



ACT
Government

2020
2021
ANNUAL
REPORT

**DIRECTOR
OF PUBLIC
PROSECUTIONS**



ACTDPP



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Themis

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

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Abbreviations and Acronyms

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

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

Glossary of Technical Terms

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

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

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

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

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

Director	Director of Public Prosecutions
directorates	administrative units of the ACT Public Service
Director-General	person appointed to head an administrative unit of the ACT Public Service under Division 3.4 of the <i>Public Sector Management Act 1994</i>
evidence	Material presented to a court to prove or disprove a fact. It can include what witnesses say as well as documents and other objects.
evidence-in-chief	Questioning of a witness by the party who called the witness to give evidence, other than questioning re-examination.
evidential burden	The burden of adducing evidence that suggests a reasonable possibility that the matter exists or does not exist.
excluded offences	Refers to the excluded offences laid out in Part 2.2 of Schedule 2 (Trial by Judge Alone - excluded offences) in the <i>Supreme Court Act 1933</i> .
exhibit	A document or object that is provided as evidence in a court case or referred to in a sworn statement.
ex officio indictment	Even if committal proceedings have not taken place, or if a magistrate has found during committal proceedings that there is insufficient evidence for a trial, the DPP may file a special information or indictment, called an <i>ex officio information/indictment</i> , against the offender and they must then stand trial in the normal manner in the Magistrates Court or Supreme Court.
FI list	This refers to the Family Violence List in the Family Court. Defendants charged with family violence offences are to appear in the FI list.
FOI Act	<i>Freedom of Information Act 2016</i>
forcible confinement	A person who unlawfully confines or imprisons another person.
FV Unit	Family Violence Unit
good behaviour order	A good behaviour bond is a period of time when the offender must show good behaviour to avoid jail. It comes with numerous conditions such as participating in drug and alcohol counselling, staying away from certain people, and reporting to the supervising officer. Failure to follow the conditions may lead to harsher penalties ranging from simple warnings to imprisonment.
ground rules hearing	This is a pre-trial process that involves the parties and judge to address issues, including the manner and content of cross-examination, and the comprehension capacity and communication needs of vulnerable witnesses and assisting parties to plan their questions. It will be required in criminal proceedings in any matter in which an intermediary has been appointed

guilty	When a defendant enters a plea of guilty, they accept responsibility for the offence. When a defendant pleads not guilty, a jury will determine the guilt of the defendant if the matter proceeds as a trial in a higher court. Where a defendant pleads not guilty in the Magistrates Court, the magistrate determines the guilt of the defendant.
Head of Service	person appointed to head the ACT Public Service under Division 3.2A of the <i>Public Sector Management Act 1994</i>
head sentence	The total period of imprisonment imposed. A person will usually be released on parole or a suspended sentence before the entire head sentence is served.
hearing	A proceeding where the evidence is presented to the court after an accused or defendant has pleaded not guilty.
High Court	Refers to the High Court of Australia. The highest court in the Australian judicial system. The High Court only deals with legal matters of wider public importance and is not a sentencing court.
historical offences	a term used to describe offences that have occurred in the distant past
hung jury	An outcome where the jury cannot agree whether the accused is guilty or not.
incarceration	confinement in a jail or prison
indictable offence	an offence required or able to be dealt with in the Supreme Court
indictment	A formal accusation of the commission of a criminal offence in Supreme Court proceedings
Industrial Court	Refers to the ACT Industrial Court. The Court has jurisdiction to deal with industrial or work safety matters
inter alia	amongst other things
intermediary	Intermediaries are skilled communication specialists who assist vulnerable witnesses to give their best evidence. Their role is to help communication with the witness and to assist the witness to give evidence to police and in court.
intermediary program	The ACT's Intermediary Program commenced in January 2020 and is actively providing intermediaries to assist police and courts' engagement with vulnerable witnesses in criminal matters.
judicial review	The court's review of an administrative decision on the basis of a legal error in the decision-making process.

jury	A group of (usually) 12 people chosen at random from the general community who are tasked with the responsibility of determining whether the defendant is guilty on the evidence presented in a criminal trial.
leave to appeal	A defendant must first seek permission to appeal before their appeal can be heard by the Court of Appeal. The leave to appeal argument will be heard before a single judge in the Supreme Court.
Legal Professionals Enterprise Agreement 2018-2021	This refers to the ACT public sector <i>Legal Professionals Enterprise Agreement 2018-2021</i>
Legislative Assembly	Refers to the Legislative Assembly for the ACT, i.e. the parliament for the nation's capital. It was established after self-government in 1989. It performs both territory and local level functions and makes decisions that impact the lives of those who live and work in the ACT.
lockdown	During the COVID-19 pandemic, the term lockdown was used for actions related to mass quarantines or stay-at-home orders.
LSD	LSD, also known colloquially as acid, is a hallucinogenic drug. The effects of the drug include altered thoughts, feelings, and awareness of one's surroundings.
Magistrate	The person who hears the case and decides the sentence in the Magistrates Court or the Childrens Court.
Magistrates Court	The first tier of the ACT courts system. Most criminal cases are heard in this court in some form.
manslaughter	The act of causing another person's death without the intent to do so.
mental health order	Where a person does not have decision-making capacity or where their mental illness/disorder is placing them or the community at significant risk, involuntary measures may be required to provide them with the necessary assessment, treatment, care or support. There are a number of mental health orders that ACAT can make under the <i>Mental Health Act 2015</i> including: Psychiatric Treatment Orders; Community Care Orders; Restriction Orders; Forensic Psychiatric Treatment Orders; and Forensic Community Care Orders.
mental impairment	This includes senility, intellectual disability, mental illness, brain damage and severe personality disorder
mention	This is where the case appears in court for a brief time, usually to deal with a procedural matter and is not the 'hearing' of the matter. This includes setting dates and deciding bail.

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

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

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

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

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

tendency evidence	This is evidence 'of the character, reputation or conduct of a person, or a tendency that a person has or had', adduced to prove that the person 'has or had a tendency (whether because of the person's character or otherwise) to act in a particular way, or to have a particular state of mind'.
Territory	Refers to the ACT. The ACT is established as a body politic under the Crown by the name of the ACT.
the Act	the <i>Director of Public Prosecutions Act 1990</i>
the financial year	Refers to the 2020-2021 financial year or reporting year
trial	A hearing in a court where all evidence is heard, and a final decision is made.
trial directions	Orders made by the registrar in relation to the conduct of a proceeding. Before the trial or hearing of a matter, a registrar may give directions so that the parties involved will be properly ready. The directions usually set down a list of steps to be taken by the parties and the deadline for those steps. The steps usually involve filing of material and defining the issues that require a decision by the Court.
upholding an appeal	A court finding in favour of the appellant
verdict	The decision of a jury in a criminal trial as to whether an accused is guilty or not guilty of an offence.
victim	A person who has suffered harm directly because of a criminal offence, or a family member or dependant of a person who has died or suffered harm because of a criminal offence.
victim impact statement	A statement written by a victim that may be read or presented to a court after an offender has been found guilty and before they are sentenced. The VIS informs the court about the harm suffered by the victim as a result of the offence. In sentencing, the court is required to consider a number of factors including the injury, loss or damage to a victim, resulting from the offence.
Victims of Crime Charter	This is a charter embodying a raft of victim's rights provided for in the <i>Victims of Crimes Act 1994</i> and the <i>Human Rights Act 2004</i>
witness	A person who appears in court to give direct information about something relevant to the case the court is hearing.
young person	A young person is a person who is 12 years old or older, but not yet an adult. An adult is a person who is at least 18 years old.

Contact Sources

Agency Contact Details

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

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

Annual report contact details:

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

A. Transmittal Certificate and Compliance Statement

A.1 Transmittal Certificate



ACT Office of the Director of Public Prosecutions

25 November 2021

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

Dear Attorney,

2020-21 DIRECTOR OF PUBLIC PROSECUTIONS ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2021. This Report has been prepared in accordance with section 7(2) of the *Annual Reports (Government Agencies) Act 2004* and with the requirements under the *Annual Reports (Government Agencies) Directions 2021*. It has also been prepared in conformity with the *Director of Public Prosecutions Act 1990*.

I certify that the information in the attached report and information provided for whole of government reporting, is an honest and accurate account and that all material information on the operations of the Director of Public Prosecutions has been included for the period of 1 July 2020 to 30 June 2021.

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

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you present the Report to the Legislative Assembly within 15 weeks after the end of the reporting year. However, under section 14, the Chief Minister has granted an extension of the time when the report must be presented by you to the Legislative Assembly. The Chief Minister has granted the extension to the Legislative Assembly sitting day on 2 December 2021.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Shane Drumgold", is written over a horizontal line.

Shane Drumgold SC
Director - ACT Director of Public Prosecutions

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

A.2 Compliance Statement

The 2020-21 ACT Director of Public Prosecutions Annual Report must comply with the Annual Report Directions (the Directions) made under section 8 of the Annual Reports Act. The Directions are found at the ACT Legislation Register: www.legislation.act.gov.au.

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

Part 1 Directions Overview

The requirements under Part 1 of the Directions relate to the purpose, timing and distribution, and records keeping of annual reports. The 2020-21 ACT Director of Public Prosecutions Annual Report complies with all subsections of Part 1 under the Directions.

To meet Section 15 Feedback, Part 1 of the Directions, contact details for the Office of the Director of Public Prosecutions, ACT are provided within the 2020-2021 ACT Director of Public Prosecutions Annual Report to afford readers the opportunity to provide feedback.

Part 2 Reporting entity Annual Report Requirements

The requirements within Part 2 of the Directions are mandatory for all reporting entities and the Office of the Director of Public Prosecutions, ACT complies with all subsections. The information that satisfies the requirements of Part 2 is found in the 2020-2021 ACT Director of Public Prosecutions Annual Report as follows:

- A. Transmittal Certificate, see page 26
- B. Organisational Overview and Performance, inclusive of all subsections, see B.1 from page 35 to page 39 and B.2 from page 40 to page 105 respectively.
- C. Financial Management Reporting, inclusive of all subsections, see pages 106 to 108.

Part 3 Reporting by Exception

The Office of the Director of Public Prosecutions, ACT has nil information to report by exception under Part 3 of the Directions for the 2020-2021 reporting year.

Part 4 Directorate and Public Sector Body Specific Annual Report Requirements

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

Part 5 Whole of Government Annual Reporting

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

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

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

Director's foreword

Office Performance

The 2020-21 reporting period has delivered another difficult year, with the ever-present challenges of Covid. Transparency in planning for public offices is very important, and in May 2021 we published our Business Plan 2021-2025, delayed 12 months due to Covid. The Business Plan is now available on our web page under the Publications tab. At pages 10-12 of the Business Plan, we publish our key targets and parameters, including trials that we anticipate will return a verdict of not-guilty as a percentage of all matters committed for trial. As outlined at section 2.4.2 of the Business Plan, this is an important statistic as it provides objective guidance for vital decisions regularly made by the Office. For example, if the percentage of not-guilty verdicts is too high or too low, it may suggest that the application of the reasonable prospects of conviction test in section 2.7 of the Prosecution Policy is either too optimistic or too pessimistic. Also, the figure could potentially reveal issues with our skill sets and quality of preparation. Looking at our historic figures and experience from other jurisdictions, as reported in our Business Plan, we consider an appropriate balance of not-guilty as a percentage of matters committed for trial to be 30-40%.

Matters will be committed for trial in one reporting period yet not finalised until the next reporting period, and this will cause some statistical inconsistencies between matters committed and matters finalised in the same reporting period. During the last reporting period however, there were 177 matters committed for trial in the Supreme Court. As at the time of writing this Annual Report we had two matters awaiting decision, and there were a number of matters vacated or subject to a mistrial and pending new trial. Of the completed matters, there were 26 pleas of guilty prior to setting for trial, 36 pleas of guilty after being set for trial, 15 verdicts of guilty and 21 verdicts of not guilty. Statistically this represents 12% of all matters committed for trial recording an acquittal. When compared to our Business Plan, a not-guilty percentage of 12% of all matters committed suggests we performed much better than our target of 30-40%.

I have decided not to adjust our decision values, as the higher than anticipated percentage of successful prosecutions over the last reporting period have been impacted by two significant structural developments. Firstly, we have established an eighth team, the committals unit, aimed at early and thorough preparation of all matters immediately after they are committed for trial. This includes correcting evidentiary gaps, working with investigators to generally strengthen the case, and entering earlier discussions with defence to settle or shorten matters where possible. Secondly, we are now reaping the full benefits of the establishment of Crown Chambers, which consists of experienced trial lawyers Deputy Director Anthony Williamson, Crown Prosecutors Rebecca Christensen, Keegan Lee and Trent Hickey, and Crown Advocates Patrick Dixon, Skye Jerome and Soraya Saikal-Skea. Crown Chambers is also supported by a dedicated team of seven Prosecutor Associates, who are specialised instructing lawyers

that maintain a consistent point of contact for witness' and victims, and who provide much needed continuity of matters. The establishment of a professional and well-resourced Crown Chambers has enabled us to attract and retain experienced criminal Barristers. The structure also allows for a more thorough preparation of all serious criminal matters.

Finally, we have strengthened our criminal practice generally, which is managed by my Deputy Director, head of criminal practice, Joel Hiscox. Mr Hiscox has significantly strengthened the structure of the criminal practice, including the management of the Criminal Case Conferencing process. Our higher than anticipated success in prosecutions has been greatly assisted by the results achieved through the criminal case conferencing process, which settled 38% of matters listed for conference during the reporting period, up almost 10% on the previous year. It is to the defence bar's great credit that criminal case conferencing has been embraced by both sides of the bar table and enjoys the support of the judiciary. The high settlement rate enables many victims and accused to achieve just outcomes whilst avoiding the trauma and expense of a full criminal trial.

Across the practice there were 5760 total matters finalised over the reporting period, up more than 700 matters on the previous reporting period. This represents an increase of 13% over the previous reporting period, well above the 3-4% anticipated at page 11 of the Business Plan. Key amongst these were 18 homicide matters completed at various levels including trials, sentences, committals and appeals that bring us into the double figures for the second consecutive reporting period. We further ran 50 Supreme Court trials, up 11 on the previous reporting period and the highest number since my appointment as Director. Of these there was a clear dip in sex offence trials, with 13 in the reporting period, down seven from the previous reporting period. There has, however, been an increase in domestic violence matters finalised, growing from 599 in the previous reporting period to 669. Our appeals practice continues to grow, with 70 appeals in total, including 34 in the ACT Court of Appeal and five in the High Court.

Section 334 of the *Crimes Act 1900* provides the Magistrates Court power to summarily dismiss matters where they are satisfied the accused is mentally impaired, and the Magistrate considers it appropriate on alleged facts. This is a power not even open to the Supreme Court. Pursuant to section 334(4), the Magistrates Court requires the consent of my Office with respect to indictable offences, however, summary matters can be dismissed without this consent and without a formal hearing. In the last reporting period, we have experienced a 142% increase over the previous reporting period, and a 102% increase over the previous five-year average in the number of matters being summarily dismissed pursuant to this provision. In our observation there has not been a corresponding growth in mental impairment rates. Section 21 of the *Human Rights Act 2004* provides that "Everyone" has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing. This is a concerning trend that runs the risk of arbitrarily removing a victim's right under section 21. We will continue to monitor the situation.

The restructure of the Office is reaping rewards in both the percentage of successful prosecutions as well as producing a reduction in the operating cost per matter, allowing us to absorb the growth in both demand and complexity that we have experienced. Early technology driven productivity measures such as the automatic electronic exchange of data between our CASES system, the AFP PROMIS and Courts ICMS systems has significantly reduced labour-intensive data entry. These resources have been channelled into the legal stream and have kept operating costs down, with a drop in the average cost per matter from the previous financial year, from \$2,792 to \$2,581, a saving of over \$200 per matter. This has not only enabled the DPP to absorb the added costs of running more serious and complex prosecutions but has done so whilst delivering better than expected results and an actual reduction in our cost per matter.

This work continues with the introduction of electronic bench sheets already completed and work currently underway creating a Sharepoint to hopefully facilitate the electronic tender of key documents in the Magistrates Court, paving the way for a transition to a completely paperless office in the coming years.

In the summary jurisdiction, the significant restructure including the establishment of a list team to manage the Magistrates Court lists has provided multiple benefits. The list team staffed by Prosecutor Associates has firstly reduced the operating cost of servicing the Magistrates Court lists, further freeing up the more experienced grade 1-2 prosecutors and higher to focus on the preparation of defended criminal hearings. Having a dedicated list team has facilitated a higher level of specialisation, particularly dealing with the broad and complex range of legislation that is regularly dealt with in Magistrates Court lists. Finally, the establishment of the Prosecutor Associate Crown Chambers and Prosecutor Associate List Team has provided a pool of increasingly experienced lawyers from which we draw our grade 1-2 lawyers, providing an appropriate entry level and a thorough and controllable training environment for our future home-grown criminal lawyers.

Staffing diversity

In a traditionally male dominated profession, we continue to lead the way with woman making up 70% of the Office. We enjoy gender balance across all levels, with 50% of my executive and 55% of our Supervising Prosecutors being woman. Unsurprisingly, many of our outstanding female lawyers are leaders within the broader profession, including Barristers Rebecca Christensen, Skye Jerome and Soraya Saikal-Skea from Crown Chambers who appear as lead counsel in some of the ACT's most complex trials and appeals, and the head of appeals unit Katie McCann who has emerged as one of the ACT's leading appeal Barristers. In the non-legal stream, Executive Officer Katie Cantwell and Office Manager Mercy Wilkie have both been instrumental in guiding the office's direction, particularly through a very difficult period and both were central to the architecture of the new office structure.

We strive to have workforce diversity commensurate with those most impacted by our functions and have worked hard to be an inclusive and inviting workplace for all. The diversity of our staff is both one of our greatest strengths and one of our proudest achievements. 8.1%

of our workforce identify as LGBTQIA. Our indigenous employment program is producing sustainable results with 5.4% of our workforce identifying as aboriginal or Torres Strait Islander. The workforce diversity aspect of our disability justice strategy has seen the number of staff identifying as possessing a disability increase to 6.7%. In keeping with the multi-cultural society in which we operate, 19% of our workforce identify that English is not the first language for either themselves or at least one parent, and 34.7% were either themselves or had at least one parent born overseas.

Personal qualities

Our Business Plan 2021-2025 sets out the qualities we seek in our staff, which guides our recruitment and retention practices. In the Business Plan, we outlined four major attributes that guide our recruitment priorities.

1) be committed to the pursuit of excellence.

We seek people who see themselves as future leaders within the profession who are willing to put in the work pursuing continual improvement, who aim to be the best criminal lawyers they can be.

2) be trusted by the judiciary, the profession and the community.

We seek people who value being trusted by the community, the judiciary and the profession above all else. We seek people who work hard to establish trust, then value and defend their trusted reputation.

We consider trust as important as skill because it extends beyond what a prosecutor does, to how they do it. Trust for a prosecutor requires not just technical compliance with the rule of law and the rules of ethics, but the very personification of the spirit of those things at all times, regardless of the operating environment.

3) excellence and independence in judgement.

A successful prosecutor will work hard on exercising their judgement as well as their skill.

Independence and a strong sense of agency are essential. A prosecutor will spend much of their working life surrounded by lawyers trying to undermine their confidence to convince them that their arguments have no merits. A prosecutor's sense of agency must come from the strength of their judgement and their confidence in the rigour they applied in exercising it, rather than external affirmation. We promote this judgment-based sense of agency.

4) at all times demonstrate they are calm, professional, measured and worthy of community confidence.

We believe a prosecutor must be the personification of the profession as it should be. They must never be arrogant, must always appear calm, must never use intemperate language or be petulant, and must always be measured. They must appreciate that they are the face of the profession and be worthy of this. Terms such as minister of justice and model litigant must not just inform our decisions, they must visibly describe the staff of the ODPP.

Training

We maintain a strong focus on the physical and emotional wellbeing of our staff, and in the 2020-21 reporting period we introduced a number of new initiatives to maintain this. These include the training of staff in Mental Health First-Aid, creating a number of mental health first-aid officers throughout the ODPP. Training in vicarious trauma through Blue Knot, and whole of office training in resilience through the Resilience Project, personally delivered by the project developer and best-selling author Hugh Van Cuylenburg. We are pleased that our employment assistance program has seen higher than average use during the COVID pandemic, demonstrating that in addition to formal programs, our staff are reaching out when needed.

We maintain a strong focus on skills development, and regularly engage in both office specific and profession wide training in a range of topics. Topics in the last reporting year included a presentation by Dr Jan Van Diemen, one of the leading authorities in the signs and effects strangulation in domestic violence victims. We also introduced an internal advocacy training program, running our first weekend advocacy workshop on 1 May 2021. Our program of putting all of our barristers through the bar exams and bar practice course is progressing well, with several of our barristers completing their professional qualifications in the last reporting period.

Deliverables

Our Business Plan outlines three main deliverables for a successful ODPP.

- 1) we will make the community safer.
- 2) we will make the community feel safer.
- 3) we will do so in an efficient and cost-effective way, using best practice operations.

Each of these deliverables create distinct obligations on the Office. Firstly, all decisions we make are driven by the goal of reducing crime and making members of the community safer. This extends beyond deterring crime to supporting the effective rehabilitation of those who have committed crime. This Office plays a central role in assisting people who have committed crime to become successful and productive members of the community, and all decisions are driven by this objective.

Secondly, we have an important role to play in messaging to ensure the community not only is safe, but feels safe. Feeling safe is essential to the quality of life for all members of the community. Finally, whilst we must continue to protect the high quality of the work we do, we must do so in an efficient and cost-effective way. To achieve this, we regularly conduct process mapping within the ODPP and between our Office and external stakeholder agencies to ensure that we identify and eliminate wasted resources and focus on quality outcomes.

In April this year, I launched a revised Prosecution Policy with four important changes:

Firstly, section 8 was amended to accommodate the changes to the ACT *Victims of Crime Act 1994* and incorporate our new victim's rights policies issued to implement recommendations 40-43 of the *Royal Commission into Institutional Responses to Child Sexual Abuse (Criminal Justice Report, Parts III to VI, 2017)*.

Secondly, section 3 was amended by adding sections 3.26 - 3.27, formally recognising the overrepresentation of indigenous people in custody and adopting sentencing jurisprudence from cases such as *R v Fernando (1992) 76 A Crim R 58*, *The Queen v Fuller-Cust [2002] VSCA 168*, *Bugmy v The Queen (2013) 249 CLR 571*, and *Kentwell v R (No 2) [2015] NSWCCA 96* into our policy.

Thirdly, section 10 was added incorporating sections 62-72 of the ACT Bar Rules. This is in keeping with the unification of the legal profession, with all prosecutors appearing in the Supreme Court now being members of the ACT Bar Association and holding ACT Bar Association practising certificates. Further, we continue our presence on the ACT Bar Council and remain active in ACT Bar activities. Finally, more members of Crown Chambers have now successfully completed the bar exams and bar readers course, providing the same level of training, and ensuring the Office is captured by the same checks and balances as the broader profession.

Finally, section 4 disclosure was amended to incorporate the new guideline I issued on 3 August 2020, requiring AFP certification of disclosure implementing recommendation 63 in Volume IV of the Victorian *Royal Commission into the Management of Police Informants*.

The new Prosecution Policy is available on our web page under the Publications tab.

Conclusion

Our Office consists of the people, and our strategy of carefully building a structure that will sustain the Office over the coming decades and having a clear vision of the professionals we recruit to fill that structure is working for us. We have experienced increased demand and have met this with improved results and a reduced operating cost per matter. The current structure places us well to continue to achieve outstanding results in an ever growing and changing environment.

