



ACT
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2021
2022



DIRECTOR
OF PUBLIC
PROSECUTIONS

ACTDPP



Themis

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

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Abbreviations and Acronyms

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

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

Glossary of Technical Terms

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

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

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

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

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

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

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

intermediary program	The ACT's Intermediary Program commenced in January 2020 and is actively providing intermediaries to assist police and courts' engagement with vulnerable witnesses in criminal matters.
judicial review	The court's review of an administrative decision on the basis of a legal error in the decision-making process.
jury	A group of (usually) 12 people chosen at random from the general community who are tasked with the responsibility of determining whether the defendant is guilty on the evidence presented in a criminal trial.
leave to appeal	A defendant must first seek permission to appeal before their appeal can be heard by the Court of Appeal. The leave to appeal argument will be heard before a single judge in the Supreme Court.
Legal Professionals Enterprise Agreement 2018-2021	This refers to the ACT public sector <i>Legal Professionals Enterprise Agreement 2018-2021</i>
Legislative Assembly	Refers to the Legislative Assembly for the ACT, i.e. the parliament for the nation's capital. It was established after self-government in 1989. It performs both territory and local level functions and makes decisions that impact the lives of those who live and work in the ACT.
lockdown	During the COVID-19 pandemic, the term lockdown was used for actions related to mass quarantines or stay-at-home orders.
LSD	LSD, also known colloquially as acid, is a hallucinogenic drug. The effects of the drug include altered thoughts, feelings, and awareness of one's surroundings.
Magistrate	The person who hears the case and decides the sentence in the Magistrates Court or the Childrens Court.
Magistrates Court	The first tier of the ACT courts system. Most criminal cases are heard in this court in some form.
manslaughter	The act of causing another person's death without the intent to do so.
mental health order	Where a person does not have decision-making capacity or where their mental illness/disorder is placing them or the community at significant risk, involuntary measures may be required to provide them with the necessary assessment, treatment, care or support. There are a number of mental health orders that ACAT can make under the <i>Mental Health Act 2015</i> including: Psychiatric Treatment Orders; Community Care Orders; Restriction Orders; Forensic Psychiatric Treatment Orders; and Forensic Community Care Orders.

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

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

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

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

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

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

Contact Sources

Agency Contact Details

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

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

Annual report contact details:

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

A. Transmittal Certificate and Compliance Statement

A.1 Transmittal Certificate



ACT Office of the Director of Public Prosecutions

7 October 2022

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

Dear Attorney,

2021-22 DIRECTOR OF PUBLIC PROSECUTIONS ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2022. This Report has been prepared in accordance with section 7(2) of the *Annual Reports (Government Agencies) Act 2004* and with the requirements under the *Annual Reports (Government Agencies) Directions 2021*. It has also been prepared in conformity with the *Director of Public Prosecutions Act 1990*.

I certify that the information in the attached report and information provided for whole of government reporting, is an honest and accurate account and that all material information on the operations of the Director of Public Prosecutions has been included for the period of 1 July 2021 to 30 June 2022.

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

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

Yours faithfully,

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

Shane Drumgold SC
Director - ACT Director of Public Prosecutions

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A.2 Compliance Statement

The 2021-22 ACT Director of Public Prosecutions Annual Report must comply with the Annual Report Directions (the Directions) made under section 8 of the Annual Reports Act. The Directions are found at the ACT Legislation Register: www.legislation.act.gov.au.

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

Part 1 Directions Overview

The requirements under Part 1 of the Directions relate to the purpose, timing and distribution, and records keeping of annual reports. The 2021-22 ACT Director of Public Prosecutions Annual Report complies with all subsections of Part 1 under the Directions.

To meet Section 15 Feedback, Part 1 of the Directions, contact details for the Office of the Director of Public Prosecutions, ACT are provided within the 2021-2022 ACT Director of Public Prosecutions Annual Report to afford readers the opportunity to provide feedback.

Part 2 Reporting entity Annual Report Requirements

The requirements within Part 2 of the Directions are mandatory for all reporting entities and the Office of the Director of Public Prosecutions, ACT complies with all subsections. The information that satisfies the requirements of Part 2 is found in the 2021-2022 ACT Director of Public Prosecutions Annual Report as follows:

Transmittal Certificate, see page 26.

Organisational Overview and Performance, inclusive of all subsections, see B.1 from page 34 to page 39 and B.2 from page 39 to page 87 respectively.

Financial Management Reporting, inclusive of all subsections, see pages 99 to 101.

Part 3 Reporting by Exception

The Office of the Director of Public Prosecutions, ACT has nil information to report by exception under Part 3 of the Directions for the 2021-2022 reporting year.

