



ACT
Government

DIRECTOR OF PUBLIC PROSECUTIONS

ANNUAL REPORT 2016-2017





Ethos: the spirit of the community

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

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Glossary

Acronyms

AFP	Australian Federal Police
CASES	name of the case management system of the Office
DPP	Director of Public Prosecutions
DVCS	Domestic Violence Crisis Service
FTE	full time equivalent employees
FV	family violence
JACS	Justice and Community Safety Directorate
VSACT	Victim Support ACT
WAS	Witness Assistance Service

Technical Terms

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

Director's Overview

In the face of well documented critical resource issues, this year an independent report was commissioned to provide a Strategic Review of the operations of the Office. The review, conducted by the Nous Group, was the first such independent review ever conducted into the Office. The results were revealing, and the report will provide a constructive framework for government to deal with the resourcing and governance issues for the Office.

The review found that the Office was performing well to meet the pressures placed on it by the criminal justice system. ACT DPP performs more functions overall than any other DPP state or territory. Not only that, but the ACT DPP is relatively efficient when compared with DPP's in other jurisdictions. However, the Office has had to deliver these functions without an increase in resources that matched its operating environment. In particular the DPP does not have enough senior prosecutors to keep up with the trends of increasing workload on complex criminal matters. Further, within existing resources, it is difficult for the DPP to recruit and retain senior prosecutors.

The pressures on DPP resources are well documented. As the ACT population has grown, so has the volume of Supreme Court trials the DPP must manage. On top of that, the increasing complexity of indictable matters compounds the pressure from increased trial volumes. Prosecutions for sexual offending, numbers of which have greatly increased, are invariably complex for a range of reasons, including the need for pre-trial evidence and pre-trial applications, the need for expert evidence, and issues around consent. The increasing complexity of trials is reflected in an upward trend in the amount of time prosecutors spend in court on criminal trials. This is compounded by the large number of late pleas of guilty in trial matters. Data on the number of trials or days in court does not capture the work done preparing for a trial which does not proceed due to a late guilty plea. The issue of late pleas is specifically referred to elsewhere in this report.

There is an element also of pressure from changes in community expectations. As has been well documented in previous annual reports, government has at the urging of this Office responded to community expectations for the justice system to be more accommodating of the needs of witnesses with special vulnerabilities. Of course, those sensitive matters require a specialist approach from the DPP. As documented elsewhere in this report sexual offences and family violence matters are increasing at significant rates. Such matters require not only greater sensitivity by DPP prosecutors and witness assistants, they also require greater resources.

Decisions by government to fund other parts of the justice system without any concomitant increase in resources available to the DPP have also, as predicted, started to have a significant impact. I warned some years ago of the consequences to the resources of my Office of appointing additional judicial resources. It is a matter of great regret that those warnings were not heeded, and additional resources to meet the increased needs have not flowed through to my Office. The impending opening of the new Supreme Court, which is expected early in 2018, will exacerbate the situation greatly. Put simply, the capacity of the courts to hear more matters will overtake my Office's capacity to prosecute them. This will be particularly acute in relation to jury trials. The Supreme Court's capacity to hear concurrent jury trials will be greatly increased, however I will have no capacity to meet that increase without a significant increase in resources.

The recommendations of the independent strategic review are clear. There needs to be an immediate increase in resources for the DPP followed by greater funding over the long term to meet the increasing number and complexity of trials. As well, the DPP should be provided with greater financial independence and governance. Again this is a matter I have referred to repeatedly in annual reports since the recommendation in the Hawke report that the DPP be separately appropriated.

I can only hope that at long last my plea for additional resources will be met. The ACT community has every reason to be proud of its prosecution service. But that service cannot continue to prosper when additional resources are provided to every other part of the justice system, but not to it.

The Royal Commission into Institutional Responses to Child Sexual Abuse released its long-awaited criminal justice report just after the end of the reporting period. This Office has been an enthusiastic participant in Royal Commission proceedings. The criminal justice report represents a once in a generation opportunity to right some terrible wrongs in the Australian criminal justice system. As such the release of the report provides an invaluable opportunity to reflect on the current state of the ACT criminal justice system and its handling of child sexual abuse cases, and to consider the need for law reform to facilitate greater justice for victims, offenders, and the broader community.

I will not canvass all of the recommendations of the Royal Commission. Broadly, the recommendations for law reform cover reform to offences, reform in the area of sentencing and appeals, reform to judicial directions, and recommendations for additional special measures for victims of child sexual abuse giving evidence.

The recommendations of the Royal Commission are all rigorously evidence-based. For example the Royal Commission has conducted consideration of jury reasoning utilising real jury panels. It has considered issues such as the impact of delayed reporting on the prosecution of child sexual abuse cases, and the way in which evidence is elicited from victims of sexual abuse. In doing so it has had access to some of the best advice from psychologists and child welfare experts from Australia and indeed around the world.

The recommendations of the Royal Commission deserve to be widely considered. Given the DPP's unique position in working closely with victims and prosecuting such matters I feel it is appropriate that I should make comment upon the recommendations to the government, and I have done so. It is to be hoped the government will seize the opportunity presented by this groundbreaking report to reform the law without delay.

Jon White SC
Director of Public Prosecutions

A. Transmittal certificate



6 October 2017

Mr Gordon Ramsay MLA
Attorney General
Legislative Assembly
CANBERRA ACT 2601

Dear Attorney,

ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2017.

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

I certify that the attached Annual Report, and information provided for whole of government reporting, is an honest and accurate account and that all material information on the operations of the Office during the period 1 July 2016 to 30 June 2017 has been included.

I hereby certify that fraud prevention has been managed in accordance with the *Public Sector Management Standards 2006*, Part 2.

Section 13 of the *Annual Reports (Government Agencies) Act 2004* requires that you cause a copy of the Report to be laid before the Legislative Assembly within 15 months of the end of the reporting year.

Yours faithfully



Jon White SC
Director of Public Prosecutions

ACT DIRECTOR OF PUBLIC PROSECUTIONS

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B. Organisational Overview and Performance

B.1 Organisational Overview

The role and functions of the Office

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

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

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

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

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

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

The principal duties of the Director are:

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

The Director has some important statutory functions, including:

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

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

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

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

The organisation

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

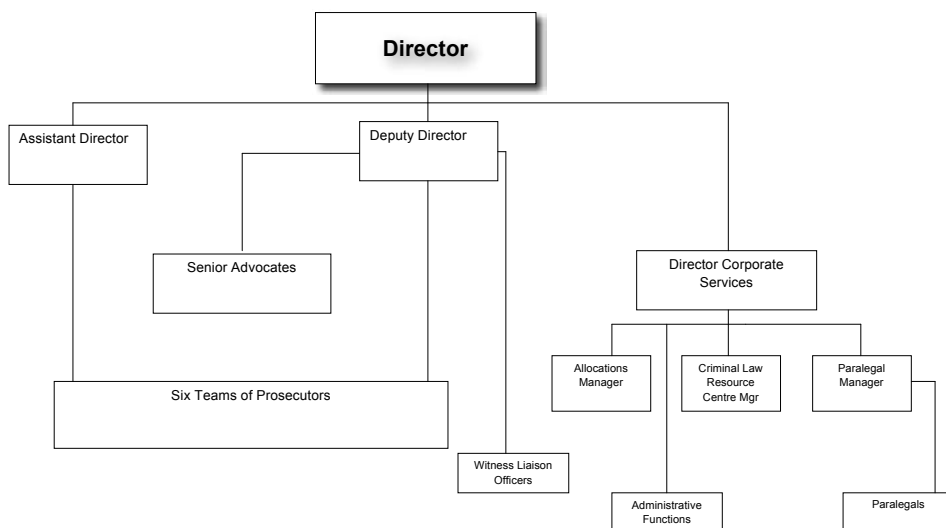
The ACT Remuneration Tribunal determines the remuneration of the Director and senior executive staff from time to time. The Director or executives may make submissions to the Tribunal on those matters.

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

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

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

The Office structure during the reporting period was as follows:



Summary of performance

During the reporting period the Office's achievements included:

- prosecution of a number of difficult and high profile trials in the Supreme Court;
- continuing a significant contribution to law reform, particularly in the areas of sexual offending and family violence;
- prosecuting large numbers of Supreme Court trials and appeals to the Supreme Court and Court of Appeal;
- instituting a health and wellbeing program involving the appointment of a specialist psychologist with particular skills in law enforcement issues to provide counselling and support to all staff;
- providing high quality in-house training to prosecutors in an environment of tight resources;
- liaising with Courts to ensure efficient listing practices;
- consolidating the move to the electronic presentation of evidence.

Outlook

The outlook for the Office continues to be clouded by serious resourcing issues. An increase in the number of Supreme Court judges, and critically, an increase in the number of jury rooms available to cater for trials when the new court complex opens, allied with an increase in the number and complexity of matters, continues to put pressure on the Office in an environment of decreasing resources in real terms. A restriction on non-core activities such as contributing to law reform is unavoidable. Without proper resourcing, pressure will also fall on core activities.

The priorities for the coming year include:

- working with government to deliver upon the recently completed Strategic Review into the Office;
- implementing the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse, in particular in criminal law reform, evidence and procedure, and interactions with victims;
- working with the Courts and the profession to resolve the problem of late pleas of guilty;
- responding to an expected increase in COCA applications from the AFP;
- working with the Magistrates Court to improve listing procedures and hearing processes, in particular to ensure that block listing of Magistrates Court matters takes place outside intensive listing periods in the Supreme Court, to abolish family violence case management hearings, and to decrease the number of lists so that the core business of the Court, the hearing of matters, can be given priority;
- implementing the new laws for evidence in chief interviews for sexual and violent offences;
- working towards 100% electronic brief handling and case preparation;
- within an environment of restricted resources and time pressures, to provide appropriate training and professional development to lawyers and paralegals within the Office.

B.2 Performance Analysis

Superior Courts

There was a significant increase in the volume and complexity of superior court work during the year. 62 trials were conducted in the Supreme Court, a significant increase of 22% compared to the last year. 23 of the trials were sexual offence trials.

The increase in trials is underpinned by an increase in the number of serious charges. The following table shows the number of trials conducted in the past five years:

Year	2012/2013	2013/2014	2014/2015	2015/2016	2016/2017
Trials	72	65	49	47	62

As reported in previous annual reports the high numbers for 2012/2013 reflected the tail end of the blitz held in the Supreme Court in 2011/2012. In 2011 there were amendments to the jurisdiction of the Magistrates Court which led to offences of five years or less being able to be kept in the Magistrates Court. In the Annual Report of 2010/2011 I stated that it was expected that this change would significantly reduce the numbers of straightforward matters being committed for trial. As can be seen from the above table, this in fact did occur for the financial years 2014/2015 and 2015/2016. However the reduction in the number of trials has been relatively short lived, and it can be seen from this year's figures that the number of trials is climbing significantly.

The number of trials actually conducted is only part of the picture. As can be seen by the next table, in many matters committed for trial and given a trial date, the accused changes their plea to guilty prior to the trial commencing. The largest percentage of change of plea takes place within one week of the trial date, when the bulk of the work has already been done by the prosecutors, paralegals and our corporate area.

Pleas of Guilty after Committal for Trial - 1 July 2016 to 30 June 2017

Pleas of guilty after committal for trial	Trials listed	Total Matters Subpoenas issued	Plea of guilty on day of trial	Plea of guilty within 1 week of trial	Plea of guilty within 2-4 weeks of trial	Plea of guilty more than 4 weeks before trial
64	46	42	7	19	13	7

Note: Plea of guilty after committal for trial shows all matters that were committed for trial following a plea of not guilty, where the plea was changed to guilty after committal. Where subpoenas have been issued in these matters it is a general indicator that most of the preparatory work has been completed.

Late pleas of guilty are a cost to the criminal justice system, and a problem that bedevils all jurisdictions. The criminal trial listing periods introduced by the Chief Justice of the Supreme Court in 2013 have improved the efficiency of the Supreme Court. Having an early and definite trial date focuses both parties' attention. Earlier consultation between this Office and lawyers representing accused persons could increase the number of matters where pleas are entered at an earlier stage. This Office encourages defence lawyers to engage in early consultation with this Office to ensure where a plea of guilty is going to be entered, it is entered early. This is a better outcome for all involved, particularly victims of crime and their families.

The resources put into preparation of trials that resolve in pleas of guilty highlights that what goes on in court is really only the tip of the iceberg. There are days and weeks of preparation before and during the trial.

