



ACT
Government



ACT DPP
OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS

ANNUAL REPORT

2012–13

DIRECTOR OF PUBLIC PROSECUTIONS



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Ethos: the spirit of the community

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

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Transmittal Certificate



19 September 2013

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 2013.

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

I hereby certify that the attached Annual Report is and is an honest and accurate account and that all material information on the operations of the Office during the period 1 July 2012 to 30 June 2013 has been included.

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

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

Yours faithfully,

Jon White
Director of Public Prosecutions

Glossary

Acronyms

ACTPS	Australian Capital Territory Public Service
AFP	Australian Federal Police
CASES	Name of the case management system of the Office
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
FOI	Freedom of information
FV	Family violence
FVIP	Family Violence Intervention Program
JACS	Justice and Community Safety Directorate
RJ	Restorative justice
SARP	Sexual Assault Reform Program
WAS	Witness Assistance Service

Technical Terms

Accused	person charged with an offence, usually an indictable offence
Complainant	person against whom it is alleged a crime has been committed, usually used in the context of sexual assault
Crown	the prosecutor in the Supreme Court or Court of Appeal
Defendant	a person charged with an offence
Director	the Director of Public Prosecutions
Directorate	administrative unit of the ACT Public Service
Director-General	person appointed to head an administrative unit of the ACT Public Service under Division 3.4 of the <i>Public Sector Management Act 1994</i>
Head of service	person appointed to head the ACT Public Service under Division 3.2A of the <i>Public Sector Management Act 1994</i>
Indictable offence	an offence required or able to be dealt with in the Supreme Court
Office	the Director and staff assisting the Director
Summary	an offence required or able to be dealt with in the Magistrates Court
Victim	a person who suffers harm arising from an offence

Director's Overview

Undoubtedly the highlight of this year has been the record number of trials, sentencing proceedings and appeals in the Supreme Court and Court of Appeal. Every section of the Office contributed to this magnificent achievement.

The number of Supreme Court trials concluded – 72 – was the highest on record and more than double the long term average. Sentencing proceedings in the Supreme Court (accused sentenced after being committed for sentence or changing their plea to guilty) were also at an all time high. The number of Supreme Court appeals (appeals from the Magistrates Court to the Supreme Court) was an all time high of 89, more than double the long term average. And appeals to the Court of Appeal where another record – 41, triple the long term average. All of this took place in the context of what was otherwise an especially busy year, as this report attests.

It is particularly notable that all trials are prosecuted by in-house counsel. In the past complex or serious matters were briefed out, often at great expense. The benefits of my policy of in-house advocacy have not just been fiscal however. There is now a greater expertise and confidence within the Office, of which I am very proud.

Criminal justice continues to throw up challenges. In the last year some 87 accused who indicated a plea of not guilty and were committed for trial changed their plea to guilty before trial. More than half of those did so within 2 weeks of the scheduled trial date, after considerable public resources had been expended on preparing their matters. Although pleas of guilty are welcome at any stage – and often come as an immense relief to victims and other witnesses – a mechanism has to be found to encourage early changes of plea. Too many public resources are being chewed up in matters that ultimately end up in pleas of guilty. Victims and witnesses are being subjected to unnecessary stress and anxiety. And in many cases, accused persons are missing out on sentencing discounts for early pleas, and the benefits that come from the certainty of resolving matters, and the expiation of guilt.

My office has concentrated in the last couple of years on resourcing matters committed for trial “up front”. As soon as a matter is committed for trial, consideration is given to the indictment – which is prepared and signed, the witness list, and the case itself. This is the subject of a detailed case statement which sets out the way in which the Crown presents its case, the elements of the offences and the evidence available to prove each element. This case statement is filed with the court and served on the defence. The time has come for the Crown's effort to be matched. Now that the docket system has brought certainty and transparency to the listing of matters in the Supreme Court, it is time to tackle the issue of case management. I have put forward some modest proposals, which I have discussed with many in the profession. In brief those are:

- the introduction of case management powers for the Supreme Court
- pre-trial disclosure of expert evidence by accused persons.

So far as case management powers of the Supreme Court, we lag well behind other jurisdictions. The court should be given powers to:

- a) enable the court to make any orders or directions that it considers necessary for the efficient, economical and expeditious management and conduct of the trial;
- b) order the prosecutor and the accused person's legal representative to attend a pre-trial conference or take other measures on a 'without prejudice' basis to attempt to agree on the issues in the trial;

- c) order the prosecutor and the accused person's legal representative to attend a pre-trial conference or take other measures on a 'without prejudice' basis to attempt to agree on the evidence to be admitted at trial; and
- d) allow the court to dispense with the formal requirements of proof for matters that were not disputed in the course of pre-trial disclosure, hearings or conferences.

Each of these reflects powers provided in other Australian jurisdictions.

As to pre-trial disclosure of expert evidence, the ACT is the only jurisdiction in Australia where accused persons are not required to disclose expert evidence to the DPP prior to the commencement of a trial.

As a jurisdiction, we must do better.

I have been working for some time with the Magistrates Court and the profession generally to reform listing procedures in the Magistrates Court. There is general agreement that the formation of a separate bail list – and the consequent reduction in the number of "A" lists – is desirable, as is reform of the case management hearing system. Progress of these matters has not been speedy, but it is hoped that in the next year there will be substantial progress.

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

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

The government is currently considering this issue and hopefully the benefits of securing the independence of my office as Dr Hawke has recommended will outweigh any perceived disadvantages. The transition of the other three bodies mentioned was able to take place without significant resourcing implications, and there is no reason it would be any different for my Office.

One area of recent reform likely to have a significant impact upon the work of the Office is work safety. The *Work Health And Safety Act 2011* was part of complementary legislation in all Australian jurisdictions to provide for a balanced and nationally consistent framework to secure the health and safety of workers and work places. Consistent with that initiative, the government has moved to establish an Industrial Court jurisdiction when the Magistrates Court is constituted by the Industrial Court Magistrate and in other specific circumstances. The most recent budget provided for funds for the implementation of recommendations of the *Getting Home Safely* report, including the provision of 12 additional work safety inspectors. The increase in work safety inspectors, and

the increased emphasis on work safety in the Territory generally will have an obvious flow on effect to my office. I have already been advised by the Work Safety Commissioner to expect a significant increase in referrals to my office. Many of those referrals were already in the pipeline before the increase in resources for Work Safe ACT.

Work safety prosecutions are often complex and of great interest to the community. Tragically, prosecutions often arise when workers are either killed or seriously injured. It is no secret that work safety prosecutions present great challenges to my office. This is because of the complexity of modern work places, the well resourced nature of potential defendants and the incentives for defendants to resist prosecution action. It is also fair to say that Work Safe ACT is still feeling its way as an investigative body. Complex factual scenarios are the norm, and there is often the necessity of calling expert evidence which is likely to be heavily disputed. Given the now uniform legislation adopted in Australia, the approach of other jurisdictions will be highly relevant in the ACT. Indeed the ACT will be measured against the performance of other jurisdictions.

Clearly it will not be possible to increase significantly the numbers of work safety matters prosecuted without a concomitant increase in resources to my Office. I am monitoring the situation closely.

Until recently, this office was the only DPP in Australia which had carriage of summary as well as indictable matters. That is now changed, with the Northern Territory DPP having been instructed by its government to take over summary prosecutions from the police prosecution service in that territory. I expect that as the benefits of an independent and fearless prosecution service in both summary and indictable jurisdictions becomes apparent more jurisdictions will follow the lead of the Northern Territory, and adopt the ACT model. Naturally we are happy to provide advice to our Territorian cousins to assist them in their new task.

With expanding workloads and diminishing resources, the Office is always looking for more efficient ways to do business. One area where this is being achieved is in the area of electronic business, particularly in regards to the service of briefs and the presentation of matters in court. The office is working closely with the Australian Federal Police to ensure that briefs of evidence are transmitted to the office in electronic form – they will be served in electronic form on defendants and ultimately transmitted to court electronically. As well courts are increasingly receptive to the electronic service of documents, submissions and other materials and this is being pursued.

There has been much controversy during the year about delays in the Supreme Court and calls in some quarters for the appointment of a fifth resident judge. I have remained aloof from such matters, which are matters for the government and the Assembly. However it must be observed that if a fifth judge were to be appointed, it would necessarily require the appointment of additional prosecutors to support the additional judicial resources. Every time the criminal courts sit they require a prosecutor to be present. Under present arrangements we only just cover the existing courts – and in some instances that is quite a struggle. We would not be able to support an additional judge unless there were an additional flow through of resources – a fact that should be kept in mind in any debate about the desirability of appointing an additional judge.

I should mention a significant upswing in the amount of work in the area of confiscation of criminal assets. In particular there has been during the reporting period a number of prosecutions brought alleging the use of suburban houses in the cultivation of marijuana. The office has pursued restraint and forfeiture action under the *Confiscation of Criminal Assets Act 2003* in relation to those houses.

This last year the team I have the honour to lead has worked tirelessly and harmoniously to serve the community. When so many have contributed to the Office's success, it would be wrong to single out individuals. My overwhelming impression from the last year is how well the various sections of the Office have worked together, and how unstintingly members of the team supported each other. The Office is distinctly youthful (most officers are under 40, as the employment profile shows) vibrant and diverse. It is also – I trust – a great place to work.

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

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

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

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

The principal duties of the Director are:

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

The Director has some important statutory functions, including:

- to institute a prosecution on indictment where there has been no committal for trial (known as an *ex officio* indictment);
- to decline to proceed further in a prosecution and bring it to an end;
- to take over and conduct, or discontinue, prosecutions instituted by another person (other than the Attorney General);
- to give to a person an undertaking that specified evidence will not be used against them, or that they will not be prosecuted for a specified offence or conduct; and
- to give directions or furnish guidelines to the chief police officer and other persons specified in the Act, including investigators and prosecutors.

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

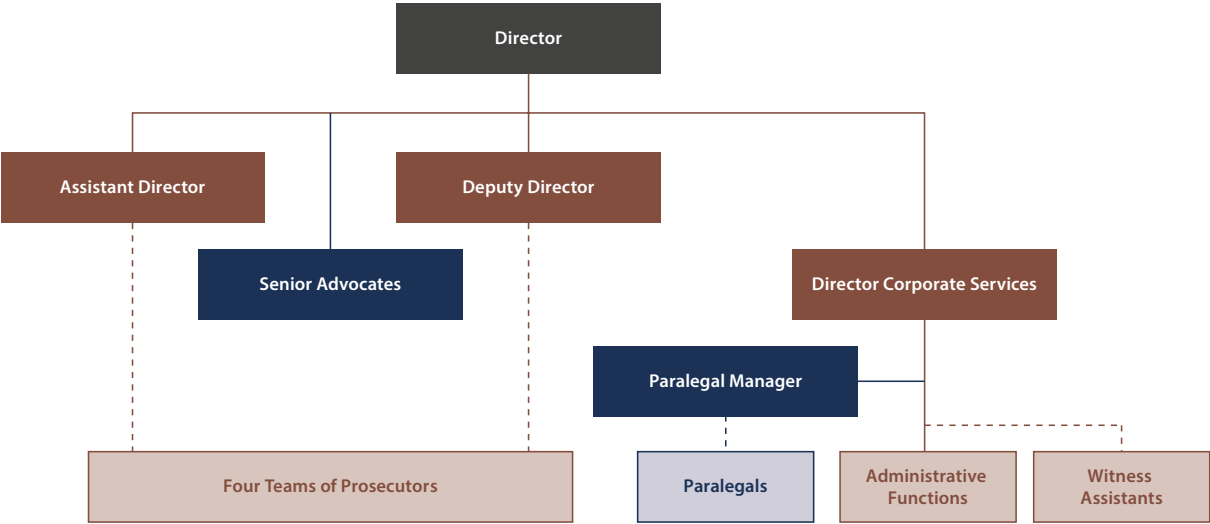
In making decisions in the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed, and in particular by the Prosecution Policy promulgated by the Director. The Prosecution Policy is available on the website of the Office and is appended to this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

From time to time the Director issues guidelines to prosecutors in relation to a particular area. A recent guideline dealt with the way in which prosecutors will exercise the election to have matters dealt with summarily.

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

A senior management meeting involving the Director, senior executives, director corporate services, paralegal manager and senior lawyers takes place each week. There are also frequent meetings of prosecutors and paralegal staff and these meetings are used to communicate proposals and requests, and invite feedback.

The Office structure during the reporting period was as follows:



A.2 Overview

The year was defined by the record numbers of Supreme Court trials, sentences, and appeals conducted by the Office.

