The legislature has chosen to separate the investigative and prosecutorial functions and, in fact, each is independent of the other. Of course, in practice, there will need to be cooperation and consultation between the respective bodies. Nonetheless, once the investigation has culminated in a prosecution any decision as to whether or not it should proceed will be made independently by the ODPP. In the ACT that independence extends to summary prosecutions as well.

2. THE DECISION TO PROSECUTE

General Criteria

2.1 It is sometimes assumed that every allegation of criminal conduct should culminate in a prosecution. Fortunately such a blanket approach has never formed part of the system of justice in England or Australia. Sir Hartley Shawcross *QC*, then the English Attorney-General, explained the position to the House of Commons on 28 January 1951 in the following terms:

> *"It has never been the rule in this country - and I hope it never will be - that suspected criminal offences must .offence or the circumstances of its commission is or are of such*

a nature that a prosecution in respect thereof is required in the public interest.' That is still the dominant consideration."
(HC Debates, Vol 483, col 681, 28 January 1951).

This statement has been widely quoted in Australia and overseas. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, he or she has merely committed an inadvertent breach of the law in some minor respect. 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 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 alleged offender and the general public must all be taken into account.

2.3 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.

2.4 Any assessment of the prospects of conviction must involve an analysis of many factors, including the following:

(a) Are the witnesses available to give evidence?

(b) Do they appear to be honest and reliable?

(c) Do any appear to be exaggerating, defective in memory, either hostile or friendly towards the defendant 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? 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?
Conversely are the versions so identical that collusion should be suspected?

(h) Where essential witnesses are children, is it likely that they will be able to give sworn evidence?

(i) Are there any grounds for believing the relevant evidence may 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 defendant, are there grounds for suspecting that they may be unreliable given the surrounding circumstances including his or her age, intelligence and apparent understanding?

(k) If identity is likely to be an issue is the evidence that it was the defendant who committed the offence sufficiently cogent and reliable?

(l) Where several defendants are to be tried together is there sufficient evidence to prove the case against each?

This list is by no means exhaustive. The factors, which need to be considered, will depend upon the circumstances of each individual case. However it may serve to demonstrate the complexity of the assessment, which may be required.

5.5 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction he or she must then consider whether it is in the interests of the public that the prosecution proceed. In many cases the answer to that question will be obvious, but from time to time it will require careful analysis and considered judgment. Many factors may be relevant, including the following:

(a) The seriousness or, conversely, the triviality of the alleged offence;

(b) Whether it is of a "technical" nature only;

(c) In appropriate cases, whether the defendant may not have known that the conduct in question was an offence and could not reasonably have been expected to have known;

(d) Any mitigating or aggravating circumstances;

(e) The youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender or victim;

(f) The antecedents and background of the alleged offender;

(g) The staleness of the alleged offence;

(h) The degree of culpability of the alleged offender in relation to the offence;

(i) The effect on public order and morale;

(j) The obsolescence or obscurity of the law;

(k) Whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;

(l) The availability and efficacy of any alternatives to prosecution;

(m) The prevalence of the alleged offence and need for deterrence, both personal and general;

(n) Whether the consequences of any resulting conviction would be unduly harsh and oppressive;

(o) Whether the alleged offence is of considerable public concern;

(p) Any entitlement of the Territory or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;

(q) The attitude of the alleged victim to a prosecution;

(r) The likely length and expense of a trial;

(s) Whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;

(t) The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;

(u) Whether the alleged offence is triable only on indictment; and

(v) The necessity to maintain public confidence in such basic institutions as the Parliament and the Courts.

The relevance of these and other factors and the weight, which should be accorded to them, will depend upon the particular circumstances of each case.

2.6 In many cases, of course, 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. 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.

5.6 Plainly the decision to prosecute must not be influenced by:

(a) The race, colour, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the alleged offender;

(b) Any personal feelings concerning the alleged offender or victim;

(c) Any political advantage or disadvantage 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.

This rule does not mean that particular sensitivities or other factors relevant to the alleged offender's conduct should be ignored merely because they are related to the race, sex or religion concerned. It may be necessary to take into account a wide range of matters such as whether the person was acting in accordance with a perceived moral duty or religious obligation, whether the conduct was induced by provocation felt more acutely due to racial innuendo or whether it may have been attributable to post natal depression or other medical factors related to the sex of the person.

The rule is intended to ensure that people are not discriminated against. It is not intended to exclude due consideration of factors which, as a matter of fairness, should be taken into account in assessing their level of culpability.