The numbers for those sentenced either after a plea of guilty or after breach (156) increased by 17% from the previous financial year (130), again another significant increase in light of no increase in prosecutor resources. This increase mirrors the increase in the number of trials.

This upward trend looks set to continue into the current financial year: in the reporting year 212 matters were committed to the Supreme Court from the Magistrates Court and the Children's

Court. This is a significant increase of 33% on the previous financial year where 160 matters were committed. Many of the matters committed will be finalised in the Supreme Court in the current financial year and we can therefore expect the numbers of trials and sentences to increase further.

There has been a significant increase in the number of prosecutor days in court in trials, sentences and pre trial applications. One of the reasons for the increase in pre trial applications is the increased use of applications to lead tendency evidence. This Office is proactive in making such applications, particularly in child sexual offence trials. This trend will only continue. In this context it is noted that the Royal Commission into Institutional Responses to Child Sexual Abuse in its recently tabled criminal justice report has made a number of recommendations to facilitate the admission of tendency evidence in child sexual offence prosecutions.

A significant change to the way evidence is given in sexual offence and violent offence proceedings commenced on 1 May 2017. The *Family Violence Act 2016* introduced provisions into the *Evidence (Miscellaneous Provisions) Act 1991* which permit the use of police interviews as evidence in chief for complainants in sexual offence and violent offence proceedings. Previously, these provisions applied to child witnesses only. What this means is that once a complainant in a relevant offence tells the police what happened, they will not have to repeat it again and again, including in court proceedings. The audio visual recording of the interview with specially trained police asking questions is played at the trial. The complainant can then be cross examined in the usual way from another room or another location via audio visual link. The new provisions will also apply to interviews conducted prior to 1 May 2017. Two sexual offence trials were held in May and June 2017 using these new provisions, and in both the complainant's interview with police was played to the jury as the evidence-in-chief. The coming year should see a much greater utilisation of these new and welcome changes. While all Australian jurisdictions permit children to give evidence this way, the ACT is only the second jurisdiction in Australia to legislate for these provisions to be extended to adult complainants. While these changes are very welcome they will inevitably increase prosecutor days in the Supreme Court as many of these matters will now require pre trial applications to deal with editing of the interviews. These can be time consuming both in terms of preparation time (requiring detailed written submissions where contested) and in court time. The increased strain on already stretched resources will be a considerable challenge.

Indeed, while this Office is at the cutting edge in developments in evidence law and how evidence is led, the future capacity of this Office to continue to do this is dependent on resources matching the increased work load, both in terms of sheer numbers of matters before the Supreme Court and in terms of the increase in the complexity of matters.

This Office continues to absorb ever increasing amounts of work in the Supreme Court with no commensurate increase in prosecutor and other resources. There were extensions of each of the criminal trial listing periods this year, in some cases to eight or nine weeks. This has meant that the Office was in a position to provide sufficient prosecutor resources to cover all the trials that were listed, however this may not be the case in the future. As raised in last year's annual report, the appointment of a fifth Supreme Court judge was not matched by any increase in the resources of this Office. As predicted, the appointment of a fifth judge has placed a considerable extra burden on this Office. The increase in jury court capacity in 2018 (from three jury courts to five) will place further burdens on this Office.

Appeals

In relation to appeals, there were 44 appeals to the Court of Appeal, an increase of 33% from the previous year. Eight of the appeals were Crown appeals from decisions of the Supreme Court. There were 64 appeals to the Supreme Court from the Magistrates Court.

New appeal procedures for the Court of Appeal were promulgated by the court at the end of 2016. These procedures include new time frames for the lodgement of documents and significant changes to the documents that must be filed with the court by the parties. Appeal books containing the entire transcript and all tendered exhibits will no longer be filed. Transcripts of the original proceedings are provided to the court electronically and parties will be required to provide only the relevant material they rely on to the court. These new requirements took effect in the reporting period. These new procedures depend on appellants preparing their documents earlier, and notifying the court if they are not going to comply with required time frames. To date appellants (other than this Office) have been delinquent in their compliance with these new requirements. It is hoped that legal practitioners get on board with the new procedures, with the active encouragement of the court.

The Office continues to have an active presence in the High Court. The High Court granted special leave to the Office to appeal a Court of Appeal decision quashing a conviction: *Holliday v The Queen* [2016] ACTCA 42. The appeal involved the consideration of the construction of the Criminal Code insofar as it relates to the offence of procuring an offence. The hearing was held before the Full Court in Sydney in June 2017. On 6 September 2017 the High Court dismissed the appeal.

Summary courts

There was a fairly significant increase in matters finalised in the Magistrates Court (4189, up 9% on the previous year). Family violence matters in both the Magistrates Court and the Childrens Court, which had increased sharply last year, continued in high numbers. Further details of the practice of the family violence team are included later in this report.

The Magistrates Court is known as the Galambany Court when it sits to provide circle sentencing. This is the step in a sentencing proceeding for an Aboriginal or Torres Strait Islander offender which includes members of the Aboriginal or Torres Strait Islander community. This Office continues to assist the Galambany Court in circle sentencing.

After many years of urging from this Office and other quarters, the Magistrates Court has now fairly enthusiastically embraced “block listing” of hearings whereby matters are “over listed” in blocks, in the expectation that many will result in pleas of guilty, with the remainder able to be heard. The matters in such block lists tend to be fairly straightforward hearings conducted by more junior prosecutors. The Office also rosters on a senior prosecutor to oversee the distribution of hearings to prosecutors, and to negotiate pleas of guilty and so on. Block listings are a much more efficient way of listing matters, and have the effect of bringing hearings on earlier. The next step in the block listing process is to include block listing of family violence matters. Early hearing of these matters is particularly important, as it is not uncommon for the complainant and defendant to still be in a relationship or even living together despite the pending hearing, and it is in everyone’s interest that these matters be resolved as speedily as possible.

With the introduction of block listing in the Magistrates Court as a permanent feature, we now have intensive listing periods in both the Supreme Court and the Magistrates Court. The Magistrates Court has hitherto been cooperative in arranging block listing periods in times when the Supreme Court intensive listing periods were not listed. However the Magistrates Court has indicated that they propose to block list matters at times when the Supreme Court is also engaged in intensive listing. The Office simply cannot accommodate both of these listings taking place at the same time within existing resources. This has been pointed out to the Magistrates Court and is no doubt readily apparent in any event. It is not just this Office that will have difficulties – the Legal Aid office and private defence practitioners will also be stretched beyond breaking point if both intensive listing periods take place at once. It is hoped that sanity will prevail and that the Magistrates Court is able to coordinate its block listing hearings with the Supreme Court listings. If not, then clearly priority will have to be given to the Supreme Court.

This Office continues to try to work with the Magistrates Court to make listings in that Court more efficient. The central business of the Court should be the determination of hearings. The number and complexity of plea or mention lists, which should take a subsidiary role in the business of the Court, is in fact increasing. This is in marked contrast to the way such matters are dealt with in other jurisdictions, where in summary courts plea and mention lists are subordinate to the main business of the Court. This Office will continue to work in conjunction with the Legal Aid office and the private profession to increase the efficiency of the Magistrates Court listings for the benefit both of individual defendants and the community as a whole.

Paralegals

During the 2016/2017 reporting year, the paralegal section, building on the work previously reported around the establishment of professional qualifications for paralegal staff, has undergone further changes to improve the support provided to legal staff in the office.

A more structured in-house training plan has been put in place and the Office has also employed casual staff to help with the overflow of work. We are continuing to focus on cross training to ensure that all paralegals within the Office have an understanding of each of the roles.

Senior paralegals continue to prepare all matters at first mention stage. This is beneficial to both legal staff and the paralegals as it provides the legal staff with more time to prepare for their more detailed and time consuming matters, and gives the paralegals a greater understanding of legislation and enhances their skills.

The paralegal training program which has been in place over a number of years is now demonstrating tangible improvements in legal knowledge and the quality of the work output from the paralegal cohort.

Sexual Offences Unit

The sexual offences unit continues its work as a specialist team that coordinates the prosecution of sexual offence matters within the Office, including sexual offences against children, and provides a central point of expertise in the Office.

The unit has initial carriage of all sexual offence prosecutions. A review is conducted of each new sexual offence matter to ensure that any issues are identified at an early stage in the prosecution. Trials, sentences, appeals and hearings are conducted by prosecutors throughout the Office. The sexual offences unit acts as a support for those prosecutors and ensures that there is consistency in the way in which these matters are prosecuted.

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

Sexual Offences All Matters - 1 July 2016 to 30 June 2017

Description	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual Offence matters commenced	81	9	46	136
Sexual Offence matters completed	66	8	52	126
Sexual Offence matters proved	18	6	36	60
Sexual Offence matters discontinued	2	0	2	4

The setting up of the unit in 2010 was a recognition of the need in sexual offence cases for early and sustained contact with complainants, continuity of prosecutor, minimal delays, and to ensure appropriate use of the special measures provided for as part of the legislative reforms of 2008.

On 1 May 2017, another significant reform came into force. From this day, the audio-visual recording of police interviews of adult sexual assault complainants and similar act witnesses became admissible in court proceedings. This is a major step forward in reducing the stress on these two classes of witness as they need only recount the events on one occasion. The records of police interviews have already been used as evidence in a number of court proceedings.

During the reporting period, the Office conducted 23 trials relating to sexual offences (five more than in the previous year) of which 12 resulted in guilty verdicts on one or more counts. Supreme Court results for the year were as follows.

Sexual Offences: Trials and Sentences in the Supreme Court - 1 July 2016 to 30 June 2017

Description		Matters
Trials		
Trials		23
Trial Outcomes		
Guilty Verdicts		12
Not Guilty Verdicts		10
Other		1
Awaiting verdict		
Sentencing Proceedings		
Accused sentenced after committal for sentence and after committal for trial/changed plea		18
Accused re-sentenced after breach		5
Total sentence proceedings		23
Notices declining to proceed further		2

Sexual assault matters have at their centre a power imbalance between the offender and the victim. Sometimes this imbalance is a function of physical strength, or the taking advantage of a disability or intoxication, but offences also arise out of the exploitation of a position of authority. A recent notable instance of the misuse of a position of authority was the case of *R v Hoyle*, which is the subject of a case report.

Prosecutors within the Office receive internal training and continuing legal education sessions on matters which are particularly relevant in the prosecution of sexual offences including relationship evidence, special measures, vulnerable witnesses and tendency evidence. All matters are prosecuted in-house, reflecting our commitment to building capacity and expertise among our prosecutors.

Prosecutors from the unit provide training to the AFP on a range of issues, including the implications of new legislative provisions.

The Witness Assistance Service (WAS) continues to work alongside the prosecutors from the sexual offences unit, acting as a bridge between vulnerable witnesses and their family members and prosecutors. Witness liaison officers continue to provide support and information to vulnerable witnesses to ensure they are able to understand and fully participate in court proceedings. While the WAS is not a counselling or social work service, the service performs a fundamental role in relation

to the prosecution of sexual offence matters. This includes an explanation of the court process to witnesses and making appropriate referrals to other agencies to ensure that vulnerable witnesses receive the support they require and the information they need.

Family Violence Team

The Office has a dedicated Family Violence unit with 6 prosecutors, supported by paralegals. The number of paralegals has increased from 2 to 4 this year, to meet the increased workloads of the Unit. The Unit manages each family violence prosecution as it proceeds through the court process and matters are allocated to a prosecutor early in the proceedings. This allows an earlier consideration of the police brief and discussions with defence by the responsible prosecutor.

The last Annual Report noted the significant increase in the number of new family violence matters, a 37% increase of matters commenced in that financial year. Numbers of FV matters commenced this financial year have plateaued (687 compared to 710 last year) however this is still a significant increase of the numbers in previous years. This year has seen an increase in the number of FV matters completed (681 compared to 637 last year). With increased community awareness and increased reporting of family violence, it is expected these high numbers of new matters will continue.

Significant statistics during the reporting period are:

Description	Magistrates Court	Childrens Court	Supreme Court	Total
FV matters commenced	630	38	19	687
FV matters completed	610	35	36	681
FV matters proved	502	28	22	552
FV matters discontinued	19	3	1	23

The continued high numbers of FV matters put pressure on the Office's resources and often hearings are conducted by prosecutors from outside the FV unit. Past funding increases to this Office related to family violence have been quickly absorbed by the sheer volume of family violence matters. The prosecution of a FV matter will typically involve more hours of preparation for a prosecutor compared to other types of crime. The prosecutor will often have early contact with the victim, liaise with other agencies (such as Domestic Violence Crisis Service) to obtain information needed to ensure the safety of the family is presented to the court in any bail application, and continued contact with the victim whilst the matter progresses through the criminal justice system.