It was not just the number of matters. Some very significant and complex matters were prosecuted – all by in-house counsel.

The office continued to be engaged in discussions concerning case management in the Supreme Court, and listing practices in the Magistrates Court. In the Supreme Court the implementation of the docket system brought about a transparent allocation of work between judges: the challenge now is to institute a case management system to support the allocation. In the Magistrates Court, progress towards a separate bail list, and abolition of case management hearings, has been frustratingly slow.

Recently enacted special measures in relation to the prosecution of sexual offences are now fully in operation. This has greatly increased the number of instances of evidence of complainants being given in pre trial hearings, and has also increased the number of pre trial applications.

The year also saw the making of a number of tendency applications by the prosecution, particularly in sexual offence cases.

The year saw a consolidation of the paralegal professional development package and an enhanced contribution by paralegals to the litigation effort of the office.

As always, the essential business of the office is criminal litigation and the office continues to operate in an environment of externally imposed deadlines and very high work volumes. The statistics and case reports in the body of this report give an idea of the breadth, quantity and complexity of the work performed by the Office.

A.3 Highlights

Noteworthy operational achievements during 2012–2013 were:

- The performance of the Office in the Supreme Court in conducting a record number of trials, sentencing proceedings, and appeals;
- The contribution to the Supreme Court performance by all officers, including paralegal and corporate staff who arrange for the attendance of witnesses, and WAS officers who had to deal with many difficult cases;
- The prosecution of a number of complex matters, including two murders, serious armed robberies, conspiracies to commit robbery, major frauds, and historical sexual assaults;
- The prosecution of significant Crown appeals;
- Responding to a record numbers of appeals in the Supreme Court and Court of Appeal;
- Implementing the special measures in sexual offence cases, in particular the procedure whereby evidence is given in advance of the trial hearing;
- The preparation of a number of tendency and coincidence applications in all manner of prosecutions, particularly sexual offences;
- The consolidation of the paralegal professional development package;
- The progress to electronic service delivery, and decreasing reliance on paper;
- taking action in significant COCA matters;

- Accreditation of the Office under the ACT Smart Office program; and
- The recruitment and training of junior lawyers.

The major challenge facing the Office is undoubtedly maintaining prosecutorial services in the face of increasing workloads and resourcing cutbacks. Other major challenges are:

- Meeting the demands of the new Industrial Court, and the new environment for work safety prosecutions, at a time of contracting resources;
- Maintaining staff development, particularly professional development for prosecutors in face of workload and budgetary pressures;
- Retaining junior prosecutors;
- Continuing pressures on wage rates and workloads of paralegals;
- Dealing with issues of security of staff outside the office, particularly in court and on the way to court; and
- Contributing to legislative reform within existing staffing levels and workloads.

A.4 Outlook

Priorities for the coming year include:

- Participating in the reform of case management in the Supreme Court and listing reform in the Magistrates Court;
- Engaging with government as to the situation of the Office in the context of the one department model, and separate appropriation for the Office;
- Contributing to the improvement and coordination of regulatory offences, particularly work safety offences involving death or serious injury;
- Enhancing continuing legal education opportunities for prosecutors, particularly through in-house training, mentoring and advocacy exercises;
- Enhancing the reporting capabilities of CASES; and
- Doing business electronically, particularly with the service of briefs and the presentation of material in court.

The key influence on the operating environment of the Office is likely to be the case management practices of the Supreme Court and the listing practices of the Magistrates Court. The office will continue to contribute to discussions about reforming those practices.

A significant risk facing the office continues to centre upon the retention and recruitment of legal staff given workload pressures, and pressures on prosecutorial services imposed by the contracting fiscal environment. The office prosecutes virtually all matters in house. While this saves the community money on external counsel and increases the skills of public prosecutors, as previously noted, the risks associated with this are the increased pressure on prosecutors and reduced flexibility.

Another significant risk centres on the prosecution of work safety matters. These matters are complex and significant to the community. However there are no resources within the Office to cope with the expected increase in work safety prosecutions and to meet the needs of the new Industrial Court. Deficiencies in the training and resourcing of investigators, and the coordination of investigations between regulators and police are also causes of concern.

A.5 Management Discussion and Analysis

The Office is a downstream agency. It is not in control of its workload, nor the services it is required to deliver, nor the timeframes in which it delivers them. At a time when the workload of the Office is expanding, the resources available to it are contracting.

The outcome for the 2012–2013 financial year reflects the budgetary pressures faced by the Office and a sharp increase in depreciation costs.

IT costs and witness expenses will continue to burden the budget in future years. Ongoing reductions in funding by way of efficiency dividends, budget efficiency realisation program savings and workforce planning savings will further add to these challenges in an environment of increasing workloads, and greater complexity of legislation and court procedure.

A.6 Financial Report

The financial transactions of the Office for the year ending 30 June 2013 are subsumed within the audited financial statements of the JACS Directorate. For information related to the budget outcomes please refer to the audited JACS financial statements for 2012–13 (Output 1.4). It should be noted that total expenses in Output 1.4 include allocated JACS Directorate overheads.

A.7 Statement of Performance

The following is extracted from the audited JACS financial statements for 2012–2013:

Output Class 1 : Justice Services

Output 1.4 : Public Prosecutions

Output Description

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

Accountability Indicator	Original Target 2012–13	Amended Target 2012–13	YTD Actual 30 June 2013	YTD Variance %	Note
Total Cost (\$'000)	9,948	N/A	10,355	4%	N/A
Government Payment for Outputs (\$'000)	9,575	N/A	9,878	3%	N/A

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

A record number of Supreme Court trials were conducted this year. In the twenty second year of operation of the Office some 72 trials were finalised. To give some perspective on the enormity of that achievement, the long term average for the first 21 years was 34.8 trials per year. Indeed the last three years have been the three highest years in terms of trial numbers. Previous to that the highest number was 42.

To put this in perspective, here are the figures for the number of trials conducted in the last 5 years:

Year	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Trials	37	30	66	62	72

The reporting period does include the tail end of the Blitz, which was detailed in the last report. However, the large number of trials reflects an upswing in Supreme Court work generally, and a concerted effort by the Court to increase the throughput of work.

A great variety of offences were tried including murders, armed robberies, conspiracies to rob and serious sexual offences.

Consistent with the firm policy of the current Director, all trials were prosecuted in-house, in contrast to the practice of former years when many matters were briefed out at significant cost. The prosecution of matters in-house has many benefits, not the least of which is the saving to the community from having to brief matters out. This is dealt with elsewhere in this report. Other benefits include the increase in skills for officers conducting their own matters and a greater responsiveness to the needs of victims and other witnesses.

Of the trials in which verdicts were delivered, some 57% resulted in guilty verdicts. This is particularly pleasing when one considers that many matters originally set for trial result in pleas of guilty just before trial, in the face of a strong Crown case.

Indeed, completed trials (that is matters that actually run to trial) only tell part of the overall story. The Office often does a considerable amount of work on a matter, only to have an accused person plead guilty at a very late stage.

In the initial phase after committal - the first phase of preparation - the prosecution must prepare file and serve a case statement, an indictment and associated documentation. The second phase of preparation involves the setting of a trial date (which involves a court attendance) issuing and service of subpoenas, the arranging for witnesses to attend court, including arranging travel and accommodation for interstate witnesses. This second phase also includes DPP officers chasing up police for extra statements and for additional enquiries to be followed up on, and also directions hearings in court. The third phase in the few weeks before trial involves intensive work by counsel allocated by the Crown and their instructing officer in reading up on the case, proofing witnesses, familiarising themselves with exhibits etc and preparing to present the case.

In the 2012–2013 year, some 87 accused who were committed for trial changed their plea to guilty before the trial. In all of those 87 matters, the prosecution had done work – sometimes a considerable amount of work – in preparing the case for trial. Of the 87 matters, 26 accused pleaded guilty on the trial date itself, 15 within a week before the trial date and another 3 within 2 weeks before the trial date. This means that a total of 44 people, (or just over 50%) pleaded within 2 weeks of the scheduled date for trial, in all cases well into the third stage of preparation as set out above.

In 54 of the 87 cases, subpoenas had already been issued by the Crown – in itself a resource intensive and expensive exercise. In 65 cases a trial date had already been set, which indicates involvement of the court.

Of course, by the time pleas of guilty are entered in such cases, most of the work of the prosecution has already been done. The importance of achieving a higher rate of early resolution in trials is dealt with elsewhere in this report.

The number of sentencing proceedings in the Supreme Court was also at an all time high. Some 222 accused were sentenced after being committed for sentence or changing their plea to guilty. (This does not include persons pleading not guilty and sentenced after being found guilty). The record high number was partly explained by the tail end of the Blitz (as a result of which, as outlined last year, a number of changes of plea were obtained). However, it is mainly reflective of an effort from the Court to complete matters.

To put this result in perspective, here are the figures for the number of sentencing proceedings in the last 5 years:

Year	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Sentencing Proceedings	178	191	200	165	222

Appeals

Appeals, too, were at record highs during the year. Supreme Court appeals totalled 89, the highest on record. Court of Appeal appeals totalled 41. Again, this was the highest on record, the highest previously being 24. By way of comparison the long term average for the previous 21 years of the operation of the office was 39.3 Supreme Court appeals per year, and 16 Court of Appeal appeals per year.

For context, here are the figures for the number of appeals in the last 5 years:

Year	2008/2009	2009/2010	2010/2011	2011/2012	2012/2013
Supreme Court appeals	70	53	78	60	89
Court of Appeal appeals	19	12	23	18	41

Eastman Inquiry

On 3 September 2012 Acting Justice Marshall ordered an Inquiry into the conviction of David Harold Eastman for the murder of Assistant Commissioner Colin Winchester. The Inquiry is to consider a wide range of terms of reference which were drafted by counsel for Mr Eastman, and – despite opposition from the Director – adopted in their entirety by Marshall, AJ. Those terms of reference include:

- whether or not Mr Eastman was fit to plead during his trial
- questions about the reliability of a Crown forensic witness
- alleged issues involving the ballistics evidence led by the Crown at trial
- whether there was an hypothesis consistent with innocence that organised crime murdered Assistant Commissioner Winchester
- the alleged veracity and reliability of a witness who gave evidence of Mr Eastman's stated intention to kill Assistant Commissioner Winchester
- the alleged veracity and reliability of a witness who gave identification evidence
- alleged issues about the disclosure by the Crown of certain psychiatric reports relating to Mr Eastman
- alleged factual inaccuracies in the evidence led by the Crown at trial.

As a result of that order a Board was appointed, consisting of Acting Justice Duggan, previously of the South Australian Supreme Court. Acting Justice Duggan appointed Liesl Chapman SC as counsel assisting the Board, and Ms Chapman assembled a team of lawyers to assist her preparation. That team includes two junior counsel and one instructing solicitor.

The Director was given leave to appear at the Inquiry. Preparation for representation at such a wide ranging Inquiry poses a significant drain on the resources of the Office and to that end the Director was provided with additional funding by the Territory to prepare the Director's representation. Experienced counsel Dr Peggy Dwyer has been briefed by the Director to appear on his behalf. A senior prosecutor coordinates the Director's team within the office, managing two dedicated staff. All three internal staff work on the Inquiry full time.

Given the history of the Eastman litigation, which includes involvement by the Director in the inquest, trial, appeals and the 2005 Miles Inquiry, along with a number of applications for inquiries by Mr Eastman, a large number of documents have been generated over the course of the last 24 years since Assistant Commissioner Winchester's murder. To accommodate the extra staff and documentation, additional office space has been organised.

The Director has been served with numerous subpoenas from the Board between February and June 2013 and has successfully met all deadlines set by the Board for production of documents. The Director has also provided a great deal of informal assistance to counsel assisting to aid her in navigating the vast amount of material involved.

Acting Justice Duggan has since resigned his commission and been replaced by Acting Justice Brian Martin.

A formal hearing of evidence will commence on 5 November 2013. It is unclear how long the Inquiry will hear evidence but it is anticipated that the hearings will spill into 2014 and continue for some months.

Paralegals

The current year has seen the realisation of several long term goals in the paralegal area as reported the last two annual reports. These include the ongoing re-classification of paralegal grades to provide clear career progression, and improved training and access to continued professional development.

The consolidation of the re-structure of the paralegals, with a comprehensive review of processes, procedures and workloads has allowed for a stabilisation within the paralegal section. The focus on professional development and recruitment of paralegal staff with prior criminal law experience or undertaking relevant study has proved to be beneficial. The year is the first time in recent years where there has been almost no attrition of paralegal staff.