Prosecution of Juveniles

2.8 Special considerations may apply to the prosecution of juveniles. In some cases prosecution must be regarded as a severe measure with significant implications for the future development of the child or young person concerned. Whilst each situation must be assessed on its merits, there will frequently be a stronger case for dealing with the situation by some means other than actual prosecution. On the other hand, the seriousness of the alleged offence and the conduct, character and general circumstances of the juvenile concerned may leave no alternative. The public interest will not normally require the prosecution of a juvenile who is a first offender where the alleged offence is not a serious one. Furthermore, whilst it may be appropriate to prosecute a 17 year old for a particular offence it may be singularly inappropriate to prosecute a 10 year old who has committed an offence of a similar kind.

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.

9.9 The factors set out in paragraph 2.5 are also relevant to any consideration as to whether a juvenile should be prosecuted. However, the following matters are particularly important:

(a) The seriousness of the alleged offence;

(b) The age, apparent maturity and mental capacity of the juvenile;

(c) The available alternatives to prosecution and their likely efficacy;

(d) The sentencing options available to the court if the matter were to be prosecuted;

(e) The family circumstances and, in particular, whether the parents appear willing and able to exercise effective discipline and control over the juvenile;

(f) The juvenile's antecedents including the circumstances of any previous cautions that he or she may have been given; and

(g) Whether a prosecution would be likely to cause emotional or social harm to the juvenile having regard to such matters as his or her personality and family circumstances.

2.10 Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

Choice of Charges

2.11 In many cases the evidence will disclose conduct, which constitutes an offence against 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.

2.12 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 one to conclude that it would be appropriate to proceed with some other charge or charges.

2.13 Circumstances may arise in which negotiations may properly occur in relation to the charges pending against the defendant. Discussions between defence and prosecuting counsel are a necessary and proper feature of the administration of

justice and, from time to time, disclose adequate reasons for agreeing to proceed with some charges but not others. In some cases the public interest may be served by an arrangement, which results in a defendant pleading guilty to a lesser charge or a lesser number of charges than initially laid.

When such an arrangement is being considered the general principles governing the choice of charges should be applied in the circumstances then prevailing. Viewed in that context such negotiations may constitute a legitimate and proper means of resolving criminal litigation. However they must be approached with due responsibility. Under no circumstances should more serious charges be laid in order to provide scope for "plea bargaining".

2.14 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the Crimes Act unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.

2.15 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 to the circumstances revealed by the available evidence. Where conspiracy charges are laid against a number of defendants 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 individual defendants.

3. PRIVATE PROSECUTIONS

3.1 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" (per Lord Wilberforce in *Gouriet v The Union of Post Office Workers* [1978] AC 435 at 477). Unfortunately this right is sometimes abused and, from time to time, private prosecutions instituted for quite improper motives. Furthermore, even where a prosecution has been initiated in good faith there may be sound reasons why the carriage of the matter should not remain within the discretion of a private individual. In some cases there may be sound reasons why it should not proceed at all. Consequently, section 8 of the Act enables the Director to take over the conduct of prosecutions initiated by another person. Thereafter the prosecution may be continued or brought to an end.

3.2 Section 13 of the Act provides that where the Director has taken over the conduct of a private prosecution or is considering doing so the informant must provide a full report of the circumstances giving rise to the prosecution together with copies of the statements of any witnesses and other documentary evidence and furnish any further information the Director requires. In addition, section 14 enables the Director to seek police assistance in investigating the matter. These provisions enable a full assessment

to be made of the prosecution case before any decision is made or, alternatively, after the matter has been taken over.

3.3 Given the infinite range of circumstances which may give rise to a private prosecution it is impracticable to lay down any 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;

(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.

3.4 Where a private prosecution is instituted to circumvent an earlier decision of the ODPP 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.

4. APPEALS

4.1 The Australian legal system generally confers a right of appeal on any party to legal proceedings who is aggrieved by the result. The nature and extent of that right depends upon the nature of the proceedings, the type of order made and the rules of the particular court in which the proceedings were conducted. In criminal proceedings the prosecution normally has no right to appeal against a finding that the accused is not guilty of the offence charged though, in the Australian Capital Territory, there is a limited right to have the Supreme Court review decisions of law made by a Magistrate. Furthermore, where a conviction has been quashed on appeal there may be a further appeal against that decision. An accused may, of course, appeal against conviction.