It is not unusual for a FV victim to try to withdraw a statement previously given. FV victims are particularly vulnerable to pressure from the defendant, other family members or their community to discontinue proceedings. They are also under significant pressure when bail conditions mean the defendant is required to live elsewhere and contact with the defendant is prohibited or restricted. This has an impact upon the whole family and of course emphasises the need to expeditiously

resolve these matters. The majority of FV matters resolve with the defendant pleading guilty. The FV Unit resolves these matters ensuring that the charges to which the defendant will plead guilty and statement of facts clearly reflect the criminality of the conduct. The safety of victims and offender accountability are at the forefront of our considerations.

Last year I referred to the introduction of audio visual statements recorded by police shortly after a family violence incident takes place. The recording of the interview between the police and the complainant is then used as the evidence in chief of the complainant at the contested hearing. These recordings are known as Family Violence Evidence in Chief statements ("FVEIC"). The majority of new family violence matters now contain an FVEIC which enables both defendant and prosecution to be aware, immediately upon the commencement of the proceedings, of the complainant's evidence. Figures provided by the AFP indicate that there are a higher number of guilty pleas entered where the matter has a FVEIC compared to those matters where there is not.

The Office has now conducted a number of hearings where an FVEIC has been played as the complainant's evidence. It provides compelling evidence, particularly when the complainant provides inconsistent evidence at the hearing.

The Office continues to assist the AFP in training officers in the use of FVEIC's, as well as general family violence training to recruits. Members of the FV Unit attend conferences and training and work collaboratively to share ideas and knowledge about family violence issues and the prosecution of family violence offences.

The majority of FV matters are determined in the Magistrates Court which has a dedicated Family Violence List. However there has been a number family violence matters this year in the Supreme Court, including the trial of Al-Harazi for the murder of his wife (reported elsewhere), the sentences of Rappel for the murder of Tara Costigan, Vosikata for the murder of his ex-girlfriend and Lee for the murder of his step-father.

The following cases illustrate the complexities in typical FV prosecutions.

AD

The offender AD was charged with a series of offences including a burglary in 2013. The burglary occurred at the address of the offender's former wife and her partner. The offender's former wife had returned to her residence to discover that the bedding in the master bedroom had been disturbed and a number of items she had not seen before had been spread throughout the room. These items included a pair of 'g-string' style women's underpants, a partial condom wrapper and a sanitary pad wrapper. A window had been broken and a number of items belonging to her had been stolen although no items belonging to her partner had been stolen from the house. The offender's DNA was located on the woman's underwear that had been placed in the bed.

Although initially believing that she may have found evidence of her partner's infidelity, the victim then suspected the offender and reported the matter to police.

The following day the victim used a bottle of hair conditioner whilst showering only to discover that the contents of the bottle had been tampered with by the offender so that it now contained a corrosive substance. The use of this item caused some of the victim's hair to fall out.

After significant delays in the investigation and listing of the hearing, the matter proceeded to a contested hearing in the Magistrates Court held over several days. During the course of the hearing the prosecution made a successful application to lead tendency evidence, relating to an incident which occurred in NSW shortly before the subject offences. The NSW incident involved the offender installing a covert application on his former wife's mobile phone allowing him to control the functions of that phone and to monitor her movements.

All offences were found proved and the matter awaits sentence.

BS

As referred to above legislative amendments which allow the prosecution to play recorded police interviews with family violence complainants as their evidence in chief came into effect in May 2016. The first matter in which a FVEIC was used in a hearing occurred in October 2016.

The offender was charged with assault after pushing the complainant, his de facto partner, to the stomach after a loud argument in the early hours of the morning. Police attended their home just after 4am and took her statement by way of video recording.

In the video recording, the complainant demonstrated how the assault occurred, pointing out the location of the assault and her injuries to police. Her distress was readily apparent in her demeanour and the Magistrate was able to see the complainant describe what happened only minutes after the assault had occurred.

At hearing, the complainant gave evidence that was unfavourable to the prosecution resiling from the version given to the police in the video statement. This is not unusual in FV hearings especially where the relationship between the complainant and the offender continues. In this instance, the video greatly assisted the Magistrate in her ultimate finding of guilt. The Magistrate noted the assistance the FVEIC recording provided in finding the offence proved based on the version given to police at the scene.

Witness Assistance Service

The WAS continues to provide information and assistance to vulnerable witnesses during their dealings with the Office and the criminal justice system. The primary role of the Witness Liaison Officers who make up the WAS is to provide information to witnesses on the court process, information on and referrals to support services, and to act as a liaison point between prosecutors and witnesses.

The WAS assists in those matters where witnesses are identified as most vulnerable, with a primary focus on sexual offence and family violence matters, and those matters where a child is required to give evidence. While the WAS maintains a primary focus on such matters, the Witness Liaison Officers continue to provide information and assistance to various other matter types where a witness has been identified as particularly vulnerable. Contact in these matters has varied from answering general questions to providing referrals to support services. Depending on the level of contact required, some of these matters have subsequently been opened as WAS matters to maintain ongoing contact and assistance.

WAS role in assisting witnesses

The WAS provides information to vulnerable witnesses to ensure they are able to understand, and fully participate in, the court process. This includes providing updates and information on the court process, information on various support services available, and acting as a contact point for questions or concerns that can then be communicated by the WAS to the prosecutor. This allows witnesses to have a central contact.

The WAS organises meetings between prosecutors and witnesses in line with key stages in the process, or as required. For WAS matters ongoing contact with witnesses is maintained in line with key progressions throughout the court process. The key contact times include when a matter is first mentioned in court, when a plea is entered, when the matter is committed to the Supreme Court for trial or sentence, when a hearing/trial or sentence date is set, when a matter is finalised and if an appeal is filed. WAS contact ensures witnesses are provided with relevant updates on the court process and opportunities to raise any questions or concerns. After finalisation, if the witness requires it, the WAS also organises debriefing sessions with witnesses and prosecutors.

Court Support

Throughout the 2016/2017 financial year court support for victims and other vulnerable witnesses has primarily been provided by the new Volunteer Program administered by Victim Support ACT. This program rolled out in the reporting period provides trained volunteers to provide support in court when the witness is giving evidence. There are still occasions when support in court is provided by the Office's WAS, for example where a volunteer is not able to be organised due to availability or short notice.

The use of the new service has ensured that the WAS is available to assist in a broader range of matters in the Office. The Office has been involved in providing training to the volunteers. We look forward to continuing to work with this new service.

Meetings with external agencies and service providers

During the 2016/2017 financial year, the WAS continued to attend weekly Family Violence case tracking meetings with relevant external agencies and support services including the AFP, ACT Corrective Services (ACTCS), Child and Youth Protection Services (CYPS), Victim Support ACT (VSACT) and the Domestic Violence Crisis Service (DVCS). This forum is important in identifying those agencies linked in with victims of family violence throughout the court process, and ensuring assistance is offered to those identified as not receiving or engaging in support.

The WAS continued to attend monthly Wraparound Sexual Assault Reform Program (SARP) meetings with the AFP, CYPS, Child at Risk Health Unit (CARHU), Forensic and Medical Sexual Assault Care (FAMSAC), Canberra Rape Crisis Centre (CRCC) and VSACT. Wraparound continues to provide a confidential forum where support for victims of sexual offences is discussed.

Assistance in non-WAS matters

During the reporting period, the WAS provided increased assistance to prosecutors in matters not marked as WAS matters and where previous contact with the WAS had not occurred. This assistance included providing information on the status of a matter, information on the court process or support

services available, and referrals to accepted support services. The WAS also assisted in taking witnesses to remote witness rooms and explaining the layout of the rooms on arrival.

The WAS did not have ongoing contact with the majority of these matters, however on occasion the matter was opened as a WAS matter to ensure ongoing contact and assistance. The decision to open a matter as a WAS matter for ongoing contact was determined based on the wishes of the witness, and on determining whether any other external service providers were already engaged to ensure consistency in contact and information provided.

WAS Caseload

A breakdown of all WAS matters within the 2016/2017 financial year is as follows:

Offence type categories	Number of WAS matters	Percentage*
Adult Sexual Assault	55	30.7
Child Sexual Assault	62	34.6
Child Pornography	2	1.1
Death		
Historical Sexual Assault	28	15.6
Less Serious Violence Offence (adult)	8	4.5
Less Serious Violence Offence (child)	1	0.6
Other	15	8.4
Serious Violence Offence (adult)	7	3.9
Serious Violence Offence (child)	1	0.6
Total	179	100

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

Plans for 2017/2018 financial year

The WAS will continue to provide information and assistance to vulnerable witnesses throughout the court process. To assist in providing information to those witnesses in non-WAS matters, the WAS will further assist with the development of resources for witnesses engaging in the court process, including updated factsheets and information both online and in hard copy.

Confiscation of Criminal Assets

The Office conducts proceedings under the *Confiscations of Criminal Assets Act 2003* in the Magistrates and Supreme Courts. Proceeds of crime and instruments of crime are recovered through these proceedings. This ensures there is an effective way to prevent offenders from benefiting financially from the commission of criminal offences.

While the majority of confiscation proceedings are commenced in the context of drug offending and money laundering, the Office has also pursued confiscation of criminal assets in relation to violent offences over the past year including in relation to a murder.

During the 2016/2017 financial year tainted interests in six residential properties were forfeited to the Territory to a total value of \$1,129,838. \$720,908 worth of cash, vehicles and other property was also forfeited. A further \$1,849,595 worth of real estate, cash, vehicles and other property were restrained.

Where a defendant has an interest in real property, the DPP can restrain only the defendant's interest, so as not to impinge on the interests of mortgagees and other innocent third parties.

Some of the notable cases this year were as follows.

DPP v Nikro

Abdul Nikro was convicted of trafficking cocaine in the Supreme Court in 2015. The DPP had been granted a restraining order over his interest in a property in Crace when he was charged. This meant the offender could not deal in that property. Upon his conviction the Office sought to have the property forfeited.

The defendant challenged the forfeiture of his interest in the property arguing that forfeiture would amount to double punishment. Our Office argued that the decision to initiate confiscation proceedings is a statutorily mandated prosecutorial discretion, and there was considerable case law to the effect that confiscation orders did not constitute double punishment.

In the proceedings in the Supreme Court Burns J found that there was no evidence that the Office had failed to give proper consideration to the rights of the defendant.

At the hearing, the defendant gave evidence. Burns J found his evidence to be unconvincing and ordered that the defendant's interest in the Crace property be forfeited, along with cash and two vehicles. The defendant was ordered to pay the Office's costs.

Unclaimed tainted property

Police searched a property in Harrison, suspecting that they would locate indicia of drug trafficking. In the laundry, they located \$72,800 in cash. Nobody came forward to claim the property. Police suspected it was proceeds of crime, obtained through drug trafficking. The cash was forfeited to the Territory automatically following a restraining order being granted by the Magistrate's Court in December 2016.

Regulatory matters

Regulatory matters are referred to the Office by a range of agencies. They comprise a wide variety of offending, from cruelty to animals, to unhygienic restaurants, unauthorised tree lopping and complaints relating to excessive noise.

This year saw the continuation of a dedicated regulatory prosecution section – consisting of a prosecutor and a paralegal – in order to ensure a consistent approach is taken to regulatory matters. The regulatory team receives all briefs of evidence from the various agencies, peruses them, liaises with the agencies, and allocates the individual matters to other prosecutors who consider the material in depth. In consultation with the regulatory team, the allocated prosecutor then determines the appropriate charges.

The regulatory team continues to engage with external agencies so as to increase efficiency and the quality of briefs of evidence. This is an important function of the regulatory team, given many of the agencies are not regularly involved in prosecutions. The regulatory team has previously produced a guide to assist in this respect and continues to utilise that guide to ensure adequate and appropriate material is received by the Office.