All paralegals permanently employed within the DPP have either obtained their Certificate III in Business and Legal Administration and are continuing with further qualifications to the Certificate IV level or are enrolled in a relevant tertiary degree. A further three paralegals have obtained their Diploma in Legal Administration with support from the Office.

The DPP currently employs six paralegals who hold law degrees obtained whilst they were employed within the Office (including a specialist paralegal engaged to assist in the Eastman Inquiry), with a further two paralegals expected to graduate from law degrees in the coming months. This program of focusing recruitment to provide a balance between law students and professional paralegals has proved to be mutually beneficial. The Office benefits from their advanced paralegal skills in the drafting of complex legal documents, providing support in instructing solicitor roles, proofing, and the employees benefit from “on the job” training and access to legal training and supervision.

The year has seen a further focus on the development of electronic records and the on-going project to develop and disclose briefs of evidence electronically, with the long term goal that the electronic disclosure of briefs will decrease the time taken to provide briefs to defence counsel and defendants and ultimately improve the efficiency of hearing and trial processes.

Magistrates Court

Some 3517 matters were completed during the year, with 2630 been found proved. Completed matters were down on last year and more in line with historical levels. A full complement of Magistrates supplemented by experienced Special Magistrates ensured a healthy completion rate. A note of caution is sounded in comparing the figures for completions to previous years, as a more rigorous standard to merging matters was applied this year. (See in this regard the note to the statistics later in this report. This applies to both the Magistrates Court and the Childrens Court.)

The number of accused committed to the Supreme Court for trial or sentence was down this year (166 this year, 254 last year). This no doubt reflects the legislation which recently took effect permitting the prosecution to elect to treat matters having a maximum penalty of up to five years as summary matters. In practice the prosecution exercises that election in relation to most matters within that category. As a consequence fewer matters such as assaults occasioning actual bodily harm, breaches of protection orders and the like are committed to the Supreme Court. The new legislation is thus working well.

Meeting the timetable set out in a Practice Direction for the service of briefs continues to be a challenge, and the rate of compliance was again well under target during the reporting period. Certainly, the Office is dependent upon the AFP to provide material in a timely manner, and this is part of the explanation for why timetables are not met. Individual magistrates sometimes shorten the period for compliance, which places additional burdens on the Office and the AFP. However, the main reason for not meeting targets lies in the enormous burden on resources required to service the Supreme Court practice this year, which, as detailed elsewhere, is at record levels.

Childrens Court

The Court remains busy, although as with the Magistrates Court, numbers were down compared to last year. During the reporting period some 256 summary matters were concluded (with 218 being proved).

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. 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. 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.

This Office is very supportive of the RJ process. The DPP is one of six entities - including the court itself - that have the power to refer matters for RJ at various stages of the criminal process. The Office refers 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.

Galambany Court

A Circle Sentencing Court (the Circle), available for certain Aboriginal or Torres Strait Islander offenders, commenced operation in 2004. It was originally regulated under a practice direction of the Magistrates Court, but since the commencement of the *Courts Legislation Amendment Act 2011*, it is known as the Galambany Court and is provided for in Chapter 4C of the *Magistrates Court Act 1930*.

Galambany means 'we all, including you' and is intended to reflect the inclusive nature of the Court. 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, if the offence and the offender fit the guidelines. The Circle 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.

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. This process is significantly longer and more complicated than the conventional sentencing process and involves a significant amount of resources from the courts and by this Office.

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 inquiries.

Coronial proceedings are investigative rather than adversarial 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.

This year the trend away from coroners hearing evidence continued. As a consequence there were fewer appearances by officers in coronial hearings than last year, and fewer coronial briefs received.

During the reporting period there were

Appearances in Coronial Hearings	12
Appearances in Coronial Directions	28
Inquest hearings concluded	7
Matters in which a Coronial Brief was received by the DPP	12

Note: 'Matters in which the Coroner decided no inquest was required' were reported on in the 2011/2012 Annual Report. However, during this financial year the DPP only received a brief in matters where the Coroner decided that an inquest was required. Therefore this figure is no longer relevant.

Sexual Offences Unit

Sexual offence matters are particularly challenging to prosecute, are often complicated and are less likely to resolve through pleas of guilty.

The Sexual Offences Unit was created within the Office in 2010 to respond to this by providing specialisation and a best-practice approach in the prosecution of sex offences. Prosecutors continually hone their knowledge and skills in dealing with the complexities of these cases and using the special legislative measures to improve the court experience for victims. Ongoing in-house training is conducted in the Office to ensure that prosecutors are kept up to date with legislative changes and the developments in evidence law that are relevant to this area.

The evidentiary issues arising in this area are complex and evolving. For example, we have had a number of pre trial applications determined on the issue of tendency evidence. These applications often relate to whether the Crown is permitted to run a trial with more than one complainant. Courts all over the country are grappling with these complex issues and there have been a number of such applications in the past year.

The unit plays a key role in achieving greater consistency in the conduct of prosecutions and ensuring sexual assault matters progress through the courts as quickly as possible. Unfortunately, these matters are not given priority listing in the courts, as is the case in some other jurisdictions. However, as the backlog in the courts is decreased generally sexual assault matters have been going to trial sooner, in some cases within about six months of the committal.

The unit works closely with the Witness Assistance Service to ensure all victims are provided with support and information early and throughout the court process. It has also conducted training sessions for the AFP in relation to interviews with children.

Over the last year there have been 71 new sex offence matters commenced and 103 completed. This is consistent with recent years. Recent legislative reforms, in particular permitting a child complainant's interview with police to be tendered as their evidence-in-chief, have been a contributing factor to conviction rates.

During the reporting period further legislative reforms were made improving the experience for victims in giving evidence and amending the definition of sexual intercourse in line with other jurisdictions.

We have seen an increase in sexual offences involving the use of cameras. In one matter prosecuted this year a defendant used his mobile phone to remotely film a woman having a shower in a shared dormitory. However, the matter was dismissed because the magistrate was not convinced that the charge was appropriate. Other jurisdictions have passed legislation specifically aimed at the use of cameras to record or broadcast sexual activity without the consent of the person being filmed. While we are able to utilise existing legislation, it may be worth considering legislation specifically targeted at these sorts of offences.

Delay is still an issue in the Supreme Court. In Victoria legislation requires sexual offence trials to be listed for trial within three months of committal or the date of filing the indictment. While we are a much smaller jurisdiction, there is much to commend the prioritising of sexual offence proceedings. This could be achieved by building greater flexibility into the docket system to allow sexual offence proceedings to be transferred between dockets to ensure they get the earliest possible trial date.

There have been a number of sexual offence matters where the Crown has appealed against inadequacy of sentence to the Court of Appeal resulting in some significant case law in the ACT.

The number of historical matters being prosecuted has increased as complainants feel more comfortable about coming forward. Rape crisis workers have already reported an increase in complaints after the setting up of the 'Royal Commission to investigate Institutional Responses to Child Sexual Abuse'. It is anticipated that this will flow through to a significant increase in prosecutions.

Sexual assault trials and sentences in the Supreme Court were as follows

Description	Matters
Trials	30
Guilty verdicts	12
Not guilty verdicts	13
Hung Juries	3
Awaiting verdict	2
Notices declining to proceed further	5
Sentencing proceedings Accused sentenced after committal for sentence, after committal for trial/changed plea or re-sentenced after breach	14

Relevant statistics for the unit for all matters were

	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual offence matters commenced	37	5	29	71
Sexual offence matters completed	52	3	48	103
Sexual offence matters proved	12	2	26	40
Sexual offence matters discontinued	6	–	5	11

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

A sample of sexual offence matters dealt with during the reporting period included:

DMN

On 10 August 2012 a jury found the offender guilty of two counts of sexual intercourse and two counts of committing an act of indecency with one of his partner's daughters (then 12-13 years old). As well as engaging in sexual intercourse, the offender on one occasion tried to gain the attention of the victim and her sister, who were hanging out washing, by masturbating inside the bedroom window in view of them. The offences came to light when the victim fell pregnant to DMN when she was 13 years old. The pregnancy was terminated and DNA testing confirmed the accused was the father. The accused appealed against his convictions and is yet to be sentenced.

Navin Edwin

On 17 May 2013 a jury found the offender guilty of thirteen sexual offences committed against three female children. Edwin came to police attention after a complaint was made by parents who found text messages sent to some of the girls. Police executed a search warrant and found child pornography on his computer including explicit images of a girl aged 7 years old. The girl told police that the offender had removed her underwear and touched her genital area. The offender gave evidence that he had taken the photo for medical purposes.

In June 2013 a second jury found the offender guilty of four sexual offences involving a carriage service against another victim who was 15 years old. In 2010 over several months the offender attempted to groom the victim by sending her explicit photos of himself. The offender is yet to be sentenced for these offences.

Jason Dodd and Kevin O'Rafferty

On 17 June 2013 both offenders were found guilty of three offences including engaging in sexual intercourse without consent. On about 18 May 2012 the victim (16 years old) had passed out asleep on a couch at Dodd's flat in Griffith. She was very drunk. There were three men in the flat including Dodd and O'Rafferty. At some point during the night the men took turns in engaging in various sexual acts with her including performing oral sex on her and having penile-vaginal sex with her. During these occasions the victim passed in and out of consciousness. The next morning she immediately complained to her friends. She was taken to hospital and examined by a doctor who noted abrasions to her genitals. The offenders were subsequently sentenced to 7½ years imprisonment and 5 years imprisonment respectively.

MK

On 29 October 2012 the offender pleaded guilty to committing an act of indecency without consent. On 11 October 2012 he called police and asked if it would be alright if he walked up to a girl to "cop a feel". The following night he went to the Mawson Club and followed the victim out of the club. He grabbed her from behind, grabbed her breasts and put his hand up her skirt. She resisted and the offender ran away. On 12 March 2013 he was sentenced to 12 months imprisonment. The offender had a history of similar, although non-contact, offending. The prosecution successfully applied for an order placing the offender on the child sex offender's registration order as he posed a risk to the sexual safety of the community.

SARP reforms

The SARP (sexual assault reform program) continues and my Office remains actively involved.

During the reporting period the Assembly passed a number of amendments to the SARP legislation including:

- extending the definition of sexual intercourse to include common sexual acts that are covered in other jurisdictions
- making it an offence for a person to engage in sexual acts with a young person under 18 if the young person is under the person's special care. This is defined to include school teachers, step parents, foster carers, employers, those providing religious instruction, coaches, counsellors, health professionals and custodial officers. The list is non exhaustive
- reforms to how children and intellectually impaired witnesses can give evidence. Police interviews can now be used as the evidence-in-chief for all child witnesses, and witnesses who are intellectually impaired, where the matter being heard is a violent or sexual offence proceeding. Prior to this amendment this measure was only available to child or intellectually impaired complainants
- recording the evidence of all sexual offence victims to permit the evidence to be played at a retrial. This will ensure victims of sexual offences no longer have to give evidence on more than one occasion if there is a retrial.

It is timely to consider the changes brought about by the introduction of the original SARP provisions in 2009. Since then prosecutors have been able to use police interviews as the evidence-in-chief of the child or intellectually impaired victims. This is one of the most significant achievements of SARP, and has led to the prosecution of more child sex offences. No longer does a child have to recall in detail events that occurred two to three years previously. The detail of what occurred is contained in the interview they participate in shortly after police become aware of an allegation. While the child is still cross examined, the jury can see how the child appeared when first being interviewed by the police. This saves the child having to repeat what occurred on numerous occasions.

One of the other major SARP reforms was to allow child witnesses in sexual offence matters to give evidence prior to the trial. This evidence is recorded and played at the trial which may take place some months later. This allows the child to move on with their life and put the stress of having to give evidence behind them. This facility is available for some other victims of sexual assault if the court has evidence of distress to the victim. Ideally, this provision should be available to sexual assault victims generally without the need for having to prove distress. While such a change has resource implications, the benefits are obvious.

The CCTV provisions which allow for victims of family violence offences, sexual offences, and serious violent offences to give evidence from another room connected to the court by audio visual link have been of enormous benefit to hundreds of victims. As I indicated in last year's report I support these provisions being extended to victims of burglaries (especially those who are present during the burglary), victims of stalking, and victims of breaches of protection orders. It is anomalous that victims of such offences are not permitted to give evidence by CCTV. Victims of stranger stalking (or indeed stalking by an acquaintance) are not surprisingly, often highly

traumatised and to have to give evidence in court with the alleged offender present is a very stressful experience. Again, resources are always limited, but it is hoped that a way may be seen to make these relatively small but significant changes to improve the SARP legislation.