B. Organisational Overview and Performance

B.1 Organisational Overview

B.1.1 The Role and Functions of the Office

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

The Director has complete independence in relation to the operations of the ODPP. Nevertheless, it is important to note that the ODPP works closely with the courts, the legal profession, police and other investigators, victims' representatives, and other government agencies.

The current Director, Shane Drumgold SC, was appointed on 1 January 2019. The Director is aided by an Executive team¹ in running the full operations of the ODPP. They are Anthony Williamson who is the Deputy Director in charge of the Crown Chambers,² Joel Hiscox who is the Deputy Director in charge of the Criminal Practice,³ Mercy Wilkie who is the Office Manager, and Katie Cantwell who is the Executive Officer.

The Director reports to the Attorney-General of the Territory ('AG'). The Act requires the Director and AG to consult with each other, *if required*, concerning the functions and powers of the Director. The AG may give directions of a general nature to the Director, however, such directions can only be given after prior consultation with the Director. The AG's directions should also be presented to the Legislative Assembly and be published as a *notifiable instrument*.⁴

The Director makes prosecutorial decisions independent of political influence or control. The Director's prosecuting role is independent of the police and other investigative agencies. Once a prosecution has been instituted, all prosecutorial decisions are made by the Director.

1 Refer to B.1.51 (*Executive Committee*) on page 39.

2 Refer to B.2.4 (*Crown Chambers*) on page 58.

3 Refer to B.2.1 (*ODPP's Criminal Practice*) on page 40.

4 There were no such directions given in the financial year.

The principal duties of the Director include the following:

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

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

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

Prosecutors are ‘ministers of justice’, a phrase which sums up the unique position of the prosecutor in the criminal justice system. Prosecutors act in accordance to the procedures and standards as provided by the law. They are also guided in their role by the Prosecution Policy⁵ and further directions and guidelines issued by the Director under the Act.

B.1.2 Internal Accountability

Since late 2019, the ODPP has five prosecutors holding executive positions at the Senior Executive Service (‘SES’) level. They are Deputy Director, Mr Anthony Williamson, who heads the Crown Chambers,⁶ Deputy Director, Mr Joel Hiscox, who is in charge of the Criminal Practice,⁷ and three Crown Prosecutors attached to Crown Chambers, Ms Rebecca Christensen, Mr Keegan Lee and Mr Trent Hickey.

The responsibilities of the Senior Executives at the ODPP, as at 30 June 2021 are provided below.

5 Refer to Appendix A on page 110 for the *Prosecution Policy of the Australian Capital Territory*.

6 Refer to B.2.4 (Crown Chambers) on page 58.

7 Refer to B.2.1 (ODPP’s Criminal Practice) on page 40.

B.1.2.1 Senior Executives and their responsibilities

Deputy Director Crown Chambers

The Deputy Director Crown Chambers is responsible for assisting the Director with the management of the ODPP. The position also manages the ODPP's professional staff and ensures effective deployment of those resources. The Deputy Director Crown Chambers reports directly to the Director and provides the necessary leadership and support in representing the Director and the ODPP.

The Deputy Director Crown Chambers heads the chambers. As such the Deputy Director manages a team of Crown Prosecutors, Senior Advocates and Advocates.

The Deputy Director Crown Chambers exercises the discretion to initiate, vary and discontinue serious criminal charges and appeals. The Deputy Director Crown Chambers conducts more complex litigation in the Supreme Court, including in relation to committals and trials on indictment, and appears for the prosecution in appeal matters. The position also develops policy and procedures relevant to the ODPP and ensures effective working relationships with criminal justice agencies within the ACT are maintained.

Deputy Director Criminal Practice

The Deputy Director who manages the Criminal Practice at the Office reports directly to the Director. The Deputy Director Criminal Practice provides the necessary support in both representing the Director and the ODPP, and effectively managing the caseload of the Office. The Deputy Director Criminal Practice is responsible for managing the allocation of prosecution work and for advising staff on evidentiary and procedural rules, and providing advice to the police. The position also has responsibility for prosecution staff.

Besides appearing as lead counsel in superior court criminal trials, the Deputy Director Criminal Practice role contributes to the training, mentoring and the performance management of prosecutors. The role conducts complex prosecutions, appeals and related proceedings. The Deputy Director Criminal Practice also plays an active role in training and enhancing legal staff development within the Office and contributes to the development of policy and procedure.

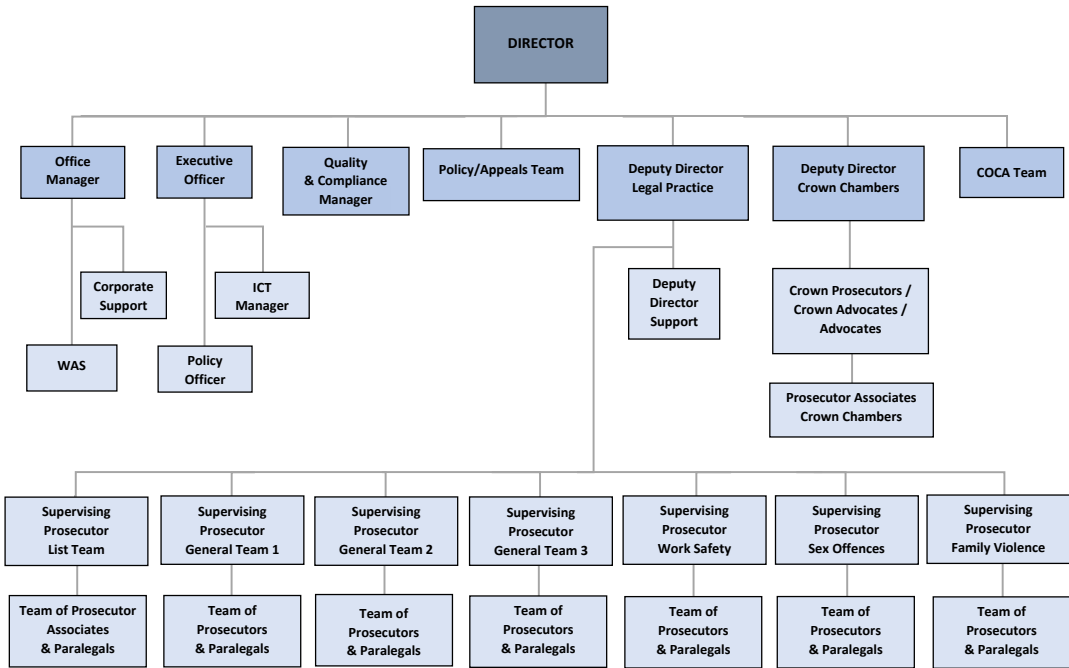
Crown Prosecutors

Crown Prosecutors sitting in the Crown Chambers report to the Deputy Director Crown Chambers. They appear in the more complex matters including conducting trials and appeals in superior courts. They also provide high-level legal and policy advice and assist the Director in formulating internal policies, guidelines and directions, and manuals. They also represent the Director on committees and in forums dealing with criminal justice issues.

The Director and Senior Executives are paid in accordance with the determinations of the ACT Remuneration Tribunal, and relevant laws and instruments including the *Public Sector Management Act 1994* and the *Public Sector Management Standards 2016*.

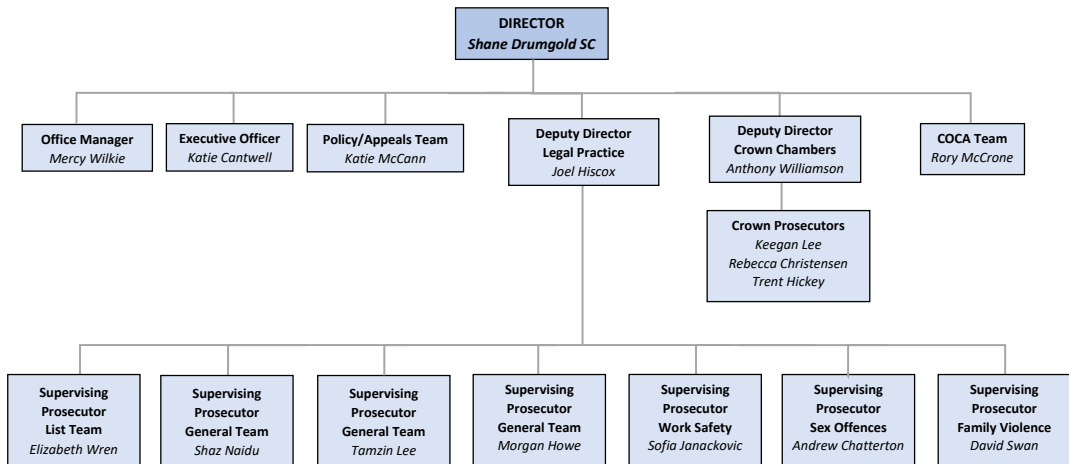
B.1.3 Organisational Structure

The Office structure as at 30 June 2021 is as follows:



B.1.4 ODPP Core Team

The ODPP core team structure as at 30 June 2021 is as follows:



B.1.5 ODPP Working Committees

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

B.1.5.1 Executive Committee

The operations of the Office (both legal and administrative) are overseen by the Executive Committee comprising the Director, Deputy Director Crown Chambers, Deputy Director Criminal Practice, Office Manager and the Executive Officer.⁸ The Executive Committee is headed by the Director and its charter encompasses a wide range of issues including staff, policy (including legal and administrative), budget, resource allocation and legal matters. The Committee meets weekly to deal with immediate operational issues. At these meetings, Committee members provide advice and guidance to the Director on the strategic direction and management of activities.

B.1.5.2 Working Environment Group

The Office has a Working Environment Group ('WEGIES') which meets monthly to discuss issues affecting staff and their working environment. All practice units within the ODPP are represented in the WEGIES. The objectives of the WEGIES is to:

- › foster co-operation in relation to the working environment and workplace safety issues;
- › disseminate information and consult about employment conditions, the working environment, and health and safety at work; and
- › co-ordinate health and wellbeing activities for the Office.⁹

B.1.5.3 Continuing Professional Development - Ad hoc Committee

The Continuing Professional Development ('CPD') - Ad hoc Committee ('Ad hoc Committee') assists in the planning and delivery of CPD programs within the ODPP. The CPD - Ad hoc Committee is normally made up of the Director, Deputy Director and Crown Prosecutors from Crown Chambers.¹⁰

The CPD program is a vital training tool for all legal staff that focuses on professional development of legal staff in the technical aspects of the criminal justice process and laws of evidence.¹¹ A series of fortnightly sessions are presented, concentrating on practical issues, enhancing the skills and knowledge of prosecutors.

B.1.6 ODPP Stakeholders

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

⁸ Refer to the Executive team mentioned in B.1.1 (The Role and Functions of the Office) on page 35.

⁹ Refer to B.11 (Human Resources Management) on page 101.

¹⁰ Refer to B.2.4 (Crown Chambers) on page 58.

¹¹ Refer to B.11 (Human Resources Management) on page 101.

B.2 Performance Analysis

B.2.1 ODPP's Criminal Practice

The criminal practice is split between two jurisdictions. Firstly, the Magistrates Court where the bulk of matters are prosecuted. Secondly, the Supreme Court where generally more serious charges are prosecuted following committal for trial or sentence. However, that is not to say the Magistrates Court only deals with minor matters. In some cases, a Magistrate has power to impose a sentence of up to five years imprisonment, and the court can hear charges that if otherwise heard in the Supreme Court, could attract a sentence of up to 10 to 14 years imprisonment. Accordingly, the work that prosecutors perform in the Magistrates Court can be just as important as equivalent matters dealt with in the Supreme Court.

The bulk of the Magistrates Court work is performed by Prosecutor Associates attending lists (A1, A2 and Childrens Court) as well as Grade 1-3 prosecutors who appear in hearings and more complex sentences. The bulk of the Supreme Court work is performed by Grade 3-4 prosecutors as well as members of Crown Chambers (who are Crown Advocates and Crown Prosecutors).

The past 12 months has again seen important changes implemented in the business of prosecuting, building upon the significant changes from last year. As the Director's vision for the structure of the Office crystallises, attention is being shifted to capabilities and resourcing needs.

Electronic capabilities

The design, testing and implementation of electronic bench sheets was effective, with full rollout of "E Bench sheets" occurring in December 2020. Prosecutors no longer record court outcomes or activities on paper files. This is now only stored electronically. Further there is capability for the AFP to receive sentencing results the same day as the sentence is imposed. The co-operation of the Magistrates court to allow computer screens to be installed onto the bar table of court room 1 was much appreciated. The Director wishes to roll out more screens across bar tables in the coming year.

The AFP is now delivering greater numbers of briefs electronically. ODPP continues to work with the AFP to improve existing capabilities whereby the receipt and disclosure of such E Briefs to defence occurs as efficiently as possible. The DPP has now rolled out a Sharepoint delivery system that provides time savings for the AFP, DPP and defence lawyers, and in the future may provide an electronic tendering solution for the court.

Work has commenced on upgrading our information management system, CASES. This includes preparing for transitioning CASES to a new modern server, which should protect the electronic capabilities for the Office for at least the next ten years. In addition, further programming has been undertaken to improve the efficient operation of CASES.

Further, work has been and will continue to be performed to enable greater information flow from the DPP CASES management system into the AFP PROMIS system. The aim is to provide the AFP with automatic and real time access to key information including bail conditions, sentence outcomes, listings and listing outcomes.

It is envisaged that the final barrier to implementing a fully electronic office, will be the court accepting the tender of exhibits electronically. However, as outlined above, the Director is working to a mutually agreeable solution to achieve this.

The “List Team” is now a successful and fully-fledged unit and can be described as the beating heart of the Office. Nearly all matters begin within the A1 or A2 lists. This small but dedicated team triages and deals with the bulk of prosecutions to completion. Essentially, only matters for which there is a plea of not guilty or serious sentences will be dealt with by our other teams.

Introduction of the “Committals Unit” came into effect in March 2021. This unit is designed to provide greater oversight and review of matters committed to the Supreme Court, to work with investigators to generally strengthen matters and reduce unnecessary forensic testing on exhibits for which potential evidence no longer goes to a fact in issue, and to produce resources and tools for prosecutors to more effectively perform their functions in a timely fashion.

It is important to reflect on significant recruitment activities in the past 12 months. Due to COVID-19 restrictions and office renovations, combined with operational requirements, the Director had to pause any recruitment activities until safe workspaces were available. While recruitment occurred in early 2021, with new prosecutors becoming available in May-June, the full benefits will not be felt for a few months due to the time taken to train new prosecutors. This delay has had a significant impact on existing prosecutors within the Office, who have had to absorb greater workloads with less time to prepare. While such pressure can be absorbed over a short timeframe, it cannot be sustained longer term and the Director looks forward to having a fully staffed office in the new financial year. All staff in the Office have done a great job during a difficult period. With respect to recruitment:

- › It was pleasing to see Prosecutor Associates in the List Team perform strongly at interview and graduate into the prosecutor ranks. In one sense, the List Team has been too successful, as through delayed recruitment and subsequent promotions, we are now effectively required to rebuild the team from the ground up. However, those who have served a significant period within the List Team received strong grounding in regular appearance work and will be formidable advocates in their new roles.
- › The Grade 4 recruitment saw a substantial shift in middle management, due to other promotions and departures, four new Grade 4 prosecutors (representing 50% of middle management) were appointed. The Director continues to work towards expanding the role of middle management.

Looking forward, we see many exciting opportunities for the criminal practice including the expansion of the roles of Prosecutor Associates, strengthening of the Committal Unit's capabilities and expanding the capabilities of the DPP online management system, CASES.

B.2.1.1 Development in the Magistrates Court

In the Magistrates Court, the most significant development has been the introduction of Criminal Party Conferencing, commencing as of 1 January 2021. As with any new process, there are teething problems. The Director is committed to make the system work as best as possible. While the results are not as strong as originally hoped, the Director is implementing internal changes so see if greater efficiencies can be found.

B.2.1.2 Development in the Supreme Court

In the Supreme Court, the Drug and Alcohol Sentencing List ("DASL") is now in a review phase. While the Director is very supportive of this list, the ODPP is only funded for 0.5 FTE prosecutor and 0.5 support staff. Based on current workloads, this is insufficient funding noting the court sits for the majority of Friday and at times also sits on Monday and Tuesday. This does not include the subsequent preparation time required to review and advance all matters. While there have been successes in the list, serious consideration and review of the assessment of 'suitability' is required to ensure resources are best used in this space.

B.2.2 Magistrates Court

Every criminal case conducted by the ODPP starts in the Magistrates Court. The vast majority of matters that are prosecuted in the ACT are summary in nature. Therefore, these are dealt with by the Magistrates Court. It is a dynamic jurisdiction which serves to train and develop emerging advocates who will one day move on to prosecute indictable cases in the Supreme Court.

The ODPP continues to promote the fair and reasonable resolution of matters in accordance with its *Prosecution Policy of the Australian Capital Territory*¹². By maintaining contact with victims, witnesses, investigative authorities and other relevant stakeholders, the ODPP strives to obtain just, and efficient results.

B.2.2.1 MC Cases

Police v Matthew Job

The defendant was found guilty of one count of contravening an Interim Personal Protection Order (IPPO) made in favour of the victim, his neighbour. The Magistrate found that the defendant breached the IPPO by engaging in three distinct episodes of conduct.

The victim and the defendant lived in nearby units in the same complex. Less than two weeks before the offence, the defendant was served with an IPPO prohibiting him from "engaging

¹² Refer to Appendix A on page 110 for the Prosecution Policy of the Australian Capital Territory.

in behaviour that constitutes personal violence towards the protected person (the victim), including harassing behaviour”.

On the morning of the offence the victim had tradespeople at her house completing renovations. Within minutes of the victim leaving her address, the defendant began questioning the tradespeople about their work and telling them that they were not permitted to undertake it.

When the victim returned shortly after, the defendant persisted in his questioning of the tradespeople and the victim. He was repeatedly asked to leave the area and refused. The Magistrate found that this conduct alone would have satisfied the charge.

Eventually the defendant retreated to a nearby garden path about 10 meters from the rear of the victim's unit, but remaining within full view of the victim, where he engaged in the second episode of breaching conduct. Here, he walked back and forth along the path (erroneously) claiming that he was not breaching the IPPO because of his (mistaken) interpretation of it. The victim captured footage on her mobile phone depicting this episode which proved to be very compelling evidence. The Magistrate described the defendant's conduct on the path as “attempting to disturb, worry, torment and annoy the complainant”.

The final episode consisted of the defendant then following the tradespeople to the front of the unit and continuing to question them. When the victim intervened and again asked the defendant to leave, he remained, and, in the words of the Magistrate, “disturbed and tormented the victim with great labour for many minutes”.

The defendant gave evidence in his defence and attempted to explain his conduct, however, the Magistrate rejected his evidence in its entirety.

The victim provided a Victim Impact Statement at sentence. The Magistrate found the offending came very close to warranting a period of imprisonment and asked the defendant to reflect on the fact that he had caused the victim to become a prisoner in her own home. The defendant was sentenced to a 12-month Good Behaviour Order with conditions to submit to probation for 12 months and to undergo any medical assessment and treatment deemed necessary for his mental health.

Police v Lafferty

The defendant was employed in a role that included the driving of water trucks. While carrying out this role the truck that the defendant was driving flipped on its side on the intersection of Coulter Drive and William Hovell Drive. CCTV footage from the cabin of the truck depicted the defendant frequently fidgeting, eating, making a call with the mobile phone on his lap and steering with his forearms. It was established that the truck flipped over after it entered a turn marked with an advisory 45km per hour sign at 64km per hour. The presiding Magistrate was satisfied that the defendant had driven in a way dangerous to the public.

Another issue at hearing was whether the defendant had an *intervening act* defence to driving with methylamphetamine in his blood at the time. The defendant gave evidence that

he had not consumed methylamphetamine since 2008 and had been drug tested multiple times for work with only negative results. Evidence before the court suggested that passive smoking was unlikely to be the source of methylamphetamine in his blood (the defendant admitted to being in the presence of methylamphetamine being consumed). Overall, the presiding Magistrate was satisfied that the defence was made out and the defendant was found not criminally responsible for having methylamphetamine in his blood. The Magistrate however found the offence of dangerous drive proved and he had plead guilty to the offence of driving whilst using a handheld mobile phone and will be sentenced at a later date.

Police v Tracey Kruzins

The defendant was employed at The Shaver Shop at the Canberra Outlet Centre located in Fyshwick. While at work, she took an order over the phone from the complainant and processed the purchase of several items. The complainant was an elderly man, phoning from his residence at an aged care facility. Later that day, the defendant entered the credit card details belonging to the complainant into her Afterpay account.

Over a nine-day period, the defendant made 39 payments on her Afterpay account, totalling \$1,936.34. Also, during this period, she made 23 payments totalling \$3,497.41 for services including Uber Eats, Uber Trips, PayPal, eBay, Partylite and McDonalds.

The complainant's son was authorised to manage his father's bank account. He was suspicious of these transactions because they were well in excess of his father's usual spending habits and occurred via online payment platforms, and his father did not have the technological literacy to do this.

The defendant was charged with 64 counts of obtain property by deception reflecting each transaction. Following negotiations between the ODPP and defence, she pleaded guilty to a single "rolled-up" charge reflecting the course of conduct.

The defendant was convicted and sentenced to seven months imprisonment. That sentence was suspended on the condition that she comply with a Good Behaviour Order for a period of 18 months. She was also required to complete 240 hours of community service work within 12 months.

Sadly, the complainant had died by the time of the sentence. His financial institution had reimbursed him for the loss and they sought compensation.

Police v Kenji Aoki

The defendant was found by a member of the public slumped across the steering wheel of a stolen white Audi motor vehicle. The vehicle's motor was still running, and it was parked on both the road and median strip. When police attended, the defendant had to be woken and was erratic during his interaction with police. He provided a false name to police and refused to leave the vehicle. The front driver door was locked, and the defendant refused to hand over the keys to the car. The defendant's behaviour caused police to draw a taser, which he then reached for while becoming increasingly erratic. He continued to refuse police direction to leave the vehicle. Police officers were forced to open the rear door and the front passenger

door and continued to order the defendant to get out. As one police officer was stepping into the vehicle, the defendant drove off at significant speed placing the lives of three officers in danger due to their proximity to the vehicle. The defendant pleaded not guilty, and the matter went to hearing.

The primary issue at hearing was whether the individual at the scene was the defendant, namely an identification case. It required comparison between body worn camera footage, photographs of the defendant's licence, footage of his arrest and recognition evidence provided by police. A complicating factor was that the hearing was held when facemasks were required to be worn, due to Covid-19, unless exempt. A legal issue arose as to whether the defendant had to remove his mask to allow the Magistrate to compare body worn camera footage and photographs to his actual face. The defendant argued there was no legal obligation to require him to remove his mask and reveal his face to the Court. The prosecution argued there were powers to allow for face masks to be removed for specific reasons during covid-19 restrictions and it was in the inherent powers of the Court to require a defendant to appear with their face visible. This was in line with case law out of the United Kingdom and other Australian jurisdictions requiring the removal of religious attire during criminal proceedings. To mitigate risks to the defendant in removing his face mask he could be placed in a remote witness room and adjournments taken if he wished to speak with his legal representative. Ultimately, the defendant agreed to the prosecution's proposal that he be viewed by the Court in the remote witness room.

The defendant was found guilty of all but one of the charges. He was sentenced to a total of 10 months imprisonment and was fined and disqualified from driving for three months. For the charge of aggravated driving dangerously, which encompassed putting the police officers in danger, the defendant was sentenced to eight months imprisonment.

Police v Hayley Wood

On 27 August 2020, police executed a search warrant at an address in Scullin. At that address, police located \$16,565 cash in a backpack, two tasers and 271 grams of Gamma-butyrolactone (GBL), a substance similar to gamma hydroxybutyrate (GHB).