In 2016/2017, the Office received 25 new briefs of evidence relating to regulatory prosecutions. Those briefs of evidence related to the following legislation:

Act	Matters (No.)
Animal Welfare Act 1992	17
Food Act 2001	5
Domestic Animal Act 2000	1
Environment Protection Regulation 2005	1
Tree Protection Act 2005	1
Total	25

In the same period, a variety of regulatory matters were finalised. The below table demonstrates the variety of matters finalised in the past year and the number of which resulted in offences being found proved:

Act	Matters (No.)	Proved
Animal Welfare Act 1992	25	19
Food Act 2001	4	3
Construction Occupations (Licensing) Act 2004	1	1
Total	30	23

Work Health and Safety prosecutions

Work Health and Safety (WHS) prosecutions under the 2011 *Work Health and Safety Act* have in the past attracted considerable community attention. The future bodes similarly in that August 2016 saw a tragic death in the workplace in circumstances that are of interest nationally. WorkSafe ACT and the AFP are continuing in their investigation of the incident.

From early January 2017 a WorkSafe investigatory team and the Office met and developed strategies to improve investigations and prosecutions. Two new matters were commenced this financial year, while a number of prosecutions were already underway.

Carnell v Gibbons; Carnell v Allhomes Pty Ltd:

This was a matter where the prosecution alleged that asbestos had been unsafely handled in the course of a renovation to residential premises, thereby risking the health and safety of persons due to asbestos exposure.

In *Gibbons* following a hearing the magistrate dismissed the charge on the basis that she could not be satisfied beyond a reasonable doubt that the defendant was a person conducting a business or undertaking. That was an essential element of the offence.

The prosecution against the *Allhomes Pty Ltd* was withdrawn by the Office as in light of the *Gibbons* decision.

Noakes v Star Aviation Services Pty Ltd

In this case a worker fell from a height from the back of an aircraft that was being cleaned. Charges were laid alleging a breach of a health and safety duty. The matter was set down for hearing in December 2016, almost a year after the proceedings had been commenced. The Industrial Court Magistrate took issue with the form of the charge against the defendant. The prosecution made an application for the magistrate to recuse herself. The magistrate refused the recusal application and dismissed the charges against the defendant on the basis they were deficient. Although the magistrate found that the detailed particulars filed and served with the charge addressed any deficiency, the magistrate refused to amend the charge characterising the particulars as “*extraneous material served on the defendant outside the limitation period*”. The magistrate was of the view that defects could not be cured because “*the defendant was not on notice as to the true nature of the charges within the limitation period.*”

Cummins v Demolition Environmental Civil Contractors Pty Ltd

On notice as to the Industrial Court Magistrate’s recently expressed attitude to charges pursuant to the WHS Act, the prosecution made an application in this matter to amend the charge early on in the proceedings. The allegation was that the defendant had breached a work health and safety duty resulting in a worker being injured from a ceiling collapse. The Industrial Court Magistrate refused the application to amend the charges and dismissed the charges against the defendant.

Two WorkSafe prosecutions: *Carnall v Leemhuis Pty Ltd* and *Carnall v Swan Bricklaying Pty Ltd* arising from the same incident, were withdrawn in early 2017. Swan Bricklaying Pty Ltd entered into an enforceable undertaking with WorkSafe. *Leemhuis Pty Ltd* was withdrawn on public interest grounds, an acceptable agreement having been reached between the parties.

These cases highlight the highly technical nature of these prosecutions.

R v Eastman

Background

On 10 January 1989, Assistant Commissioner Winchester was shot and killed in his neighbour's driveway. Following a coronial inquiry, David Harold Eastman was committed for trial for the murder. He was found guilty in 1995.

On 22 August 2014, following an inquiry into his conviction, the Full Court of the Supreme Court quashed Mr Eastman's conviction and ordered a re-trial. After a number of delays, in February 2016, Mr Eastman applied for a permanent stay of proceedings. In April 2016, his application was dismissed. Shortly after, Mr Eastman filed an application for leave to appeal against that decision.

Developments in this reporting period

Application for leave to appeal to the Court of Appeal

Mr Eastman's application for leave to appeal was heard by the Court of Appeal in October 2016. As the resident judges of the ACT are for various reasons unable to preside over hearings involving Mr Eastman, three judges from the Victorian Court of Appeal were appointed as acting judges to hear the application.

Although leave was required to appeal the dismissal of the stay application, the Director agreed that the appeal should be argued in full. Much of the application was heard in closed court or made the subject of non-publication orders. This was done to ensure that any retrial would not be affected by publicity and could be conducted fairly. Given the non-publication orders, the application cannot be reported in detail.

It can be reported, however, that as part of the application Mr Eastman contended that Ashley AJ's decision to dismiss his application for a permanent stay was attended by apprehended bias. The Court of Appeal unanimously refused Mr Eastman's application for leave to appeal. In a published summary of the reasons, the Court stated:

In its decision refusing Mr Eastman leave to appeal, the Court of Appeal was not persuaded that Acting Justice Ashley's decision was attended by apprehended bias, or that any of the other matters put forward by Mr Eastman should have led to a permanent stay being granted.

Application for special leave to appeal to the High Court

Mr Eastman applied for special leave to appeal to the High Court from the decision of the Court of Appeal. Both parties filed written submissions and the High Court dismissed the application on the papers. In brief reasons, the High Court stated:

The application for special leave to appeal does not raise a question of general importance. There is no reason to doubt the correctness of the decision or reasoning of the Court of Appeal of the Supreme Court of the Australian Capital Territory (Osborn, Whelan and Priest AJJ).

Preparations for the re-trial

Following the dismissal of Mr Eastman's application for a permanent stay, the Director sought a trial date. In December 2016, it was announced that Kellam A-J had been appointed to the ACT Supreme Court to preside over the re-trial, which was listed to commence on 15 May 2017.

On 20 December 2016, the parties agreed, and the Court ordered, that the retrial commence on 17 July 2017. In early 2017, the Court made directions about the filing and service of submissions in relation to eight pre-trial applications which were listed to commence on 5 June 2017 and run for a number of weeks, effectively through until the commencement of the trial.

On 17 May 2017, Mr Eastman's representatives made an oral application to vacate the trial, which was due to commence on 17 July 2017. The Director did not oppose the application. Acting Justice Kellam granted the application and fixed the trial for hearing commencing Monday, 12 February 2018 and ordered that the pre-trial applications, which were due to commence on 5 June 2017, instead commence on 13 June 2017.

The Court has now heard many of the pre-trial applications, however, details cannot be reported. Further pre-trial applications are listed for hearing.

In addition to preparing for the pre-trial applications, the Office has commenced preparations for the re-trial. The workload of the team prosecuting the case has increased significantly during this reporting period and particularly over the last few months. The team has grown and now consists of a supervising lawyer, two junior lawyers and a paralegal, with two external counsel also being briefed in the matter.

Parking matters

The Office prosecutes parking offences which end up in court. There were 393 parking matters completed in the reporting period. This was a significant increase on the long term trend, and an increase of 91% for the previous period.

Criminal Law Resource Centre

This year the Criminal Law Resource Centre continued to take a leading role in the Office's move away from paper towards working predominately with electronic files. Previous work included moving legislation resources into the 'cloud', rolling out Sharepoint for the management of electronic files within the office, and providing iPads for use in Court.

The Office required a solution to working with E-Briefs online instead of printing off often very large paper copies. Key to this project was the setting up of secure network disk space, the use of Sharepoint to manage the files and provide access, and the roll-out of Acrobat Pro DC to all prosecutors. This software provides a range of tools that can make working with large pdf files easier than using hard copies.

The Criminal Law Resource Centre also significantly reduced the Office's hard copy collection and increased the coverage of online subscriptions. This has had the effect of reducing the footprint of the hard copy collection.

Case Reports

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

Homicides

Murder is one of the most serious offences in the criminal calendar. The maximum penalty is life imprisonment. Allegations of murder often arise in a family violence context. The reporting period saw the finalisation in the Supreme Court of a number of family violence murders committed in early 2015. These are described below. A trial was held in another family violence murder, that of *Gabrielle Woutersz*. This ended with a hung jury.

Marcus Rappel

On 20 February 2015 Tara Costigan gave birth to a baby girl. Ms Costigan was estranged from her former partner and father of the child, Marcus Rappel. Due to Rappel's increasingly aggressive behaviour following the birth of her daughter Ms Costigan took out a domestic violence protection order prohibiting Rappel from contacting or approaching within 100 metres of her.

At 1.30pm on Saturday 28 February 2015 Rappel was served with the protection order at the City Police Station. He immediately drove to Queanbeyan where he dropped his new partner at the caravan they shared saying "I should kill that bitch for what she did".

Rappel then drove to Bunnings at Tuggeranong where he purchased an axe. He then drove to Tara Costigan's home, where over a period of 46 minutes he drove past the house 12 times. On the 13th pass at 4.25pm, Rappel parked in her driveway and smashed in the front door with the axe.

Tara, who was holding her eight day old baby in her arms, ran towards the internal door to the garage. While Tara's nine and twelve year old boys watched, and as her 18 year old sister Rikki attempted to pull her to safety, Rappel swung the axe at Tara. He first struck her in the left shoulder breaking the shoulder blade and shoulder joint, then swung it a second time this time causing catastrophic injuries from which she died shortly after being struck. Her sister Rikki sustained serious injuries in the process. Rikki's 18 year old boyfriend Bryce Bullman knocked the axe from Rappel's hand, before Rappel punched him in the nose, walked over to where Tara's two young boys were watching television, and pushed the TV from its stand. He then walked outside and waited for police to arrive.

Rappel was charged with one count of murder, one count of breaching the protection order, one count of causing grievous harm to Rikki's hand, and one count of assault occasioning actual bodily harm to Bryce Bullman. He pleaded not guilty in the Magistrates Court. In September 2015 the charges were committed to the Supreme Court for trial.

On 3 March 2016 Rappel pleaded guilty to all counts except for the grievous bodily harm count on Rikki to which he eventually pleaded guilty to on a later date.

Rappel disputed significant portions of the facts alleged by the Crown and the matter was listed for a disputed facts hearing. The disputed facts hearing took place over eight days. A number of witnesses were called. Rappel gave evidence in his case.

On 24 February 2017 Burns J delivered his findings on the disputed facts and the sentence. Whilst his Honour was delivering adverse findings about Rappel's credibility when he had given his evidence, Rappel became disruptive. He yelled "rights for fathers" as Corrective Services officers removed him from the court room.

Rappel was sentenced to 32 years and two months imprisonment, with a non parole period of 26 years. His Honour said in sentencing Rappel:

The present offence of murder was vicious and cowardly. Those who witnessed your violence will have to live with their memories for the rest of their lives. Your actions deprived three children of their mother, including your own infant daughter BD. You have effectively deprived BD of both of her parents. The effects of your actions will be felt for decades to come. There is a very substantial community interest in retribution, deterrence and punishment. This can only be achieved by a very substantial period of imprisonment.

Maged Al-Harazi

At around 9.30pm on Monday 16 March 2015 a verbal argument started between Maged Al Harazi and his wife Sabah Al Harazi which lasted until 2am the next morning. The argument ended with Al Harazi taking a large kitchen knife, and whilst Sabah was in the process of breastfeeding their 10 month old baby, and with his five year old daughter and seven year old son in the next room, he stabbed her 20 times to the front of the body. As Sabah slumped forward and lay motionless, he stabbed her more than 30 more times in the back.

Al Harazi then got into his car with the three children, and at 3.07am arrived at Tuggeranong Police Station. Using his son as interpreter, he told police that at 11.30am that night he was at home with his wife and three children, when his wife's father and 15 year old brother arrived. They had asked him to leave with the three children for 20 minutes, and when they returned they had found his wife dead.

The next morning police arrested the victim's father and 15 year old brother. When interviewed they both strenuously denied any involvement in the murder. The investigation unfolded and police obtained CCTV footage from a house two doors away from the Al Harazi's house. That footage showed vehicles coming and going from the house and proved that Al Harazi was lying. Police released the father and brother, and Al Harazi was charged with murder. He pleaded not guilty.

The trial, lasting six weeks, heard evidence of the rocky relationship between the accused and his wife from a number of members of her family and from other members of the Arabic speaking community. Evidence at trial included eye witness evidence from neighbouring houses as well as the CCTV footage. There was detailed forensic and technical evidence, including of the locations of the phones belonging to the various parties in relation to mobile telephone towers around the crime scene and other Canberra locations and of phone calls and SMS messages. After less than four hours of deliberation, the jury returned a verdict of guilty to the single charge of murder.

Al Harazi was sentenced to 30 years imprisonment, with a non-parole period of 21 years.