4.2 Both the prosecution and the defence have the right to appeal against the sentence imposed following a conviction. However, appellate courts have stressed that the prosecutor's right to appeal against the perceived inadequacy of a sentence should be exercised with due caution. The principle was explained by Sir Garfield Barwick, then Chief Justice of the High Court of Australia, in an appeal from the District Court of New South Wales decided in 1977:

> *"Inadequacy of sentence ... is not satisfied by mere disagreement by the Court of Appeal with the sentence actually imposed. It means, in my opinion, such an inadequacy in the sentence as is indicative of error or departure from principle. No doubt, consistency in*

the sentences imposed by judges of the District Court is a desirable feature of criminal administration. Gross departure from what might in experience be regarded as the norm may be held to be error in point of principle ... But that consistency is not to be sought or secured, in my opinion, by the court of criminal appeal substituting in any case which the Attorney-General cares to bring before it, its own view of the appropriate sentence irrespective of the presence or absence of error on the part of the trial judge" (*Griffiths v R* (1977) 137 CLR 293 at 310).

Accordingly, an appeal against the inadequacy of sentence will normally be instituted by the prosecution only in exceptional cases where some error of principle can be identified or when the sentence is thought to be so grossly inadequate that it lies outside the range of discretion properly available to the judge in the circumstances. Where a prosecutor believes that the sentence falls into that category it is his duty to provide a report to the Director of Public Prosecutions so that the matter may receive due consideration.

5. UNDERTAKINGS

5.1 The Act also enables the Director to give undertakings that evidence will not subsequently be used against the person who gave it or produced it. This may sometimes enable the prosecution to obtain evidence from people who have themselves been guilty of criminal conduct and who might otherwise be entitled to claim privilege against self incrimination. In those circumstances the power may be used to ensure that the evidence is available to be used in the prosecution of others without prejudicing the position of the person who has given or produced it.

5.2 The Director also has a power 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.

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. For example, the prosecution may be reluctantly forced to conclude that it will be impracticable to prosecute those primarily responsible for a particular criminal enterprise without the cooperation of one of their accomplices. Any decision as to whether or not such an undertaking should be granted will be made by the Director personally. The factors to be considered include the following:

(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;

(c) The character, credibility and previous criminal record of the person concerned;

(d) Whether any inducement has been offered to the person to give the evidence sought; and

(e) Whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking of the kind referred to in paragraph 5.1.

6. PUBLICATION OF REASONS

Where the Director decides to exercise the power conferred by the Act to decline to proceed further with a prosecution reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the 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.

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.

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. This policy should not be regarded as an inflexible rule. It may be appropriate to provide reasons in some circumstances even when there has been no public hearing. Where, for example, the arrest and charge has attracted significant public interest it may be necessary to consider providing at least some explanation for the decision to terminate the prosecution.

GUIDELINES FOR PROSECUTORS

Pursuant to section 12 of the *Director of Public Prosecutions Act 1990* the following guidelines are provided to Deputy and Assistant Directors and prosecutors who institute or conduct prosecutions on behalf of the Director:

1. All lawyers appearing for the prosecution should be conscious of the ethical obligations imposed on them by virtue of that role. The essence of those obligations is encapsulated in the following passage extracted from the rules of the New South Wales Bar Association -

   "A barrister appearing for the Crown in a criminal case is a representative of the State and his function is to assist the court in arriving at the truth. It is not his duty to obtain a conviction by all means but fairly and impartially to endeavour to ensure that the jury has before it the whole of the relevant facts in intelligible form and to see that the jury is adequately instructed as to the law so as to be able to apply the law to the facts. He shall not press for a conviction beyond putting the case for the Crown fully and firmly. He shall not by his language or conduct endeavour to inflame or prejudice the jury against the prisoner (sic). He shall not urge any argument of law that he does not believe to be of substance or any argument of fact that does not carry weight in his mind."
   (Rule 20)

2. It has long been an axiom of the criminal law that "justice delayed is justice denied". Consequently, it is incumbent upon prosecutors to cooperate in ensuring that cases are heard as quickly as practicable.

   In the Magistrates Court a hearing date is frequently allocated even though the brief of evidence has not been received by the prosecution. In that events steps should be taken to ensure that the brief is received within 28 days of the date upon which the hearing date was allocated so that the case may be properly assessed. It is not appropriate to permit charges to remain pending against members of the community when it has not been possible to make any sensible assessment of the adequacy of the evidence or as to the necessity for such a prosecution.

   If the brief is not delivered within a reasonable period the matter should be relisted with the view to having the hearing date vacated. In that event it will, of course, be necessary to have a further hearing date allocated once the brief has been received and the matter assessed.