The defendant's phone showed text messages in which she boasted about trafficking drugs, with one of the messages saying "I'm a dealer now made 4k profit today moving 6k of product. 10 grand deals." Police also located at the residence a Mercedes vehicle which the defendant stated she paid for using cash. The vehicle and the money were seized as proceeds of crime, and the defendant was charged with trafficking in a controlled drug, dealing in proceeds of crime and possession of a prohibited weapon. She pleaded guilty to the offences and was sentenced on 29 January 2021.

In sentencing her, the Magistrate described the offending as 'brazen offending that the defendant was proud about at the time.' In relation to the drug trafficking offence, the defendant was sentenced to 18 months imprisonment. She was sentenced to a further three months imprisonment for dealing in proceeds of crime and was fined in relation to possession of the prohibited weapon.

The total sentence was 20 months imprisonment, and she was released after serving six months of that sentence on entering a recognisance to be of good behaviour. The proceeds of crime were forfeited to the Territory.

B.2.3 Supreme Court

Despite the COVID-19 pandemic, matters have continued to progress through the Supreme Court as efficiently as possible throughout the 2020-21 reporting period. This includes both trial matters and sentencing proceedings.

Between 1 July 2020 and 30 June 2021, 50 trials commenced in the Supreme Court, totalling 208 trial days. Of these 50 trials:

- › 15 trials returned guilty verdicts;
- › 21 trials returned verdicts of not guilty;
- › 7 trials returned no verdicts because the jury was hung or the trial was aborted; and
- › 6 trials resulted in a special verdict being entered of not guilty by way of mental impairment.

No trials were vacated due to COVID-19.

In terms of sentencing proceedings, the COVID-19 pandemic has again had minimal impact on these proceedings continuing. As the Supreme Court issued *Practice Direction 1 of 2020, Special Arrangements in response to COVID-19*, during COVID-19 lockdown periods, parties and offenders appear by audio-visual link ('AVL') or by phone. Between 1 July 2020 and 30 June 2021, there were 158 sentencing proceedings in the Supreme Court following a plea of guilty in the Magistrates Court, a change of plea after being committed for trial, or as a result of breaching a sentencing order.

B.2.3.1 SC Cases

R v MT

The offender was 17 years of age at the time he committed murder, intentionally inflict grievous bodily harm and assault occasioning actual bodily harm.

After School on Friday 15 March 2019, the offender walked a short distance from the College where he was in year 11, to a nearby McDonalds with a number of friends, arriving around 4.00pm. The offender had told one friend that he purchased some LSD or Acid tabs over the dark web and was trying to sell them for \$20 each, and at least one of his friends purchased one.

As the offender was about to leave McDonalds, he went to the bathroom and took one LSD tab himself. Around 6.00-7.00pm the group including the offender, went to the offender's north Canberra home, where at around 8.00pm he took a second LSD tab, and it appears to have had an immediate adverse effect on him.

He went to his room for a period of time, and returned, saying he was freaking out. After a period of time, he phoned another friend and asked him to come over saying he was tripping. When the friend got there, most of the group were also “tripping” on acid, and the offender seemed quite disconnected from them. The friend took the offender for a walk to try and bring him down. They went to a Service Station to get some food and a drink, then decided to go to a nearby food van. The offender was saying “*I’m tripping, this is crazy*”.

When they returned, the offender said he just wanted to watch a movie and he did not want to deal with the others, so his friend put a movie on for him. The offender fell into a psychedelic crisis that appeared to be getting worse causing him to vomit. His friend told the others to leave, and put on Netflix for the offender to watch, then left. Shortly before 10.18pm the offender left his house in a psychedelic crisis and began walking through the streets.

Just after 10.18pm, two elderly couples were returning from a Belconnen Restaurant where they had dinner together, and one couple were dropping the other at their home, which was located just around the corner from the offender’s home. Just as the car turned into the driveway, the offender wrenched open the front passenger door, and started attacking the elderly male passenger, including punching him and knocking out a tooth implant, and in one instance biting his hand. As he was doing this, he repeatedly yelled that he was going to kill him.

As the car rolled forward into the bushes, the man’s wife, who was driving, attempted to help her husband by leaning over him and pushing the offender away. At this point the offender turned on her, leaning over her husband and punching her, and on one occasion biting her hand leaving a large wound. At one stage, the offender grabbed her head and pulled it forward so hard it fractured the facet joint of the spine and buckled the spinal cord at C6, causing a hyperflexion of the spine, straining the interspinous ligaments all along the cervical spine. This effectively caused trauma to the spinal cord such that she temporarily lost sensation in her legs, and has resulted in long term nerve damage.

At this stage, the third victim, the second elderly male got out of the rear driver’s side door to help the first male, who was trapped by his seatbelt. He ran to the side gate and got a garden spade and returned. Not a lot is known of what happened over the next few seconds, but by the time the first male managed to undo his seat belt and get out, he saw his friend, the second male laying in the gutter to the rear of the car and the offender stomp on his head, a blow that, combined with others, caused a severe head injury such that he never regained consciousness and was declared dead 10 days later on 25 March.

Police had been called by neighbours who overheard the start of the attack, and were on route during the attack, arriving quickly at around 10.20pm. Police found the offender on the ground with his eyes shut, and he was initially not moving. When they approached him however, the offender jumped up and lunged at police. A violent altercation followed requiring the use of OC spray that appeared to have no effect on the offender.

At least four other police came to assist, where due to difficulties getting an ambulance, it required a total of four officers to maintain control of the offender over a period of some 1 hour

40 minutes. They eventually managed to handcuff the offender however he continued to kick and fight until the ambulance arrived with sedatives.

Two drugs were used to sedate the offender. Drugs can be administered either intermuscular (directly into a muscle), which makes them slower working but easier to administer, or intravenous (directly into the vein) which makes the drug faster acting but requires the medic to be able to inject it direct into a vein. Droperidol is a sedative with a prescribed dose of 10mg per 1kg body weight to knock someone out, so an 80kg person would normally be administered 800mg. Because the offender was fighting so hard, Droperidol was administered intramuscularly. He was given 10mg at 12.03am which appeared to aggravate him, so at 12.13am he was given a second 10mg dose which appeared to aggravate him more. Due to the fact the initial use of Droperidol appeared to be aggravating the offender, ambulance officers decided to abandon Droperidol and instead called for an intensive care ambulance to administer another much stronger sedative drug called Ketamine.

Ketamine is also a sedative, but a stronger sedative with dissociative benefits, and the prescribed dose to knock someone out is 1-2mg per 10kg body weight, so an 80kg person would be administered 8-16mg. Given his degree of aggression and fight, at 12.21am ambulance staff administered 200mg intramuscularly which appeared to only have a marginal effect, so at 12.28am they administered another 200mg intramuscularly, which sedated the offender enough to get an intravenous line into his arm, to allow any further doses to be administered intravenously.

The offender eventually required a total of 1060mg of Ketamine to maintain control of him, which far exceeds the expected dosage required. The drug was administered then the offender observed to see if another dose was required to keep him sedated.

The ambulance eventually loaded him up and arrived at the hospital at 1.09am, and the offender was triaged at 1.10am, however the ambulance staff had to wait in the airlock before being permitted to enter emergency. The ambulance officer attempted to keep the offender calm whilst reducing the dose so at 1.11am he was given 60mg of Ketamine, but he appeared to again come out his sedation, so they returned to 100mg doses. After the last dose of Ketamine, the offender was transferred to the care of the emergency staff who made the decision to effectively put him into a medically induced coma until the effects of the LSD wore off, involving sedating, intubating and ventilating him, placing a tube into his lungs to breath for him. He was further administered the anaesthetic Propofol, a second sedative called Dexmedetomidine, then the pain killer Fentanyl, then he remained in a medically induced coma, that is sedated and ventilated for the next 12 hours until the impacts of the LSD wore off and he was ultimately charged.

On Sunday 17 March 2019, police executed a search warrant at the house the offender shared with his father and in the offender's bedroom in the bottom drawer of a set of drawers, police located a number of drugs, including MDMA, Psilocin mushrooms (that simulate LSD) and three tabs of LSD. Police also located 6.9g of cannabis, and a well-used bong made from a Gatorade bottle in the rear courtyard.

The offender plead guilty to one count of murder of the rear seat passenger, one count of assault occasioning actual bodily harm for the first male and one count of intentionally inflicting grievous bodily harm on his wife. On 16 December 2020 he was sentenced to 15 years imprisonment, to be suspended after eight years and six months. The offender appealed the sentence to the ACT Court of Appeal who upheld the appeal and resentenced the offender to a total head sentence of 11 years, nine months, suspended after serving four years, six months. The offender will be released in September 2023.

R v Kourpanidis

On Sunday 5 July 2020, the victim was alone at the Kingston Hotel, and had been drinking for most of the afternoon. At around 6pm the offender was at the hotel with his girlfriend and his daughter. They met the offender's brother and ordered a counter meal. While they were there, the victim approached the offender and his family and spoke directly to the adults and the offender's daughter. At one stage he told the offender's daughter she was beautiful and touched her on the face. A short time later the offender and his family left the hotel.

The offender, his partner and his daughter arrived home a little after 8.00pm. When they arrived home the offender's partner criticised him for not standing up to the victim. At about 9.00pm the offender left his home, got in his car, and drove the short distance back to the hotel, parked his car and entered. The victim was in the pool room speaking to some other patrons. He was either standing next to, or seated on, a bar stool. The offender ran at the victim and tackled him to the ground. He then struck him in the head several times, then got up and left.

The force of the assault rendered the victim unconscious. Hotel staff commenced CPR and the ACT Ambulance Service ("ACTAS") was called. When ACTAS arrived, they took over performing CPR from the hotel staff. After a short while they moved the victim to the ambulance. Despite their best efforts, paramedics were unable to revive the victim, and he was pronounced dead at the scene. The cause of death was traumatic basal subarachnoid haemorrhage.

The offender pleaded guilty to manslaughter on the basis that he voluntarily assaulted the victim, and that voluntary act caused traumatic basal subarachnoid haemorrhage, which in turn caused his death. The assault was unlawful and in striking the victim to the head several times, the offender realised that he was exposing the victim to an appreciable risk of injury.

The sentencing judge observed "the attack was short, it was brutal and included the targeting of the deceased's head". He further observed that the offender's actions were "... consistent with reprisal for the perceived harm caused to his daughter". The Crown submitted that the offender had engaged in vigilante conduct. His Honour agreed stating "... vigilantism can be as criminal as the conduct it seeks to address. In this case it immeasurably exceeded that conduct".

As part of the sentencing process the court received a number of victim impact statements from the victim's family. Those statements described him as a loving and affectionate man. The court also received a number of references on behalf of the offender. One of those

references stated that the offender was a good man who made a mistake. His Honour commented “this observation was obviously correct but does not deal with the extent of the mistake and its overwhelming consequences”.

In sentencing the offender his Honour said “... I am dealing with the tragic tale of two decent men, but one of whom killed the other and must be appropriately punished... it is a case in which the actions of the offender must be brought to appropriate account”.

The offender was sentenced to seven years and six months imprisonment. His Honour ordered that the offender would be eligible to apply for parole after serving three years and nine months of that sentence.

The offender has appealed the sentence on the basis that the sentence was manifestly excessive. The appeal is likely to be heard in early 2022.

R v Higgins

On the Canberra Day long weekend in 2019, the accused stabbed his university friend, Jae-Ho Oh, late at night at his Gungahlin townhouse. Higgins has been staying with Mr Oh after Higgins' mother told him not to return home. Over two days, Higgins had lost all of his money gambling and consumed methamphetamine. On the fateful night Higgins had not slept for 60 hours because of his drug taking, and on top of that, he and Mr Oh had consumed a considerable amount of alcohol.

It is not clear what happened next but autopsy and crime scene investigators showed that Higgins stabbed the deceased multiple times causing injuries to his buttocks, thigh, elbow and upper back and neck, some of which penetrated the deceased's chest wall and lungs, and fractured the laminae of his vertebrae. He also struck the deceased with a sound bar, leaving him slumped on the floor in a pool of blood. Higgins took the deceased's watch, ID and phone and ran onto the street calling for help from neighbours. Neighbours recalled that he seemed genuinely scared and afraid that Mr Oh would come after him and became relieved when police arrived.

The accused was charged with murder. The trial ran for 21 days and the jury heard evidence from Crown witnesses including DNA specialists, a blood pattern expert who gave evidence about the features of the crime scene, and others.

The issue at trial was what happened immediately before Mr Oh's death. Crime scene investigators could throw little light on what happened before the blood shedding started. Higgins gave evidence stating that he had awoken to the accused lying on top of him and sexually assaulting him. He said that he confronted him and that Mr Oh became enraged and tried to attack him with a knife. Higgins claimed that he feared for his life and it was in that state that he killed Mr Oh. Other defence witnesses were called, including a forensic psychiatrist who gave evidence how the accused's pre-existing PTSD may have led him to misperceive or overexaggerate the threat and overreact to it. It was not known what disorientating effect the alcohol and lack of sleep also had on him.

Higgins claimed he acted in self-defence. In the alternative he claimed that he was provoked or that his PTSD diminished his moral responsibility for his conduct – both of which, if accepted, meant the jury would return a lesser ‘manslaughter’ verdict.

Ultimately, the jury found Higgins guilty of manslaughter. However, because of the inscrutability of jury verdicts, it is unclear which pathway to manslaughter the jury took. At sentence the trial judge determined that Higgins probably didn’t hold any of the mental states required for murder (such as intent to kill) and that his conviction for manslaughter was because of his dangerous and unlawful act or acts.

Higgins was sentenced to eight years and six months’ imprisonment, with a non-parole period of five years and three months.

R v Hallam

This is a matter where the offender acted on false information from his intoxicated partner to carry out vigilantism with an unauthorised loaded firearm, resulting in devastating and enduring impacts to an innocent victim and his family.

On 30 May 2020, Benjamin Hallam attended a party with his partner Isabella Denis and his close friend Paul Fredrickson. All three consumed alcohol and were moderately to heavily affected by alcohol. Denis left the party early in anger to visit her friend’s house. That evening Denis attended the victim’s house looking for her friend. The victim did not know Denis nor Denis’ friend. At the time the victim was at home with his wife, his 16 year old son and his eight year old granddaughter. After realising that she had the wrong house, Denis laid on the road in front of the victim’s house. The victim and his wife were concerned that Denis might be hit by a car, so they approached her and asked her if she was okay. Denis told them that she was fine and to “fuck off”. Still concerned that a car might approach and hit Denis, the victim lifted and carried Denis off the road to the nearest footpath. Denis became enraged, she stood up and struck the victim to the side of his face. The victim and his wife retreated back into their home while Denis yelled obscenities at them and damaged the victim’s letterbox. Denis then ran away to her friend’s home. Denis told her friend that she was bashed by a black guy. This was false information. Denis called Hallam to tell him that she had been bashed by five black guys. This again was false information. Hallam asked his friend Fredrickson to come with him to see Denis.

Later that evening, Hallam and Fredrickson saw Denis and spoke to her. After speaking to Denis, Hallam retrieved a 12-gauge-pump-action shortened shotgun and Fredrickson retrieved a baseball bat. Both males then attended the victim’s home. Fredrickson used the baseball bat to smash the glass window near the front door. At the time the victim’s eight year old granddaughter was seated only metres away from the front door and she started screaming, causing the victim’s wife to run to her. The victim approached the front door to confront Fredrickson who was holding the baseball bat. At this time the victim’s 16 year old son also came out of his bedroom after hearing the noise. Fearing for their safety, the victim’s wife took her granddaughter and ran out the back door to a neighbour’s property. The victim tried to

disarm Fredrickson of the baseball bat. Meanwhile Hallam was standing nearby holding the shotgun. He fired one shot towards the front door and the shot struck the victim to the left side of his chest. The victim's son came to the victim's assistance and observed blood coming from the victim's chest.

After the shooting, Hallam and Fredrickson ran from the location. While fleeing, Fredrickson threw the baseball bat into the West Belconnen Pond whilst Hallam concealed the shotgun in the Dunlop Grasslands Nature Reserve. Meanwhile, the victim was transported by ambulance to hospital to be treated for a shotgun wound to the left side of his chest. The victim had a pre-existing cardiac condition which placed him at high risk of cardiac complications. On examination, he was found to have metal foreign bodies, being shotgun pellets, with more than 20 pieces embedded in his chest. Without medical intervention, the victim's recovery would have been significantly compromised due to the risk of soft tissue infection and increased susceptibility to life threatening complications due to his pre-existing health issues. The shotgun pellets lodged in the victim's chest will likely remain in his body for the remainder of his life and he will have permanent scarring to his chest, abdomen and left upper arm.

As part of the police investigation into the shooting, police searched the area around the victim's home and located the baseball bat used by Fredrickson. After he was arrested, Fredrickson voluntarily showed police the location of the shotgun used by Hallam. Police conducted a search of Hallam's house and located six large cannabis plants growing in a bedroom dedicated to a hydroponic set up.

Fredrickson pleaded guilty to all charges and was sentenced by the ACT Magistrates Court for causing property damage, possessing an item to cause property damage and attempting to conceal evidence. He received a head sentence of 18 months imprisonment with a non-parole period of 10 months. Hallam initially pleaded not guilty to all charges before eventually pleading guilty to some charges. He was sentenced in the ACT Supreme Court by Justice Burns in July 2021.

A Victim Impact Statement was prepared by the victim. The victim's statement spoke of the shock he felt when Fredrickson smashed his front window and of being shot when he tried to protect his family. As the shotgun pellets cannot be removed from his body, the victim felt that he will have to live with the results of the offence for the rest of his life. The victim had to take time away from work for a considerable period of time and had to undergo medical treatment. He further stated that his granddaughter no longer felt safe without him and his wife around. The victim said that the incident has left a lasting effect on his health, life and family. A Victim Impact Statement was also prepared by the victim's wife. She also spoke of the shock and fear she experienced during this offence. When she found out that her husband had been shot it was a great shock to her because she knew that the victim had just had open heart surgery. For the first two months after the offence, the victim's wife was unable to continue with some of her regular activities. She has become anxious with regards to the wellbeing of her children and her granddaughter. Her granddaughter has also become very anxious. The victim's wife stated that the offence has had a lasting effect on her family both emotionally and mentally. It has also taken a "huge financial toll" on the family.

In his sentencing remarks, Justice Burns found that Hallam was aware that the shotgun was loaded and that the discharge of it in the direction of a home in which he knew that people would be present, carried a very high risk of serious injury or death to a person within the house. The judge also found that the injuries were inflicted on a middle-aged victim with pre-existing health conditions, and the fact that Hallam did not know the age of the victim or that he had pre-existing health conditions, did not matter. Justice Burns held that Hallam's moral culpability for his offending was not reduced by reason of the fact that he was wrongly led to believe that the victim had earlier assaulted his partner. The judge noted that Hallam took no steps to report any alleged assault to the police for them to investigate. While no assault had ever taken place, his Honour stated that even if there had been an assault, it could be no justification for Hallam attending the victim's house in company and armed with a loaded shotgun. The judge found that the offending was not spontaneous, that Hallam had an opportunity to consider his actions before retrieving the shotgun and walking to the victim's house. Justice Burns held that Hallam's voluntary intoxication did not mitigate his responsibility and he assessed Hallam's moral culpability for the offence as high.

Hallam was convicted for the offences of recklessly inflicting grievous bodily harm, discharging a firearm at a building, the unauthorised use of a prohibited firearm, attempting to conceal evidence and cultivating cannabis plants. He received a total head sentence of four years and five months imprisonment, with a non-prole period of two years and five months.

R v Mackinder

The offender was stopped on the roadside by police following a surveillance operation. A subsequent search of his vehicle led to the discovery of a package of cocaine weighing 503.76 grams.

The offender was charged with a single count of trafficking in a controlled drug. The offender initially pleaded not guilty and the matter was committed to the ACT Supreme Court for trial.

Following case conferencing, the offender was arraigned and pleaded guilty to the charge of trafficking. At sentence the court accepted that the offender was engaged as a courier, had collected the cocaine from Sydney before returning to the ACT and that the reward he expected to receive was to have outstanding personal drug debts related to his own cocaine use reduced. After being assessed as suitable for an Intensive Correction Order, that disposition was sought by the defence. The Crown submitted that a term of full-time imprisonment was warranted, noting the gravity of the offending and the potential harm to the community that the trafficking of such a quantity presented.

The court took into account the plea of guilty, the agreed position of the parties as to the role of the offender, his favourable prospects of rehabilitation and that he had no prior criminal history.

The offender was convicted and sentenced to two years and six months imprisonment (reduced from three years imprisonment for the plea of guilty) to be served by Intensive Correction Order. He was required to perform three hundred hours of community service during the first two years of the order.

R v Paul David Kelly

This matter involved a number of serious offences committed on the ANU campus, culminating in a terrifying sexual assault.

On 28 September 2019, the offender, Paul Kelly, attempted unsuccessfully to gain entry to the John XXIII College dining room by swiping an object over the security card reader. Thereafter, by unknown means, he gained access. At about 5 am, he went to the unlocked music room. He removed a trumpet and trumpet case from the room. Later, the trumpet was recovered on ANU campus grounds, where it had been abandoned. The offender entered a study room within the College, rifled through cupboards, and removed a rugby jersey. He walked through the College wearing the rugby jersey and carrying a trumpet case and a Kathmandu brand jacket.

The offender then went to Burgmann College (another ANU residential college) and proceeded to the dining room, where he stole four laptop computers belonging to four different students.

At about 6 am, the offender entered the room of a Burgmann College student resident. The victim awoke to find the offender standing over her. She was wearing the underwear in which she had been sleeping. The offender was wearing a dark ski mask, a rugby jumper, long pants, a large full backpack, and gloves. The victim's sheets were pulled back and the offender was rubbing her breasts with his hand. While doing so, the offender said, "you don't know me". When the victim became fully conscious, the offender ceased rubbing her, and grabbed her laptop. She jumped out of bed and began to scream. She struggled to wrest her laptop from the offender. He stumbled backwards, attempting to leave the room, and stated, "I will rape you". She screamed for him to leave. As he left, he said, "I'm going to come back and I'm going to get you". The victim awoke her neighbours, and they rang for assistance.

On returning to her room, the victim discovered that the offender had taken her mobile telephone, car keys, and wallet. Within her wallet and phone case were her driver's licence, a student identification card, credit cards, a gift card, and other items. After the offender was arrested, these items were returned to the victim.

The offender had left behind a Kathmandu jacket (which was later linked to him by DNA evidence) and two black spray can bottles. He had consumed a bottle of water from the victim's refrigerator.

At sentence the offender blamed his conduct on his drug addiction. His counsel objected to the Court receiving evidence about a former sexual assault where he had pinned his victim to the ground and grabbed her breast.

The offender was sentenced to a term of imprisonment of five years and nine months, with a non-parole period of three years and five months. The offender subsequently appealed the sentence to the Court of Appeal. His appeal was dismissed.

R v Daniel [2020] ACTSC 64 and R v Daniel (No 2) [2021] ACTSC 117

This matter illustrates the tragic consequences of alcohol fuelled violence and coward punches. The victim in this matter was playing pool at the Civic Pub with his partner and friends. The offender was also at the Civic Pub playing pool with his partner and friends. The two groups were not known to each other but there was some disagreement. The victim approached the offender's pool table and tried to calm the situation the down displaying both his palms in a peaceful gesture. The offender approached from the side, grabbed the victim's shirt to square him up, and forcefully punched him in the head. The victim suffered life threatening injuries and was hospitalised for 75 days.

The entire incident was caught on CCTV. The footage is graphic and confronting. The force of the punch is evident, as is the fact the victim was unconscious well before he hit the ground.

The offender was charged with recklessly inflicting grievous bodily harm, contrary to section 20 of the *Crimes Act 1900*, which is punishable by 13 years imprisonment.