Part 4 Directorate and Public Sector Body Specific Annual Report Requirements

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

Part 5 Whole of Government Annual Reporting

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

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

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

Director's foreword

30 June 2022 marks the halfway point through my first seven-year term as the Director of Public Prosecutions. I am delighted that both our major organisational restructure and accommodation projects are complete and reaping significant rewards. The COVID pandemic has, however, consumed much of the first half of my first term, so it will be a busy second half with a long list of projects yet to be completed, particularly in the areas of law reform and the first nations imprisonment rates.

The 2021-2022 financial year has seen us largely resume pre-COVID operations. On the trial front, there were four trial periods during the reporting period with 81 trials listed. Of these, 35 trials plead guilty prior to the start of the trial, with a further 10 returning a verdict of guilty at trial. Only six of the 81 matters listed for trial, or about 7% returned a verdict of not guilty. There were five notices declining to proceed for a range of reasons, and a further 21 trials were either mistrial or vacated to a subsequent trial period. Two matters resulted in a finding that the conduct was committed, however, a verdict of not guilty by reason of mental impairment was recorded because it was found that a mental impairment deprived the accused of the required mental state.¹

Of the trial matters, we have experienced a significant increase in serious and complex trials. Matters completed included 26 homicide matters across all court levels, an increase of 12% over the previous reporting period. This is part of a significant upward trend in serious crime being prosecuted by the office, consistent with the ACT's growing population with our jurisdiction becoming larger and more complex.

Fortunately, these matters are able to be expertly prosecuted by Crown Chambers, which is now entering its third year of operation. Crown Chambers was set up in the first year of my appointment as an independent Barrister's Chambers attached to the Office of the Director of Public Prosecutions, with all Barristers both holding Barrister Practising Certificates and receiving access to the same training and qualifications as Barristers at the private bar. This was designed to create an internal Barristers Chambers with much deeper and broader experience, with the hope of eventually creating greater mobility between the private bar and Crown Chambers. I am pleased to report that this is materialising, with Keegan Lee being called to the private bar, and Crown Chambers recruiting Beth Morrisroe from the private bar during the last reporting period. We continue to have a presence on the ACT Bar Council and make significant contributions to the broader legal profession. Such integration with the private bar is very healthy for the entire profession, ensuring the ongoing strength and impartiality of the Barristers working within Crown Chambers.

During the reporting period, Crown Prosecutor Rebecca Christensen SC became the first member of Crown Chambers to be appointed Senior Counsel, a milestone reflective of a maturing Crown Chambers. The establishment of Crown Chambers has set the office well to

¹ Note: these figures may differ from Table B.2.14.6, that reflects trials finalised during the reporting period, rather than trials conducted, potentially including trials conducted in the last reporting period but finalised in the current.

manage the increasing number of serious matters we are now regularly prosecuting, as the ACT moves towards half a million in population. The growing number of serious crimes being prosecuted by the office, however, will make the expansion of Crown Chambers inevitable in the coming years.

We continue to achieve exceptional results through criminal case conferencing, with 78 matters (three of which were referred to conferencing prior to the allocation of a trial date) being taken to conference with 25 (or 32%) settling either at criminal case conference, or as a direct result of criminal case conference. This is an outstanding result, meaning one third of all trials referred to conferencing achieved just outcomes without the need to put victims, witnesses, the community and the accused through the expense and inconvenience of a full criminal trial.

Appeals

Crown appeals are rare and exceptional, and limited to circumstances where there is an error in principle that needs correcting for the governance and guidance of subordinate courts, or to correct a sentence that is so disproportionate to the seriousness of the crime that correction is required to address a manifest injustice.

When I was appointed Director, I set up the office's first dedicated Appeals and Policy team, particularly devoted to looking at sentencing trends and examining how they sit with community standards and expectations. The appeals unit, headed by Katie McCann who was recently joined by Emma Roff, has been both very active and very successful in the appeal space. During the reporting period to 30 June 2022 there were 29 appeals heard in the ACT Court of Criminal Appeal, 24% of which were Crown Appeals. The dedicated Appeals and Policy unit has resulted in the prosecution enjoying greater success in sentencing appeals than we have in the past.² Most of the crown appeals sought to address sentences for murder and child sexual offending that we considered fell clearly short of community standards for offending of this type. At least half of the Crown Appeals to the Court of Appeal were successful, and in total, the Crown were successful in 69% of all appeals to the ACT Court of Appeal.

There were a further 27 appeals filed from the Magistrates Court to the Supreme Court, 15% of which were bought by the DPP, many of which were successful. In total, the DPP were successful in 56% of all appeals from the Magistrates Court to the Supreme Court.

We have further experienced a record number of High Court appeals for the office, with one Crown appeal and four defence appeals to the High Court of Australia during the reporting period.