Family Violence Intervention Program

The Family Violence Intervention Program (FVIP) is a coordinated inter-agency response to address family violence in our community through the criminal justice system.

The Office continues to devote significant resources to the FVIP. The Family Violence (FV) team consists of 5.5 specialist prosecutors to cope with the large number of family violence cases. The number of FV matters continues at a high level, although with the change-over in the way statistics are captured within the office, it has been difficult to make exact comparisons to previous reporting periods.

Family violence matters are identified at the charging stage by the police and once before the Magistrates Court, are transferred to the Family Violence Court.

FV prosecutors appear in most family violence matters. This provides consistency of approach and continuity for victims. Prosecutor case loads continue to be allocated according to defendants' surnames to enable prosecutors to be familiar with the background history of repeat offenders and ensure consistency.

A significant challenge for FV prosecutors is prosecuting matters where the complainant is a reluctant participant in the proceedings. The reasons for this vary but issues such as financial reliance and pressure from the defendant and other family members play a major role. As with all prosecutions, the FV team proceeds with charges where there are reasonable prospects of conviction bearing in mind the strong public interest in denouncing family violence. The specialist FV prosecutors undertake in-house training in evidence law and courtroom skills. They are greatly assisted and supported by the Witness Assistance Service and dedicated specialist paralegals.

FV prosecutors continue to work closely with all the FVIP participating agencies. The Office works closely with the AFP advising of appropriate charges, identifying further evidence and providing specialist family violence training to new recruits. Victims Support ACT and the Domestic Violence Crisis Service (DVCS) also continue to play an important role in supporting complainants. And in cases involving children, FV prosecutors liaise closely with the AFP and the Office of Children, Youth and Family Support.

Significant statistics during the reporting period include

	Magistrates Court	Childrens Court	Supreme Court	Total
FV matters commenced	383	35	7	425
FV matters completed	375	37	29	441
FV matters proved	275	31	17	323
FV matters discontinued	35	1	2	38
FV defendants diverted under mental health provisions	16	–	–	16
FV matters finalised before hearing	245	34	9	288
FV matters proceeding to hearing	115	3	3	121
• Proved	73	2	–	75
• Discontinued	14	–	1	15

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

Prosecuting FV matters

Family violence matters are difficult. The offences take place in private and are often not reported to the police. In most cases the victims are women. The challenges associated with convincing a court that an offence has been committed in a person's home, often without any witnesses apart from the victim, and in circumstances where there are emotional financial and physical pressures placed on the victim, should not be underestimated.

Further, victims often reconcile with their attackers before the prosecution is concluded, leading them to be uncooperative or 'unfavourable' witnesses. Family Violence prosecutors are familiar with the operation of section 38 of the *Evidence Act 2011* which allows the prosecution to cross-examine witnesses it has called. Prosecutors also become well versed in the vulnerable witness provisions in the *Evidence (Miscellaneous Provisions) Act 1991*.

The following case reports illustrate some of the challenges in the area and demonstrate the issues that arise when one family member is charged with offending against another:

The Queen v ML

ML, a retired police officer, was indicted for using an offensive weapon likely to endanger human life or cause grievous bodily harm, reckless threat to kill, burglary with intent to cause harm, assault occasioning actual bodily harm, and contravening a protection order - all against his wife the complainant. He was tried by judge alone.

The Crown case was that ML had separated from his wife acrimoniously and, had broken in and waited in the family home for his wife to return. The allegation was that he wore two pairs of rubber gloves and came up behind her carrying an improvised device connected to an illegal power point under the house, which did not pass through the fuse box. He attempted to jab the device, which had a sharp piece of metal attached to an extension cord, into her hand, and said that he intended to kill her. This had no effect, and so he attempted to strangle her and smother her mouth and nose. When she said, "Please stop. The kids. The kids," he stopped and ran out of the house. She immediately called emergency services, and gave that version of events to the operator and to a neighbour who arrived to assist.

The Chief Justice found that, because the complainant was not electrocuted by the device, it must not have been live, and so was not an offensive weapon likely to endanger life or cause grievous bodily harm. His Honour dismissed this charge at the conclusion of the Crown case.

The accused gave evidence that he had arranged with the complainant to do maintenance around the house, including cleaning the drains, requiring rubber gloves. He said that he was holding a voltmeter and was approached by the complainant, who initiated a sudden verbal and physical altercation. As a result of striking him, he said, she sustained the wounds on her hands from the voltmeter. He said he was struck with the extension cord by the complainant, explaining the presence of her blood on the cord. The Chief Justice found the accused not guilty on all remaining charges except contravening the protection order, because he found that the Crown did not disprove the version of the accused. He found that the complainant's recollection could not be trusted, there was no sign of forced entry, and the placement of the cords in the house was not consistent with her version.

On the charge of contravening a protection order, ML was sentenced to three months imprisonment, backdated to account for time served on remand.

R v AC

AC, an affiliate of the Rebels Outlaw Motor Cycle Gang, was charged with assaulting his partner, ML, on two occasions, causing her actual bodily harm. The pair had been in a relationship for 15 months, and ML had given birth to their son five weeks prior to the first incident.

That incident began with AC and ML arguing one morning about where AC had been the previous night. During the argument AC became violent and punched ML in the face. The violence continued throughout the day. AC hit ML multiple times in the face, causing black eyes, headaches and a blood nose. He punched her in the thigh, causing a large fist-shaped bruise.

The second assault occurred eight days later. Around midday AC became angry at ML because his computer was having problems. He and ML began to argue and AC again became violent. He slapped ML hard on the side of the face, rupturing her eardrum.

ML reported both assaults to Police on the afternoon of the second incident. AC was arrested and charged. He initially pleaded not guilty to both assaults, but changed his pleas to guilty in the week prior to the hearing.

AC was sentenced in the ACT Magistrate's Court. He had a significant criminal record, mainly for driving, drug and dishonesty offences. The prosecution in its submissions emphasised the need for general deterrence in instances of serious and repeated family violence. AC's defence counsel asked that AC be sentenced to a suspended term of imprisonment.

On the first assault, AC was convicted and sentenced to 11 months imprisonment. On the second assault, he was convicted and sentenced to five months imprisonment. Three months in relation to the second assault were cumulative with the 11 months for the first assault, resulting in a head sentence of 14 months imprisonment. Five months were to be served full-time; a further five months were to be served by way of periodic detention; and the remaining four months were suspended upon AC entering in to a two year good behaviour order.

On appeal the sentence was reduced to two months full-time imprisonment, with a further five months suspended upon his entering into a two year good behaviour order.

Police v AT

AT was charged with assaulting his partner, ND, on two separate occasions, once by hitting her with a broom to her elbow occasioning to her actual bodily harm, and once for pushing her over. In relation to the first assault ND went to the hospital for medical treatment but did not report the incident to police. Police attended ND and AT's residence the day after the last assault and ND disclosed the events to police.

It was alleged that the couple's daughter, ST, witnessed both assaults. She had been interviewed by police, however, ST did not attend court at the hearing. Because ST was a child and was not before the court, the prosecution made an application under s 65 of the *Evidence Act 2011* to treat ST as an unavailable witness. ST had spoken to police the day after the second assault which was also relatively close in time to the first assault. This application was successful and police were able to give evidence of what ST had told them about the assault.

AT, who had no criminal record, was found guilty of the first assault occasioning actual bodily harm, but not of the second assault. He was sentenced to a good behaviour order for 12 months. AT has appealed against the decision.

Witness Assistance Service

The priority of the Witness Assistance Service (WAS) is to support vulnerable witnesses involved in the criminal process, focusing on sexual assault victims, child victims, victims of a crime where a death has occurred, family violence victims and victims of crime where a significant traumatic impact has occurred. This priority model is not exhaustive, but acts as a guideline for WAS Officers and those within the Office to identify those complainants, victims and witnesses who may be particularly in need of WAS support during their involvement with the criminal process. (The WAS refers to complainants, victims and witnesses they deal with as 'clients', although the Office does not have clients in a legal sense).

The 2012–2013 financial year saw a number of staffing changes to the WAS. September 2012 saw the departure of the Professional Officer 2 (PO 2) Senior Witness Assistant who was replaced by a new officer. In January 2013, a new Witness Assistant (PO 1) was employed. The disruption to staffing continuity presented challenges in the provision of ongoing support to clients.

WAS role in supporting witnesses

Witness Assistants possess professional qualifications and experience which enables them to assess the needs of each individual client, and then liaise with the prosecutors and Court staff in relation to any specific needs or concerns.

The WAS supports clients using the priority model. Witness Assistants initiate contact with the clients to schedule a (voluntary) 'meet and greet' which entails an informal meeting with the client, the prosecutor and a Witness Assistant. If the client is unable to be contacted, a letter is sent to them outlining the role of the WAS and offering assistance.

During the 2012–2013 financial year, the WAS maintained contact with clients throughout Court processes – this also included attending further meetings at the Office as required. This ongoing contact kept clients abreast of the proceedings and provided them with opportunities to have any questions or concerns addressed by prosecutors or Witness Assistants. Witness Assistants continued to assist prosecutors in proofing sessions prior to Court hearings and trials. Further, the WAS was actively involved in escorting clients to Court and/or sitting with clients in remote witness rooms and/or in Court rooms for hearings and trials. At the completion of Court matters, Witness Assistants often sat in on debrief sessions with prosecutors and clients. This often provided a level of solace for clients and an opportunity for questions and concerns to be answered regarding how the Court proceedings went.

Training provided by WAS

The WAS continued to provide training to the AFP new recruits four times per year at the Police College. The WAS also provided training to volunteers of Victim Support ACT (VSACT) who provide a volunteer Court support service for victims of crime.

The WAS provided in-house training to legal and administrative staff within the Office, with particular emphasis on working with clients identified through the priority model. This included meeting with new prosecutors and explaining the role and functions of the WAS and regularly providing relevant information to prosecutors at the Sexual Assault and Family Violence team meetings. An example of this was advising prosecutors of services/programs provided by external service providers for victims of family violence and sexual assault offences, as well as services available for the perpetrators.

Contact with external service providers

During the 2012–2013 financial year, the WAS continued to attend weekly Family Violence case tracking meetings with relevant parties including the AFP, ACT Corrective Services (ACTCS), Care and Protection Services (CPS), VSACT and the Domestic Violence Crisis Service (DVCS). This forum was important in identifying support services linked in with victims of family violence.

The WAS continued to attend monthly Wraparound Sexual Assault Reform Program (SARP) meetings with the AFP, CPS, Child at Risk Health Unit (CARHU), Forensic and Medical Sexual Assault Care (FAMSAC), Canberra Rape Crisis Centre (CRCC) and VSACT. As with the Family Violence case tracking meetings, Wraparound continued to provide a confidential forum where updated information regarding client matters was discussed. The WAS was responsible for providing updated information involving matters where Court proceedings were afoot.

In addition the WAS also attended regular meetings with VSACT to discuss the progress of Court proceedings involving mutual clients. This ensures there is no duplication of services, and that vulnerable witnesses do not fall between services.

During the year the WAS attended interagency forums with external services and agencies (government and non-government) in order to develop and implement closer and more collaborative working relationships.

Victim Impact Statements

There has been a marked increase in assistance provided to clients in the preparation of Victim Impact Statements (VIS). Prosecutors were pro-active in promoting the uses of VIS to victims and the Courts. The WAS reviewed common issues encountered in assisting clients preparing and presenting VIS in court, and reinforced the emphasis on clients preparing the statements in their own words, individually articulating the impact of offences on themselves.

WAS Caseload

A breakdown of all matters dealt with in the reporting period is as follows:

Offence type categories	Number of clients	Percentage
Adult Sexual Assault	56	25.3
Child sexual assault	82	37.1
Historical sexual assault	33	14.9
Violent Offence	28	12.7
Death	12	5.4
Other	10	4.5
Total	221	100

The WAS caseload statistics reflect staffing challenges within the WAS. The demands for WAS services over the financial year appear to have remained stable, however given the staffing issues there were a number of matters in which the WAS lacked the capacity to become involved.

The WAS Bi-annual Conference

The bi-annual WAS Conference, held in Hobart on 25 – 27 February 2013, was attended by both Witness Assistants. It provided an opportunity for an exchange of information and ideas and networking with witness assistants from other jurisdictions. Although a smaller jurisdiction than most, the WAS in the ACT is at least on par with other jurisdictions in their work with clients.