The defendant accepted his conduct was unlawful and that the victim had suffered grievous bodily harm, however, argued that he was not reckless about the victim suffering serious injuries. A judge-alone trial was conducted. During this trial the defendant admitted the following matters:

- › He was angry;
- › He had done boxing training. He knew he hit the complainant in "the right spot";
- › At no stage did the victim present a threat to him;
- › He watches a lot of combat sports and knows people suffer serious injuries from being struck to the head; and
- › He punched the victim with significant force. He knows punching someone in the head with significant force can cause serious harm.

Despite all these admissions, the offender said he did not turn his mind, in the few seconds leading up the punch, to the possibility he might inflict really serious injury. On this basis he was found not guilty of the more serious charge of recklessly inflicting grievous harm (punishable by 13 years imprisonment), and guilty of the less serious offence, causing grievous bodily harm (only punishable by five years imprisonment). Unfortunately, the ACT has not kept pace with other jurisdictions, like NSW, and enacted what is referred to as the "*Blackwell*" amendment. The trial judge intimated that the outcome may have been different had the ACT enacted the *Blackwell* amendment.

The victim in *Daniel* suffered the following catastrophic injuries:

- › A severe traumatic brain injury;
- › Permanent cognitive impairment and difficulties performing complex tasks;
- › Impaired memory;
- › Facial fractures; and

- › Three days in an induced coma. Seven days in the intensive care unit. 29 days in the brain injury rehabilitation unit. 75 days in hospital.

At sentence the prosecution submitted the only way to deter this conduct and recognise these injuries was to impose a period of full-time imprisonment. The Court did not agree and imposed an Intensive Corrections Order (ICO) for three years and six months with 500 hours of community service to be performed. The offender will not spend any time in custody in relation to the incident, assuming he complies with the conditions of the ICO. The victim's life will never be the same.

The Office has written to the Victim's Advisory Board asking that it consider making recommendations to government about statutory reform in this area. The Director has noted that in other jurisdictions those who commit these serious offences of recklessly inflicting grievous bodily harm not only receive longer sentences of imprisonment, they are very rarely community based imprisonment orders. Consistent with community expectations, those who commit these offences in other jurisdictions will typically spend a period of time in full-time custody.

Unsurprisingly yet regrettably, the victims of these attacks, and the community more generally, often feel aggrieved about the sentences imposed for such serious offending.

B.2.3.2 Drug and Alcohol Sentencing List¹³

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

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

To be eligible, participants must:

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

¹³ Refer to B.2.1.2 (*Development in the Supreme Court*) on page 42.

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

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

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

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

The DATO is split into three phases:

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

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

There are currently 24 offenders subject to a DATO. Of those, 14 are in a residential rehabilitation facility while the rest are in the community.

Four offenders completed their DATO in 2021, with two having graduated through all three phases.

Eight DATOs were cancelled for non-compliance with the program. The non-compliance involved ongoing drug use and unsatisfactory engagement with treatment plans. For some of the offenders, the non-compliance also included fresh offending. One offender was re-sentenced to a suspended sentence to complete residential rehabilitation in another jurisdiction. The other seven offenders are now serving their sentences in full-time imprisonment.

B.2.4 Crown Chambers

In 2019 the Director established a Crown Chambers within the Office. Crown Chambers is an internal chambers within the Office reserved for the most senior and experienced counsel. It is comprised of the Deputy Director (Head of Crown Chambers), three Crown Prosecutors, three Senior Advocates (Grade 5 prosecutors) and six Prosecutor Associates that support them.

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

The prosecutors in Crown Chambers deal with the most complex and serious trials, sentencing and appellate matters. Its members appear predominantly in the ACT Supreme Court and the Court of Appeal. Crown Chambers has carriage of the prosecution of homicide matters, and the most serious charges of sexual offending, crimes involving personal violence, serious drug trafficking matters, and prosecutions involving outlaw motor-cycle gangs (OMCGs). Crown Chambers also oversees referrals for prosecutions made by the ACT Integrity Commission. The Deputy Director Crown Chambers also sits on the unsolved homicide review panel with the Chief Police Officer.

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

B.2.4.1 Involvement with external criminal justice agencies

The ACT ODPP has continued its involvement with criminal justice agencies in other jurisdictions under the guidance of Crown Prosecutor Rebecca Christensen. In the last reporting year, prosecutors and the ODPP Witness Assistance Service provided input and support to the Australian Government Attorney General's Department (AGDs) 'Pacific Legal Twinning Program'. AGDs provides that the *'Pacific Legal Policy Twinning Program is a peer-to-peer program that fosters linkages between the Australian Attorney-General's Department and counterpart agencies in Pacific Island countries. The Twinning program often informs our bilateral engagement, and forms the cornerstone of our broader work'*.

In the past, the ODPP has had participants in the program visit at the Office and at the courts and has held meetings with legal practitioners from across the Pacific to discuss various aspects of the work we do. This year, due to the COVID-19 pandemic, AGDs held the twinning program remotely with participants remaining in their home country and engaging via AVL and email to receive mentoring and advice on their projects.

The ODPP contributed to a project developed and undertaken by the Chief Legal Officer (CLO) of the Solomon Islands ODPP Family and Sexual Violence area. The project sought to develop a policy and guidance manual for the prosecution of sexual violence matters in order to improve support and coordination for vulnerable victims. During the three months of the project, ODPP Prosecutors and the ODPP Witness Assistance Service engaged with the CLO and provided advice and feedback as to the guidelines and brochures that were developed. At the conclusion of the Twinning Program, the valuable inputs of the ODPP were acknowledged

by AGDs and the Solomon Islands ODPP. The ACT ODPP will continue supporting the CLO through the implementation phase of the project.

B.2.4.2 Notable Cases by Crown Chambers

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

R v DQ

This matter involved the attempted murder of two children by their mother. The facts are disturbing. Following a protracted and acrimonious battle in the Family Court, the offender attempted to murder her two children. The offender harboured a strong hatred of her ex-husband following the Family Court proceedings.

As of 21 July 2019, the offender was in breach of the Family Court's orders. She set multiple fires at her house whilst the children were asleep. Before doing so, she removed the batteries in two smoke alarms. The first few fires burned out quickly. Around 5:45 am the offender lit two more fires – one on a couch in the lounge room, and another in a linen cupboard. Those fires quickly took hold with the house soon engulfed by fire. The children awoke and were struggling to breathe, and they were crying out for help. The offender told them to stay calm and said "this is what happens". A neighbour noticed the fire and began banging on the bedroom window and yelled at the offender to get out. He observed the offender to remain calm and tell the children to stay on the bed.

The ACT Fire Brigade attended the premises and the children were rescued by fire-fighters. By this time, they were unconscious. Fire-fighters and paramedics began administering CPR and oxygen therapy to the children. They were rushed to hospital where one of the children was categorised as a priority one patient who was experiencing an immediate life-threatening condition. He suffered smoke inhalation which required him to be placed in an induced coma, intubated, placed on mechanical ventilation and then flown to the Westmead Children's Hospital in Sydney for specialist care.

The Court accepted that the offender was suffering from a depressive episode at the time of the offending.

During sentencing proceedings, the Crown submitted that the offending fell at the upper end of the spectrum of objective seriousness for offending of this nature. The Crown submitted that the most striking features of this matter are the egregious breach of trust, the fact that the children were utterly defenceless, and the deliberate and sustained nature of the offending. The Crown submitted that reasonable and dispassionate members of the community would be shocked and appalled by the level of depravity involved in this offending. The Court disagreed with Crown's submission concerning the objective seriousness of the offending, assessing the offending as only being above the mid-range of objective seriousness. The offender was sentenced to nine years and five months imprisonment, with a non-parole period of six years and five months.

R v UD; R v TF

Between 2009 and 2016, a series of armed robberies were committed on fast food restaurants and licensed clubs in the south of Canberra.

The robberies involved multiple offenders, the use of firearms or other dangerous weapons such as tasers, and a high-level of planning and sophistication. Police investigations determined that the same group of offenders were involved in the robberies given their 'signature' or 'modus operandi'. The robberies involved scoping out the venues beforehand and gaining knowledge of the closing practices of the venues to undertake the robberies at that time. The offenders used disguises including masks, wigs and faked accents, and targeted the managers of the clubs to secure access to the safes of the venues. In some of the robberies, staff or patrons were injured, including one person who was stabbed multiple times, others were 'tasered', and one who was shot in the leg with a nail gun. One particular club was targeted on two occasions, with the second occasion involving the offenders impersonating police in order to carjack a manager and then return the manager to the club to gain access to the safe. The total amount of money stolen in the series of robberies was approximately \$380 000.

Following a lengthy police investigation, brothers 'UD' and 'TF' were identified as suspects. The evidence to identify their alleged involvement included DNA and fingerprint evidence. After the two brothers were released from prison in NSW for armed robberies committed in that state, and upon their return to Canberra, police arrested the brothers for the above series of alleged robberies. The charges laid against the brothers included charges of attempted murder, aggravated robbery, threats to kill, and impersonating a territory official. The primary issue at trial was the identity of the offenders and whether the two brothers, UD and TF, were involved.

The matters were listed for jury trials in the ACT Supreme Court over a period of 15 weeks and were scheduled to proceed from February 2020. A number of legal arguments were required including an application to adduce tendency and coincidence evidence, the inclusion of admissions of involvement in the robberies at the trials, and the inclusion of DNA evidence that was covertly obtained.

Soon after commencing, in March 2020, the COVID-19 pandemic interrupted the continuation of the trials. The matter became the subject of an order pursuant to the COVID-19 Emergency Legislation that the trials would continue with a judge alone hearing the matters. This was over the objection of the accused who sought that a jury hear the matters, even if that involved delays until the matters could be heard. A legal challenge to the emergency legislation was commenced in the Supreme Court and was the subject of removal orders to the High Court. As the year progressed, the trials were able to resume with juries sitting on the matters from September 2020 and determination of the challenge to the emergency legislation that arose in this matter did not need to be determined and the removal orders were vacated by the High Court.

An assortment of outcomes occurred including findings of not guilty by juries, a judicial finding of there being no case to answer in one matter, discontinuance where there was exclusion of evidence, and pleas of guilty entered by both brothers in respect to some matters. By February 2021 – one year after the matters were initially listed for trial in the Supreme Court – the matters were completed by way of sentence.

TF was sentenced for his role to a term of three years and six months imprisonment. *UD*, who was a young person when he began his involvement in the robberies, was convicted of more robberies than his brother *TF*, and was sentenced to a term of ten years imprisonment, with a non-parole period of five years and six months. Following his release from custody, *UD* will be prohibited from being in any ACT licensed club venue for a period of 12 months. During the sentencing for *UD*, Elkaim J said –

Persons committing robberies of the type involved here may do so thinking that the weapons they carry and the threats they make will enable them to achieve their objective, perhaps frighten the victims for a little time, but no doubt they will all soon recover. Or perhaps these robbers simply don't care. Whatever the case when a robber is caught they must face the consequences of what they have actually done, and must be warned that continuing similar behaviour will not be tolerated by the community and certainly not by the courts.

In concluding the sentence, Elkaim J said –

I do not wish the offender well. I do however hope he finds a way to stay away from the courts and live a productive life. I do wish the victims well.

B.2.5 Appeals

The Appeals Unit and criminal justice policy work sits within Crown Chambers. In the period of 2020-21, the appeals and policy units merged. The unit is led by a Crown Advocate under the direction of the Director.

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

B.2.5.1 Supreme Court

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

The total number of appeals in the Supreme Court for 2020-21 was 34, consisting of 29 defence appeals (against convictions and severity of sentence) and five Crown appeals.

B.2.5.2 Court of Appeal

The appellate workload in the Court of Appeal has increased significantly over the last three years. The majority of appeals lodged in the ACT Court of Appeal are against convictions (jury verdicts) and severity of sentence. Appeals in the Court of Appeal are often very complex, particularly appeals against conviction. Typically, the Director, Deputy Director Crown Chambers, Crown Prosecutors and Crown Advocates appear in the Court of Appeal.

The Crown has limited right of appeal against verdicts of acquittal. Crown appeals to the Court of Appeal are rare and generally are against sentences considered to be erroneous and manifestly inadequate. Occasionally, the Crown may institute a reference appeal relating to the correction of a legal error or the settling of legal principle. A reference appeal does not change the outcome, however it is reserved to ensure the application of correct legal principles in the furtherance of the administration of justice.

The number of self-represented appeals are increasing. This presents a challenge both to the ODPP and to the Court. Those who are self-represented often have no clear points identified in the Notice of Appeal, and do not provide submissions. Dealing with such appeals can be time consuming, however, the Court has extended latitude in the procedures to those who are not represented. The Court relies upon the ODPP as a model litigant to assist in the conduct of such appeals.

The total number of appeals in the Court of Appeal for the reporting period was 34, which consisted of 29 defence appeals (against convictions and severity of sentence) and five Crown appeals against inadequacy of sentence.

B.2.5.3 High Court

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

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

In the period of 2020-21, the ODPP has responded to five applications for special leave to appeal.

B.2.5.4 Appeal cases

Foster-Jones v The Queen [2020] ACTCA 31

The appellant was charged in relation to two violent incidents which ultimately, and tragically, resulted in the death of Eden Waugh (“the deceased”). The appellant was initially sentenced to a total sentence of 40 years, five months and 23 days imprisonment, with a non-parole period of 25 years. The offender appealed against the severity of the sentence imposed.

On 22 September 2016, just before 7.30 am, the appellant, armed with a machete, and the co-offenders who were armed with a shotgun and metal pole, broke into the deceased’s residence demanding drugs and money. During this, the appellant and co-offenders violently assaulted and injured the deceased and others in the residence.

On 3 November 2016, the appellant and co-offenders returned to the deceased’s residence. The appellant at this time was armed with a 12-gauge sawn-off shotgun and was carrying a bag with a machete. Another co-offender was armed with a crowbar. Prior to 3 November 2016, the deceased had reported the earlier home invasion to police, implicating one of the co-offenders in the incident - this was known to the appellant and co-offenders. The Crown case was that the appellant and co-offenders returned to the deceased’s premises with the motivation, in part, to scare the deceased through violence and thereby protect the co-offender from the legal ramifications of the earlier home invasion.

The appellant knocked on the deceased door and attempted to enter by ripping off the screen door and kicking the wooden door. The deceased and his partner were inside the unit. The appellant told the deceased to “*open the fucking door now, c#%t, or I’m gunna shoot*”. The deceased did not open the door. The appellant counted to three before he fired a single shot through the wooden door at close range which struck the deceased in the chest, causing fatal injuries. The appellant and co-offender entered the unit, stepping over the deceased. The appellant described walking in and hearing the deceased gasp for air and that he was “*fucked*” and “*dying on the ground*”. The appellant described that he “*went to hack him. And then I didn’t even hack him because I knew...*” The co-offender demanded drugs and money from Ms Barr before dragging her around the residence by her hair. The appellant and co-offender stole some of Ms Barr’s items, including cash, before leaving the residence. During this time, Ms Barr had called triple zero.

The Court of Appeal (Murrell CJ, Crowe and Berman AJJ) allowed the appellant’s appeal, and he was re-sentenced. The appellant argued and the Crown accepted, that the sentencing judge had fallen into error by failing to assess the objective seriousness of the offence of murder. As their Honour’s noted, the assessment of the objective gravity of any offence is a fundamental part of determining the appropriate sentence for that offence and that it must be apparent from sentencing judgments that this is what they have done. A failure to do so will mean that the sentencing process has been miscarried. It is not enough to simply recite the facts on which any particular count is based. In light of this error, the appellant was re-sentenced to a total sentence of 30 years imprisonment, with a non-parole period of 18 years.

R v BC (No 3) [2020] ACTSC 49

This matter was a Crown interlocutory appeal from a ruling regarding the use of tendency evidence.

The offender was charged with seven counts of committing an act of indecency on a young person under the age of 10 years, and three counts of engaging in sexual intercourse with a young person under the age of 16 years, between 1 January 2002 and 1 August 2010. The victim was the offender's younger cousin. The offender had pleaded guilty to one of the counts of engaging in sexual intercourse, however, denied the remainder of the allegations as a "fabrication". The Crown sought to adduce evidence of the charges as tendency evidence demonstrating the offender's sexual interest in, and tendency to act upon that sexual interest, with the victim. The primary judge who heard the Crown's application to adduce tendency evidence, denied the Crown the ability to lead evidence of the incident in which the offender had pleaded guilty.

The Crown appealed this ruling as legally erroneous. The Court of Appeal (Mossop, Loukas-Karlsson and Abraham JJ) unanimously allowed the appeal. The Court held the ruling was in error and there was no basis to suggest the offender would be significantly or unfairly prejudiced by the admission of the incident he had admitted. The Court noted that the fact the jury would be aware the offender admitted to that incident did not mean he was procedurally disadvantaged in the conduct of his defence. The mere fact that an offender may have to make orthodox forensic decisions does not constitute unfair prejudice within the meaning of s 101(2) of the *Evidence Act 2011*. Following the successful Crown appeal, the offender entered pleas of guilty was sentenced.

Featherstone v The Queen; Bloxsome v The Queen [2020] ACTCA 33; [2020] HCASL 247

Court of Appeal proceedings:

The appellants were tried on a single indictment containing 15 counts. The Crown case at trial was that on 26 February 2018 Mr Featherstone was at a house occupied by Mr Diaz in Narrabundah. Also there during the course of events were DT (Mr Featherstone's wife), NQ (a relative of Mr Featherstone), MX (a friend of Mr Diaz), Mr Dimitrov (an associate of Mr Bloxsome), Mr Russell (Mr Bloxsome's son), and Mr Bloxsome, who is Mr Featherstone's uncle. MX had gone to the house to visit Mr Diaz. She had been dropped off near the premises in a car by four men, one of whom was her ex-boyfriend, BC. After she arrived, Mr Featherstone became concerned that BC and the other men would come to rob him and Mr Diaz of their drugs. Mr Featherstone contacted Mr Bloxsome and asked him to come to the house. Mr Bloxsome arrived with his three sons, Mr Dimitrov, and Mr Dimitrov's sister, although Mr Dimitrov's sister and two of Mr Bloxsome's sons left soon afterwards.

While at the house, Mr Featherstone and Mr Bloxsome consumed methylamphetamine. At the request of Mr Diaz, MX attempted to inject Mr Diaz with methylamphetamine but was unsuccessful. Shortly after, Mr Featherstone announced that everyone at the house should

“tool up” and break into a gun shop in preparation for the expected robbery. Mr Diaz, who was holding a machete at the time, told Mr Featherstone that he did not want to leave the house. Mr Featherstone then shot Mr Diaz in the leg. Mr Diaz cried out in pain. Mr Bloxsome told Mr Diaz to “shut up” and, when he did not do so, Mr Bloxsome stabbed Mr Diaz a number of times. The group, with the exception of Mr Diaz, then left the house. Mr Diaz went to a neighbour’s house and called an ambulance.

When they left the house in Narrabundah, MX was forced into a car and she and Mr Dimitrov were driven to a house in Casey. While at the house, she was interrogated by Mr Featherstone regarding the men in the car. She was not allowed to leave. At some point, she was taken to the garage by Mr Bloxsome, who tied her hands in front of her with cable ties and ordered her to undress. On the Crown case, Mr Bloxsome inserted a gun into MX’s vagina and, a short time later, digitally penetrated her. Mr Bloxsome then took MX to an upstairs bedroom in the Casey house, where she was again sexually assaulted, this time by penile/vaginal intercourse.

Sometime in the afternoon of 26 February 2018, MX was put into a car with Mr Featherstone, Mr Bloxsome and NQ, and driven to the house of Mr Jacky in Tuggeranong. Mr Jacky was believed to be behind the group that the appellants expected to carry out the robbery. When they arrived, Mr Featherstone left the car, pulled out a gun, and confronted Mr Jacky in his driveway. When Mr Jacky’s young child left the house, Mr Featherstone returned to the car and the group drove away. On 27 February 2018, Mr Bloxsome and Mr Featherstone left the Casey house with NQ, Mr Dimitrov, and MX. They drove for some time through the inner north suburbs of Canberra. MX made two attempts to “hotwire” cars but both were unsuccessful. After some time, the group drove to Ainslie Football Club. Both appellants remained in the car while NQ and MX approached a group of three elderly people. NQ produced a knife and demanded the keys to their vehicle. Mr Featherstone then got out of the car, approached the group, and brandished a gun at the elderly people, who handed over their car keys. The group left in the stolen vehicle. In the early hours of 28 February 2018, Mr Bloxsome, Mr Featherstone, NQ, Mr Russell, and MX drove in the stolen vehicle to a shop in Fyshwick that sold military equipment. Mr Featherstone smashed the glass window and entered the shop with MX, NQ, and Mr Russell. The group broke into the glass display cabinets and obtained knives before leaving.

Both Mr Featherstone and Mr Bloxsome appealed their convictions and sentences to the Court of Appeal. The grounds alleged, amongst other things, failures by the trial judge to discharge the jury, and that the convictions were unreasonable and not supported by the evidence. The Court of Appeal (Murrell CJ, Loukas-Karlsson J and Berman AJ) dismissed Mr Featherstone’s appeal. They allowed Mr Bloxsome’s appeal in part (relating to the sexual offending), but otherwise dismissed the appeal against the convictions in which he was jointly charged with Mr Featherstone. The Court of Appeal noted that it was necessary for each appellant to demonstrate that the jury must have had a reasonable doubt and that they had failed to do so. Their Honours noted the jury were entitled to be satisfied beyond reasonable doubt that the events occurred notwithstanding some inconsistencies in the evidence.

High Court

Following the dismissal of both appeals, Mr Featherstone and Mr Bloxsome both applied for special leave to appeal against their convictions. In each case, the appellant's sought to contend that the Court of Appeal had incorrectly applied the legal principles relating to unreasonable verdicts. In particular, both appellants argued that the High Court's decision in *Pell v The Queen* (2020) 94 ALJR 394; [2020] HCA, required clarification as to what the proper legal principles were.

The High Court denied leave to appeal and dismissed both applications. Justices Gageler and Keane found that neither matter would turn on the resolution of any issue of principle and the prospects of success of the appeal were not such as to warrant the grant of special leave.

Saipani v The Queen [2021] ACTCA 5; HCA C6 of 2021

Court of Appeal:

The appellant, Javarne Saipani, was jointly charged with Ibrahim Kaddour and Kyle Butkovic (the co-offenders) with aggravated burglary relating to a home invasion on 5 November 2018. The Crown case was that, in the early hours of 5 November 2018, the accused and the co-offenders entered and/or remained in the Lyneham unit as trespassers. Inside, they committed acts of violence against DX and KM. At least two of the men were armed; Mr Butkovic was armed with an electrical discharge device and Mr Kaddour was armed with a knife. After a trial by judge alone before Murrell CJ, the appellant was convicted of the offence.

The appellant appealed his convictions and sentence to the Court of Appeal. In relation to his conviction, the Court of Appeal found the trial judge had erred in finding the appellant was a trespasser at the time he and the co-offenders entered the unit. This was because there was an invitation by one of the occupants. However, their Honours Burns, Loukas-Karlsson and Charlesworth JJ dismissed the appeal against conviction on the basis that the appellant had remained as a trespasser. In relation to the appeal against sentence, their Honours allowed the appeal on the basis of a lack of parity between the appellant's sentence and that of his co-offenders.

High Court

The appellant applied for special leave to appeal against the Court of Appeal's dismissal of his appeal against conviction. On 9 September 2021 the High Court refused leave.

Will v The Queen (No 2) [2021] ACTCA 14

The appellant's brother, Mr Ian Will, knew Mr Pagden, who worked with Chubb Security Services. The appellant was an irregular acquaintance of Mr Pagden. The appellant was friends with Mr Melkie and Mr Munro. Because Chubb undertook security services at the Mawson Club, Mr Pagden knew that on a Monday, weekend takings of about \$150,000 were collected.