Jeffrey Lee

On the morning of 10 March 2015 Jeffrey Lee arrived at the home his mother and step-father, Mr Neil Wilkinson. At the time his mother, who was predominantly bed ridden due to a longstanding illness, and Mr Wilkinson, who for a number of years had acted as his mother's primary carer, were unaware he would be attending. Upon his arrival Lee was met by Mr Wilkinson at the front door of the home. An altercation ensued and Lee struck Mr Wilkinson several times to the head causing his death.

Following the murder Lee left the premises without calling an ambulance before returning later that same morning. Upon his return, he entered the house where Mr Wilkinson's body still lay. He spoke with his mother who remained unaware that the murder had taken place. He told her he had killed Mr Wilkinson, and disconnected the telephone next to her bed to prevent her from calling police. Lee then looked for and found a pillowcase hidden within the home which contained approximately \$53,000 in cash. This money had been accumulated from the couple's modest incomes over a number of years and represented their life savings.

Lee left the property on foot taking the money with him and did not notify anyone as to what had occurred at the home or that his bedridden mother remained inside. Due to the disconnected telephone his mother resorted to calling for help from her bedroom window before she was discovered later that day.

Lee initially pleaded not guilty and was committed for trial to the Supreme Court. He pleaded guilty prior to a trial date being set. The sentencing judge discounted the sentence by 20% with respect to the offence of murder and 15% with respect to the offence of theft to take into account the pleas of guilty. For murder he was sentenced to a term of 12 years imprisonment and for the theft he was sentenced to a term of three years imprisonment, with two years of those sentences to be served concurrently. The total sentence imposed was 13 years imprisonment with a non-parole period of seven years.

I appealed the sentence to the Court of Appeal on the ground that the sentence was manifestly inadequate. The Court of Appeal dismissed my appeal. I have now filed an application for special leave to the High Court which is yet to be determined.

Josaia Vosikata

In early 2015 Vosikata and Daniela D'Addario had a brief relationship which she soon ended. Vosikata could not accept that the relationship was over and began to obsess over Ms D'Addario. Vosikata somehow formed the belief, which was incorrect, that she was pregnant. In messages between the pair, Ms D'Addario made it clear that she no longer wanted to be in a relationship with Vosikata and no longer wanted to have any contact with him.

Early on 10 April 2015 Vosikata broke into Ms D'Addario's flat through the front door using a key that she didn't realise he still possessed. She was asleep. Vosikata got into bed with her and attempted to molest her. The victim woke up and punched and kicked him, forcing him out of her bed.

Following this incident Vosikata continued to obsess over his victim. He started to search the internet for information about chemicals to knock people out, how to kill, and how to break into premises. Of particular significance, he conducted a number of searches concerning a product known as Rapid Fixer and whether that could knock someone out.

Sometime on the morning of 19 April 2015 Vosikata entered the Ms D'Addario's apartment. Although there were no signs of forced entry, it is highly unlikely the victim let him in voluntarily. Vosikata had a bottle of Rapid Fixer with him. Vosikata straddled Ms D'Addario and strangled her to death. After her death, he performed sexual acts on her body and filmed them.

To cover his tracks, Vosikata used the victim's mobile phone to send messages pretending to come from the victim after she had died. Eventually he loaded her body into the back of her car and drove to the south coast of New South Wales where days later he was apprehended.

Vosikata pleaded not guilty in the Magistrates Court and was committed for trial to the Supreme Court. On 30 March 2016, Vosikata entered a plea of guilty to one count of murder and asked the judge to take into account two further offences, the first being the act of indecency committed against the victim on 10 April 2015, and the second being indecently interfering with a dead human body on 19 April 2015.

In sentencing Vosikata, the sentencing judge remarked:

It would be entirely understandable if the family and friends of the victim found the debate about whether the present offence of murder falls within the worst category of cases of murder to be mystifying, if not obscene. After all, their loved one is dead and for no reason other than your desire to exercise control over her and your desire to ensure that she did not report to the police your actions of gaining entry into her apartment and attempting to render her unconscious.

Vosikata was sentenced to 22 years and 10 months imprisonment with a non-parole period of 18 years and four months. He has appealed against the sentence.

Sexual offences

Sexual offences continue to be a major focus of the Office. As with family violence offences, issues of the power imbalance between perpetrator and victim loom large.

R v Hoyle

Sexual assault is an abuse of power by a perpetrator where the stronger party often tries to exploit the power imbalances and vulnerabilities of their victims. This was nowhere more clearly demonstrated than in the case of Arthur Hoyle.

Hoyle was a Canberra University law professor who taught business law. In April 2015 he requested a number of international female students to attend his office alone to discuss his concerns with them about their university assignments. For each student English was their second language, thus making them more vulnerable. Hoyle had made some noises to other staff that he was concerned about student plagiarism and it was under this guise that he invited the students to his office. During these meetings Hoyle told them that the University's plagiarism detection software had identified problems with their assignment, but he could make the problems go away if they suggested something to him. He put his hand on their thighs or tried to touch their breasts or kiss them - the clear inference being that he was inviting them to make sexual suggestions to him. One of the students was so paralysed with fear at Hoyle's advances that he was able to exploit her lack of resistance and engage in sexual intercourse with her.

During the trial the jury heard evidence from a medical expert about the immediate response of people to sexual assault including a freeze or paralysed response that overwhelms their capacity to cope. This response is not uncommon when people are traumatised.

After hearing more than 20 witnesses the jury found Hoyle guilty of offences against five young women. He was sentenced to four years imprisonment with a non-parole period of two years and six months.

BL

Legislative reform in the ACT has minimised complainants' trauma in sexual abuse trials. It is now the norm for the evidence in chief of child sexual assault complainants to be the video of their interview with police. It is also common for their evidence to be pre-recorded before the trial. Under these arrangements the complainant gives their evidence from a remote location where they cannot see the alleged abuser. The child can have a support person present while they give evidence.

In BL the child complained of sexual abuse by her father. The child had been diagnosed with high functioning autism and generalised anxiety disorder. In her daily life she relied on an assistance dog who was still in training. There was evidence that the child would be assisted by having her dog with her when she gave evidence. Having the dog would serve to reduce her anxiety and the sensory overload which she was likely to experience when giving evidence.

Assistance dogs are being increasingly used in courts overseas and now in NSW in a pilot court dealing specifically with child sexual abuse cases. In the ACT there is no specific legislation permitting a dog to be present with a vulnerable witness. However the Supreme Court has an inherent power to make orders.

Prosecutors applied for the dog to be present when the complainant gave evidence to alleviate the effects of her disability which might otherwise compromise her ability to give evidence. This application was vigorously opposed by the defence barrister. After hearing evidence on the application and considering submissions, Refshauge J ordered that the dog would be present while the child gave evidence. The child's evidence was recorded before the trial with the dog on the floor near her feet. The dog was not visible or audible in the recording and its presence was not discernible to the jury.

The trial subsequently proceeded over several days. BL was acquitted.

The Royal Commission into Institutional Responses to Child Sexual Abuse presents an ideal opportunity for the ACT community to consider how we might facilitate children giving evidence. The use of assistance dogs is growing in the US, the UK and in NSW. Rather than have hotly contested applications, it would be preferable if legislation could facilitate the use of therapy or assistance dogs in the court context.

CX

It is an uncomfortable reality that child sexual abuse is more prevalent than many in the community realise. The Royal Commission into Institutional Responses to Child Sexual Abuse has done much to shine a light on this, and encourage victims to come forward.

In CX it was a newspaper article about child abusers using the anonymity and safety of the church confessional that angered a victim to come forward and tell police about her own sexual abuse by

her father 40 years earlier. In the late 1970's/early 1980's the victim had complained to a church member that her father had been sexually abusing her. Members of the church confronted the offender who admitted to sexually interfering with his daughter but grossly minimised the extent. However, because he had been to confession and his god had forgiven him, the victim was also encouraged to forgive him. Years later the jury heard that one of the offender's other daughters complained that she had also been sexually assaulted by him. At the time CX's wife ran a child-minding business from home. The offender often found occasions to be alone with one of the girls in their care where he also repeatedly sexually molested her. During the trial the jury heard from a medical expert in childhood sexual assault who explained what the research consistently showed – that delay in disclosure was more common in childhood sexual assault than disclosure around the time that the events occurred. Indeed none of the four victims in this case complained until much later.

CX pleaded guilty to some charges but not guilty to others. Following a two week trial and nearly 20 witnesses the jury found the offender guilty of most of the remaining charges. He was sentenced to 10 years imprisonment with a non-parole period of five years. The sentencing judge noted that the pleas of guilty did not entitle CX to any discount of his sentence because the relevant complainant was still required to give evidence in the trial, and the pleas were made in the face of an overwhelming prosecution case including admissions he had made to members of his Catholic Church group. The sentence did, however, take into account CX's deteriorating health and that the medical evidence suggested his life expectancy was between six and seven years.

CX appealed the sentence but the Court of Appeal unanimously dismissed the appeal. The Court noted that it was appropriate in the circumstances for the sentencing judge not to discount the sentence in relation to the pleas of guilty, and found that the overall sentence imposed was well within the range for offending of this nature.

R v Aroub

The offender was charged with one count of sexual intercourse without consent and one count of committing an act of indecency without consent. The victim lay sleeping in a spare room at the offender's house. She woke to find the offender kissing her on the back and digitally penetrating her. The offender in a record of interview denied touching the complainant, however his DNA was found on her back where she said she had felt the offender kissing her.

The offender was unrepresented having dismissed his legal team just prior to the trial starting. Legislation prohibits an accused from cross-examining in person a complainant in a sexual offence proceeding. Instead, the Registrar of the court asked the questions in cross examination. The complainant who gave evidence from a remote location was therefore not required to hear or see the accused. The Chief Justice ensured that the accused had every opportunity to satisfy himself that he had been able to cross-examine the complainant within the boundaries of the law.

Out of fairness to the accused, the Crown chose not to make a closing address to the jury leaving only the Chief Justice's summation of the evidence in addition to some comments made by the accused to the jury.

The offender was found guilty by the jury and later sentenced to two years imprisonment with the first six months to be served full time, and the balance suspended upon entering into a good behaviour order for 18 months.

R v Naqvi

The offender pleaded guilty to one count of forcible confinement, one count of recklessly inflict actual bodily harm and four counts of sexual intercourse without consent on a “rolled up” basis representing many incidents. In brief the offender led the victim away from her work, detained her against her will, took her money and forced her to cook and clean for him until she escaped about a week later. The offender forced the victim to carve his name into her arm and sexually assaulted her numerous times. The offender told the victim she had to do what he said otherwise he would chop her legs off.

The victim was a vulnerable woman who had immigrated to Australia on her husband’s student visa. She and her husband had borrowed a lot of money from family to pay for their trip to Australia. Soon after arriving the couple breached their visa by ceasing study and commenced working to pay debts. The victim separated from her husband and continued to work. In committing the offences the offender took advantage of the victim’s perilous immigration status and her isolation.

The victim impact statement was a testament to the sad experience of a sexual offence victim. The victim expressed feelings of guilt and shame. Because of her culture and religion she felt that she is now perceived as a ‘cheap’ woman who entered into a relationship which was wrong and sinful. While victims of sexual offences bear no blame for the actions of their perpetrators, sadly it is not uncommon for such victims to experience feelings of guilt and shame.

Once the victim escaped the offender and was brought to the attention of authorities, she was liable to be deported due to her immigration status. Fortunately, the Red Cross was able to assist her. The Red Cross supported the victim with learning English, acquiring skills and an application for permanent residency. In this case their assistance was invaluable in supporting a vulnerable victim of crime.

The offender was sentenced to an aggregate sentence of 13 years and eight months imprisonment with a non-parole period of eight years and two months. He has appealed the sentence on the ground that it is manifestly excessive.

Significant matters

A large fraud on the Public Trustee generated considerable public interest. It was but one of a number of difficult matters prosecuted during the year.

R v Leighton, Savanhu, McLeod, Evans

In 2014 a large fraud was discovered inside the offices of the Public Trustee of the ACT (PTACT). This fraud involved two Trust Officers employed by PTACT to manage PTACT client affairs, and two contractors engaged by PTACT. All four eventually pleaded guilty. PTACT clients are especially vulnerable members of the community who, for various reasons such as mental or physical infirmity, cannot manage their own financial affairs. PTACT manage their money for them.