Supporting multiple complainants of one offender

The WAS experienced a number of cases involving multiple victims of an individual offender. This was an especially busy time due to the amount of contact that was made with each client each time the matter appeared in Court. There was often urgency, as it was important for a client to be informed of the progress of a matter before it appeared in the media. In one matter, this included making contact with eight individual people.

In cases where there are multiple victims of a single offender processes within the criminal justice system are often slower. With large trials, it can also be difficult finding available dates for trial. Victims often express frustration at the amount of time a matter takes to get to trial stage and it is the role of the Witness Assistants to attempt to ease their frustration and distress.

Plans for 2013 – 2014 financial year

During the next 12 months, the Witness Assistants will be undertaking further training specific to the needs of the Office, to enhance the skill set of the Witness Assistants in providing a quality service to the WAS clients.

Confiscation of Criminal Assets

The Confiscation of *Criminal Assets Act 2003* has proven to be an effective tool in the fight against serious crime. The Office continues to pursue the restraint and forfeiture of property in cases where there is clear evidence that property was either used in the commission of an offence, or where the property is the proceeds of crime. Restraint and forfeiture of property can act as a significant deterrent to criminal activity.

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

In the latest reporting period, six residential properties have been the subject of restraining orders, with two properties being subject to conviction forfeiture orders and a third the subject of a substantial settlement to discharge the forfeiture action on the house. Most of the confiscated assets relate to drug trafficking and cultivation, and fraud matters. Other property confiscated includes a vehicle used in an armed robbery, and a vehicle used to facilitate a sexual assault.

There was a significant increase in the number of matters pursued in the last financial year, as well as the value of the restrained and forfeited property. This increase was due to a number of large drug trafficking matters coming before the courts, clearing a back log of matters, and regular listing dates for COCA matters in the Magistrates Court.

During the reporting period the following activity took place:

- Number of matters referred from the AFP to the DPP – 43 (up from 14 last period)
- Applications made – 40
- Value of applications made – \$3,450,774.00
- Value of Restrained Property – \$2,473,330.00 (up from \$1,273,890.00)
- Value of Forfeited property – (includes matters which were subject to restraining orders and subsequently forfeited upon conviction) \$1,870,774 (up from \$549,572.83).
- Applications to restrain property – 15
- Applications for conviction forfeiture orders – 25
- Applications for buy back order – 1 (agreed by the Office – the matter of Wheeler).
- Application for unclaimed property – nil

Regulatory Matters

The Office prosecutes regulatory matters referred to it by ACT Government agencies and the RSPCA.

The management of the regulatory practice is an escalating challenge. These matters can sometimes involve tricky or complex legal and factual issues. In addition, these matters are often investigated by staff who do not necessarily have training or experience as investigators. For this reason, briefs of evidence that are submitted are of variable quality. Also, briefs are sometimes submitted just before statutory time limits expire, and this presents challenges for proper dispositions of matters when the general work of the Office is so consistently busy.

Within the Office, the regulatory practice is managed by a dedicated prosecutor who has responsibility for allocating regulatory files and liaising with the regulatory agencies.

Discussions with various regulatory agencies suggest a significant increase in the number of regulatory matters being referred to the Office within the next financial year. This is particularly so in relation to work safety matters and this is addressed separately in this report.

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

Act	Matters	Proved
<i>Animal Welfare Act 1992</i>	5	5
<i>Building Act 2004</i>	1	–
<i>Competition and Consumer Act 2010</i>	1	–
<i>Construction Occupations (Licensing) Act 2004 (ACT)</i>	2	–
<i>Domestic Animals Act 2000</i>	1	1
<i>Food Act 2001</i>	13	12
<i>Tobacco Act 1927</i>	2	2
<i>Trespass on Territory Land Act 1932</i>	1	1
<i>Work Safety Act 2008</i>	3	–
Total	29	21

Parking matters

The Office prosecutes those parking offences which end up in court. There were 93 parking matters completed in the reporting period.

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 before the Board when occasion demands. However, the Board as presently constituted rarely requests such assistance.

Criminal Law Resource Centre

The Criminal Law Resource Centre (CLRC) contributes to the operation of the Office by developing and maintaining three main areas of operation. The first of these is the Office website where work has progressed on the WCAG 2.0 compliance requirements. The website can now be accessed on mobile devices and the content of site is in the final stages of conversion to ensure full compliance.

The intranet is the second area managed by the Resource Centre. This service provides quick access to internal communications as well as commonly used resources and information, essential to the work of the Office.

The third area is the resource component which includes law reports, monographs, legislation, iPads and similar devices, online subscriptions to case law and commentary, reference material and research. These resources are managed through the CLRC catalogue which also provides quick and easy access to sentence data, judgments and continuing legal education materials.

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. Cases specific to particular areas of work are reported elsewhere in this report.

Yuen, Elphick & Ashcroft

Shortly after midnight on the morning of Monday 10 May 2010, Brendan Welsh drove a blue Hyundai Excel into Whittle Street Hughes, at the rear of the Hughes Shops to conduct what he thought was a low level drug deal. Cameron Ashcroft approached the car to buy drugs, and then stepped to one side and Kai Edgar Yuen emerged and through the partially opened window, fired a shot from a 12 gauge double barrel shotgun into Welsh's chest – killing him instantly. As the car jolted forward, Yuen fired a second shot, this time hitting the "B" pillar between the front and rear right side doors. Yuen ran back to a nearby car being driven by his flatmate Todd Elphick, and was driven away from the scene. On the way back to the flat shared by Yuen and Elphick, Elphick stopped the car to allow Yuen to throw the murder weapon down a drain.

Yuen and Welsh had been best friends since school, and the murder was motivated by a petty argument over Welsh borrowing a car for longer than expected. This argument escalated through a series of angry SMS exchanges, eventuating in Yuen and Welsh causing damage to each other's

property. Late on the evening of 9 May 2010, Welsh smashed the rear window of Yuen's work van. When Yuen found out, he and Elphick drove across Canberra for more than three hours trying to locate Welsh, before using Ashcroft to lure him to the location of the murder under the pretence of a drug purchase.

By August 2010, police had arrested and charged Yuen, Elphick and Ashcroft in relation to the murder. All pleaded not guilty and were remanded in custody.

Following a detailed assessment of the available evidence, the charges against Elphick and Ashcroft were downgraded to conspiring to commit grievous bodily harm and they were released on bail. However Yuen remained in custody on the murder charge. In March 2011, all three accused were committed to face trial in the ACT Supreme Court, with Elphick and Ashcroft to be jointly tried on the conspiracy charge, and Yuen to face a separate murder trial.

During the trial build-up Yuen mounted several challenges the admissibility of evidence including incriminating telephone calls intercepted prior to his arrest and hostile SMS messages exchanged between he and Welsh prior to the murder. A pre-trial hearing was listed in the Supreme Court to deal with these challenges one week before the trial was scheduled to start. On that day instead of challenging the evidence, Yuen plead guilty to the murder. The trial was vacated and the matter was listed for sentence. Yuen was also to be sentenced for the vicious bashing of another inmate whilst on remand for the murder.

During the preparation of the statement of facts Yuen claimed the gun had accidentally discharged, resulting in the matter being listed for a lengthy disputed facts hearing, involving most of the key trial witnesses, ballistic evidence and a lengthy cross-examination of Yuen. Following the disputed facts hearing the court found the fatal shot was deliberately fired and the matter was listed for a three day sentence hearing in April 2013, during which the court again heard from Yuen, as well as the family of Brendan Welsh through their victim impact statements.

On 31 May 2013, Yuen was sentenced to 28 years imprisonment with a non-parole period of 20 years, for the murder as well as the prison bashing. He will be eligible for parole in October 2030.

Elphick and Ashcroft were then jointly tried by jury for conspiring to commit grievous bodily harm on Brendan Welsh. Most of the witnesses called in the Yuen disputed facts hearing were again called to give evidence in the trial, and Yuen was again called to give evidence. After deliberating for five days, the jury could not agree on a verdict in relation to Elphick, however found Ashcroft not guilty.

Following discussions between defence and the Crown in preparation for the re-trial of Elphick, the charge of conspiracy to commit grievous bodily harm was replaced with one count of being an accessory after the fact, and Elphick pleaded guilty. He was sentenced to seven and a half months imprisonment.

Martin

Corey Martin was charged with murdering Andre Le Dinh at Le Dinh's apartment in Belconnen in May 2010. Andre Le Dinh was a full time public servant and a part time dealer in cannabis. He dealt from his unit and often had large quantities of drugs and money in the unit.

It was the Crown case that Martin came to know about this, and formulated a plan to rob Mr Le Dinh. Martin somehow gained access to Mr Le Dinh's apartment and a violent altercation took place. A key aspect of the Crown case was the physical disparity between Martin and Mr Le Dinh. Mr Le Dinh was of slight build weighing around 50kg and being about 165 cm's tall. Martin was

a much taller man and weighed about 110 kg. After the altercation, Martin took a significant quantity of drugs and cash from Mr Le Dinh's premises, leaving Mr Le Dinh mortally wounded. He died from his injuries shortly after. His body was discovered the next day by his brother.

Martin was found guilty after a trial lasting 2 weeks. At time of writing he was yet to be sentenced.

Cringle & Allred

In May 2012, Shane Cringle was detained in the Alexander Machonochie Centre. Due to a mix up concerning drugs, Cringle needed to repay a drug debt, however, he did not have the immediate resources to do so. Cringle sought and found assistance from his friend Jackson Allred who was at liberty. It was agreed that Allred would do a robbery for the benefit of Cringle. Cringle supplied the target name and address to Allred and sought the assistance of his partner Ms Amber Haber who agreed to take Mr Allred to the intended target.

Police became aware of the contact between Cringle and Allred and monitored the phone calls. This enabled police to determine the time and location of the robbery. Police followed Allred and Haber as they were being driven by another person to the intended target address. Upon entering the target's street in Florey, police stopped the car, and arrested those inside. Cringle and Allred were charged with conspiracy to commit aggravated robbery. The case was a classic case of conspiracy as the robbery itself had not yet been carried out.

The trial lasted nine days, after which the jury found both Cringle and Allred guilty. Cringle was seen as the instigator, planner and the beneficiary of the planned robbery, and as such his culpability to this agreement was seen as higher than that of Allred's. Cringle was sentenced to six and a half years imprisonment, with a non-parole period of three years. Allred was sentenced to five and half years imprisonment with a non-parole period of three years.

K

K was a well known sportsman who became involved in coaching junior players including offering private coaching. In the context of his role as a coach, K committed numerous sexual offences against young males. He ultimately pleaded guilty to numerous counts including counts of sexual intercourse with a person under the age of 16 and committing acts of indecency on a person under the age of 16.

K had originally pleaded not guilty however after a trial date was set he entered pleas of guilty to 25 charges in satisfaction of a number of charges against him. The sentencing judge sentenced K to an aggregate sentence of 12 years imprisonment with a non parole period of seven and a half years. The Crown appealed against the sentence on the ground that the sentences imposed were manifestly inadequate. The Court of Appeal unanimously upheld the Crown's appeal. The Court noted that the aggregate sentence imposed by the primary judge did not adequately reflect the total of the respondent's criminality with regard to the offences. "He abused the trust of the victims, their parents, and the members of the [sporting] club to prey upon children."

The Court of Appeal resentenced K to an aggregate of 19 years imprisonment with a non parole period of 11 years 10 months.

Monfries

On the afternoon of 3 May 2012 Justin Monfries, a recidivist car thief, driving a stolen car at about 118 kph and under the influence of alcohol, struck two Canberra Hospital employees who were crossing the road after work. Linda Cox was instantly killed. Ashlee Bumpus was thrown some distance and suffered significant and permanent injuries. Monfries failed to stop after the accident, continuing on until ploughing into another vehicle.

Having initially pleaded not guilty, Monfries eventually pleaded guilty to culpable driving causing death and culpable driving causing grievous bodily harm, as well as other associated charges. He was sentenced in June 2013 to 10 years and nine months imprisonment for culpable driving causing the death of Linda Cox, and five years and four months imprisonment for culpable driving causing grievous bodily harm to Ashlee Bumpus. The total sentence, with other matters, was 13 years and seven months, with a non-parole period of nine years and 10 months. Monfries was disqualified from holding a drivers licence until further order of the Court.