The appellant questioned Mr Pagden about committing an armed robbery on a Chubb van. He offered to pay Mr Pagden \$15,000 if Mr Pagden would assist with information. Mr Pagden proposed a robbery at the Mawson Club on a Monday and provided the appellant with

information, including the expected take, the usual pickup time and the roles of the armoured vehicle operators.

Prior to 10 May 2004, the appellant introduced Mr Munro and Mr Melkie and he recruited them to rob the Mawson Club. The proceeds of the robbery were to be returned to the appellant, who would distribute them. Mr Pagden was responsible for scheduling the Chubb road crews for Monday 10 May 2004. The pickup from the Mawson Club was to occur between 3 and 4 pm on that day. Mr Munro and Mr Melkie waited in a bus shelter outside the Club. The Chubb vehicle arrived at about 3:44 pm and parked outside the main entrance to the Club, approximately 15 metres from the bus shelter. Chubb employees entered the Club and collected three satchels containing a total sum of \$151,995.35.

As the Chubb employees exited the Club and approached the armoured Chubb vehicle, Mr Munro and Mr Melkie ran from the bus shelter towards them, shouting. Mr Melkie was armed with a revolver and Mr Munro was armed with a sawn-off shot gun. Mr Melkie shouted, "get on the ground, get on the ground". Mr Melkie pulled one of the Chubb employees to the ground and snatched the three satchels from his arms.

The other employee dropped to one knee. Mr Munro pointed his firearm at this man and discharged a single round in his direction. Part of the shot struck the Chubb employee, knocking him to the ground. He sustained 14 to 16 shot gun pellet wounds to his chest, abdomen, upper left arm, left hand, and left eye. Later, he underwent surgery to repair a perforated bowel and pellet wounds to the thumb joint of his left hand. Mr Melkie and Mr Munro ran towards a parked car and were driven from the scene. The appellant distributed the proceeds of the robbery, giving \$40,000 each to himself, Mr Melkie and Mr Munro, and \$15,000 to Mr Pagden.

In May 2010, the Australian Crime Commission (ACC) examined the appellant, who gave evidence inculcating himself. The ACC also conducted a compulsory examination of Mr Pagden, who implicated himself and the appellant.

The appellant was sentenced by Mossop J for his involvement in the robbery to a term of imprisonment of ten years and ten months, with a non-parole period of six years.

The appellant appealed his sentence (with leave) on the basis that the sentencing judge did not give the appellant a discount for his assistance to authorities and that the sentence was manifestly excessive.

By majority, (Murrell CJ and Charlesworth J) dismissed the appeal. Their Honours noted that historically, the rationale for the discount for assistance to the authorities has been to encourage willing and frank cooperation that may facilitate the investigation and prosecution of offences. Their Honours held that primacy must be given to the public interest of promoting willing cooperation. Voluntariness or willingness does not merely go to the extent of discount; it is essential to enlivening the discretion to award a discount. Further, it was noted that compliance with the courts' compulsive powers is not an occasion for reward, and that it would undermine the proper administration of justice if witnesses were rewarded for complying with

a subpoena and giving evidence in accordance with their oath or affirmation. Loukas-Karlsson J was in the minority. Her Honour said she would have allowed the appeal, and was of the view that a discount should have been given.

The appellant has applied for special leave to appeal to the High Court on the question of whether voluntariness is essential to a discount for assistance being provided. The matter will be determined by the High Court at a later date with the matter currently listed for oral argument.

B.2.6 Sexual Offences Unit

The Sexual Offences Unit ('the SO Unit') is made up of a specialist team of prosecutors experienced in the review, management and preparation of sexual offence matters as they make their way through the criminal justice system.

Due to the nature of sexual offence matters, it is common practice for the SO Unit's prosecutors to engage with vulnerable witnesses such as children and adults with communication difficulties. The prospect of giving evidence and recounting traumatic events can be daunting for such witnesses and the SO Unit's prosecutors frequently use the special provisions available in the *Evidence (Miscellaneous) Provisions Act 1991* to assist such witnesses. These provisions are designed to enable them to give their best evidence.

Such special provisions include use of witness intermediaries to assist witnesses of all ages with communication difficulties, as well as provisions that allow witnesses to give their evidence at a pre-trial hearing in advance of the hearing or trial itself, and the use of the remote witness room at court where witnesses can give their evidence outside of the courtroom in a safe environment where they do not have to see the accused.

The availability of such provisions requires the SO Unit's prosecutors to review matters and meet with witnesses as early as possible so as to identify which provisions would be of the use and to make timely applications to the courts.

Engaging with witnesses is a significant part of the role of SO Unit prosecutors, and it is enhanced by the Unit's strong and close working relationship with members of the Office's Witness Assistance Service ('WAS'), who play a critical role alongside prosecutors in communicating with witnesses, informing them about the progress of matters, and referring them to external agencies to help them access services to give them the support they require both during and after their time participating in the criminal justice system.

The past 12 months have seen the SO Unit's daily work challenged by the restrictions of the Covid-19 pandemic. The early days of the pandemic and lockdown saw prosecutors embracing technology through audio-visual link remote court appearances as well as the more frequent use of provisions that allow witnesses subject to travel restrictions to give evidence to the court remotely using their laptops or mobile telephones.

For example, in a sexual offence matter due to be heard later this year in the Magistrates Court, the prosecution successfully overcame defence objections to its applications for the complainant and several key witnesses to give evidence via audio-visual links from overseas in

circumstances where the closure of Australia's borders will prevent them appearing in person in the courtroom in the ACT.

The SO Unit's prosecutors continue to enjoy professional relationships with police officers within the AFP's Sexual Assault and Child Abuse Team ('SACAT'), who are responsible for investigating and preparing briefs of evidence in sexual offence matters. Prosecutors meet regularly with SACAT officers to discuss the progress of individual cases and more general issues. It is a working relationship designed to ensure that the prosecution case is as strong as it can be when a matter comes before the court. As well as engaging with SACAT, the SO Unit's prosecutors have assisted in providing training to other police officers seeking qualification to be able to conduct Evidence in Chief Interviews of witnesses in family violence and sexual offence proceedings.

The SO Unit's prosecutors work hard to maximise their use of admissible evidence to prove sexual offences beyond a reasonable doubt. Of particular note this year, was the introduction of changes to the way in which tendency evidence may be admitted in criminal proceedings, with the passing into legislation in September 2020 of the new section 97A in the *Evidence Act 2011*.

The new section 97A is expressly designed to facilitate the admissibility of tendency evidence in criminal proceedings involving child sexual offences, mandating that tendency evidence in such proceedings is presumed to have the significant probative value required for it to be admissible.

The changes result from a Working Group set up by the Council of Attorneys-General to consider and implement the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, which found that the difficulties in admitting tendency evidence under the old provisions in child sexual offence proceedings resulted in "*the criminal justice system failing to provide adequate criminal justice for victims.*"¹⁴

Since its introduction, the SO Unit has already used the new section 97A to successfully admit tendency evidence in child sexual offence proceedings and ultimately secure convictions.

Other external agencies that the SO Unit engages with include the ACT Civil & Administrative Tribunal ('ACAT') in its role supervising persons ordered to be referred to its jurisdiction by the Magistrates Court for the purpose of making a mental health order or a forensic mental health order.¹⁵

Such persons are ordered to be referred to ACAT if a Magistrate decides that a person charged with an offence is unfit to plead, and after hearing the charge, is satisfied beyond reasonable doubt that the person engaged in the conduct required for the offence charged. Essentially, the person is found not to be criminally responsible for their alleged offending but is nevertheless referred to the jurisdiction of ACAT for them to receive suitable supervision under a mental health order or a forensic mental health order.

A person's fitness to plead is required to be reviewed by ACAT every 12 months, whether or not they are still subject to a mental health order or a forensic mental health order.¹⁶ Reviews must

¹⁴ *Royal Commission into Institutional Responses to Child Sexual Abuse*, Criminal Justice Report Parts III – VI (2017) 634.

¹⁵ Section 335(4) of the *Crimes Act 1900*.

¹⁶ Section 176 of the *Mental Health Act 2015*.

continue until either the person is found fit to plead, or the Director of Public Prosecutions tells ACAT of their intention not to take further proceedings against the person in relation to the offence. ACAT is required to notify the Director of Public Prosecutions of the outcome of such annual reviews.¹⁷

The SO Unit engaged this year with ACAT in relation to a matter involving a young person charged with various child sexual offences who was found unfit to plead at a hearing in August 2017. The Magistrate presiding over the hearing was satisfied beyond reasonable doubt that the young person engaged in the conduct required for the offences charged (including incest and sexual intercourse with a young person) and ordered the young person to submit to ACAT's jurisdiction.

ACAT confirmed to the Director of Public Prosecutions the outcome of their review for 2021 that the young person remained unfit to plead, and SO Unit prosecutors (with the assistance of WAS) met with the family of one of the young person's victims to communicate ACAT's finding. This is an example of the SO Unit maintaining contact with victims and their families even years after the conclusion of formal criminal proceedings.

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

B.2.6.1 Sexual Offences: Trials and Sentences in the Supreme Court – 1 July 2020 to 30 June 2021

Description	Matters
Trials	
Trials	13
Trial Days in Court	63
Trial Outcomes	
Guilty Verdicts	4
Not Guilty Verdicts	7
Other	1
Awaiting verdict	1
Sentencing Proceedings	
Accused sentenced after committal for sentence or after committal for trial/changed plea	15
Accused re-sentenced after breach	1
Notices declining to proceed further	
	1

¹⁷ Section 179 of the *Mental Health Act 2015*.

B.2.6.2 Breakdown of Sexual Offence matters in different courts - 1 July 2020 to 30 June 2021

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

Description	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual Offence matters commenced	51	4	30	85
Sexual Offence matters completed	31	1	28	60
Sexual Offence matters proved	21		19	40
Sexual Offence matters discontinued	3	1	1	5
Sexual Offence breach matters	12		1	13

*Note: The Sexual Offence Matters table has changed from the previous reporting periods. Committals, breaches and SC appeals have been removed from the 'Sexual Offence matters completed' field to provide a more accurate picture of matters proved compared to matters completed. Breach matters are now recorded in a separate row of the table. Committals and SC appeals are reported separately in the Annual Report.

B.2.6.3 Sexual Offence Cases

R v Vunilagi; R v Vatanitawake; R v Masivesi; R v Macanawai

This trial proceeded as judge alone pursuant to s 68BA of the *Supreme Court Act 1933*. Usually, trials involving sexual offences are required to be heard before a jury. However, because of the COVID-19 pandemic, emergency legislation was enacted to allow trials in such matters to proceed as judge alone. That emergency legislation has since lapsed, on 30 June 2021.

The prosecution case was that, at about 4:30 am on 3 November 2019, the complainant, a 22-year-old woman, was heavily intoxicated when she met the four accused at Mooseheads Bar in London Circuit, Civic. Previously, she did not know them. She began to socialise with them. The complainant and the four accused travelled to Masivesi's one-bedroom unit. A fifth man who could not be located, TW, was also present. When they arrived at the unit, Vunilagi took the complainant to the bedroom and, without her consent, engaged in various acts of sexual intercourse. Vunilagi then encouraged Vatanitawake to engage in penile/vaginal intercourse while he engaged in oral intercourse.

Next, Macanawai engaged in fellatio and penile/vaginal intercourse while Vunilagi engaged in digital intercourse. The digital penetration continued. Vunilagi left the room and Masivesi engaged in an act of indecency, cunnilingus, and digital/vaginal penetration. The complainant fell asleep and was awoken by Vunilagi digitally penetrating her. After she was escorted to the toilet, she was digitally penetrated by Vunilagi in front of the other accused and TW. She was further assaulted by Vunilagi in the bedroom.

The complainant escaped from the house and sought assistance from a passer-by who called a taxi for her. When she arrived home, she spoke to a friend, LU, and reported the matter to police. That evening, the complainant was forensically examined at Canberra Hospital. A DNA analysis of vaginal swabs found extremely strong support for contribution by Vatanitawake. On 7 November 2019, the complainant participated in a police evidence-in-chief interview. Vunilagi, Macanawai and Masivesi were interviewed by police. All made limited admissions. The prosecution case was that the complainant did not consent to any sexual act.

The Chief Justice found that there was insufficient identification evidence to prove beyond reasonable doubt that Macanawai was the person who sexually assaulted the victim. Macanawai was acquitted of all charges against him. Vunilagi was convicted of all but two charges. Vatanitawake and Masevisi were convicted of all charges against them.

Vunilagi was sentenced to a total of six years, three months and 14 days' imprisonment, with a non-parole period of three years and one month. Vatanitawake was sentenced to two years and six months' imprisonment with a non-parole period of 15 months. Masevesi was sentenced to imprisonment for two years and one month with a non-parole period of 12 months and 14 days.

The convictions are subject to appeal in the ACT Court of Appeal and are currently awaiting a decision.

R v Bradley Bartell

The offender entered a plea of guilty to a 'rolled up' count of sexual intercourse with a young person, which encompassed three separate acts of sexual intercourse with a young person on the same occasion: digital penetration, cunnilingus and penile-vaginal intercourse. Although the victim was a week shy of her sixteenth birthday, the incident occurred in the context of a professional relationship between the victim and offender, wherein, he was her supervisor at a KFC restaurant, as well as being five years her senior.

The offender was sentenced for the offence in the Supreme Court. The Crown submitted that the offender bore a significant degree of responsibility, given both the age gap and the offender's position of authority. The victim gave a Victim Impact Statement, which made it clear that she was suffering significant ongoing emotional impacts as a result of the offending, and her studies had suffered at a critical moment in her education.

The offender had no criminal history and was a relatively young man. Upon conviction, he became a registrable offender with reporting obligations under the *Crimes (Child Sex Offenders) Act* for a period of 15 years. He was sentenced to imprisonment for 12 months, which was fully suspended upon him entering a Good Behaviour Order for 18 months. This sentence is consistent with the sentencing pattern in the ACT for offences that occur in similar circumstances.

Police v A Young Person

The young person entered pleas of not guilty to four charges of sexual intercourse with a person under 16 years, and one charge of an act of indecency on a person under 16 years.

The circumstances of the offending were that the young person and the victim were boyfriend and girlfriend, and on several occasions the young person wanted to engage in sexual activity with the victim when she did not. The victim told the young person on each occasion that she did not want to engage in sexual activity, but he persisted despite her protestations. The victim told her friends and a teacher at their school what had occurred, and the young person wrote a letter of apology to the victim.

The matter proceeded to hearing in the Children's Court, and the young person asserted that one of the incidents did not occur, and that in respect of the other charges the victim had been consenting to the sexual activity (which is a defence where both young people are aged within two years of each other). The prosecution relied on evidence from the victim, the friends and teacher she had told, and evidence from the victim's father. The young person gave evidence and was cross-examined.

After a hearing that lasted two days, the Magistrate found it proved beyond reasonable doubt that the incidents occurred as described by the victim, and that she had not been consenting. The young person was found guilty on all charges and the matter will return for sentence in September 2021.

Police v Van Eyle

The defendant pleaded not guilty to one charge of committing an act of indecency without consent on one of his massage clients: it was alleged he touched her breasts in the course of a massage, without her consent.

The defendant disputed that he had groped her in the way she described, and he gave evidence that any touching of breast tissue had been incidental to the legitimate chest massage he was performing. The defendant gave evidence and was cross-examined, and the dispute ultimately came down to the victim's evidence against his.

After hearing all of the evidence, the Magistrate found the offence proved, rejecting the defendant's version and accepting the victim's. The matter has been appealed and will be heard in the Supreme Court at a later date.

R v Simon Hope

The offender entered pleas of guilty to one count of sexual intercourse without consent and one count of an act of indecency without consent in the Magistrates Court. The matter was committed for sentence to the Supreme Court.

The circumstances of the offending were that the victim had attended a friend's party, and at some point in the evening, went to sleep in a bed in one of the rooms. The offender came into the room and engaged in cunnilingus and digital penetration on the victim while she

was sleeping. He later made admissions to her via Snapchat and in a pre-text call – although he asserted he must have been high from inhaling the passive smoke of another party-goer who had been smoking ice. In a record of interview with police, he denied the conduct and suggested he had apologised because he thought that is what the victim needed to hear.

At sentence, the offender relied on evidence that he had Klinefelter syndrome, which can impact a person's ability to read social cues. The Crown submitted that this was not a situation where the offender had misread social cues, as the victim had been asleep. The victim read out a Victim Impact Statement at sentence and the sentencing judge acknowledged the significant effect of the offending on her. The offender was sentenced to a total of 19 months imprisonment, with a nine-month non-parole period.

B.2.7 Family Violence Unit

During the 2020-21 reporting period, the family violence unit ('FV Unit') has remained a specialist team which oversees and prosecutes the majority of family violence matters within the Office. The maintenance of this specialist team allows the Office to address the unique challenges and approaches required to prosecute family violence related offending.

The FV Unit consists of a supervising lawyer, senior lawyer, five prosecutors and two paralegals. During this past year the unit has undergone a complete transition of all prosecutors within the team.

The FV Unit has continued an existing practice of allocating matters at an early stage to an individual prosecutor. Once the brief of evidence is received that prosecutor will conduct a review and liaise with police, the victim, the defence representative and the court to facilitate the progression of the matter.

Members of the FV Unit regularly appear in the weekly family violence list held in the Magistrates Court, which deals with matters at the mention, pre-hearing mention and sentence stages. In matters listed for pre-hearing mention, the supervising lawyer will attend and engage in case conferencing with the defence representative to determine whether matters are capable of resolution, or, if the matter is to proceed to hearing, whether any of the issues can be narrowed to expedite the listing and ultimately the finalisation of the matter.

Recent amendments to the *Victims of Crime Act 2001* have imposed positive obligations on the Office with regards to the nature of contact and information which is required to be provided to victims of crime. The FV Unit continues to be supported by the Witness Liaison Officers from the Office's Witness Assistant Service ('WAS'), who provide essential support in liaising with vulnerable family violence complainants to enable them to understand and participate in court proceedings. The availability and utilisation of witness intermediaries within the ACT has also been a key focus of the FV Unit, with an emphasis placed upon identifying witnesses who would benefit from the use of intermediaries and making the necessary arrangements to assist them to give their best evidence.

The FV Unit works closely with several external agencies, in particular ACT Policing's Family Violence Coordination Unit. The Office is represented by a member of the FV Unit each week at a weekly case tracking meeting, which is attended by representatives from the AFP, Domestic Violence Crisis Service ('DVCS'), Child and Youth Protection Services ('CYPS'), Victim Support ACT ('VSACT') and ACT Corrective Services ('ACTCS'). The purpose of this meeting is to facilitate information sharing across agencies for family violence offenders whose matters are currently progressing through the courts. The supervising lawyer of the FV Unit also represents the Office at meetings of the Family Violence Intervention Program Coordinating Committee ('FVIPCC'), which works to identify and implement family violence related reforms across agencies in the ACT.

The FV Unit strives to uphold the guiding principles of the Prosecution Policy and to ensure consistency in its application across the matters which progress through the unit. The Office recognises the strong public interest in prosecuting family violence related offences, and this informs many of the considerations taken with respect to family violence proceedings handled by the FV Unit.

B.2.7.1 Family Violence Cases: Trials and Sentences in the Supreme Court – 1 July 2020 to 30 June 2021

Description	Matters
Trials	
Trials	1
Trial Days in Court	4
Trial Outcomes	
Guilty Verdicts	
Not Guilty Verdicts	1
Other	
Awaiting verdict	
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/changed plea or re-sentenced after breach	19
Notices declining to proceed further	3

B.2.7.2 Breakdown of FV cases in different courts – 1 July 2020 to 30 June 2021

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

Description	Magistrates Court	Childrens Court	Supreme Court	Total
FV matters commenced	529	30	14	573
FV matters completed	507	22	21	550
FV matters proved	417	17	13	447
FV matters discontinued	33	3	3	39
FV breach matters	112	4	3	119

*Note: The Family Violence Matters table has changed from the previous reporting periods. Committals, breaches and SC appeals have been removed from the 'FV matters completed' field to provide a more accurate picture of matters proved compared to matters completed. Breach matters are now recorded in a separate row of the above table.

B.2.7.3 FV Cases

Pruckner v Sharma

The defendant was charged with choking and several associated charges of common assault. A family violence evidence-in-chief interview had been conducted by police during the course of their investigation containing the complainant's original account. A voir dire was held as to the admissibility of that recording, and after legal argument it was accepted into evidence. On the day of hearing, the complainant gave evidence unfavourable to the prosecution, and inconsistent with her initial interview. Leave was sought and granted for her to be cross-examined by the prosecutor.

Ultimately the court found all charges proved and convictions were recorded.

Page v McDermott

The defendant was charged with a series of violent offences against the complainant (his former partner), including choking her and rendering her unconscious, and assault occasioning actual bodily harm. He was also charged with a series of assault offences against neighbours, who, in viewing part of the assault against the complainant, came to her aid.

In this matter, the complainant participated in a Family Violence Evidence in Chief interview after having suffered a head injury and medication having been administered. Accordingly, her presentation when interviewed by police and her ability to convey what had occurred was impaired by her condition. During her oral evidence at the hearing, the complainant also reported memory loss of portions of the incident as a result of that head injury. The prosecution was successful in adducing complainant evidence which was of some significance in supplementing the evidence of the complainant.

All charges were found proved and convictions recorded.

Police v JJ

In January 2021 the offender, his wife and two young daughters were living in Canberra. The offender's relationship with the victim, his 16-year-old daughter, was fraught. One night he had been consuming alcohol and began arguing with his wife and the victim over the victim's clothing and use of her mobile phone. The offender ripped his shirt off and refused to leave the victim's bedroom while berating her and her mother. He then struck out at a hammock which was next to where the victim was seated, yelled at the victim to wear a shirt then wrapped his hand around her throat, squeezed and shook her once. She later noticed red marks on each side of her neck. Unknown to the offender the victim had begun filming the incident on her mobile phone, capturing the surrounding circumstances but not the assault itself. She later provided this footage to police.

The offender pleaded not guilty to the single charge of choke, strangle or suffocate, and the matter proceeded to a hearing over two days. The victim and her mother gave evidence in the hearing via remote witness rooms. The video footage was played to the court. The offender did not give evidence and the defence case disputed his hand ever making contact with the victim. The court found the victim's account to be credible and consistent with the objective evidence, and the offender was convicted of the offence.

At sentence the offender demonstrated remorse and accepted responsibility for his actions. He had engaged in domestic violence counselling and expressed a wish to gradually rebuild the relationship with his family. He was not otherwise recorded and had protective factors including stable employment. The court found the cultural factors and the strain of parenting a teenager contributed to the offence although it involved a serious breach of trust in the father-daughter relationship. The court noted that absent the mitigating factors, this offence would normally attract a sentence of imprisonment. The offender was sentenced to a lengthy Good Behaviour Order with community service, probation and counselling conditions.

B.2.8 Witness Assistance Service

The Witness Liaison Officers of the Witness Assistance Service ('WAS') at the ODPP contact and provide information on the criminal justice system to witnesses, update vulnerable witnesses at significant milestones of the court process, assist with referrals to support services, act as a liaison point between prosecutors and witnesses, and assist with preparing victim impact statements. The WAS also provides court support as a last resort when other supports are unavailable.

The WAS primarily focuses on assisting vulnerable witnesses in sexual offences and family violence matters and matters where children are required to give evidence. When referred by a prosecutor, the WAS may also assist with matters that involve serious crimes such as murder, and complex matters with multiple vulnerable witnesses, and other crimes where victims and vulnerable witnesses require support and assistance.

The WAS liaises and collaborates with other major stakeholders and support agencies such as VSACT, DVCS, Canberra Rape Crisis Centre ('CRCC') and ACT Policing's Victim Liaison Office to ensure victims are offered the relevant support.