   Where committal proceedings have been completed and a person committed for trial in the Supreme Court a Bill of Indictment should be found within 28 days of the committal.

3. The specific approval of the Director is required for the finding of any *ex officio* Bill of Indictment where the offence charged differs substantially from the offence or offences in respect of which the accused was committed for trial or where the circumstances giving rise to the offence were not the subject of any committal for trial.

4. In exercising the right to challenge prospective jurors the prosecution must not attempt to select a jury which is not representative as to age, sex, ethnic origin, marital or economic or social background.

5. Where the defence indicates that certain evidence should not be disclosed during the course of the Crown's opening and there appears to be reasonable grounds for that indication, care should be taken to ensure that nothing is said in the opening, which may lead to the subsequent discharge of the jury.

6. It is not a legitimate forensic tactic for the prosecution to engage in "trial by ambush" and there is a general duty to disclose the whole of the prosecution case to counsel for the accused. This duty is subject only to any overriding demands of justice such as the need to prevent risk to the lives or safety of potential witnesses. Even then it will usually be possible to apprise the defence of the general nature of the Crown case even if such details as the names and addresses of particular witnesses are withheld.

7. Where prosecuting counsel knows that a witness for the Crown has prior convictions and/or has been given an undertaking pursuant to section 9 of the Act the material facts should be revealed to the defence if it appears to the prosecutor that they could be of material significance in the trial.

8. In determining whether or not to call a particular witness the prosecutor presenting the case must pay due regard to the need to be fair to the accused. In general, it is the duty of the prosecution to call all witnesses capable of giving evidence relevant to the guilt or innocence of the accused. It is only in rare circumstances that the prosecution would be justified in concluding that the overriding interests of justice require that such a witness not be called. Where the prosecutor makes a *bona fide* assessment on reasonable grounds that the evidence in question would be unreliable the defence should be informed at the earliest possible time of the decision not to call that evidence. Even then all practicable steps should be taken to enable the defence to tender the evidence if desired. In particular, the defence should be informed of the existence, identity and whereabouts, if known, of any witness who is not to be called in the prosecution case but whose evidence may be relevant to the case, which the defence may wish to adduce.

9. Since the court has a discretion to exclude otherwise admissible evidence on the ground that it was illegally or improperly obtained prosecuting counsel will generally be obliged to inform defence counsel of any evidence which appears to fall into that category. This principle is enshrined in the rules of the New South Wales Bar Association.

"Where in criminal proceedings a barrister appearing for the prosecution reasonably believes that a document or record included in his brief or instructions may have been unlawfully obtained, he shall, in the interests of justice:

a) Inform his or her opponent of the intention to use such document or record; and/or

b) Make a copy of such document or record available to his or her opponent.

(Rule 57)

In the Australian Capital Territory a prosecuting counsel should, in addition, inform defence counsel of the reason for his belief that the document may have been unlawfully obtained unless that reason should be readily apparent to the defence.

10. Where prosecuting counsel are entitled to cross-examine an accused as to his or her credit or motive they must ensure that such an exercise is carried out fairly. In particular, accusations should not be put to an accused unless based on information, which appears to be accurate, and unless they are justified in the circumstances of the case.

11. In prosecuting charges of assault, especially sexual assault, there should be particular concern for the position of the victim. Many such people have suffered severe emotional and physical distress as a result of the offence and may be confused and apprehensive at the prospect of having to give evidence. Prosecutors should carefully explain to victims of such offences the role which they play in the prosecution process and, if appropriate, the steps that can be taken to ensure their protection. Where a decision is made not to proceed further with a particular prosecution or to accept a plea of guilty to a lesser charge the victim is entitled to be informed and given reasons for the decision in question. Conversely, where a victim does not wish the prosecution to proceed because, for example, the resultant trial would cause further humiliation and/or trauma, those wishes should receive due consideration. However, in some instances, the interests of the wider community may demand that the prosecution proceed.

These guidelines are not intended to cover every conceivable situation, which may be encountered during the prosecution process. Prosecutors must seek to resolve a wide range of issues with judgment, sensitivity and commonsense. It is neither practicable nor desirable to fetter the prosecutor's discretion as to the manner in which the dictates of justice and fairness may best be served in every case. Nonetheless, emerging trends in the pattern of criminal behaviour and/or the manner in which proceedings are conducted may, from time to time, raise the need for further guidelines.

ALPHABETICAL AND COMPLIANCE INDEX