Monfries was the first person in the ACT to be sentenced for culpable driving offences following significant increases in the maximum penalties available. The maximum penalty for culpable driving causing death was, prior to November 2011, seven years imprisonment, and for causing grievous bodily harm, four years imprisonment. In November 2011 the Assembly increased these penalties to 14 years and 10 years respectively. The increase in the penalties followed representations after the case of *R v Creighton* in 2011. In that case (previously reported upon) the Court of Appeal declined to increase a sentence imposed in respect of two counts of culpable driving causing death and one of causing grievous bodily harm. The judges of the Court of Appeal were of the view that they could not consider sentences imposed in other jurisdictions, particularly NSW and Victoria, as those jurisdictions had much greater maximum penalties for such offences.

The tragedy of the Monfries case was compounded by the fact that Justin Monfries had been dealt with by the courts for dangerous driving following high speed chases in stolen cars on three previous occasions. One of those incidents took place on a weekday at 3.20pm in the inner north of Canberra. He drove up to 130 kph going through stop signs and driving on the other side of the road. The other incidents were in the middle of the night but extended over kilometres and involved driving up to 140 kph. He had two young women in the car during one of those incidents. In all three previous incidents police and the public had been put in danger, and it was a matter of good fortune that no one had been killed or seriously injured. The maximum penalty for dangerous driving in the ACT is 12 months imprisonment. Other jurisdictions have considerably higher penalties for this sort of driving committed in aggravating circumstances. Circumstances of aggravation include evading police, excessive speed, alcohol or drugs and repeat offending.

M

Allegations of sexual assaults against children are some of the most difficult matters we prosecute. The law concerning the giving of evidence by children has developed greatly in this area in recent times and the test embodied in the *Evidence Act 2011* is intended to simplify the issue of whether a child is competent to give evidence. In particular the Evidence Act provisions are designed to allow young children to testify even though they do not comprehend the concept of the obligation to give truthful evidence. If a young person is competent to give evidence about a fact but is not competent to give sworn evidence about a fact, they can give unsworn evidence. Unsworn evidence is treated no differently from other evidence.

The way in which the law has developed is illustrated by the case of M. In that case the trial judge initially ruled that the child complainant in a sexual offence case was not competent to give unsworn evidence because he had answered "I don't know" to the question "What do you understand by me telling you that it is important to tell the truth? What does that mean to you?".

The Crown appealed against his Honour's ruling and the Court of Appeal upheld the appeal, ruling that the trial judge's consideration was irrelevant to the question of the complainant's competence to give unsworn evidence.

McDougall

In a previous report the conviction of McDougall for the murders of Straun Bolas and Julie Tattersall was recorded. During the reporting period the Court of Appeal dismissed an appeal by McDougall against his conviction for Mr Bolas's murder and his sentence. The Court of Appeal unanimously held that it was open to the trial judge to make the findings of fact that he did concerning the death of Mr Bolas and that he had correctly identified the law relevant to the issues raised at trial - in particular the law relevant to self defence.

Massey

The conviction of Rebecca Massey for the murder of Elizabeth Booshand has previously been reported. In the reporting period the Court of Appeal unanimously dismissed an appeal by Massey against her conviction. The appeal centred on directions given by the trial judge to the jury concerning the issue of self defence. The Court unanimously found that the trial judge had not misdirected the jury.

Massey is seeking special leave from the High Court to appeal against this decision.

Tate, Fusimalohi

In these two cases, the decisions for which were handed down on the same day, the Court of Appeal made significant observations in relation to sentences for the offence of burglary. This is an offence which is all too prevalent in the Territory, and in respect of which sentencing has been inconsistent.

Tate had pleaded guilty to four burglaries of domestic premises and associated thefts, the offences being committed within a short time of each other. The sentencing judge imposed a total sentence of six years imprisonment with a non parole period of four years. Tate appealed on the basis that the sentence was manifestly excessive. The Court of Appeal by majority rejected the appeal. The majority, in referring to a table of sentences in what were said to be similar cases furnished by the appellant noted:

We do not consider the table of sentencing decisions prepared by the appellant's counsel establishes that the sentences imposed on the appellant are manifestly excessive. What the table does establish, as with the decisions referred to above, is that there is no single, correct sentence for offences of burglary. Sentencing is not a simple arithmetic process, but instead requires the sentencer to determine a sentence based upon an "instinctive synthesis" of the facts and circumstances relevant to the offences and offender: Markarian v The Queen (2006) 228 CLR 357. As such, there will always be a range of sentences that may legitimately be imposed for an offence of this type.

Fusimalohi had committed a series of burglaries of residential premises and associated thefts over a number of months. He entered pleas of guilty to all matters. He was sentenced to a total of seven years four months imprisonment with a non parole period of five years. He appealed against the sentence. The Court of Appeal unanimously dismissed his appeal. Justices Burns and Lander in a joint judgment noted:

None of these cases suggest that the sentences imposed upon the appellant, either individually or in aggregate, are manifestly excessive. These cases simply underline the proposition that there is no single, correct sentence for offences of burglary and aggravated burglary. There will always be a range of sentences that may legitimately be imposed for any particular offence of this type, taking into account the characteristics of the offence and the offender. The fact that other offenders have received more lenient sentences than the appellant for similar offences does not mean that the sentences imposed on the appellant are manifestly excessive.

Merrilees

This case is a reminder of the seriousness with which the courts view offences which undermine our justice system. What might seem like a favour for a mate is in fact a very serious offence. Gregory Merrilees was charged with committing aggravated perjury (that is perjury with the intent of procuring someone else's conviction or acquittal). Merrilees was a witness called by a defendant, Marco Zanatta, in a Magistrates Court hearing in 2010. Zanatta was charged with a drink driving offence and driving while disqualified. Zanatta pleaded not guilty and at the hearing denied he was the driver, giving evidence that Merrilees was the driver. Merrilees also gave evidence at the Magistrates Court hearing stating that he was the driver, not Zanatta. Zanatta was convicted of the two driving offences and, in the course of having a pre sentence report prepared, indicated to the probation officer that he had in fact been driving.

Merrilees was found guilty on a charge of aggravated perjury following a judge alone trial. In sentencing Merrilees, the Chief Justice observed:

It is a crime which strikes at the system of justice in this country and therefore is deserving of, and will be visited with, a period of imprisonment.

The maximum penalty for aggravated perjury is 14 years imprisonment. Merrilees was sentenced to two years imprisonment for the perjury offence and a further year was added for other offences. He was ordered to serve nine months of that sentence by way of full time imprisonment, and a further nine months by way of periodic detention with the remainder of the sentence suspended. This reflects current sentencing practice in Australian jurisdictions. It is rare indeed that a person convicted of such an offence will escape a full time custodial sentence. Merrilees has lodged appeals against conviction and sentence.

Wheeler

Between December 2009 and March 2012, Simon Wheeler a senior employee of ACTTAB Limited, working as the executive manager for wagering and sports betting, stole a total of \$517,284.74. Using five legitimate businesses that had prior dealings with ACTTAB, Wheeler created bogus invoices purportedly from these businesses, and from ACTTAB funds, paid the invoices and credited the money into three separate bank accounts that he controlled.

The fraud was detected when one of the businesses questioned correspondence relating to one of the bogus invoices. When confronted, Wheeler admitted his wrong doing. He was charged with 107 separate charges and pleaded guilty in the Supreme Court. He was convicted and sentenced to a total of five years imprisonment, to be served by way of 12 months full time

custody, then six months by way of periodic detention and the balance suspended on entering a good behaviour for a period of four years.

Narayan

Between November 2008 and February 2012, Adi Narayan stole \$987,005.08 while employed as a financial controller at a project and construction management company. One of his roles as a financial controller was to manage payments to the company's creditors. Using nine different bank accounts, Narayan credited these accounts for work allegedly done, using bogus invoices. On some occasions, Narayan used legitimate invoices by inflating the amount to be paid and authorising the extra to be credited to one of the bank accounts he controlled. Because Narayan had sole control of the company's financial systems, he was able to avoid detection for several years. The offences were detected when he was on leave and a temporary financial controller found suspicious transactions.

Narayan pleaded guilty and was sentenced in the Supreme Court to five years imprisonment, to be served by way of two years full time custody, then 18 months by way of periodic detention and the balance suspended on entering a good behaviour bond for 18 months.

Close

In 1989, Pamela Close commenced employment with ACTTAB Limited, a Territory owned corporation. In 1991 she was appointed as a Raceday Control Operator, and in 2003 she was promoted to the position of Manager, Raceday Control Centre at ACTTAB's head office. As Control Operator and Manager, she was authorised to re-open betting after a race had been run. This authorisation was given in the very rare event that a race had to be re-run.

Between 2001 and 2010, Close misused her authorisation to re-open betting on 590 occasions immediately after the result of a race was known. She would then place "winning" bets using one of three phone betting accounts that she had opened in other peoples' names, and re-close the betting. By so doing, Close dishonestly obtained \$1,428,355.20. The dividends she obtained on each of the 590 occasions came from a pool of punters' money with the result that on each occasion the total amount in the pool was reduced. The offending behaviour was detected in 2010 when ACTTAB instigated a new computer protocol which limited the amount of time available to re-open and close the betting.

The offender was initially charged with 590 charges, one for each time she committed an offence. She initially pleaded not guilty. These charges were eventually rolled up into two charges to which she pleaded guilty. She was convicted and sentenced to a period of imprisonment for five years to be served by way of 12 months full-time imprisonment followed by 18 months periodic detention with the balance suspended on entering a good behaviour order.

Siddiq

Prosecutions under the *Food Act 2001* for breaches of the Food Standards Code attract much community interest. Khawar Siddiq operated a restaurant in Dickson. An inspection by a public health officer of the restaurant premises revealed several failures to comply with the requirements of the Food Standards Code. The breaches related to cleanliness, food storage, cleaning and sanitising specific equipment, pests, and hand washing facilities.

The matter was originally heard in the Magistrate's Court. The prosecution had sought to rely on separate charges for each breach of the Food Standards Code, however the Magistrate forced the prosecution to combine all the breaches in one charge. Siddiq pleaded guilty and the Magistrate

convicted him and fined him \$1,800.00. The Crown appealed against that fine on the basis that it was manifestly inadequate. Acting Justice Nield in the Supreme Court upheld the appeal and increased the fine to \$10,625.00. His Honour found that the Magistrate had given inadequate weight to the objective seriousness of the offence and had failed to appreciate the extent of Siddiq's failures and the potential consequences of those failures. His Honour repeated what he had said in an earlier case:

There cannot be any argument that the offences committed by the respondent are not serious offences. The public who eat in restaurants and who buy food from take away food shops have the right to expect and are entitled to expect that food intended to be sold and offered for sale will be prepared and cooked in a clean and healthy environment by people who adopt and maintain a high standard of personal cleanliness and hygiene using clean and safe equipment and utensils which are free from any contamination.

His Honour also criticised the Magistrate for forcing the prosecution to proceed upon only one charge.

"Sully's case"

The 26 year old female defendant entered her horse "Sully" at an agistment in February 2011. At the time of registration, the defendant was advised that Sully was underweight and would require regular feeding and attention. Over the next five months the defendant rarely visited, and in July 2011 another horse owner reported to the RSPCA that Sully was in an emaciated state. The RSPCA and an equine veterinarian attended and examined Sully. Sully was found to have a number of serious health problems, including being approximately 100kg underweight, having lice infestation in his hair, "soft mouth" meaning he was unable to properly eat food, and a heart murmur. Sully was in pain as a result of those problems.

The defendant had either not visited Sully to feed him, or at least only visited occasionally (and insufficiently), neglecting Sully.

Sully was then seized by the RSPCA and after eight weeks of veterinary care and regular feeding, the health problems described had either gone entirely or at least decreased in severity.

The defendant was charged with neglecting an animal so as to cause it pain. She was convicted and ordered to complete 75 hours of community service over 12 months. Sully was also formally transferred into the full-time care of the RSPCA.

Statistics

A note on statistics used in this report

This reporting period is the third period in which the case management system of the Office, known as CASES, has been in operation. CASES has led to numerous changes in procedure within the Office, and has had a particular impact upon how statistics are recorded.

Prior to CASES, the statistics used in DPP Annual Reports were mainly provided by the courts, and were generally based on individual charges, rather than on defendants. However, most of the statistics used in this report are generated from CASES. These new statistics comply with the Australian Bureau of Statistics (ABS) standards for the characteristics of defendants dealt with by criminal courts (see ABS 4513.0). A fundamental aspect that is different is that the ABS standard reports against defendants rather than charges. As ABS 4513.0 (Criminal Courts Australia) at para 28 puts it: "the principal counting unit for the Criminal Courts collection is a defendant. A defendant is a person or organisation against whom one or more criminal charges have been laid and which are heard together as the one unit of work by a court at a particular level."