The WAS together with a representative from the FV Unit contribute to the ODPP's involvement in the Family Violence Intervention Program ('FVIP') case tracking which is a weekly interagency meeting that seeks to provide coordinated responses to family violence matters that come to the attention of police and proceed to prosecution. This forum is important in ensuring that relevant agencies including the AFP, ACTCS, CYPS, VSACT and DVCS are offered to or linked with victims of family violence throughout the court process, and to ensure that assistance is offered to those identified as not receiving or engaging support.

The WAS also provides ongoing monthly contribution to Wraparound,¹⁸ which is an integral part of the Sexual Assault Reform Program ('SARP') designed to:

- a) ensure appropriate and adequate support is provided to victims who report sexual offences to the police;
- b) provide a coordinated response to victims' case management; and
- c) provide information to, and communicate with, victims throughout their involvement with the criminal justice process.

B.2.8.1 Intermediary Program

The ACT's Intermediary Program established within the ACT Human Rights Commission commenced in January 2020 and is actively providing intermediaries to assist the police and courts' engagement with victims and vulnerable witnesses (e.g., children and the mentally impaired) in criminal matters. Intermediaries help witnesses to communicate their best evidence.

The creation of the Intermediary Program was in response to a finding of the Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA) that vulnerable witnesses, such as children in sexual abuse cases, face significant communication barriers when giving evidence. Thus, one of the recommendations of the RCIRCSA was that states and territories establish intermediary schemes that are able to assist vulnerable witnesses give their evidence.

Intermediaries are officers of the court who have undertaken rigorous training in order to become accredited. Intermediaries effectively facilitate communication between witnesses and police, and between witnesses, lawyers and others at court during the criminal trial process. The accredited intermediaries of the Intermediary Program assess the communication needs of witnesses and recommend effective communication techniques to enable police, lawyers and courts to elicit the best evidence from the witnesses.

It is, however, important to note that a witness intermediary is not a support person. Intermediaries are impartial participants in the process who are focused on achieving the effective communication of evidence.

¹⁸ Members of the Wraparound include the CRCC, ACT Policing, AFP, VSACT, Child and Risk Health Unit ('CARHU'), Care and Protection Services ('CPS'), FAMSAC, and ODPP. The AFP maintains the record of the contact details of victims requiring support, and distributes the updated record to members of Wraparound.

B.2.8.2 Disability Liaison Officer

In May 2021, the ODPP appointed a Disability Liaison Officer ('DLO') as part of the Disability Justice Strategy to ensure people with disabilities have access to appropriate resources and information and feel recognised throughout their interactions within the criminal justice system.

The DLO also connects and works with the network of DLOs from the other ACT criminal justice stakeholders such as ACT Courts, AFP, Legal Aid ACT, VSACT, and ACT Corrective Services. This ensures a cohesive and collaborative approach to supporting people with disabilities in the criminal justice system.

The DLO works alongside the WAS at the ODPP. As the Disability Justice Strategy progresses and develops further, the role of the DLO within the ODPP is expected to grow to address priority areas that involve this vulnerable group within our community.

B.2.8.3 Impact of COVID-19

The WAS continued to engage with vulnerable victims and witnesses throughout the COVID-19 pandemic. Phone conferencing and video conferencing for meetings with witnesses as well as 'proofing' meetings between prosecutors and witnesses, have remained an option to maintain communication while observing the ODPP's COVID safe protocols.

With social distancing and hygiene measures in place, vulnerable witnesses continued to give their evidence from the remote witness room. Support agencies such as VSACT, DVCS and CRCC continued to observe the strict COVID-19 precautionary measures.

B.2.8.4 Breakdown of WAS matters - 1 July 2020 to 30 June 2021

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

Offence type Categories	Number of WAS matters	Percentage*
Adult Sexual Assault	67	29.4
Child Sexual Assault	48	21.1
Historical Sexual Assault	14	6.1
Less Serious Violence Off (adult)	13	5.7
Less Serious Violence Off (child)	1	0.4
Serious Violence Offence (adult)	19	8.3
Serious Violence Offence (child)	2	0.9
Child Pornography	-	-
Other	52	22.8

Offence type Categories	Number of WAS matters	Percentage*
Significant Trauma	3	1.3
Appeal	9	3.9
Total	228	100

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

B.2.9 Confiscation of Criminal Assets

The *Confiscation of Criminal Assets Act 2003* ('COCA Act') is an effective tool in the fight against serious and organised crime. The ODPP 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 ODPP conducts confiscation proceedings under the COCA Act in both the Magistrates Court and the Supreme Court. Proceeds of crime and property used in the commission of offences are restrained and forfeited to the Territory through these proceedings. This ensures a person will not be enriched by the commission of an offence and deprives persons of all benefits derived from criminal offending and any property used or intended to be used in relation to an offence.

The Office has a dedicated COCA team. This has ensured specialised prosecutors are ready and available to work on confiscation proceedings. This has helped facilitate the effective use of restraining orders, forfeiture orders and penalty orders under the COCA Act. It has also enabled the effective use of the auxiliary capabilities under the COCA Act to obtain information from third parties, and conduct compulsory examinations of offenders and their associates, in order to locate property that is or could be subject to forfeiture. The ODPP's confiscation team works closely with the AFP's Financial Investigations Team, as well as representatives from the Public Trustee and Guardian ('PTG').

In February 2020, the Legislative Assembly passed the *Confiscation of Criminal Assets (Unexplained Wealth) Bill 2020*. The Bill introduced a new Part 7A, Unexplained Wealth Orders, into the COCA Act, with the amendments taking effect from 29 August 2020.

The unexplained wealth amendments provide authorities with additional measures to target and disrupt serious and organised crime. The provisions are fundamentally different from other confiscation proceedings under the COCA Act because the ODPP does not need to establish a link to the commission of an offence. The amendments allow authorities to intervene proactively where a person's wealth exceeds their lawfully acquired wealth and there is a suspicion it has been derived from serious criminal activity. Where an unexplained wealth application is brought by the ODPP, the respondent then bears the onus of proof of establishing that their wealth was lawfully acquired.

Over the reporting year 2020-21, the ODPP dealt with a total of 51 COCA matters, 34 of which were referred by the AFP with 17 internal referrals, amounting to an estimated accumulated value of \$15,830,129. Property that was restrained or forfeited during this reporting year included 14 residential properties, 17 cars, 11 motorcycles, 7 watercraft, 51 bank accounts and a number of sporting goods and designer fashion items. The ODPP has successfully obtained at least 40 restraining orders, four consent orders, five examination orders, one penalty order and one civil forfeiture order during the reporting period.

B.2.9.1 COCA Cases

DPP v Clark

In October 2020, the ODPP successfully obtained an unexplained wealth restraining order against Mr Michael Clark, the national president of the Nomads outlaw motor-cycle gang. In November 2020, the ODPP brought an unexplained wealth order application alleging that Mr Clark had obscured his wealth through members of his family. This matter was the first unexplained wealth matter to be commenced by the ODPP following the introduction of Part 7A of the COCA Act.

Mr Clark and the ODPP resolved the proceeding by Mr Clark agreeing to forfeit property worth in excess of \$300,000 including cash, European cars, motor-cycles, boats, fishing and sporting equipment, electronics and designer fashion goods.

DPP v Henderson

Mr Henderson was charged with trafficking a controlled drug other than cannabis contrary to section 603(7) of the *Criminal Code 2002* (ACT) after Police located 444.249g of cocaine inside the console of Mr Henderson's vehicle. Also located in the vehicle was a significant amount of cash.

At his criminal trial, Mr Henderson was acquitted of the offence as the trial judge could not be satisfied, beyond reasonable doubt, that Mr Henderson knew about the presence of the cocaine in his vehicle.

Following Mr Henderson's acquittal, the ODPP filed a penalty order application pursuant to section 83 of the COCA Act, which sought to prove the relevant offence on the balance of probabilities.

The ODPP and Mr Henderson resolved the penalty order application by Mr Henderson agreeing to forfeit the cash seized from his vehicle, the Ford Ranger Utility in which the cocaine and cash were found, and to pay a \$150,000 penalty order to the Territory.

B.2.10 Work Safety

The Office has a Work Safety Unit which comprises a single senior prosecutor who is dedicated to prosecuting offences against the *Work Health and Safety Act 2011* (ACT) and who works closely with WorkSafe in relation to matters proceeding to prosecution before the ACT Courts.

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

B.2.10.1 WHS Cases

Multiplex and Others

In the 2020-21 reporting year, the Office has continued a prosecution in relation to an incident occurring at the University of Canberra Hospital construction site in 2016 after a crane was overloaded and overturned, killing a worker. The matter has been listed for hearing for approximately four weeks commencing on 18 October 2021.

Radwick Deeranyika

Additionally, the Office prosecuted a disability care worker after leaving his severely disabled client for approximately fifty minutes locked in a van which was parked in direct sunlight. The man had been left in the van without adequate shade or ventilation, and without access to water or fluids. Members of the public noticed the man in the van and managed to rescue him. The disability care worker pleaded guilty to a Category 3 charge (Failure to comply with health and safety duty) and was convicted and fined \$8,000 by the ACT Industrial Court.

B.2.10.2 Breakdown of WHS matters

The table below reflects the WHS matters prosecuted by the ODPP in the financial year.

Act	Matters (No.)	Proved/Fine Paid
<i>Work Health and Safety Act 2011</i>	4	1 (proved)

B.2.11 Regulatory Matters

As well as prosecuting the typical criminal offences that occur in the ACT, the ODPP also has responsibility for prosecuting offences that arise due to the contravention of regulations created to ensure that appropriate health, safety and protection standards are adhered to. These matters can cover a diverse range of regulatory offences; and they are referred to the Office from various regulatory agencies – such as offences relating to the neglect or mistreatment of animals, referred by the RSPCA; offences relating to improper handling or preparation of food sold by restaurants or cafes, referred by ACT Health; offences relating to

noise pollution by home-owners, referred by the ACT Environment Protection Authority; or offences relating to the construction of buildings in the ACT, referred by Access Canberra.

B.2.11.1 Breakdown of regulatory matters

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

- › The RSPCA
- › Access Canberra

Act	Matters (No.)	Proved/Fine Paid
<i>Animal Welfare Act 1992</i>	1	1 (proved)
<i>Agents Act 2003</i>	1	1 (proved)
<i>Construction Occupations (Licensing) Act 2004</i>	1	1 (proved)
Total	3	3 (proved)

In addition to the above matters, a number of other regulatory matters were referred to the ODPP during the last financial year, however, these prosecutions are currently on-going.

When a regulatory matter is referred to the Office, the regulatory agency typically provides us with a full Brief of Evidence with respect to the potential regulatory offence alleged to have occurred – often with a recommendation as to what potential charges should arise. The ODPP then has responsibility to review and assess this evidence. Following this assessment, and in consultation with the relevant regulatory agency, the Office determines whether a prosecution should commence, and if so, what charges should be laid.

It is interesting to note that regulatory prosecutions can, from time to time, present matters that have never previously come before the ACT Courts. One such example from the 2020-21 reporting year related to a prosecution under section 40 of the *Construction Occupations (Licensing) Act 2004 (ACT)*. The alleged offence in this instance concerned the construction of a residential house by a building company. An investigation revealed significant defects in the construction of this house and the building company was issued with a Rectification Order by the ACT Construction Occupations Registrar to rectify these structural defects. The company chose not to comply with this Rectification Order, and they became subject to prosecution. This matter ultimately proceeded to sentence in the Magistrates Court, where the defendant company was convicted of the offence and ordered to pay a fine of \$20,000.

B.2.12 Parking Matters

The ODPP also prosecutes parking infringements.¹⁹ As shown in the table below, there were a total of 833 parking matters completed in the financial year. This was inclusive of 95 convictions, seven dismissed charges and 12 charges proven but no convictions recorded. For the majority of the remaining parking infringements there was no evidence offered by the prosecution. Often this happens because the offender has responded to the infringement notice and paid the fine before the hearing date.

Parking matters managed by the ODPP in the financial year are reflected below.

	Matters
Conviction	95
Proved no conviction	12
Dismissed	7
Withdrawn	10
No Evidence to Offer	709
Total	833

B.2.13 List Team

The list team is currently comprised of eight prosecutor associates who appear in the daily Magistrate's Court A1 general list and the A2 bail list. These lists are critical to the administration of justice, as all criminal matters in the ACT at one time or another are heard in one of these lists. The prosecutor associates also appear in the Children's Court weekly list, dealing with bail applications, sentences and mentions for young people charged with criminal offences.

The prosecutor associates in the list team are generally newly admitted lawyers and appearing in these lists allows them to learn advocacy and legal skills which prepares them for future opportunities within the Office. This year, all of the prosecutor associates who started in the list team were promoted to grade 1-2 prosecutors, with a number of them now having appeared in their first hearing matters. As a result, several new prosecutor associates have joined the team.

Over the last 12 months, the list team has continued to appear in a wide variety of matters including forensic procedure applications, extradition applications, bail applications, sentences, and committals to the Supreme Court, demonstrating their ability to appear in matters raising complex legal issues.

The list team also includes three paralegals who assist in the administrative preparation of files and providing material to defence practitioners.

¹⁹ Infringements are issued by Access Canberra and the AFP for breaching the current *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Safety and Traffic Management) Act 1999*.

B.2.14 ODPP Statistics (from 1 July 2020 to 30 June 2021)

The statistics used in this Annual Report are generated from the ODPP's Criminal Advocacy Support and Enquiry System ('CASES'). These statistics comply with the Australian Bureau of Statistics ('ABS') standards for the characteristics of defendants dealt with by criminal courts.²⁰ A fundamental aspect that is different, is that the ABS standard reports against defendants rather than charges.

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

Generally, matters reported are those finalised within the reporting period. As set out in ABS 4513 "finalisation" describes how a criminal charge is concluded by a criminal court level. Matters are concluded, as explained by ABS 4513.0,²¹ depending on the court involved. Of particular note, a transfer to another court level (for example a committal either for trial or sentence) concludes the matter in one court level and initiates it in another court level.

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

All offences in CASES are classified against the Australian and New Zealand Standard Offence Classification ('ANZSOC'). The ABS has formulated ANZSOC to provide uniform national statistics. The 16 divisions used for the classification of offences for statistical purposes within the ANZSOC are set out in ABS 1234.0.²² Where tables refer to matters being "disaggregated by matter type", this is a reference to the ANZSOC divisions. The National Offence Index ('NOI')²³

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

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

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

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

is a ranking of all ANZSOC groups and supplementary ANZSOC codes.²⁴ This ranking is based on the concept of 'offence seriousness'. Where a finalised defendant has multiple charges, the principal offence is determined by the type of finalisation and/or the highest ranked ANZSOC using the NOI.

B.2.14.1 Total matters finalised by jurisdiction

Description	Matters
Childrens Court	248
Magistrates Court	5204
Industrial Court	4
Supreme Court	277
Court of Appeal	25
High Court	2
Total	5760

*Note: Childrens Court, Magistrates Court and Industrial Court matters include committals to the Supreme Court. Supreme Court matters include Supreme Court appeals and matters where a Notice Declining to Proceed was filed.

B.2.14.2 Matters finalised disaggregated by matter type

Description	Matters
Homicide and related offences	
Childrens Court	1
Magistrates Court	6
Industrial Court	
Supreme Court	8
Court of Appeal	3
High Court	
Sub Total	18

²⁴ The NOI has been developed by the ABS as a statistical tool to enable the output of nationally comparable offence information within the field of crime and justice statistics. The NOI is a tool which provides an ordinal ranking of the offence categories in the ANZSOC according to perceived seriousness in order to determine a principal offence. The purpose of the NOI is to enable the representation of an offender by a single offence in instances where multiple offences occur within the same incident or where defendants have multiple charges in criminal cases.

Description	Matters
Acts intended to cause injury	
Childrens Court	62
Magistrates Court	544
Industrial Court	
Supreme Court	38
Court of Appeal	1
High Court	
Sub Total	645
Sexual assault and related offences	
Childrens Court	4
Magistrates Court	72
Industrial Court	
Supreme Court	30
Court of Appeal	9
High Court	1
Sub Total	116
Dangerous or negligent acts endangering persons	
Childrens Court	10
Magistrates Court	140
Industrial Court	
Supreme Court	15
Court of Appeal	1
High Court	
Sub Total	166
Abduction and related offences	
Childrens Court	3
Magistrates Court	99
Industrial Court	

Description	Matters
Supreme Court	16
Court of Appeal	1
High Court	
Sub Total	119
Robbery, extortion and related offences	
Childrens Court	22
Magistrates Court	71
Industrial Court	
Supreme Court	48
Court of Appeal	7
High Court	
Sub Total	148
Unlawful entry with intent/burglary, break and enter	
Childrens Court	17
Magistrates Court	133
Industrial Court	
Supreme Court	49
Court of Appeal	3
High Court	1
Sub Total	203
Theft and related offences	
Childrens Court	39
Magistrates Court	208
Industrial Court	
Supreme Court	17
Court of Appeal	
High Court	
Sub Total	264

Description	Matters
Deception and related offences	
Childrens Court	
Magistrates Court	21
Industrial Court	
Supreme Court	9
Court of Appeal	
High Court	
Sub Total	30
Illicit drug offences	
Childrens Court	6
Magistrates Court	231
Industrial Court	
Supreme Court	15
Court of Appeal	
High Court	
Sub Total	252
Weapons and explosives offences	
Childrens Court	12
Magistrates Court	110
Industrial Court	
Supreme Court	7
Court of Appeal	
High Court	
Sub Total	129
Property damage and environmental pollution	
Childrens Court	22
Magistrates Court	98
Industrial Court	

Description	Matters
Supreme Court	11
Court of Appeal	
High Court	
Sub Total	131
Public order offences	
Childrens Court	8
Magistrates Court	60
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	68
Road traffic and motor vehicle regulatory offences	
Childrens Court	36
Magistrates Court	3075
Industrial Court	
Supreme Court	3
Court of Appeal	
High Court	
Sub Total	3114
Offences against justice procedures, government security and government operations	
Childrens Court	6
Magistrates Court	327
Industrial Court	
Supreme Court	11
Court of Appeal	
High Court	
Sub Total	344

Description	Matters
Miscellaneous offences	
Childrens Court	
Magistrates Court	9
Industrial Court	4
Supreme Court	
Court of Appeal	
High Court	
Sub Total	13
Coronial	
Childrens Court	
Magistrates Court	
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	0
TOTAL	5760

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

B.2.14.3 Committals to the Supreme Court

Description	Matters
Childrens Court	
Magistrates Court	8
Industrial Court	169
Total	177

B.2.14.4 Plea of Guilty after Committal for Trial

Description	Matters
Plea of guilty after committal for trial	62
Plea of guilty after trial listed	33
Total matters subpoenas issued	32
Plea of guilty on day of trial	4
Plea of guilty within one week of trial	9
Plea of guilty within 2-4 weeks of trial	11
Plea of guilty more than 4 weeks before trial	9

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

Description	Childrens Court		Magistrates Court		Industrial Court		Total
	Trial	Sentence	Trial	Sentence	Trial	Sentence	
Homicide and related offences	1		4	2			7
Acts intended to cause injury			7	5			12
Sexual assault and related offences	2	1	21	8			32
Dangerous or negligent acts endangering persons			4	7			11
Abduction and related offences			2	3			5
Robbery, extortion and related offences	1	1	18	13			33
Unlawful entry with intent/burglary, break and enter			18	21			39
Theft and related offences			3	3			6
Deception and related offences			1	1			2
Illicit drug offences			7	8			15
Weapons and explosives offences	1		3	2			6
Property damage and environmental pollution	1		3	3			7

Description	Childrens Court		Magistrates Court		Industrial Court		Total
	Trial	Sentence	Trial	Sentence	Trial	Sentence	
Public order offences							0
Road traffic and motor vehicle regulatory offences							0
Offences against justice procedures, government security and government operations			2				2
Miscellaneous offences							0
Total	6	2	93	76	0	0	177

B.2.14.6 Supreme Court Matters

Description	Matters
Trials	
Trials	50
Trial Days in Court	208
Trial Outcomes	
Guilty Verdicts	15
Not Guilty Verdicts	21
Other**	13
Awaiting verdict	1
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/ changed pleas or re-sentenced after breach	134
Accused re-sentenced after breach	24
Total sentencing proceedings	158
Notices declining to proceed further	21

*Note: This includes trials which resulted in a hung jury or were aborted. Such matters are not "finalised" for the purposes of the table on 'Total matters finalised by jurisdiction' at B.2.14.1 at page 86 and the table on 'Matters finalised disaggregated by matter type' at B.2.14.2 on page 86.

B.2.14.7 Appeals

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	31	3	34
Court of Appeal	29	5	34
High Court	2		2
Total	62	8	70

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

B.3 Scrutiny

The ODPP is subject to scrutiny from the ACT Auditor-General and the ACT Ombudsman. There were no relevant reports during the financial year. From time to time, the Director appears before various committees of the Legislative Assembly. During the financial year, the Director appeared at Estimates and 2019-20 Annual Report Hearing, that were amalgamated on 19 February 2021 due to COVID.

B.3.1 Audit of Reviewable Decisions

Pursuant to the recommendations in the *Criminal Justice Report* of the RCIRCSA,²⁵ *Director's Instruction No. 14.1*²⁶ and *Director's Instruction No. 14.2*²⁷ were issued. These Director's Instructions are in relation to decisions to discontinue prosecutions, and the review of such decisions. *Director's Instruction 14.2* specifically provides that an audit is to be conducted on decisions that have been subject to review during the financial year. This is to ensure that the relevant procedures have been complied with by the Office in relation to the reviews of decisions to discontinue prosecutions. Thus, an Audit Committee was formed at the end of the financial year to look into all the automatically reviewable decisions during the 2020-21 financial year. The *Audit Report* and its accompanying *Record of Reviewable Decisions - Audit 2020-2021* are located in Appendix D (page 139) and E (page 140) respectively.

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

26 Refer to Appendix B on page 130 for *Director's Instruction No. 14.1 - Review of a Decision to Discontinue a Prosecution*.

27 Refer to Appendix C on page 131 for *Director's Instruction No. 14.2 - Reviewable Decisions to Discontinue - Contact with Complainants, Review Processes and Auditing*.

B.4 Risk Management

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

B.5 Internal Audit

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

The JACSD's responsibility under the *Financial Management Act 1996* includes the maintenance of an Audit Performance and Improvement Committee ('APIC') to consider governance structures as outlined in the ACT Government's Internal Audit Framework. The APIC is an integral part of the governance arrangements of the JACSD, with particular emphasis being placed on better practices, continuous improvement, internal control mechanisms, risk management strategies, internal audit and ethical behaviour and integrity. Details of the APIC's arrangements can be found in the JACSD's 2020-21 Annual Report²⁸.

B.6 Fraud Prevention

The ODPP has a Fraud and Corruption Prevention Plan ('FCPP'), prepared in accordance with the requirements of the ACTPS Integrity Policy²⁹. The FCPP has been circulated to all staff.

The ODPP's fraud and corruption measures are also integrated into the JACSD's FCPP, which provides the framework for raising awareness of, and reducing and managing instances of fraud and corruption in the JACSD.

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

²⁸ <https://www.justice.act.gov.au/about-us/annual-reports>

²⁹ This policy is issued by CMTEDD, and is designed to protect public money and property, protect the integrity, security and reputation of our public sector agencies while maintaining a high level of services to the community consistent with the good government of the ACT.