The scam was instigated separately by the two Trust Officers; Timothy McLeod and Donald Savanhu. McLeod would arrange for cheques to be drawn against funds held by PTACT on behalf of clients. These cheques were for purposes that were illegitimate. They included bogus holiday expenses for clients who were bed bound, the purchasing of expensive electrical items, such as new laptops, for

elderly dementia ridden clients, and numerous expenses for property maintenance that was never carried out. In addition to this, McLeod withdrew cash funds from clients' personal bank accounts using their ATM cards which were held by PTACT. The total amount of this fraud was \$1,087,227.55.

Two contractors, Joshua Leighton and Stephen Evans, were complicit in the fake maintenance scam. McLeod would arrange for money to be paid into their accounts, sometimes in satisfaction of false invoices. He would then have them withdraw cash while in his company at a designated meeting point. This was usually an ATM at a licensed club. Evans, a close childhood friend of McLeod, would split the money with him 50/50, whereas Leighton would split the money with him 60/40 in favour of McLeod. Evans would use the money to drink, gamble and pay household expenses. Leighton used the money to drink, gamble, buy drugs, visit prostitutes and pay household expenses.

Savanhu's fraud was slightly different. Again, it involved claiming moneys for maintenance that was not carried out. He would arrange for contractors to provide him with invoices for work not yet done but that he had asked them to do. He would then pay them in advance, and shortly thereafter tell them the work was no longer required. He would have them pay him back the money in cash, keeping a cut for himself.

The investigation in the matter was extensive and time consuming. When the brief was submitted to the Office by police, a senior lawyer, assisted at various times by other lawyers, was assigned to the case. An enormous amount of time was spent in preparing the complex case for trial. All accused eventually pleaded guilty before scheduled trials.

Leighton was first to plead guilty. He pleaded to 23 counts of theft, comprising 116 separate transactions, in relation to a gross amount of \$675,734. He received a sentence of four years imprisonment with a non parole period of 19 months. Evans pleaded guilty in the week prior to the trial commencing to 26 counts of obtaining a benefit by deception, comprising 101 transactions, in relation to a gross amount of \$287,373.95. He received a sentence of three years and nine months imprisonment, with a non parole period of 17 months.

Savanhu pleaded guilty a week prior to his trial commencing in relation to a gross amount of \$28,654.70 comprising 36 transactions. He received an 18 month suspended prison sentence with a two year good behaviour order. The offending was described by Justice Burns (in sentencing Leighton) as "disgraceful."

McLeod pleaded guilty to four counts of theft comprising 402 transactions, in relation to a gross amount of \$1,087,227.55, on the day the trial was scheduled to commence. He is yet to be sentenced.

R v Eliadis and Parlov

Circumstantial evidence cases are often difficult to investigate and prosecute. In this case much depended on the hard work of police investigators.

On 13 March 2014 Brierly's Cafe in Weston Creek was set alight causing extensive damage and closing the business for about a year. At the time police obtained CCTV footage from the building which showed a non-descript man, wearing a hooded jumper over his head, breaking into the cafe and pouring petrol inside before setting it alight. There was little to identify the man and there were no other leads. A break in the investigation came when police looked at CCTV footage from nearby businesses and saw the hooded man arrive and leave in a car. While the footage was poor quality,

and did not show the car's numberplate, after days of researching similar cars police were able to identify the make, model and colour of the car. From there police obtained the registration details of all cars matching that description in the ACT and identified owners with links to the Weston Creek area. This led police to identify the suspects – Leo Eliadis and Nick Parlov.

Eliadis was the godson of another cafe owner who was a competitor to Brierly's Cafe. Police obtained listening device warrants and over months listened to Eliadis' conversations, which showed his knowledge of the arson and a connection to Parlov. Later police became aware of a tip-off linking Parlov to a similar hooded jumper that he tried to destroy at about the time of the fire. The offenders were charged. 15 witnesses were called in the course of the trial and numerous listening device recordings were played to the jury. The trial ran over two weeks. The jury found both men guilty. Parlov was sentenced to three years imprisonment with a non-parole period of two years six months. Eliadis was sentenced on this and other matters to two years and three months imprisonment, with a non-parole period of two years.

R v Walters

The accused, Luke Anthony Walters, was charged with conspiracy to commit the offence of trafficking in a controlled drug other than cannabis, namely Alpha - Pyrrolidinovalerophenone or 'a-PVP'. The accused entered a plea of not guilty and the matter proceeded to judge-alone trial.

This matter was the first prosecution in the ACT of trafficking a-PVP, also known colloquially as 'Flakka', the 'zombie drug' or 'bath salts'. A-PVP is a synthetic psychoactive drug in the cathinone class and presents symptoms such as euphoric sensations, feelings of superhuman-strength, rapid heart rate and palpitations, profound paranoia, extreme agitation and aggression. The drug is more potent than methamphetamine ('ice') and has an even higher propensity for addiction than ice. At the time the offence was committed a-PVP was a 'controlled drug' within the ACT but it was not a 'border controlled drug'. This meant the importation of it from China was not illegal. It was, however, illegal to traffic the drug within the ACT.

The charge arose out of an arrangement between Walters, and an associate, Izaak Silvester-Day. Silvester-Day pleaded guilty to conspiracy to traffic a-PVP in the ACT Magistrates Court and undertook to give evidence against Walters at his trial.

The evidence established an agreement for Silvester-Day to purchase the drug a-PVP for Walters who would then sell it to various buyers. Walters provided the funds for the order and Silvester-Day ordered the drugs over the internet through a website based in China. After initial problems with the order, an amount of just less than 1kg was ordered. This had an estimated street-value of approximately \$100,000. Silvester-Day had the drugs delivered to his girlfriend's house in the ACT and told Walters to come over to collect them. Walters was present at the house on the day of delivery. After he took delivery police arrived. The drugs were in a bag in the middle of the lounge room floor near Walters.

When giving evidence in the trial Walters claimed complete ignorance of the importation of drugs. He denied coming to an agreement with Silvester-Day in relation to the drugs. He denied participating in the ordering of the drugs, denied that the drugs were purchased for him and denied having an intention to traffic the drugs. It was Walter's case that he attended Silvester-Day's girlfriend's residence on the day in question to receive a birthday present from Silvester-Day and the presence of the drugs on the lounge room floor when police arrived was an unfortunate coincidence.

This case presented a cocktail of interesting legal issues. First, this matter raised some difficult legal points about what needed to be proved in a conspiracy offence; particularly the timing or 'crystallisation' of the agreement, the knowledge of a co-conspirator of the intention of the conspirator, and the way in which the acts of a co-conspirator can be taken into account as evidence of the furtherance of the conspiracy. Secondly, despite Silvester-Day's agreement to give evidence against Walters, when Silvester-Day was called to give evidence he became unfavourable to the Crown and claimed that the offender had not been involved in the conspiracy, despite his earlier pleading to a charge of conspiracy involving the offender. The Crown made an application to cross-examine Silvester-Day on the basis that his evidence was inconsistent with previous representations made by him and that he was not favourable to the Crown's case. That application was granted, and Mr Silvester-Day ultimately agreed that Walters had been involved in the conspiracy.

Walters was found guilty. He was sentenced to two years and six months imprisonment, with a non-parole period of 15 months.

Walters has since appealed both his conviction and his sentence. The appeal is yet to be determined.

R v Lou

Daniel Lou entered City Police Station in October 2015 and told police he was a drug dealer and needed to be arrested. He had \$84,190 in cash in his bag. He was interviewed by police and after being cautioned, explained the inner workings of his drug dealing enterprise, including how he obtained the drugs, who distributed them for him, and how much he made. Lou explained that the money he brought with him was proceeds of crime, and that everything else he owned was also proceeds of crime, including his Subaru WRX which was parked outside.

Police executed search warrants at various premises and found significant evidence corroborating Lou's admissions. Lou was subsequently charged with drug trafficking and money laundering offences.

Lou pleaded not guilty. At a pre-trial application Lou asserted that his admissions were involuntary, the result of a drug-induced psychosis which caused voices in his head to tell him to confess. He gave evidence to that effect that he felt he had no choice but to confess. His counsel argued that evidence of his admissions, and other related evidence, should be excluded from the trial.

The Crown accepted that it was likely Lou had experienced a psychosis; he had a well documented history of psychosis including auditory hallucinations. The Crown argued, however, that there was no evidence that the substance of the admissions was unreliable because of the psychosis, and therefore that evidence should be admitted. The Crown also argued that the interview was conducted fairly by the police.

The presiding judge ruled that the interview and the related evidence were admissible. His Honour stated that the police had conducted the interview with "complete propriety". His Honour found that the probative value of the evidence was very high, and that the amount of weight to be placed on those admissions was a matter for the jury.

Following this decision, the offender entered guilty pleas to the full indictment and is awaiting sentence.

R v Williams

Derek Joseph Williams pleaded guilty to a total of 19 offences, including that of culpable driving causing grievous bodily harm to a police officer, using an offensive weapon likely to endanger life to prevent his lawful arrest, aggravated dangerous driving and burglary.

On 1 November 2016, Williams broke into business premises in Fyshwick by smashing the front glass window. Once inside he ransacked the premises before the security alarm was activated. Williams left the scene but not before leaving behind his blood which was later discovered by AFP Forensics.

Five days later, on 6 November 2016, police attended Williams' house in Kambah to arrest him on an outstanding warrant. Williams sought to evade police by telling police over the phone that he was not inside the house but at a different location. At one point Williams' nephew ran out of the backdoor and jumped over a fence; when police approached the nephew, Williams took the opportunity to leave from the front of the house. Williams got into his car and reversed it, ramming it into a marked police vehicle. He then collided with the carport causing the carport to collapse. Williams then reversed his car and turned to aim his car directly into the path of a uniformed police officer who was seated on a marked police motorcycle. The police motorcyclist was forced to jump off his motorcycle when Williams rammed his car into the police motorcycle. The police motorcyclist was still connected to his motorcycle by the radio cable that was attached to his helmet. Williams ignored repeated police directions to stop his car and instead he drove away at high speeds whilst waving his arm out of the driver's side window and beeping his horn.

Two days later, on 8 November 2016, police attended a residence in Chisholm following reports that Williams was at that location. The warrant for Williams' arrest remained outstanding. Police cordoned off the road and deployed a drone to assist with monitoring the movements of Williams. AFP Specialist Response Group (SRG) was called in to assist with apprehending Williams.

Williams was observed to start his car and reverse out of the driveway. He had a female passenger in the car with him. SRG vehicles approached from behind in an attempt to block Williams from driving away. Williams continued to reverse colliding with an SRG vehicle. The female passenger jumped out of Williams' car before Williams accelerated forward and struck a fully uniformed AFP SRG officer. The SRG officer fell onto the bonnet of Williams' car before landing on the ground. Williams did not stop but continued to accelerate forward narrowly missing striking the SRG officer a further time. The SRG officer was taken to hospital for treatment where it was revealed that he had sustained two fractured vertebrae in his spine.

After striking the SRG officer, Williams' car continued to accelerate forward through the nature strips, weaving between trees at the front of neighbouring properties in attempt to escape from police. His car eventually collided with SRG vehicles. Police officers were forced to physically remove Williams from his car when he refused to exit. Whilst in custody Williams underwent a mandatory oral fluid analysis where methylamphetamine was detected in his oral fluid.

Williams was sentenced to nine years and 11 months imprisonment for all offences, to serve a minimum of five years and nine months before being eligible for parole.

R v Forrest

In July 2015, Michael Paul Forrest engaged in what Refshauge J described as “a sustained rampage of criminality” resulting in him being charged with 95 offences. He had also been charged with two offences arising out of events occurring in September 2014. The bulk of the offences involved Forrest breaking into cars parked in either underground garages or remote car parks, and on some occasions using keys and information found therein to burgle residential properties across Canberra. After pleading guilty Forrest requested that he be referred to restorative justice – a process of mediated encounters between Forrest and some of the victims of the property offences.

Forrest participated in this process, engaging with some of the victims of his offences. At sentencing he gave evidence about the impact the restorative justice process had on him. He also gave evidence about his desire to continue his efforts at rehabilitation in a community setting. By the time Forrest had come to be sentenced he had spent approximately 10 months in custody. Refshauge J accepted Forrest’s evidence and deferred the formal sentencing of the offender for approximately 12 months to allow him to participate in residential rehabilitation. His Honour indicated that, should the offender successfully complete that treatment, any further sentence would be fully suspended.