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

As the Office becomes more familiar with the CASES system, more rigorous treatment of finalised matters is applied. This has resulted in more frequent "merging" of matters more properly to reflect the fact that a group of charges has been heard together as one unit of work. This more rigorous approach has resulted in fewer matters being recorded as finalised in the reporting period than would have been yielded by the approach in previous years. Some caution is therefore required in comparing the figures in this report to those in previous years.

Generally, matters reported are those finalised within the reporting period. As set out in ABS 4513 "finalisation" describes how a criminal charge is concluded. Matters are concluded as set out in paragraphs 30 - 38 depending on the court involved. Of particular note, a transfer to another court level (for example a committal either for trial or sentence) concludes the matter in one court level and initials it in another court level.

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

Table 1: Total matters finalised by jurisdiction

Description	Matters	Proved
Children's Court	256	218
Magistrates Court	3517	2630
Supreme Court	375	253
Court of Appeal	33	N/A
Total	4181	3101

Note: Children's Court and Magistrates Court matters include committals to the Supreme Court. Supreme Court matters include Supreme Court appeals and matters where a NDTP was filed. As noted above, it is not possible to compare these figures to those from the last report, as a more rigorous treatment to merging matters has now been adopted in the light of more experience with the CASES system.

Table 2: Matters finalised disaggregated by matter type

Description	Matters	Proved
Homicide and related offences		
Children's Court	–	–
Magistrates Court	6	–
Supreme Court	7	4
Court of Appeal	3	N/A
Sub Total	16	4
Acts intended to cause injury		
Children's Court	62	55
Magistrates Court	460	320
Supreme Court	69	46
Court of Appeal	7	N/A
Sub Total	598	421

Description	Matters	Proved
Sexual assault and related offences		
Children's Court	3	2
Magistrates Court	52	12
Supreme Court	48	26
Court of Appeal	9	N/A
Sub Total	112	40
Dangerous or negligent acts endangering persons		
Children's Court	1	1
Magistrates Court	15	10
Supreme Court	6	5
Court of Appeal	0	N/A
Sub Total	22	16
Abduction and related offences		
Children's Court	2	2
Magistrates Court	11	6
Supreme Court	3	3
Court of Appeal	2	N/A
Sub Total	18	11
Robbery, extortion and related offences		
Children's Court	12	7
Magistrates Court	38	5
Supreme Court	56	52
Court of Appeal	3	N/A
Sub Total	109	64

Description	Matters	Proved
Unlawful entry with intent/burglary, break and enter		
Children's Court	32	27
Magistrates Court	78	30
Supreme Court	58	55
Court of Appeal	5	N/A
Sub Total	173	112
Theft and related offences		
Children's Court	40	36
Magistrates Court	215	149
Supreme Court	28	22
Court of Appeal	1	N/A
Sub Total	284	207
Deception and related offences		
Children's Court	2	2
Magistrates Court	19	8
Supreme Court	5	4
Court of Appeal	0	N/A
Sub Total	26	14
Illicit drug offences		
Children's Court	6	6
Magistrates Court	147	103
Supreme Court	29	20
Court of Appeal	3	N/A
Sub Total	185	129

Description	Matters	Proved
Weapons and explosives offences		
Children's Court	5	5
Magistrates Court	54	40
Supreme Court	1	1
Court of Appeal	0	N/A
Sub Total	60	46
Property damage and environmental pollution		
Children's Court	23	19
Magistrates Court	116	84
Supreme Court	15	9
Court of Appeal	0	N/A
Sub Total	154	112
Public order offences		
Children's Court	3	2
Magistrates Court	25	15
Supreme Court	0	0
Court of Appeal	0	N/A
Sub Total	28	17
Road traffic and motor vehicle regulatory offences		
Children's Court	49	45
Magistrates Court	1995	1719
Supreme Court	37	1
Court of Appeal	0	N/A
Sub Total	2081	1765

Description	Matters	Proved
Offences against justice procedures, government security and government operations		
Children's Court	13	6
Magistrates Court	153	93
Supreme Court	12	5
Court of Appeal	0	N/A
Sub Total	178	104
Miscellaneous offences		
Children's Court	3	3
Magistrates Court	126	36
Supreme Court	1	N/A
Court of Appeal	0	N/A
Sub Total	130	39
Coronial		
Coroners Court	7	N/A
Sub Total	7	N/A
Total	4181	3101

Table 3: Committals to the Supreme Court

Court	Matters
Children's Court	7
Magistrates Court	159
Total	166

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

Description	Childrens Court		Magistrates Court		Total
	Trial	Sentence	Trial	Sentence	
Homicide and related offences	–	–	4	1	5
Acts intended to cause injury	–	–	9	5	14
Sexual assault and related offences	–	–	23	6	29
Dangerous or negligent acts endangering persons	–	–	1	1	2
Abduction and related offences	–	–	4	–	4
Robbery, extortion and related offences	1	2	8	15	26
Unlawful entry with intent/ burglary, break and enter	–	2	19	17	38
Theft and related offences		1	2	13	16
Deception and related offences	–	–	3	4	7
Illicit drug offences	–	–	5	4	9
Weapons and explosives offences	–	–	3	2	5
Property damage and environmental pollution	1	–	5	4	10
Public order offences	–	–	–	–	0
Road traffic and motor vehicle regulatory offences	–	–	–	–	0
Offences against justice procedures, government security and government operations	–	–	–	1	1
Miscellaneous offences	–	–	–	–	0
Total	2	5	86	73	166

Table 5: Supreme Court Matters

Description	Matters
Trials	72
Trial Outcomes	
Guilty Verdicts	36
Not Guilty Verdicts	27
Other	5
Awaiting verdict	4
Sentencing Proceedings	
Accused sentenced after committal for sentence; after committal for trial/changed plea; or re-sentenced after breach	222
Notices declining to proceed further	
Notices filed	15

Note: this includes trials conducted during the reporting period, but awaiting verdict. Such matters are not "finalised" for the purposes of Tables 1 and 2

Table 6: Appeals

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	83	6	89
Court of Appeal	31	10	41
High Court	1		1
Total	115	16	131

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

A.10 Triple Bottom Line Report

Indicator	2011–2012 Results	2012–2013 Results	% Change
Economic			
Employee Expenses			
Number of staff employed (head count, not FTE)	70	75	7.1%
Total employee expenditure (dollars)	\$6,839,000	\$6,927,000	1.3%
Operating Statement			
Total expenditure (dollars)	\$9,816,000	\$10,355,000	5.49%
Total own source revenue (dollars)	0	0	–
Total net cost of services (dollars)	\$9,816,000	\$10,355,000	5.49%
Economic Viability			
Total assets (dollars)	\$2,000,000	\$2,000,000	0%
Total liabilities (dollars)	Refer JACS Financial Statements	Refer JACS Financial Statements	–
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 CO ₂ e)	N/A	N/A	N/A
Energy Use			
Total office energy use (megajoules)	441.63	396.92	-10.1%
Office energy use per person (megajoules)	6.33	5.4	-14.7%
Office energy use per m ² (megajoules)	0.34	0.25	-26%

Indicator	2011–2012 Results	2012–2013 Results	% Change
Greenhouse Emissions			
Total office greenhouse emissions – direct and indirect (tonnes and CO²-e)	116.35	116.58	0.2%
Total office greenhouse emissions per person (tonnes of CO²-e)	1.67	1.59	-4.8%
Total office greenhouse emissions per m² (tonnes of CO²-e)	0.09	0.07	-22%
Water Consumption			
Total water use (kilolitres)	Unavailable	Unavailable	–
Office water use per person (kilolitres)	Unavailable	Unavailable	–
Office water use per m² (kilolitres)	Unavailable	Unavailable	–
Resource Efficiency and Waste			
Total co-mingled office waste per FTE (litres)	665.1L	492.4L	-26%
Total paper recycled (litres)	49680L	51360L	3.4%
Total paper used (by reams) per FTE (litres)	36.4L	33.6L	-7.7%

Indicator	2011–2012 Results	2012–2013 Results	% Change
Social			
The Diversity of Our Workforce			
Women (Female FTE's as a percentage of the total workforce)	63.6%	68%	6.9%
People with a disability (as a percentage of the total workforce)	0%	1.3%	100%
Aboriginal and Torres Strait Islander people (as a percentage of the total workforce)	2.6%	2.7%	3.8%
Staff with English as a second language (as a percentage of the total workforce)	9.1%	14.7%	61.5%
Staff Health and Wellbeing			
OH&S Incident Reports	1	5	400%
Accepted claims for compensation (as at 31 August 2010)	0	1	100%
Staff receiving influenza vaccinations	12	28	133%
Workstation assessments requested	4	2	-50%

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SECTION B – CONSULTATION AND SCRUTINY REPORTING



B.1 Community Engagement

The Office consults with and interacts with the Attorney General, the Justice and Community Safety Directorate, 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 moot 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 within the Justice and Community Safety Directorate. This approach emphasises that the management of risk is the responsibility of all employees within the Office

Internal Audit

The Office's internal audit arrangements are primarily managed under the broader enterprise risk management framework of the Justice and Community Safety Directorate. 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 2013-2015, 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 2012*, 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 2013.

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 2013 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
- policy files
- administrative and financial records

The following documents are available upon request without charge:

- Annual Reports
- 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 8:30am to 4:30pm 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 was/were five application(s) to access documents made during the reporting year. Of these applications:
 - full access to the documents was granted in 0 case(s)
 - partial access to the documents was granted in five case(s)
 - access was refused to all documents in 0 case(s)
- there was/were one application(s) made during the reporting year for the internal review of decisions under section 59 which was successful;
- there was/were 0 application(s) made during the reporting year to the Tribunal for the review of decisions;

- there was/were 0 charge(s) or application fees collected during the reporting year in relation to FOI requests and other applications made under the FOI Act; and
- there was/were 0 request(s) 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.

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

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

The operations of the Office are overseen by the executive comprising the Director, senior executives, and the director corporate services. The executive meets weekly with a senior management committee comprising the executive, the paralegal manager and senior advocates.

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

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

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

C.6 HR Performance

Following an internal review of the specific skills, educational qualifications and attributes necessary for improved paralegal support within the office a training and development plan for paralegals has been implemented. This includes paralegal staff being provided with support to complete certificates for levels 3 in Business Administration (Legal) and level 4 in Legal Services, under new vocational training arrangements. Staff have continued to achieve these qualifications.

This year has also seen the continuation of training and development opportunities for legal staff with regular continuing legal education training sessions.

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

The turnover rate of paralegal staff has stabilised during this year. In previous annual reports this turnover has been identified as high. While this is a positive result and was influenced by the increased effort to provide targeted vocational training and development, wage rates and workloads of paralegal staff are still factors which will influence retention rates.

The Office is also developing health and wellbeing programs to support a range of activities to promote to staff the benefits of adopting a healthy lifestyle.

C.7 Staffing Profile

The statistics provided in the following tables includes employees in receipt of salary as at 30 June 2013. The figures are expressed in full time equivalent terms.

FTE and headcount

	Female	Male
FTE by Gender	49.1	24.0
Headcount by Gender	51	24
% of Workforce	68.0%	32.0%

Classifications

Classification Group	Female	Male	Total
Administrative Officers	11	2	13
Executive Officers	1	1	2
Legal Support	12	4	16
Professional Officers	2	0	2
Prosecutors	23	15	38
Senior Officers	2	1	3
Statutory Office Holders	0	1	1
Total	51	24	75

Employment category by gender

Employment Category	Female	Male	Total
Casual	0	0	0
Permanent Full-time	32	17	49
Permanent Part-time	5	0	5
Temporary Full-time	13	7	20
Temporary Part-time	1	0	1
Total	51	24	75

Length of service by age-group by gender

Average Length of Service	Pre-Baby Boomers		Baby Boomers		Generation X		Generation Y		Total	
	F	M	F	M	F	M	F	M	F	M
0-2	0	0	1	1	3	2	19	7	23	10
2-4	0	0	1	0	2	0	10	1	13	1
4-6	0	0	2	1	3	1	0	1	5	3
6-8	0	0	0	0	0	1	3	2	3	3
8-10	0	0	0	1	1	0	0	0	1	1
10-12	0	0	0	1	1	2	1	0	2	3
12-14	0	0	1	1	1	0	0	0	2	1
14+ years	0	0	1	2	1	0	0	0	2	2

The following explains the generations in the prior table

Generation	Year span
Pre-Baby Boomers	Born prior to 1946
Baby Boomers	Born 1946 to 1964 inclusive
Generation X	Born 1965 to 1979 inclusive
Generation Y	Born from 1980 and onwards

Average length of service by gender

Gender	Average length of service
Female	3.9
Male	6.1
Total	4.6

Age profile

Age Group	Female	Male	Total
<20	0	0	0
20-24	8	2	10
25-29	16	4	20
30-34	10	6	16
35-39	6	4	10
40-44	3	0	3
45-49	3	1	4
50-54	3	0	3
55-59	0	4	4
60-64	2	3	5
65-69	0	0	0
70+	0	0	0

Agency profile

Branch/Division	FTE	Headcount
CORPORATE	8.1	9
EXECUTIVE	2.0	2
LEGAL SUPPORT	27.4	28
PROSECUTOR	35.6	36
Total	73.1	75

Agency profile by employment type

Branch/Division	Permanent	Temporary	Casual
CORPORATE	4	5	0
EXECUTIVE	1	1	0
LEGAL SUPPORT	20	8	0
PROSECUTOR	30	6	0
Total	55	20	0

Equity and workplace diversity

	A	B	C		
	Aboriginal and/or Torres Strait Islander	Culturally & Linguistically Diverse	People with a disability	Employees who identified in A, B or C*	Women
Headcount	2	11	1	14	51
% of Total Staff	2.7%	14.7%	1.3%	18.7%	68.0%

*Note: employees who identify in more than one equity and diversity category should only be counted once.