B.7 Freedom of Information

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

Under the FOI Act, the ODPP must make information proactively available via an open access scheme. If the information is not available on the Open Access Website,³⁰ the person seeking information is encouraged to contact the ODPP before resorting to the more formal FOI procedure. In many cases it may be possible to access information more quickly and efficiently through such an approach. However, if a formal access application is necessary under the FOI Act, then the application must include:

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

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

The ODPP is also required to maintain a disclosure log³¹ in accordance with section 28 of the FOI Act. Information provided to an applicant through an FOI request is published on the disclosure log between three and 10 working days after the decision notice has been sent out to the applicant. The disclosure log includes the following information:

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

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

B.7.1 FOI Access Applications

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

³⁰ <https://www.act.gov.au/open-access>

³¹ <https://www.dpp.act.gov.au/publications/freedom-of-information>

Access Applications	Total
On hand at the beginning of the financial period	1
Received during the financial period	7
Finalised / completed	8
On hand at the end of the financial period	8
Decided within timeframe (section 40)	8
Decided outside timeframes but within extended timeframes agreed to with the applicant (section 40)	0
Decided outside timeframes but within extended timeframes agreed to with the Ombudsman (section 40)	0
Not decided within the statutory timeframes in the FOI Act, i.e. deemed decisions.	0
Where a fee or charge was applied	0
For Ombudsman review (section 74)	2
Applications made to ACAT	0
Decisions confirmed through Ombudsman review (section 82(2)(a))	1
Decisions varied through Ombudsman review (section 82(2)(b))	0
Decisions set aside and substituted through Ombudsman review (section 82(2)(c))	0
Where a decision gave full access (section 35(1)(a)).	2
Where a decision gave partial access (section 35(1)(c)).	2
Where a decision refused access (section 35(1)(c)).	4
Decisions to publish open access information (section 24(1))	2
Decisions not to publish open access information (section 24(1))	5
Decisions not to publish a description of open access information withheld (section 24(1))	5
Requests made to amend personal information	0

B.8 Community engagement and support

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

The following sponsorship was provided by the Director during the year ending 30 June 2021.

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

B.9 Aboriginal and Torres Strait Islander Reporting

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

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

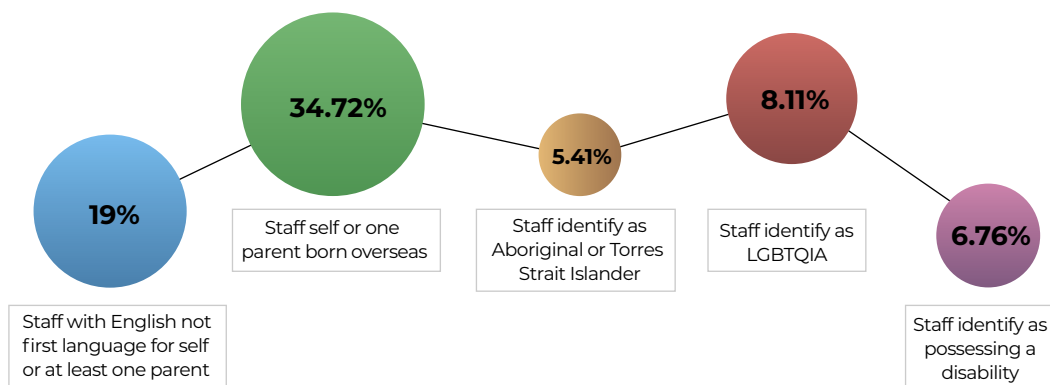
the Office is now employing two indigenous prosecutor associates in its Crown Chambers, and hopes to expand the program further in 2022. This is the first program of its type in this Office and aims to get more indigenous lawyers appearing in court in gowns and wigs.

B.9.1 Office Employment Diversity Statement

The ODPP's OEDS is as follows:

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

Employment Diversity Statement



B.10 Work Health and Safety

The ODPP's Health and Wellbeing Policy outlines its commitment to the provision of a healthy and safe workplace. The Office had two elected Health and Safety representatives in the financial year.

Due to the challenging nature of work at the ODPP, staff are encouraged to avail themselves of the Employee Assistance Program ('EAP') and the services of specialised psychologists.³²

The Office works proactively with staff to prevent work related injuries, by offering ergonomic workstation assessments, and ergonomic office equipment, ensuring that staff are set up at their respective workstations or offices in a safe and correct manner. Further, the ODPP's WEGIEs³³ is used as a forum to assess office or work-related injury data and develop injury prevention programs for implementation and monitoring within the Office.

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

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

- › Health and wellbeing checks;
- › Resilience Training (The Resilience Project);³⁴
- › Mental Health First Aid training;
- › ACT government-funded influenza vaccine;
- › Fire Warden training;
- › First Aid training;
- › Work life balance;³⁵
- › Respect, Equity and Diversity training.

B.10.1 Notifiable incidents

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

Events Notified to WorkSafe	*Total Incidents	Total Worker Incidents	Harassment Contacts
0	5	5	0

³² Refer to B.11 (Human Resources Management) at page 101.

³³ Refer to B.1.5.2 (Working Environment Group) on page 39.

³⁴ Refer to B.11 (Human Resources Management) on page 101.

³⁵ Refer to B.11 (Human Resources Management) on page 101.

B.11 Human Resources Management

The ODPP has continued to support its staff wellbeing in a variety of ways including health and wellbeing initiatives and other professional training opportunities.³⁶ The Office has maintained its focus on supporting staff in dealing with the complex, challenging and confronting nature of work.

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

During the financial year, 95% of the staff at the Office participated in a one-hour webinar "The Resilience Project" The aim of the presentation was to manage wellbeing, both in the work environment, and with family and friends. The presentation focused on key areas of Gratitude, Empathy/Kindness and Mindfulness - all evidence based wellbeing strategies which are relevant key areas for personal wellbeing during times of crisis

The Office continues to collaborate and promote opportunities in support of staff leading a healthy lifestyle. As mentioned in B.1.5.2, these are co-ordinated through the WEGIEs.³⁷

Legal staff also had the opportunity to participate in the training and seminar sessions organised as part of the ODPP's CPD program.³⁸

In terms of flexible work arrangements offered to staff over the financial year, seven employees at the ODPP worked part-time, and a further ten employees had flexibility in the workplace. The Office acknowledges and is supportive of the need for staff to maintain a healthy work life balance. As such the ODPP constantly looks for means and ways of enabling a work arrangement that works well for both the Office and its staff.

B.11.1 ARIns Reporting

Nil ARIns were provided during the reporting year.

B.11.1.1 Agency profile

Branch/Division	FTE	Headcount
Director of Public Prosecutions	89.4	97
Total	89.4	97

³⁶ Refer to B.10 (Work Health and Safety) on page 100.

³⁷ Refer to B.1.5.2 (Working Environment Group) on page 39.

³⁸ Refer to B.1.5.3 (Continuing Professional Development - Ad hoc Committee) on page 39.

B.11.1.2 FTE and headcount

	Female	Male	Total
FTE by Gender	61.1	28.2	89.4
Headcount by Gender	67	30	97
% OF WORKFORCE	69.1%	30.9%	100.0%

B.11.1.3 Classifications

Classification Group	Female	Male	Total
Administrative Officers	8	1	9
Executive Officers	1	4	5
Legal Support	23	6	29
Prosecutors	32	17	49
Senior Officers	3	1	4
Statutory Office Holders	0	1	1
Total	67	30	97

B.11.1.4 Employment category by gender

Employment Category	Female	Male	Total
Casual	0	0	0
Permanent Full-time	48	22	70
Permanent Part-time	11	0	11
Temporary Full-time	7	8	15
Temporary Part-time	1	0	1
Total	67	30	97

B.11.1.5 Equity and workplace diversity

The ODPP's equity and diversity strategies form part of the JACSD's Respect, Equity and Diversity Framework. Consistent with the ACTPS diversity and equity framework, the employment policies and practices of the Office

- a) support a work environment that is respectful, courteous, inclusive, collaborative, equitable and productive;
- b) ensure equality of opportunity; and
- c) are family friendly and cognisant of the demands placed on employees with family responsibilities.

	Headcount	% of Total Staff
Aboriginal and/or Torres Strait Islander	3	3.1%
Culturally & Linguistically Diverse	9	9.3%
People with a disability	2	2.1%

B.11.1.6 Age profile

Age Group	Female	Male	Total
Under 25	6	4	10
25-34	36	14	50
35-44	16	8	24
45-54	7	2	9
55 and over	2	2	4

B.11.1.7 Average years of service by gender

Gender	Female	Male	Total
Average years of service	5.5	5.5	5.5

B.11.1.8 Recruitment and Separation Rates

Classification Group	Recruitment Rate	Separation Rate
Total	21.4%	15.1%

B.12 Ecologically Sustainable Development

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

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

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

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Stationary energy usage				
Electricity use	Kilowatt hours	122409	115804	5.70%
Natural gas use (non-transport)	Megajoules	N/A	N/A	N/A
Diesel use (non-transport)	Kilolitres	Unavailable	Unavailable	
Transport fuel usage				
Electric vehicles	Number	N/A	N/A	N/A
Hybrid vehicles	Number	N/A	N/A	N/A
Hydrogen vehicles	Number	N/A	N/A	N/A
Total number of vehicles	Number	N/A	N/A	N/A
Fuel use – Petrol	Kilolitres	N/A	N/A	N/A
Fuel use – Diesel	Kilolitres	N/A	N/A	N/A
Fuel use – Liquid Petroleum Gas (LPG)	Kilolitres	N/A	N/A	N/A
Fuel use – Compressed Natural Gas (CNG)	Gigajoules	N/A	N/A	N/A
Water usage				
Water use	Kilolitres	Unavailable	Unavailable	

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Resource efficiency and waste				
Reams of paper purchased	Reams	2980	2633	13.18%
Recycled content of paper purchased	Percentage	100%	100%	0%
Waste to landfill	Litres	30000	30000	0%
Co-mingled material recycled	Litres	30000	30000	0%
Paper & Cardboard recycled (incl. secure paper)	Litres	71040	86160	-17.54%
Organic material recycled	Litres	0	0	0
Greenhouse gas emissions				
Emissions from natural gas use (non-transport)	Tonnes CO ₂ -e	0	0	100%
Emissions diesel use (non-transport)	Tonnes CO ₂ -e	N/A	N/A	N/A
Emissions from transport fuel use	Tonnes CO ₂ -e	N/A	N/A	N/A
Total emissions	Tonnes CO ₂ -e	0	0	100%

Notes

1. Please note that some data reported for FY 2019-20 in the table above may differ slightly from figures reported in the 2019-20 Annual Report. These are due to updates to agency occupancy and historical consumption data. Where actual data is not available, the Enterprise Sustainability Platform provides estimations using an accrual function. Accruals are calculated from the average annual daily consumption of the most current 12-month period applied for the number of days of missing data.
2. No water consumption data is captured in the ESP for the ODPP's occupancy. The ACT Government is not formally billed for its water consumption as it is factored into the landlord's rent.
3. Emissions reported for stationary energy and transport fuels include Scope 1 and Scope 2 emissions only. Scope 1 are direct emissions from sources owned and operated by the government including: emissions from transport fuel and natural gas use. Scope 2 are indirect emissions from mains electricity.
4. The ACT met its 100% renewable electricity target in 2019-20. As a result, the ACT Government reports zero greenhouse gas emissions from electricity use. The ACT Government is committed to maintaining 100% renewable electricity supply beyond 2020.

C. Financial Management Reporting

C.1 Financial Management Analysis

The ODPP is a downstream agency. Both its workload and timeframes for service delivery are externally imposed. The level of Supreme Court work continues to increase in both time and complexity, while Magistrates Court work remains high.

C.2 Financial Statements

The financial transactions of the Office for the year ending 30 June 2021 are subsumed within the audited financial statements of the JACSD. Any data that is provided below should be read in conjunction with those financial statements.

For information related to the budget outcomes please refer to the JACSD's audited financial statements for 2020-21 (Output 1.4).³⁹ It should be noted that total expense in Output 1.4 include the JACSD's allocated overheads.

C.3 Capital Works

The following capital works projects are still ongoing.

Capital Project	Original Completion Date	Revised completion Date	Original Project Value	Revised Project Value	2020-2021 Expenditure	Commentary
More support for families and inclusion						
More resources for the Director of Public Prosecutions	Dec-20		\$238,000	0	\$238,000	Completed
Screwdriver Ready Project 2	Nov-20		\$1,400,000	0	\$1,400,000	Phase 2 completed

Contact details capital works officer:

Mercy Wilkie
Office Manager
Phone: 02 6207 5399

³⁹ Refer to C.6 (Statement of Performance) on page 108.

C.4 Asset Management

The ODPP is located in the Reserve Bank building, adjacent to the Supreme Court and Magistrates Court buildings. The location is strategic being in close proximity to where the Office conducts most of its business.

97 staff occupied a total floor space of 1,974m². The current utilisation rate is 20.35m² per employee which is an increase from 17.67m² in the last period. The utilisation rate is referenced to a benchmark of 15m² per employee. Factors relevant to the utilisation rate include additional accommodation space as a part of new renovations on level 2 completed under the Screwdriver Ready Project, the need to provide facilities such as witness interview rooms, waiting rooms for vulnerable witnesses, conference rooms, 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. It is also significantly impacted by our requirement to establish facilities to appear in a number of courts remotely from the ODPP office, during multiple COVID lockdowns.

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

The assets of the Office are mainly comprised of the Office fit out (partitioning and cabling) and the criminal law resource centre. Total replacement costs are estimated at \$3m.

C.5 Government Contracting

For year ending 30 June 2021, the following suppliers of goods, services and works with a value greater than \$25,000 were undertaken.

Output Class	Name of Contractor	Description or Reason for Contract	Expenditure 2020-2021	Date services commenced	Procurement Type
1.4	Thomson Reuters	Research Resources	\$61,833.00	01 July 2020	Single Select
	Itec Pty Ltd	Case Management System	\$50,000.00	01 July 2020	Single Select

C.6 Statement of Performance

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

Output Class 1 Justice Services - Output 1.4 Public Prosecutions

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

	2020-21 Original Target	2020-21 Amended Target	2020-2021 Actual	YTD Variance
Total Cost (\$'000)	14,665		14,867	1%
Controlled Recurrent Payments (\$,000)	15,048		14,956	(1%)
Accountability Indicators				
a) Average cost per matter finalised	\$3,000		\$2,581	(14%)
b) The percentage of cases where the brief is served within two weeks of it being received from the ACT Police	80%		94%	18%
c) The percentage of cases where the indictment case statement and questionnaire are filed within the timeframes specified at directions in the Supreme Court	80%		70%	(13%)

These are new indicators in 2020-21 which better reflect the performance of the Director of Public Prosecutions. The target will be revisited next year once more data is available.

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

D. Territory Records

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

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

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

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

E. Appendices

Appendix A

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

Prosecution Policy of the Australian Capital Territory

Introduction

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

truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one".

- 1.5 Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution's case firmly, fearlessly and vigorously, with, it has been said "*an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings*".
- 1.6 Further, the prosecution's right to be treated fairly must not be overlooked. Indeed, in the ACT, the *Human Rights Act 2004*, provides that everyone - the accused, members of the community and victims of crime - has the right to have criminal charges, and rights and obligations recognised by law, decided by a competent, independent and impartial court or tribunal after a fair and public hearing.
- 1.7 The ACT is a human rights compliant jurisdiction, and all staff of the DPP must be mindful of the principles underlying the *Human Rights Act* and its purpose, as they conduct the business of the DPP. In particular, they are responsible for respecting, protecting and promoting the human rights that are set out in that Act.
- 1.8 This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Where law or policy ends, discretion begins. Prosecutors must seek to resolve a wide range of issues with judgement, sensitivity and common sense. It is neither practicable nor desirable to fetter the prosecutor's discretion too much because the demands of justice and fairness will vary from case to case.
- 1.9 From time to time, the Director may issue directions or furnish guidelines pursuant to section 12 of the *DPP Act*. This policy supersedes the previous policy and guidelines and directions, save for the Director's disclosure guideline which came into effect on 3 August 2020 and remains in effect.

2. The decision to prosecute

General criteria

- 2.1 It is not the case that every allegation of criminal conduct must culminate in a prosecution. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, they have merely committed an inadvertent or minor breach of the law. On the other hand, an inappropriate decision not to prosecute may mean that the guilty go free and the community is denied the protection to which it is entitled. It must never be forgotten that the criminal law reflects the community's pursuit of justice and the decision to prosecute must be taken in that context.
- 2.2 Further, the resources available for prosecution are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue, with appropriate vigour, those cases worthy of prosecution.

- 2.3 Whilst a number of general principles may be articulated, it is not possible to reduce such an important discretion to a mere formula. Plainly, the demands of fairness and consistency will be important considerations, but the interests of the victim, the accused and the general public must all be taken into account. (In this context the term “the accused” includes an alleged offender, a defendant and an accused.)
- 2.4 The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the public interest to proceed with a prosecution?
- 2.5 The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law, that a criminal offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a prima facie case. The evidence must provide reasonable prospects of a conviction. If it is not of sufficient strength any prosecution would be unfair to the accused and a waste of public funds.
- 2.6 The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.
- 2.7 The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:
- (a) Are the witnesses available and competent to give evidence?
 - (b) Do they appear to be honest and reliable?
 - (c) Do any appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?
 - (d) Do any have a motive for being less than candid?
 - (e) Are there any matters which may properly form the basis for an attack upon the credibility of a witness?
 - (f) What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?
 - (g) If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?

- (i) Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?
- (j) Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?
- (k) If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?
- (l) Where several accused are to be tried together, is there sufficient evidence to prove the case against each of them?

2.8 If the assessment leads the prosecutor to conclude that there are reasonable prospects of a conviction, they must then consider whether it is in the interest of the public that the prosecution should proceed. In many cases the interests of the public will only be served by the deterrent effect of an appropriate prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed, and it will usually be appropriate that they be taken into account only in that manner. Generally, the more serious the offence the more likely it will be that the public interest will require that a prosecution be pursued.

2.9 Nevertheless, the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued. Many factors may be relevant to the public interest, and the weight which should be accorded to them will depend upon the circumstances of each case. Without purporting to be exhaustive those factors may include the following:

- (a) the seriousness or, conversely, the triviality of the alleged offence;
- (b) whether it is of a “technical” nature only;
- (c) any mitigating or aggravating circumstances;
- (d) the youth, age, physical health, mental health or special vulnerability of the accused, a witness or victim;
- (e) the antecedents and background of the accused;
- (f) the staleness of the alleged offence;
- (g) the degree of culpability of the accused in relation to the offence;
- (h) the effect on public order and morale;
- (i) the obsolescence or obscurity of the law;
- (j) whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
- (k) the availability and efficacy of any alternatives to prosecution;

- (l) the prevalence of the alleged offence and need for deterrence, both personal and general;
- (m) whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- (n) whether the alleged offence is of considerable public concern;
- (o) any entitlement of a person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- (p) the actual or potential harm occasioned to any person as a result of the alleged offence,
- (q) the attitude of the victim of the alleged offence to a prosecution;
- (r) the need to give effect to regulatory priorities;
- (s) the likely length and expense of a trial;
- (t) whether the accused is willing to cooperate in the investigation or prosecution of others, or the extent to which they have already done so;
- (u) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (v) whether the alleged offence is triable only on indictment; and
- (w) the need to maintain public confidence in such basic institutions as parliament and the courts.

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

- (a) the race, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the accused or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account as a matter of fairness to the accused – see for example subparagraphs 3.26-3.27);
- (b) any personal feelings concerning the alleged offender or victim;
- (c) any political advantage, disadvantage or embarrassment to the government or any political group or association; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

Prosecution of juveniles

2.11 Special considerations apply to the prosecution of juveniles. In this context a juvenile is a child (a person who is under 12 years old) or a young person (a person who is 12 years

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

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

Prosecution of Corporations

- 2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.

- 2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.
- 2.17 As a general rule it is best to have all connected offenders - corporate and individual - prosecuted together at the same time.
- 2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.
- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.
- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at subparagraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
- (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
 - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;
 - (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
 - (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
 - (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
 - (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;

- (g) failure to report wrongdoing within a reasonable time of the offending coming to light;
- (h) a genuinely proactive approach adopted by the corporate management team involving self-reporting and remedial actions, including the compensation of victims;
- (i) the availability of alternative civil or regulatory remedies that are likely to be effective and more proportionate;
- (j) whether the offending represents isolated actions by individuals, for example by a rogue director;
- (k) the fact that the offending is not recent in nature, and the corporation in its current form is effectively a different body to that which committed the offences;
- (l) whether the corporation is in administration, liquidation or receivership.

Discontinuing a prosecution

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

3. OTHER DECISIONS IN THE PROSECUTION PROCESS

Choice of Charges

- 3.1 In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 3.2 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.

- 3.3 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the *Crimes Act 1900* or *Criminal Code 2002* unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.
- 3.4 There is a particular need for restraint in relation to conspiracy charges. Whenever possible, substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where conspiracy charges are laid against a number of accused jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the accused.
- 3.5 Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

Mode of trial

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

Consent to prosecution

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

Charge negotiation

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

- (h) the views of the police or other referring agency; and
- (i) the views of the victim, where those views are available and if it is appropriate to take those views into account.

- 3.14 An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused asserts or intimates that they are not guilty of an offence to which they are offering to plead guilty.
- 3.15 Sentencing of offenders is a matter for the court. It is not to be the subject of agreement or purported agreement between the prosecution and defence.

Jury selection

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

Retrials

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

Sentence

- 3.19 The prosecution has an active role to play in the sentencing process.
- 3.20 As the High Court has said, a prosecutor should draw to the attention of the court what are submitted to be the facts that should be found, the relevant principles that should be applied and what has been done in other (more or less) comparable cases. It is not

the role of the prosecutor to proffer some statement of the specific result they consider should be reached, or a statement of the bounds within which that result should fall.

- 3.21 If it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the sentencing discretion, the prosecutor may make submissions on that issue. This will be particularly so if, where a custodial sentence is appropriate, the court is contemplating a noncustodial penalty, or where a conviction is appropriate, the court is contemplating a non-conviction order.
- 3.22 Where facts are asserted on behalf of an accused which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues, if the resolution of such disputed facts is in the interests of justice or is material to sentence.
- 3.23 Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing. On no occasion will it be appropriate for material such as police testimony as to an accused's assistance to authorities, to be handed directly to the court. Such material should be given to the prosecutor and tendered to the court by the prosecutor at the prosecutor's discretion.
- 3.24 Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.
- 3.25 A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate).

Sentencing indigenous offenders

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

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

4. DISCLOSURE

- 4.1 The prosecution is under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:
- › to be relevant or possibly relevant to an issue in the case;
 - › to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
 - › to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.
- 4.2 The prosecution is also under a duty to disclose to the defence information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:
- › a relevant previous conviction or finding of guilt;
 - › a statement made by a witness which is inconsistent with any prior statement of the witness;
 - › a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
 - › evidence before a court, tribunal or Royal Commission which reflects adversely on the witness;
 - › any physical or mental condition which may affect reliability;
 - › any concession which has been granted to the witness in order to secure their testimony for the prosecution.
- 4.3 The prosecution must fulfil its duty of disclosure as soon as reasonably practicable. The prosecution's duty of disclosure continues throughout the prosecution process and any subsequent appeal.
- 4.4 In fulfilling its disclosure obligations the prosecution must have regard to the protection of the privacy of victims and other witnesses. The prosecution will not disclose the address or telephone number of any person unless that information is relevant to a fact in issue and disclosure is not likely to present a risk to the safety of any person.
- 4.5 The prosecution's duty of disclosure does not extend to disclosing material:
- › relevant only to the credibility of defence (as distinct from prosecution) witnesses;

- › relevant only to the credibility of the accused;
- › relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
- › for the purpose of preventing an accused from creating a forensic disadvantage for themselves, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.

4.6 The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.

4.7 Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example, if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.

4.8 Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with their previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.

4.9 The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.

4.10 Where known, in accordance with Director's disclosure guideline which has been in effect since 3 August 2020 (see Annexure 1), the prosecution is under a duty to disclose the existence of:

- (a) Relevant protected material that is subject of a claim of privilege or immunity;
- (b) Relevant material that is subject of a statutory publication restriction;
- (c) Relevant unprotected material that is not subject to a claim of privilege or immunity or a statutory publication restriction.