Forrest left the rehabilitation facility a week later and committed further property offences before being arrested. He was brought before the court again. His Honour accepted the Crown submission that the further offences committed when Forrest absconded from the rehabilitation facility must moderate any reliance on what the offender might suggest he had learnt from his restorative justice experience. He was ultimately sentenced to a total sentence of seven years and one month on all offences, with a non-parole period of four years and one month.

The Magistrates Court

Most criminal cases are determined in the Magistrates Court. These can include significant or high profile cases.

Carter v Monaghan

Jason Monaghan came before the ACT Magistrates Court to be sentenced for sexual offending and for an unrelated incident resulting in an assault on a Centrelink employee and a police officer. The sexual offences arose out of an incident in the early hours of one morning, when the defendant approached and indecently assaulted two women at the Woden Bus Interchange, touching them over their clothes. One of the victims alerted police, who attended and arrested him. Monaghan pleaded guilty to these offences. At the sentencing hearing, the Court received evidence of the significant impact of the offending on one of the victims of the indecent assault, who became fearful about using public transport for her commute for some time after the incident. The Court also received expert evidence about the offender’s risk of sexual re-offending. In sentencing Monaghan the Magistrate noted the right of women in the Canberra community to use public transport without fear. Her Honour found that the need to protect the public from the defendant was paramount, and outweighed any issue of his rehabilitation. On all matters, he received a total sentence of two years imprisonment, with a non-parole of 16 months.

Yanes v Trung Doan

On the morning of 5 October 2016 police received reports of a highly aggressive male holding a hammer, threatening members of the public and damaging property along Bunda Street, in Civic. Trung Doan was arrested, and when officers searched him they found a carving knife with a 15cm long blade. The offender told police, "I've come to hurt someone". The offender originally challenged the charges but on the scheduled day of the hearing pleaded guilty to an offence of possessing a weapon (claw hammer) with intent to cause violence and possessing a knife in a public place. Doan had prior convictions relating to violence, as well as a conviction in 2009 for an offence in which he was caught with a knife in Civic. He was sentenced to a total of three months imprisonment, and a one year good behaviour order with a requirement to complete 100 hours of community service.

Wayne Stephen Rumble

During December 2016 Wayne Stephen Rumble operated a real estate business. He was experiencing financial difficulties. On the afternoon of 14 December 2016, Rumble was in his office when a professional process server attended to serve him with bankruptcy documents. The process server had been invited to the office by the offender's ex-partner who was also involved in Rumble's real estate business.

The process server introduced himself and informed Rumble that he was there to serve him with bankruptcy documents. Rumble immediately became angry and threatened to kill the process server. Rumble then grabbed a Japanese-style combat knife from his desk, removed the knife from its cover and quickly walked towards the process server. Rumble pushed him backwards and pinned him against the door pointing the knife blade at his face.

The process server repeatedly stated "I'm just a process server". In his victim impact statement he said he "felt scared about what the knife would feel like inside my body, what would the knife feel like piercing my skin".

Eventually Rumble released the victim by pushing him out the door of his office. The victim ran away and reported the incident to police. Later that day police attended Rumble's office and executed a search warrant. During the search police found the combat knife on Rumble's desk as well as CCTV footage of the incident.

Rumble was charged with threatening to kill the victim. He pleaded not guilty and the charge went to hearing in the Magistrates Court. Witnesses, including the victim, gave evidence. Rumble was found guilty.

In sentencing the offender, the magistrate found that denunciation, protection of the community and recognising the impact on the victim were amongst the matters which were relevant. The magistrate also noted that Rumble did not express any remorse for his actions. Rumble was sentenced to 12 months imprisonment, suspended after serving four months, with a good behaviour order for 18 months with supervision.

Negah

Sulliman Negah was charged with several family violence related offences. After an initial assault upon her, his partner attended a police station to report the matter, however did not wish to provide a statement or for Negah to be charged. Later that week he committed a number of offences at her home during the course of an evening including further assaults, forcibly confining her within the home, breaking through a toilet door and committing an act of indecency upon her.

Negah was arrested and released on bail with conditions imposed preventing him from contacting the complainant. Despite this, he and the complainant recommenced their relationship. Negah attempted to coerce the complainant into either giving false evidence at Court or to speaking with police and telling them that she had fabricated her earlier version. The complainant later reported the content of these conversations to police and Negah was charged with attempting to pervert the course of justice.

Negah pleaded not guilty and the matter proceeded to a hearing in the Magistrates Court. During the course of the hearing Negah amended a number of his pleas to pleas of guilty, however continued to contest the remainder of the charges. Ultimately all offences were found proved.

Negah was sentenced to multiple terms of imprisonment for the offences; these included a sentence of nine months imprisonment for the offence of burglary, six months imprisonment for the offence of act of indecency and nine months imprisonment for the offence of attempting to pervert the course of justice.

Statistics

A note on statistics used in this report

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

Because a different system is used by ACT Law Courts, there is potential for a divergence between statistics produced by this Office and those produced by the courts. In particular, if charges were finalised at different court appearances in the same case for a defendant and these were counted as finalised at each appearance rather than being aggregated as a single finalised defendant, there would be a greater number of matters recorded. This would particularly affect 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 in ABS 4513 depending on the court involved. Of particular note, a transfer to another court level (for example a committal either for trial or sentence) concludes the matter in one court level and initiates it in another court level.

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

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

Table 1: Total matters finalised by jurisdiction

Description	Matters
Childrens Court	187
Magistrates Court	4189
Industrial Court	4
Supreme Court	296
Court of Appeal	34
High Court	2
Total	4712

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.

Table 2: Matters finalised disaggregated by matter type

Description	Matters
Homicide and related offences	
Childrens Court	
Magistrates Court	4
Industrial Court	
Supreme Court	6
Court of Appeal	5
High Court	1
Sub Total	16
Acts intended to cause injury	
Childrens Court	37
Magistrates Court	577
Industrial Court	
Supreme Court	39
Court of Appeal	3
High Court	1
Sub Total	657
Sexual assault and related offences	
Childrens Court	8
Magistrates Court	66
Industrial Court	
Supreme Court	52
Court of Appeal	6
High Court	
Sub Total	132

Description	Matters
Dangerous or negligent acts endangering persons	
Childrens Court	5
Magistrates Court	83
Industrial Court	
Supreme Court	10
Court of Appeal	
High Court	
Sub Total	98
Abduction and related offences	
Childrens Court	2
Magistrates Court	31
Industrial Court	
Supreme Court	9
Court of Appeal	3
High Court	
Sub Total	45
Robbery, extortion and related offences	
Childrens Court	14
Magistrates Court	54
Industrial Court	
Supreme Court	30
Court of Appeal	6
High Court	
Sub Total	104

Description	Matters
Unlawful entry with intent/burglary, break and enter	
Childrens Court	14
Magistrates Court	101
Industrial Court	
Supreme Court	41
Court of Appeal	2
High Court	
Sub Total	158
Theft and related offences	
Childrens Court	27
Magistrates Court	266
Industrial Court	
Supreme Court	19
Court of Appeal	
High Court	
Sub Total	312
Deception and related offences	
Childrens Court	
Magistrates Court	25
Industrial Court	
Supreme Court	6
Court of Appeal	2
High Court	
Sub Total	33

Description	Matters
Illicit drug offences	
Childrens Court	8
Magistrates Court	214
Industrial Court	
Supreme Court	37
Court of Appeal	4
High Court	
Sub Total	263
Weapons and explosives offences	
Childrens Court	13
Magistrates Court	121
Industrial Court	
Supreme Court	10
Court of Appeal	1
High Court	
Sub Total	145
Property damage and environmental pollution	
Childrens Court	21
Magistrates Court	101
Industrial Court	
Supreme Court	13
Court of Appeal	1
High Court	
Sub Total	136

Description	Matters
Public order offences	
Childrens Court	3
Magistrates Court	78
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	81
Road traffic and motor vehicle regulatory offences	
Childrens Court	23
Magistrates Court	1743
Industrial Court	
Supreme Court	15
Court of Appeal	1
High Court	
Sub Total	1782
Offences against justice procedures, government security and government operations	
Childrens Court	10
Magistrates Court	255
Industrial Court	
Supreme Court	4
Court of Appeal	
High Court	
Sub Total	269

Description	Matters
Miscellaneous offences	
Childrens Court	2
Magistrates Court	470
Industrial Court	
Supreme Court	9
Court of Appeal	
High Court	
Sub Total	481
Coronial	
Childrens Court	
Magistrates Court	
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	0
Total	4712

Table 3: Committals to the Supreme Court

Description	Matters
Childrens Court	10
Magistrates Court	202
Industrial Court	-
Total	212

Table 4: 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			3				3
Acts intended to cause injury			17	8			25
Sexual assault and related offences	1	1	34	10			46
Dangerous or negligent acts endangering persons			3	2			5
Abduction and related offences			5	1			6
Robbery, extortion and related offences	2	5	21	11			39
Unlawful entry with intent/ burglary, break and enter			17	11			28
Theft and related offences		1	2	7			10
Deception and related offences			2	1			3
Illicit drug offences			14	11			25
Weapons and explosives offences			9	3			12
Property damage and environmental pollution			5				5
Public order offences			1				1
Road traffic and motor vehicle regulatory offences			1				1
Offences against justice procedures, government security and government operations			1	2			3
Miscellaneous offences							0
Total	3	7	135	67	0	0	212

Table 5: Supreme Court Matters

Description	Matters
Trials	
Trials	62
Trial Outcomes	
Guilty Verdicts	36
Not Guilty Verdicts	23
Other ¹	3
Awaiting verdict	
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/ changed plea ²	114
Accused re-sentenced after breach	42
Total sentencing proceedings	156
Notices declining to proceed further	6

Notes:

1. This includes trials which resulted in a hung jury or were aborted. Such matters are not “finalised” for the purposes of Tables 1 and 2.
2. The number of accused sentenced after committal for sentence or after changing plea before trial is now disaggregated from accused resentenced after breach. In previous years those figures have been shown together.

Table 6: Appeals

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	62	2	64
Court of Appeal	33	8	41
High Court	2	1	3
Total	97	11	108

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

B.3 Scrutiny

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

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

B.4 Risk Management

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

B.5 Internal Audit

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

B.6 Fraud Prevention

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

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

B.7 Work Health and Safety

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

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

The Office Health and Wellbeing Policy outlines our commitment to the provision of a healthy and safe workplace. Because of the nature of work in the Office, new Health and Wellbeing support arrangements have been implemented (see B8) for further information. The Office had one elected Health and Safety Representative for the entire year.

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

- Respect, Equity and Diversity (RED) training
- The opportunity to participate in flu vaccinations
- LGBTI Training
- Fire Warden training
- Work life balance

Notifiable incidents

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

Section 38 notifiable incidents	Incidents without injury	Minor injuries	Total all incidents
nil	5	6	11

Note: Dates of incidents is in the range 1/07/2016 to 30/06/2017.

B.8 Human Resources Management

This year the office has implemented a new health and wellbeing initiative to provide a one hour session for each staff member with a trained psychologist. The office has been fortunate enough to secure the services of specialist psychologist who understands the complexity and sometimes challenging and/or confronting nature of the work performed by our staff. The program is open to all staff on a voluntary basis and has seen an 80% participation rate. The feedback on the program has been positive. It provides the opportunity for staff to debrief on what can be challenging work and to provide a confidential opportunity to talk through any work or personal related issues. This program also provides a mechanism for confidential referrals to other services that support staff in their overall wellbeing.

Non-legal staff also participated in a workshop on work life balance which will be rolled out to legal staff during the next reporting period. Legal staff had the opportunity to participate in continuing legal education and training sessions. Again this year participation rates have been lower than is optimal due to court commitments and workloads taking priority.

Five employees worked part-time for the entire reporting period. A further two had short term part-time arrangements during the reporting period. The Office continues to look for opportunities to improve flexible working arrangements for staff which presents a challenge in the face of inflexible court schedules.

The Office continues to work with staff to collaborate and promote opportunities in support of leading a healthy lifestyle. Further information on this is contained elsewhere in the report under the Working Environment Group Forum.