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.

The majority of staff participated in some training activities during the reporting period. This continues 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.

This year has seen the implementing the new vocational training and development arrangements for paralegals. This has seen the majority of paralegals who are not studying for a law degree obtaining qualifications in either a level 3 in Business Administration (Legal) or level 4 in Legal Services. Three senior paralegal staff also completed a Diploma in Legal Services during the reporting period.

The Office administers a Studies Assistance Policy, which aims to balance the operational and strategic needs of the Office with employees' needs for skills development. The policy provides for paid study leave and / or financial assistance for staff that satisfy the requirements of the policy. During the reporting period two employees received assistance 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 the Chief Minister's Directorate.

Summary of incidents

Section 38 notifiable incidents	Incidents without injury	Minor injuries	Total all incidents
nil	nil	5	5

Note: Dates of incidents is in the range 1/07/2012 to 30/06/2013

During the reporting period, the Office focussed on the following areas:

1. Leadership:

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

- Respect, Equity and Diversity (RED) training;
- Manual Handling training;
- the opportunity to participate in flu vaccinations;
- Health and Well Being training; 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 this 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 Health and Safety Act 2011*. The Office Health and Wellbeing 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 reports or notices were given under the *Work Health and Safety Act 2011* and no directions were issued during the reporting period.

C.10 Workplace Relations

The Office operates within the framework of the JACS Enterprise Agreement 2011-2013, which includes a requirement for a joint staff – management consultation process.

Staff are employed under the *Public Sector Management Act 1994* to assist the Director in discharging his functions under the *Director of Public Prosecutions Act 1990*. As such, the Director holds the powers of head of service over the employment of staff under his direct control.

AWA/SEA Reporting

During the reporting period no staff were employed pursuant to the terms of an Australian Workplace Agreement (AWA). Two members of staff were remunerated pursuant to the terms of a Special Employment Agreement (SEA) during the year. Information on the remuneration payable under SEA agreements has not been disclosed due to the small number of SEA's in operation within the Office and the need to retain the confidentiality requirements of these agreements.

C.11 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; and
- 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, while the Office has no formal role in reviewing legislation, officers are alert to the human rights implications of the operation of legislative provisions.

Litigation

From time to time, applications are made in cases to which the prosecution is a party that purport to invoke the Human Rights Act. Typically these are cases where delay is relied upon to support an application for a stay of the prosecution.

C.12 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.13 Strategic Asset Management

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

The current utilisation rate is 21.3^{m²} per employee which is an increase on last year's rate of 18.7^{m²}. In February 2013 the office commenced occupation of a section of the second floor in the Reserve Bank building. This was necessary to deal with the additional space required for staff involved in responding to the Eastman Inquiry. The utilisation rate is based on a benchmark of 15.9^{m²} per employee. Seventy five staff occupied a total floor space of 1,600^{m²}. Factors relevant to the utilisation rate include the need to provide facilities such as witness interview rooms, waiting rooms for vulnerable witnesses, a conference room, the criminal law resource centre, areas for professional staff undertaking sensitive and confidential work, and areas for confidentially dealing with acutely personal and intimate issues.

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

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

C.14 Capital Works

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

Capital Project	Original Project Value \$000	Actual Cost \$000	Estimated Completion Date	Actual Completion Date
Kitchen Upgrade	28	28	Dec 2012	Dec 2012

There are no works still in progress at year end.

Contact details capital works officer:

Leeanne Hollow
Director corporate services
Phone: 02 6207 5399

C.15 Government Contracting

The following external sources of labour and services were undertaken during the reporting period.

Output Class	Name of Consultancy or Contractor	Description or Reason for Contract	Expenditure 2012–13	Date services commenced	Procurement Type
1.4	Dr Dwyer	External Counsel	\$31,081.88	30 Jan 2013	Single Select

Consultancy and Contractor Services

For year ending 30 June 2013, no consultancy services were engaged.

C.16 Community Grants/Assistance/Sponsorship

The following sponsorship was provided by the Director during the year ending 30 June 2013.

No.	Organisation/ Recipient	Project Description	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.17 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 Director of Territory Records has not made any declaration under section 28 of the Act.

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 Ecologically Sustainable Development

Indicator as at 30 June		Unit	2011–12		2012–13	
Line	General		Office	Total	Office	Total
L1	Occupancy – staff full-time equivalent	Number (FTE)	69.8	69.8	73.1	73.1
L2	Area office space – net lettable area	Square metres m ²	1308.50	1302.50	1,600.10	1,600.10
Stationary Energy			Office	Total	Office	Total
L3	Electricity use	Kilowatt hours	122,675	122,675	110,256	110,256
L4	Renewable energy use (GreenPower + EDL land fill gases)	Kilowatt hours	13,482	13,482	850	850
L5	Percentage of renewable energy used (L4/L3 x 100)	Percentage	10.99	10.99	0.77	0.77
L6	Natural Gas use	Megajoules	Unavailable	Unavailable	Unavailable	Unavailable
L7*	Total energy use	Megajoules	441.63	441.63	396.92	396.92
L8	Energy intensity per FTE (L7/L1)	Megajoules/FTE	6.33	6.33	5.4	5.4
L9	Energy intensity per square metre (L7/L2)	Megajoules/m ²	0.34	0.34	0.25	0.25

Indicator as at 30 June		Unit	2011–12		2012–13	
Transport			Office	Total	Office	Total
L10	Total number of vehicles	Numeric	0	0	0	0
L11	Total vehicle kilometres travelled	Kilometres (km)	N/A	N/A	N/A	N/A
L12	Transport fuel (Petrol)	Kilolitres	N/A	N/A	N/A	N/A
L13	Transport fuel (Diesel)	Kilolitres	N/A	N/A	N/A	N/A
L14	Transport fuel (LPG)	Kilolitres	N/A	N/A	N/A	N/A
L15	Transport fuel (CNG)	Kilolitres	N/A	N/A	N/A	N/A
L16*	Total transport energy use	Gigajoules	N/A	N/A	N/A	N/A
Water			Office	Total	Office	Total
L17	Water use	Kilolitres	Unavailable	Unavailable	Unavailable	Unavailable
Intensities						
L18	Water use per FTE (L17/L1)	Kilolitres/FTE	Unavailable	Unavailable	Unavailable	Unavailable
L19	Water use per square metre (L17/L2)	Kilolitres/m ²	Unavailable	Unavailable	Unavailable	Unavailable

Indicator as at 30 June		Unit	2011–12		2012–13	
	Resource Efficiency and Waste		Office	Total	Office	Total
L20	Reams of paper purchased	Reams	2550	2550	2460	2460
L21	Recycled content of paper purchased	Percentage	75%	75%	75%	75%
L22	Estimate of general waste (based on bins collected)	Litres	23280	23280	15,360	15,360
L23	Estimate of commingled material recycled (based on bins collected)	Litres	23280	23280	20,640	20,640
L24	Estimate of paper recycled (based on bins collected)	Litres	49680	49680	51,360	51,360
L25	Estimate of organic material recycled (based on bins collected)	Litres	960	960	8,800	8,800
Greenhouse Gas Emissions			Office	Total	Office	Total
L26*	Total stationary energy greenhouse gas emissions (All scopes)	Tonnes CO ² -e	116.35	116.35	116.58	116.58
L27*	Total transport greenhouse gas emissions (All scopes)	Tonnes CO ² -e	N/A	N/A	N/A	N/A

Indicator as at 30 June		Unit	2011–12			2012–13
Intensities						
L28	Greenhouse gas emissions per person (L26/L1)	Tonnes CO ² -e FTE	1.67	1.67	1.59	1.59
L29	Greenhouse gas emissions per square metre (L26/L2)	Tonnes CO ² -e	0.09	0.09	0.07	0.07
L30	Transport greenhouse gas emissions per person (L27/L1)	Tonnes CO ² -e FTE	N/A	N/A	N/A	N/A

Notes

1. * - calculated with information entered into 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
4. The office expanded to Reserve Bank level 2 in February 2013, emissions have stayed steady while increasing staff and floor area.

C.20 Climate Change and Greenhouse Gas Reduction policies and programs

The Office has undertaken a number of changes to address climate change, greenhouse gas emissions and the targets set out in Part 2 of the *Climate Change and Greenhouse Gas Reduction Act 2010*.

The Office obtained formal accreditation under the ACT Smart Office program during the reporting period. This has enabled us to reduce the amount of waste that was previously being sent to landfill and bring about an awareness of the importance of conserving resources and energy through recycling our waste.

This program includes:

- smart purchasing to reduce waste;
- special bins for food scraps which are sent to a local worm farm;
- staff are encouraged to recycle everyday items such as coffee cups and drink cans; and
- increased paper and cardboard recycling.

The Office has also continued to identify and implement changes within the office to reduce our environmental impact including:

- using paper which has a 75% recycle content;
- turning of computers and lights nightly;
- where possible retaining information electronically rather than in hardcopy to reduce our paper usage;
- recycle used printer cartridges; and
- water saver taps are fitted to office amenities.

While these are small steps in themselves, they all make a positive contribution to reducing overall greenhouse gas emissions.

C.21 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 Galambany Court (Circle Sentencing Court). The operation of the Galambany Court is making a positive difference to the lives of Aboriginal Canberrans.

C.22 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 in 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 Service, 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.23 ACT Strategic Plan for Positive Ageing 2010–2014

The ACT Strategic Plan for Positive Ageing has been developed in partnership with the ACT Ministerial Advisory Council on Ageing with a focus on the following key principles:

- social inclusion, participation and self-fulfilment
- respect and valuing
- support, independence and dignity
- partnerships
- consultation.

The work of the Office actively supports the strategies detailed in the plan, where applicable, as detailed below.

- the Office prosecutes those alleged to have committed violent and other offences against the elderly and applies consistent policies to such prosecutions, in order to work to eliminate violence against the elderly 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 that address discrimination, harassment, equal employment opportunity and industrial democracy in the workplace.

C.24 ACT Women's Plan 2010–2015

The ACT Women's Plan 2010-2015 provides a framework for working with the community to improve the status of all women and girls. The plan identifies three key priorities in achieving this: economic, social, and environmental. The work of the Office actively improves the status of women and girls in relation to this plan, as detailed below:

- 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 to 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.25 Model Litigant Guidelines

The model litigant guidelines apply to civil rather than criminal proceedings and are therefore not directly applicable to the work of the Office.

In making decisions in the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed, and in particular by the Prosecution Policy promulgated by the Director. Like the origins of the model litigant principles, that policy reflects the higher standards of behaviour and disclosure required of the Crown.

C.26 Notices of noncompliance

There are no infringement notice offences against the *Dangerous Substances Act 2004* for the reporting period.

C.27 Property Crime Reduction

The ACT Property Crime Reduction Strategy 2012–15 is a comprehensive and collaborative response to reducing property crime in the ACT. The DPP plays a crucial role in supporting key objectives of the strategy including:

- law enforcement operations to reduce property crime;
- early intervention/diversion programs for young people; and
- programs for recidivist property crime offenders.

In particular, as reported above the Office has a key role in the operation of the Galambany Court (*Circle Sentencing Court*).

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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 automatically be the subject of prosecution. Indeed the very first regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute 'whenever it appears that the 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.

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.

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.

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 event 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.

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