5. THE UNREPRESENTED ACCUSED

5.1 Particular care must be exercised by a prosecutor in dealing with an accused without legal representation. The basic requirement, while complying in all other respects with this policy, is to ensure that the accused is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused's interests.

- 5.2 So far as practicable, oral communications with an unrepresented accused should be witnessed. Communications should be promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused. Prosecutors may also, where appropriate, communicate with the accused through the court.
- 5.3 A prosecutor has a duty to ensure that the trial judge gives appropriate assistance to the unrepresented accused.
- 5.4 While a prosecutor has a duty of fairness to an accused, it is not a prosecutor's function to advise an accused about legal issues, evidence, inquiries and investigations that might be made, possible defences, or the conduct of the defence.

6. PRIVATE PROSECUTIONS

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

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

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

7. UNDERTAKING THAT A PERSON WILL NOT BE PROSECUTED

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

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

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

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

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

- (e) whether any inducement has been offered to the person to give the evidence sought; and
- (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under subsection 9(1) or subsection 9(4) of the *DPP Act*.

- 7.5 Any undertaking given by the Director will generally be subject to the condition that the recipient of the undertaking will give evidence as and when called to do so, and that any evidence the person is called upon to give will be given truthfully, accurately and on the basis that the person will withhold nothing of relevance.
- 7.6 Requests for consideration of the giving of an undertaking will usually come from the police. Where such a request is made, the Director should be provided with a full copy of the brief of evidence against the principal offender, a copy of the brief or other material against the proposed witness, a full and frank statement signed by the proposed witness, and a comprehensive report adverting to each of the standard indemnity criteria, as listed above. Given that undertakings will rarely be given, it is prudent for investigators to consult with the Director as soon as practicable if they intend requesting an undertaking for a potential witness in criminal activity under investigation.
- 7.7 Where an accomplice receives any concession from the Director in order to secure their evidence, for example, whether as to choice of charge, or the grant of an undertaking under the *DPP Act*, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court and to the defence.

8. VICTIMS OF CRIME

- 8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the *Victims of Crime Act 1994* as well as the Director's Instruction Nos. 1, 2, 7, 13, 14.1 and 14.2 outlining victim's rights in relation to particular prosecutorial decisions.
- 8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses and be given an explanation of the outcome of criminal proceedings, including of any sentence and its implications. Victims must be informed of the outcome of finalised court proceedings in a timely fashion.
- 8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.

- 8.4 A number of agencies which exercise a function in the administration of justice are responsible for ensuring these principles are adhered to, including the DPP, police, and victim support agencies. Those agencies must work together in a complementary way.
- 8.5 Consideration must be given from the early stages of contact with the victim, and/or their families, to involvement in the case by the witness assistance service of the DPP. In all appropriate cases, victims should be advised of this service and where necessary referred to it.
- 8.6 Victims may make victim impact statements pursuant to Part 4.3 of the *Crimes (Sentencing) Act 2005*. Prosecutors should ensure that the opportunity to prepare an adequate victim impact statement has been given, and that when one is prepared it contains relevant material to assist the court in the sentencing process. They must also ensure that victims are aware of their right to present the statement as a written statement or as a statement to be given orally in court.

9. PUBLICATION OF REASONS

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

10. PROSECUTOR'S DUTIES UNDER THE ACT BAR RULES

- 10.1 Crown Prosecutors and Senior Prosecutors will hold Practising Certificates issued by the ACT Bar Association. This policy incorporates aspects of the ACT Bar rules.
- 10.2 A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.

- 10.3 A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
- 10.4 A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
- 10.5 A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
- 10.6 A prosecutor must disclose material in accordance with paragraph 4 ('Disclosure') of this policy.
- 10.7 A prosecutor who has decided not to disclose material to the opponent, as required under subparagraph 10.6 of this policy, must consider whether:
- (a) the defence of the accused could suffer by reason of such nondisclosure;
 - (b) the charge against the accused to which such material is relevant should be withdrawn; and
 - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 10.8 A prosecutor must call as part of the prosecution's case all witnesses:
- (a) whose testimony is admissible and necessary for the presentation of all of the relevant circumstances;
 - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
 - (c) whose testimony or statements were used in the course of any committal proceedings; and
 - (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case unless the opponent consents to the prosecutor not calling a particular witness;
- and except where:-
- (e) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused;
 - (f) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses; or
 - (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused; provided that:-

- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g) together with the grounds on which the prosecutor has reached that decision.
- 10.9 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
- (a) inform the opponent if the prosecutor intends to use the material; and
 - (b) make available to the opponent a copy of the material if it is in documentary form.
- 10.10 A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
- 10.11 A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
- 10.12 A prosecutor who has informed the court of matters within subparagraph 10.11 of this policy, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
- 10.13 A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- (a) must correct any error made by the opponent in address on sentence;
 - (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence; and
 - (c) must assist the court to avoid appealable error on the issue of sentence;
 - (d) may submit that a custodial or non-custodial sentence is appropriate; and
 - (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority
- 10.14 A barrister who appears as counsel assisting an inquisitorial body such as the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with subparagraphs 10.2, 10.4 and 10.5 as if the body were the court referred to in this policy and any person whose conduct is in question before the body were the accused referred to in subparagraph 10.4.

Appendix B

Director's Instruction No. 14.1 – Review of a Decision to Discontinue a Prosecution

Background

Under applicable instructions,⁴⁰ a decision to discontinue a prosecution or significantly amend a statement of facts must not be taken without first consulting the complainant (with child complainants, this includes the parent or guardian).

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

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

Procedure for review of a decision to discontinue

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

The procedure is:

- › The prosecutor consults the complainant and records their views.
- › If the complainant is opposed to the discontinuation of the matter, the prosecutor is to inform the complainant that, if a decision is made to discontinue, they may ask that the decision be reconsidered by the DPP.
- › The prosecutor prepares a recommendation on discontinuance to the relevant Deputy Director, which sets out all material matters including the views of the complainant.
- › If a decision is made to discontinue the matter, then a record of the decision and the reason for it is made.
- › If a complainant has indicated dissatisfaction with the decision, then the matter will be reviewed by the Director (this may be an automatic review or a review at request: see Director's Instruction 14.2 - Reviewable Decisions to Discontinue – Contact with Complainants, Review Processes and Auditing).

⁴⁰ Director's Instruction No. 1: Discontinuing Prosecutions and significantly amending Statements of Facts in the Supreme Court; and Director's Instruction No. 2 - Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court.

- › In reviewing the decision, the Director will take into account the views of the complainant, the reason for the decision and any other material matters that are relevant including any matters relevant from the brief of evidence.

Audit of compliance

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

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

Appendix C

Director's Instruction No. 14.2 – Reviewable Decisions to Discontinue – Contact with Complainants, Review Processes and Auditing

Aim of Instruction

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

DPP complaints and oversight mechanisms

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

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

41. *Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.*

42. *Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.*

43. *Each Australian Director of Public Prosecutions should publish the existence of their complaints mechanism and internal audit processes and data on their use and outcomes online and in their annual reports.*

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

This Instruction should also be read in line with:

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

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

Application

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

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

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

A reviewable decision **does not** include:

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

A reviewable decision does not include a decision not to bring proceedings involving a complainant. However, where the Office has provided an opinion to an investigative agency

that no charge/s are to be laid in a matter, that opinion is a reviewable decision subject to the agency requesting a review in its own right, or on behalf of a complainant.

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

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

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

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

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

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

Type of prosecution	Type of review available
Homicide offence ⁴¹	Automatic review
Sexual offence ⁴²	
Serious violent offence ⁴³	
Less serious violent offence ⁴⁴	Review at request
Any other offence against an identifiable complainant named in the information	

Recommending a Discontinuance

1. Prosecutor with carriage of a matter considers that a reviewable decision should be made. This can be at own initiative, following defence representations, or a request by the complainant or informant.

⁴¹ A 'homicide offence' includes any offence where the death of a person has occurred.

⁴² The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 41.

⁴³ The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 40.

⁴⁴ The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 39.

2. Prosecutor fills out a **RORD** (Record of Reviewable Decisions) on CASES.

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

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

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

3. Prosecutor saves all supporting documentation for RORD into Folder 22 on CASES.
4. Prosecutor sends RORD to supervising lawyer:
 - › For FV offences – FV supervising lawyer;
 - › For sexual offences – SO supervising lawyer;
 - › For all other matters – supervising lawyer of team.
5. Supervising lawyer records recommendation in RORD, and sends this document by email (copying in the prosecutor) to:
 - a. for strictly indictable matters⁴⁵ – the Deputy Director Crown Chambers;
 - b. for summary/indictable matters, or summary-only matters⁴⁶ – the Deputy Director Criminal Practice.
6. Deputy Director records decision in RORD, including the reason/s for the decision.
7. Deputy Director sends email to prosecutor and supervising lawyer, advising of decision and obligation on prosecutor to contact the complainant, informant, defence, court and witnesses in accordance with this Instruction.
8. If the decision is to proceed, the prosecutor must advise the informant and the complainant.
9. If the decision is to discontinue, and the decision is subject to automatic review, go to 'Reviewing a discontinuance'.

⁴⁵ See *Crimes Act 1900*, section 375.

⁴⁶ See *Crimes Act 1900*, section 375 and *Legislation Act 2001*, section 190.

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

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

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

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

Reviewing a discontinuance

1. If the decision is subject to automatic review, go to step 3.
2. If the decision is subject to review at request, the complainant has 7 days to request a review of the decision from the time they were first informed of the decision.⁴⁷ The complainant may request a review either over the phone or by email.

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

3. If the matter calls for an automatic review, or a review is requested in accordance with this Instruction, this must be brought to the attention of the Director⁴⁸ **as soon as possible**. The prosecutor should provide the Director with the CASES reference (with all relevant documentation saved therein) and a copy of the brief of evidence.
4. The Director has 7 days to review the decision (depending on the timeframe of the matter),⁴⁹ having regard to the documents saved on Folder 22 in CASES (including the

⁴⁷ Depending on the court timetable, this timeframe may be shorter. If the request is received outside of this timeframe, the prosecutor should immediately raise this with the Director for further consideration.

⁴⁸ If the Director is unavailable, the matter should be reviewed by the Deputy Director, depending on who made the original decision.

⁴⁹ If a trial is listed to commence within 7 days of a decision to discontinue, the request for review must be made as soon as possible, as the timeframe for the review process will be shorter. In some cases, it may not be possible to review the decision before notice of the decision is communicated to the court. In those circumstances, the decision will still be reviewed by the Director, but the matter may not be able to be prosecuted.

file note documenting the complainant's views, the RORD and supporting documents and any request for review by complainant) and the brief of evidence. The decision will be considered in accordance with the Prosecution Policy.

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

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

5. Once the review is complete, the Director should record in the RORD whether the original decision is endorsed/not endorsed and notify the prosecutor and Deputy Director of the outcome.
6. The prosecutor must then contact the complainant to explain the outcome of review. If the decision to discontinue is endorsed, the prosecutor should inform the complainant prior to informing the court, and should offer the complainant the right to both:
 - a. discuss the reasons for the decision with the Director in person (in the presence of a Witness Liaison Officer or support person, if desired);and
 - b. receive a letter containing the Director's written reasons for the decision (which must be requested within **14 days** of the final decision being communicated to the complainant).⁵⁰
7. If written reasons are requested for the decision, the Director should:
 - a. Provide written reasons to the complainant within **14 days**;
 - b. Consult with any allocated Witness Liaison Officer prior to providing written reasons to the complainant;
 - c. Ensure that written reasons are not provided in circumstances where:
 - i. statutory or other restrictions prohibit or limit the release of such information;
 - ii. the giving of reasons may affect a related case (for example, the prosecution of a co-offender) which is before the court.
 - d. If the circumstances in 7(c) are present at the time of the request, the request should remain under active review, so that if and when the circumstances are no longer applicable, further consideration may be given to the provision of reasons at that time.

⁵⁰ If the request is received outside of this timeframe, the prosecutor should immediately raise this with the Director for further consideration.

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

Audit of compliance

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

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

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

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

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

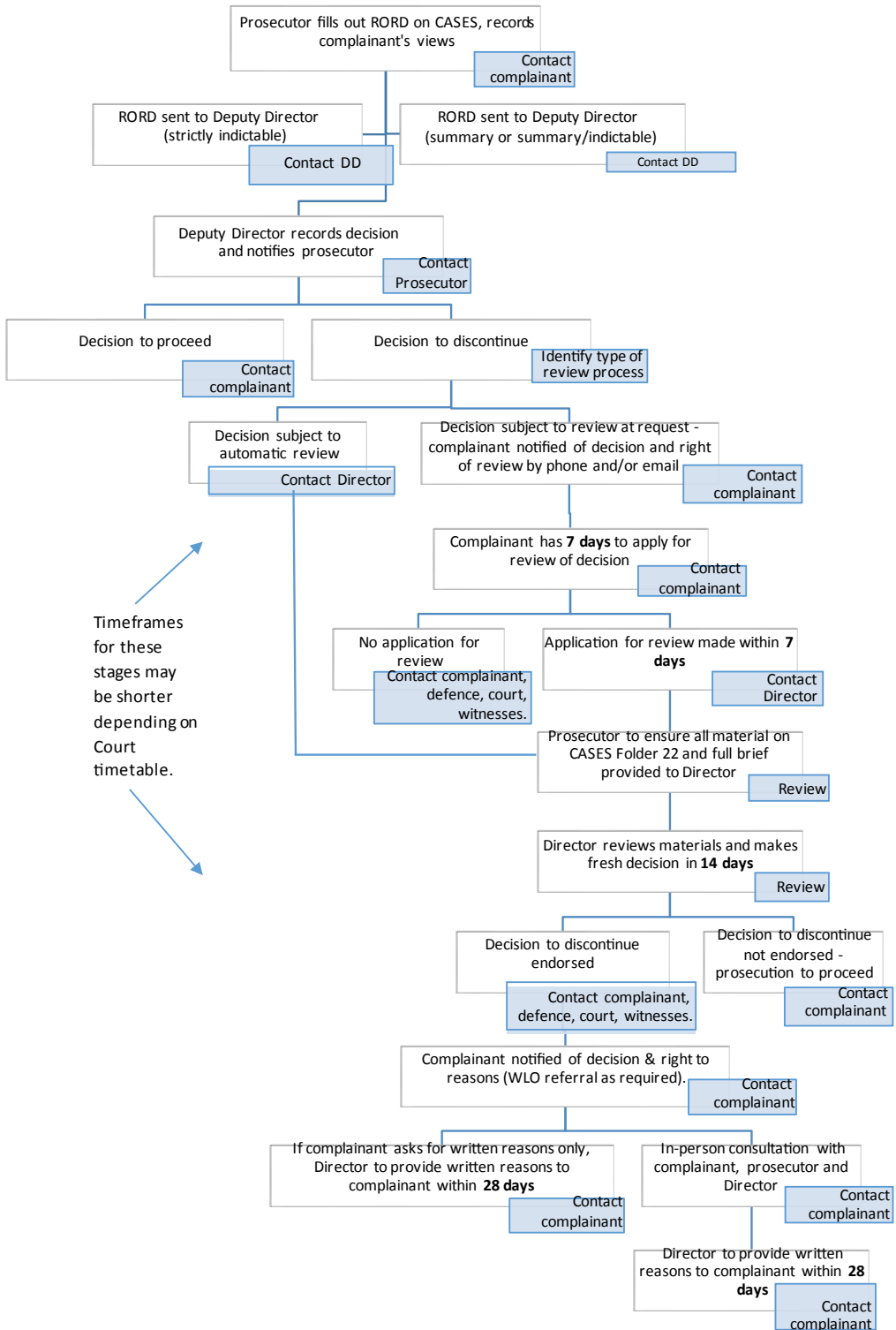
The results of the audit should be recorded on the 'Internal RORD Audit Form', which must be placed on the file. If, during the audit, it is discovered that the procedure undertaken in relation to a reviewable decision was not followed in accordance with this Instruction, the Audit Committee must review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

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

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

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

Reviewable decisions flow-chart



Appendix D

Audit Report on Legal Compliance of Procedures Relating to Reviewable Decisions⁵¹

Audit Report on Legal Compliance of Procedures relating to Reviewable Decisions

Shane Drumgold SC
Director of Public Prosecutions, ACT

Pursuant to *Director's Instruction 14.2 on Reviewable Decisions*, an audit committee comprising myself, Joanne Smith and Anita Cvetkovski, conducted an internal audit of the records of all reviewable decisions to discontinue prosecutions made between 1 July 2020 to 30 June 2021.

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

The attached document, the *Record of Reviewable Decisions - Audit 2020-2021*,

- shows that there were 81 reviewable decisions in the financial year ended June 2021;
- describes the type of offences of these reviewable decisions;
- the level of compliance with the procedures in *Director's Instruction 14.2*;
- provides a breakdown and summary of any compliance issues if any;
- compliance/all options explored were met in all 81 matters.

This Audit Report is prepared solely for the purposes of the Office of the Director of Public Prosecutions' 2020-2021 Annual Report.

For the purposes of this Audit Report, the Audit Committee was appointed by the Director at the end of the 2020 - 2021 financial year on 12 August 2021, and held three separate meetings on 19 August 2021, 24 August 2021 and 27 August 2021 to conduct the required examination of documents against the relevant procedures in *Director's Instruction 14.2*.

30 August 2021

Date



Katie Cantwell
Audit Team Leader
Office of the Director of
Public Prosecutions, ACT

⁵¹ This audit report refers to the record of decisions that have been automatically reviewed by the ODPP over the financial year.

Appendix E

Record of Reviewable Decisions - Audit 2020-2021⁵²

No	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
1.	L.A	201914881	Common assault	YES	Matter finalised
2.	A.A	202016669	Stalking	YES	Matter finalised by way of plea to one charge
3.	A.A	202111967	FV – Assault	YES	Matter finalised
4.	E.A	202013166	Theft	YES	Matter finalised
5.	L.B	201810120	Assault	YES	
6.	P.B	202015724	Common assault/ aid abet minor theft	YES	Matter proceeding with remaining minor theft charge
7.	J.B	201912936	Assault	YES	Matter finalised
8.	B.B	202110440	Damage property	YES	Matter finalised
9.	C.B	202015836	Theft/ common assault	YES	Matter proceeded with remaining charge
10.	K.C	201910832	FV – assault/ property	YES	Matter is finalised
11.	K.C	202014813	Theft	YES	Matter finalised
12.	A.C	202014691	Assault/FV	YES	Decision was made to proceed with this matter
13.	S.C	202016236	MV offences	YES	Matter finalised
14.	E.C	201913937	MV	YES	Matter finalised
15.	E.C	202011088	Assault	YES	Matter finalised
16.	R.C	202016480	Aggravated robbery	YES	Matter is still proceeding on an additional charge - common assault
17.	S.D	202011671	Theft	YES	Matter finalised
18.	T.B	202110238	FV – Contravene order	YES	Matter finalised
19.	M.E	202110863	FV – Contravene order	YES	Matter finalised

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

No	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
20.	D.F	202110178	Assault	YES	Matter proceeding on remaining charges
21.	I.F	202014932	FV – assault	YES	Matter finalised
22.	S.F	202015883	Burglary etc	YES	Matter finalised in part – some charges referred to DASL
23.	D.G	202014752	Theft/burg	YES	Matter finalised
24.	J.G	202011906	Drug offences	YES	Matter is still proceeding on other charges
25.	M.H	202015665	RIGBH/ possess knife	YES	RIGBH charge was discontinued – remaining possess knife charge remitted to Magistrates Court
26.	J.H	201915647	FV- Assault	YES	Matter finalised
27.	J.H	202013311	Theft/traffic offences	YES	Matter finalised
28.	S.H	201614498	Obstruct public official	YES	Matter finalised
29.	R.H	202012515	Contravene order	YES	
30.	C.H	202016031	Property offences	YES	Matter was discontinued
31.	J.H	202016235	MV offences	YES	Matter finalised
32.	B.H	202016202	Drug/Traffic matters	YES	Matter proceeding on other/ alternative charges
33.	S.J	202015206	Common assault	YES	Matter finalised
34.	M.J	202014212	Damage property	YES	Matter proceeded with remaining charge.
35.	H.J	202015312	FV-AOABH	YES	Matter finalised
36.	A.K	201913392	Theft	YES	Matter is finalised
37.	M.K	202012239	FV – assault/firearm charges	YES	Matter finalised/assault charges withdrawn, proceeded on firearm charges
38.	K.K	202110036	MV/Weapon	YES	Matter proceeding on other charges
39.	D.K	202014622	FV – AOABH	YES	Matter finalised

No	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
40.	E.K	202013987	Firearm charge	YES	NDTP
41.	K.L	202013780	Traffic offences	YES	Matter finalised
42.	D.M	202112181	FV Assault	YES	Matter finalised
43.	J.M	202012599	Unlawful entry/burg	YES	Matter has been finalised
44.	D.M	202013427	FV- AOABH	YES	Matter finalised
45.	W.M	202015190	Burg/trespass	YES	Matter finalised
46.	J.M	202016232	Robbery/assault	YES	Matter finalised
47.	T.M	202011481	FV – Breach FVO	YES	Matter is finalised
48.	D.M	202010942	Ride/MV w/out consent	YES	Matter finalised
49.	J.M	202015344	Traffic matters	YES	Matter proceeding on other charges
50.	J.M	202016141	Property offences	YES	Matter proceeding on other charges
51.	J.M	202016141	Joint commission theft/property/assault	YES	Some charges still proceeding
52.	D.M	202110751	FV – Assault	YES	Matter finalised
53.	M.M	201916308	Assault/theft	YES	Matter finalised
54.	B.M	202016154	Joint commission theft/property/assault	YES	Some charges still proceeding
55.	T.M	202016322	Joint commission theft/property/assault	YES	Some charges still proceeding
56.	M.N	201915347	FV - assault	YES	Matter is finalised
57.	D.O	202016029	Property offences	YES	Matter was discontinued
58.	C.P	202012206	Burg/act of indecency	YES	Matter finalised
59.	D.P	202011724	Contravene order	YES	Matter finalised
60.	B.P	201913425	FV – Damage property	YES	Matter finalised
61.	B.P	202016555	Property offences	YES	Matter was discontinued
62.	C.P	202110669	Assault	YES	Matter finalised

No	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
63.	D.Q	202013796	Sexual assault	YES	Matter finalised
64.	R.R	202016782	MV offences	YES	Matter finalised
65.	P.R	201718253	Theft	YES	Matter finalised
66.	P.R	199634392	Robbery	YES	Matter withdrawn
67.	J.S	202016068	FV- Contravene order	YES	Matter finalised
68.	L.S	202010752	Ride/MV w/out consent	YES	Matter finalised
69.	A.S	202010479	Damage property	YES	Matter finalised
70.	J.S	202016171	Common assault	YES	Matter finalised
71.	D.S	202015821	Damage property	YES	Matter is finalised
72.	M.S	202016701	FV – assault and property charges	YES	Matter is finalised
73.	S.T	202012520	Contravene order	YES	
74.	Z.T	201915635	Burglary	YES	Matter continuing on amended facts in SC
75.	T.T	201911105	Theft etc	YES	Matter finalised
76.	C.W	201911985	FV – assault	YES	Matter finalised
77.	B.W	202014680	Ride/drive m/v w/ out consent	YES	Matter is finalised
78.	D.W	202015834	Theft	YES	Additional charges proceeding through DASL
79.	B.W	202016030	Property offence	YES	Matter was discontinued
80.	D.W	201915637	Property offences	YES	Matter is still proceeding on other charges
81.	T.W	202014164	FV – Assault charges	YES	Matter finalised

Katie Cantwell
 Audit Team Leader
 30 August 2021

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