ARins Reporting

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

Agency profile

Branch/Division	FTE	Headcount
Corporate	8.1	9
Executive	2.0	2
Legal Support	24.2	25
Prosecutor	38.2	40
Total	72.5	76

FTE and headcount

	Female	Male	Total
FTE by Gender	48.0	24.4	72.4
Headcount by Gender	50	26	76
% of Workforce	65.8%	34.2%	100.0%

Classifications

Classification Group	Female	Male	Total
Administrative Officers	9	1	10
Executive Officers	1	1	2
Legal Support	14	6	20
Prosecutors	23	16	39
Senior Officers	3	1	4
Statutory Office Holders	0	1	1
TOTAL	50	26	76

Employment category by gender

Employment Category	Female	Male	Total
Casual	0	0	0
Permanent Full-time	33	17	50
Permanent Part-time	5	1	6
Temporary Full-time	12	8	20
Temporary Part-time	0	0	0
TOTAL	50	26	76

Equity and workplace diversity

	Headcount	% of Total Staff
Aboriginal and/or Torres Strait Islander	2	2.6%
Culturally & Linguistically Diverse	12	15.8%
People with a disability	0	0.0%

Age profile

Age Group	Female	Male	Total
Under 25	2	2	4
25-34	28	12	40
35-44	9	6	15
45-54	8	1	9
55 and over	3	5	8

Average years of service by gender

Gender	Female	Male	Total
Average years of service	5.7	7.3	6.3

Recruitment and Separation Rates by Classification Group

Classification Group	Recruitment Rate	Separation Rate
Administrative Officers	14.3%	14.3%
Legal Support	17.7%	8.9%
Prosecutors	37.1%	20.6%
Senior Officers	0.0%	20.6%
Total	27.1%	19.7%

Recruitment and Separation Rates - Executive

Classification Group	Recruitment Rate	Separation Rate
Executive Officers	0.0%	0.0%

B.9 Ecologically Sustainable Development

Sustainable development performance - current and previous financial year

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Agency staff and area				
Agency staff	FTE	72.5	71.3	1.68
Workplace floor area	Area (m2)	1600.10	1600.10	0
Stationary energy usage				
Electricity use	Kilowatt hours	149,413	148,891	0.35
Renewable electricity use	Kilowatt hours	N/A	N/A	N/A
Natural gas use	Megajoules	unavailable	unavailable	
Transport fuel usage				
Total number of vehicles	Number	Nil	Nil	N/A
Total kilometres travelled	Kilometres	N/A	N/A	N/A
Fuel use - Petrol	Kilolitres	N/A	N/A	N/A
Fuel use - Diesel	Kilolitres	N/A	N/A	N/A
Fuel use - Liquid Petroleum Gas (LPG)	Kilolitres	N/A	N/A	N/A
Fuel use - Compressed Natural Gas (CNG)	Kilolitres	unavailable	unavailable	
Water usage				
Water use	Kilolitres	unavailable	unavailable	

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Resource efficiency and waste				
Reams of paper purchased	Reams	3010	3306	-8.95
Recycled content of paper purchased	Percentage	100%	100%	0
Waste to landfill	Litres	18000	23040	-23.87
Co-mingled material recycled	Litres	19750	21600	-8.56
Paper & Cardboard recycled (incl. secure paper)	Litres	53000	65040	-18.51
Organic material recycled	Litres	0	0	0
Greenhouse gas emissions				
Emissions from stationary energy use	Tonnes CO ² -e	82	111	-26.17
Emissions from transport	Tonnes CO ² -e	N/A	N/A	N/A
Total emissions	Tonnes CO ² -e	82	111	-26.17

Notes

1. ACT Property Group purchased 7,700 MWh (Megawatt hours) of GreenPower on behalf of the ACT Government, representing an indicative 5% of the ACT Government's electricity consumption for 2016-17.
2. No water consumption data is captured in the ESP for DPP's occupancy. The ACT Government is not formally billed for its water consumption as it is factored into the landlord's rent.
3. Greenhouse gas emissions for electricity have been calculated using an emission factor of 0.84 kilogram (kg) CO₂-e /kWh. This has been revised from 2015-16 FY and the data have been adjusted. The emissions factors include total GreenPower purchases for the ACT calculated in the third quarter of the respective financial years and are specific to the ACT. These emissions factors (Scope 2 + Scope 3) reflect the increasing contribution of renewable electricity generated under the ACT's 90% Renewable Energy Target (RET). Consequently they are lower than those reported in the latest National Greenhouse Accounts (NGA) Factors. Emissions factors will be recalculated to account for the ACT's 100% RET after 2016-17 annual reporting. It is expected that the emissions factors reported here are unlikely to be altered.
4. Differences between Enterprise Sustainability Platform sourced data in the previous FY (2015-16) and that in the original 2014-15 Report is due to updates to agency occupancy and historical consumption data.
5. Figures reflected in the 2015-16 period for electricity data were incomplete at the time of reporting. This has been corrected in the above table.

C. Financial Management Reporting

C.1 Financial Management Analysis

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

C.2 Financial Statements

The financial transactions of the Office for the year ending 30 June 2016 are subsumed within the audited financial statements of JACS. For information related to the budget outcomes please refer to the audited JACS financial statements for 2015/2016 (Output 1.4). It should be noted that total expense in Output 1.4 includes allocated JACS overheads.

C.3 Capital Works

The Office had no Capital Works during the reporting period.

Contact details capital works officer:

Emma Flukes
Director corporate services
Phone: 02 6207 5399

C.4 Asset Management

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

The current utilisation rate is 21m². In February 2013 the Office commenced occupation of a section of the second floor in the Reserve Bank building. This was necessary to deal with the additional space required for staff involved in responding to the Eastman Inquiry. The utilisation rate is based on a benchmark of 15m² per employee. Seventy six staff occupied a total floor space of 1,600m². Factors relevant to the utilisation rate include the need to provide facilities such as witness interview rooms, waiting rooms for vulnerable witnesses, a conference room, the criminal law resource centre, areas for professional staff undertaking sensitive and confidential work, and areas for confidentially dealing with acutely personal and intimate issues.

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

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

C.5 Government Contracting

For year ending 30 June 2017, 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 2016-17	Date services commenced	Procurement Type
1.4	Mr Thangaraj	External Counsel	\$446,617.00	01 July 2016	Single Select
	NOUS Group	Review	\$43,180.00	15 May 2017	Single Select
	Itec Pty Ltd	Case Management System	\$50,000.00	01 July 2016	Single Select
	Ms Campbell	External Counsel	\$164,664.00	01 Feb 2017	Single Select

C.6 Statement of Performance

The following is extracted from the audited JACS financial statements for 2016/2017:

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.

	2016-17 Original Target	2016-17 Amended Target	2016-17 Actual	YTD Variance
Total Cost (\$'000)	13,843		12,869	-7%
Controlled Recurrent Payments (\$,000)	12,984		12,072	-7%
Accountability Indicators				
Percentage of cases where court timetable is met in accordance with Courts' rules	80%		78%	-3%
Average cost per matter finalised	\$2,632		\$2,731	4%

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

N. Community Engagement and Support

The following sponsorship was provided by the Director during the year ending 30 June 2017.

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

Q. Territory Records

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

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

A revised Records Disposal Schedule for the Office is currently being developed with the assistance of the Director of Territory Records.

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

The Director of Territory Records has not made any declaration under section 28 of the Act.

APPENDIX

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

Prosecution Policy

1. INTRODUCTION

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

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

2. THE DECISION TO PROSECUTE

General criteria

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

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

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

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

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

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

Prosecution of juveniles

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

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

2.13 In deciding whether or not the public interest warrants the prosecution of a juvenile regard should be had to such of the factors set out in paragraph 2.9 as appear to be relevant and to the following matters:

- (a) the seriousness of the alleged offence;
- (b) the age, apparent maturity and mental capacity of the juvenile;

- (c) the available alternatives to prosecution and their likely efficacy;
- (d) the sentencing options available to the court if the matter were to be prosecuted;
- (e) the family circumstances of the juvenile particularly whether those with parental responsibility appear willing and able to exercise effective discipline and control over the juvenile;
- (f) the juvenile's antecedents including the circumstances of any previous cautions that he or she may have been given; and
- (g) whether a prosecution would be likely to have an unduly harsh effect on the juvenile or otherwise be inappropriate, having regard to such matters as the vulnerability of the juvenile and his or her family circumstances.

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

Prosecution of Corporations

- 2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.
- 2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.
- 2.17 As a general rule it is best to have all connected offenders - corporate and individual - prosecuted together at the same time.
- 2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.
- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.

- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at paragraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
- (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
 - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;
 - (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
 - (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
 - (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
 - (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;
 - (g) failure to report wrongdoing within a reasonable time of the offending coming to light;
 - (h) a genuinely proactive approach adopted by the corporate management team involving self-reporting and remedial actions, including the compensation of victims;
 - (i) the availability of alternative civil or regulatory remedies that are likely to be effective and more proportionate;
 - (j) whether the offending represents isolated actions by individuals, for example by a rogue director;
 - (k) the fact that the offending is not recent in nature, and the corporation in its current form is effectively a different body to that which committed the offences;
 - (l) whether the corporation is in administration, liquidation or receivership.

Discontinuing a prosecution

- 2.21 Generally the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the Director. However, wherever practicable, the views of the police (or other referring agency) and the views of the victim will be sought and taken into account in making that decision. Of course, the

extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the Director is contemplating discontinuing the prosecution. It will be for the Director to decide on the sufficiency of evidence. On the other hand, if discontinuance on public interest grounds is contemplated, the views of the police or other referring agency, and the views of the victim will have greater relevance.

3. OTHER DECISIONS IN THE PROSECUTION PROCESS

Choice of Charges

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

Mode of trial

- 3.6 Summary disposition usually provides the speediest and most efficient disposition of justice. In relation to some indictable offences, the prosecution has the power to elect whether those matters are dealt with summarily. In other cases the consent of the prosecution may be required before an indictable matter can be dealt with summarily.

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

Consent to prosecution

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

Charge negotiation

- 3.11 Charge negotiation involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to a fewer number of charges, or to a less serious charge or charges, with the remaining charges either being not being proceeded with or being taken into account on a schedule. It may also result in agreement for matters to be dealt with summarily. In some cases it may involve agreement about the content of the statement of facts to be put before the court.

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

Jury selection

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

Retrials

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

Sentence

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

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

4. DISCLOSURE

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

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

5. THE UNREPRESENTED ACCUSED

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

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

6. PRIVATE PROSECUTIONS

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

7. UNDERTAKING THAT A PERSON WILL NOT BE PROSECUTED

- 7.1 The Director has a power under the Act to give an undertaking that a person will not be prosecuted for a specified offence or in respect of specified acts or omissions. Where such an undertaking has been given, no proceedings may subsequently be instituted in respect of the offence or conduct so specified. The undertaking may be given subject to such conditions (if any) as the Director considers appropriate.
- 7.2 In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who have participated in the commission of offences or who have guilty knowledge of their commission. It is obviously a grave step to grant, in effect, immunity from prosecution to someone apparently guilty of a serious offence. However it has long been recognised that exceptional cases do arise in which the interests of justice demand that such a course be pursued.
- 7.3 As a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. If tried and convicted or acquitted with respect to the offences in issue, the person will then be a compellable witness for the prosecution, without the need for the issuing of an undertaking. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate.
- 7.4 The central issue in deciding whether to give an accomplice an undertaking under the Act is whether it is in the overall interests of justice that the opportunity to prosecute the accomplice in respect of his or her own involvement in the crime in question should be foregone in order to secure that person's testimony in the prosecution of another. The factors to be considered include:
- (a) the importance of the evidence which may be obtained as a result of the undertaking;
 - (b) the extent of the criminal involvement of the person seeking the undertaking compared with that of the accused;
 - (c) whether the person seeking the undertaking has given a full and frank statement of his or her prospective evidence, including an acknowledgement of his or her own role in the offences in issue;
 - (d) the character, credibility and previous criminal record of the person concerned;
 - (e) whether any inducement has been offered to the person to give the evidence sought; and
 - (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under section 9(1) or section 9(4) of the Act.

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

8. VICTIMS OF CRIME

- 8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the *Victims of Crime Act 1994*.
- 8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses, and be given an explanation of the outcome of criminal proceedings, including of any sentence and its implications. Victims must be informed of the outcome of finalised court proceedings in a timely fashion.
- 8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.
- 8.4 A number of agencies which exercise a function in the administration of justice are responsible for ensuring these principles are adhered to, including the DPP, police, and victim support agencies. Those agencies must work together in a complementary way.
- 8.5 Consideration must be given in the early stages of contact with the victim, and/or their families, to involvement in the case by the witness assistance service of the DPP. In all appropriate cases, victims should be advised of the service and where necessary referred to it.

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

9. PUBLICATION OF REASONS

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

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