It is important that Crown appeals remain rare and exceptional and limited to the most appropriate vehicles for such appeals. It is, however, equally important that this office ensures that the jurisdiction's sentencing practices reflect legitimate community standards and expectations, and our structure ensures we discharge this important duty.

² Note: these figures may differ from Table B.2.14.7 that reflects appeals finalised during the reporting period, rather than appeals conducted, potentially including appeals conducted in the last reporting period but finalised in the current.

Our key performance indicators

The KPI of forecast average cost per matter is \$3,000, and reflects the average time spent on all matters ranging from simple traffic matters through to complex High Court appeals. Although it requires caution in interpretation, it complements a range of data that helps inform us of trends in demand and performance.

In the reporting period ending 30 June 2021, the average cost per matter was \$2,581, well under target. This has increased to \$3,208 during the reporting period ending 30 June 2022, reflecting an increase in the complexity and seriousness of the types of offences we prosecuted, including a significant increase in the number of Crown appeals during the reporting period. Over the past three years we have worked hard searching for productivity gains through process mapping all office operations, and the development and introduction of technology to reduce data entry. As a result, we have eliminated most of the manual data entry and converted the former data entry positions into Prosecutor Associated List and Prosecutor Associate Crown positions, who in turn free up mainstream prosecutors from lower-level legal and administrative functions. An increase in the cost per matter is a further signal that we have exhausted many of our productivity gains.

When a matter is committed to the Supreme Court for trial, it is listed in a directions list in the Supreme Court, who make orders outlining timelines for the DPP to file and serve documents such as the indictment, case statement, witness list and an issues questionnaire. The KPI target of the percentage of matters where documents are served in compliance with these court orders is 80%. In the reporting period ending 30 June 2021 we met court orders on 94% of occasions, and in the reporting period to 30 June 2022 this has improved to 95.25% reflecting further system improvement. This has been significantly assisted by the introduction of a seventh team, constituting a dedicated committals unit, focussed on the preparation and filing of trial documents for matters committed for trial. This has also significantly improved the quality of documents and the cases they reflect, resulting in much more efficient engagement with the courts.

When a plea of not guilty is entered, we request a brief of evidence from the police, and after examination of the brief of evidence, the DPP in turn serve it on the defence. The KPI target of the percentage of briefs served within two-weeks of the DPP receiving them from the AFP is 80%. During this two-week period, the DPP must receive and process the brief, read the entire brief and ensure no protected material is inadvertently served on defence. For the reporting period ending 30 June 2021 we met this KPI on 71% of occasions, however, in the latest reporting period this significantly improved to 87.75%. This is reflective of the increasing quality of support staff we have been able to attract and retain, and their dedication in the role.

Staff diversity

Beyond a doubt, the strength of this office lay in the quality of our staff. The DPP is resolutely committed to creating and retaining a demonstrably demographically diverse workforce, commensurate with the community most impacted by our functions. As of 30 June 2021, 70%

of our workforce were female, marginally reducing in the latest reporting period ending 30 June 2022 to 67%, however still reflecting a healthy gender balance. We still enjoy a gender balance at all levels within the office, from my inner executive and Crown Chambers through to the Prosecutor Associate and support staff levels.

In the reporting period ending 30 June 2021, 19% of our staff reported that English was not the first language for self or at least one parent, increasing 7% to 26% in the reporting period to 30 June 2022. In 2021 34.72% reported that self or at least one parent was born overseas, increasing marginally to 35.71% in 2022. In 2021, 8.11% of staff identified as LGBTQIA increasing 6% to 14.29% this year, and staff reporting that they possess a disability increased across the two reporting periods from 6.76% to 6.85%.

In the reporting period ending 30 June 2021, 5.41% of our staff identified as aboriginal or Torres Strait Islander. In the financial year ending 30 June 2022, this dropped to 2.86% due wholly to a number of our former aboriginal or Torres Strait Islander law students graduating and moving onto substantive lawyer positions either interstate or with the Commonwealth. We are currently working with both the ANU and University of Canberra Law Schools to identify our next cohort of aboriginal or Torres Strait Islander law students. This result reflects our proactive measures in attracting and retaining aboriginal or Torres Strait Islander lawyers at all levels and either retaining them or preparing them for legal practice outside of the office, and is an achievement not replicated in any other jurisdiction to my knowledge.

Business Plan

In 2021, I published our Business Plan 2021-2025, which sets a range of things including office deliverables and recruitment objectives. The Business Plan also contains a number of projections for things such as absenteeism and staff turnover, that whilst not conclusive, assists a range of other data to reflect potential cultural issues within the office.

Staff turnover for legal staff is anticipated at 15-20% and support staff at 5-10%. In the reporting period ending 30 June 2021 legal staff turnover was 15.1% with no turnover of support staff. In the reporting period ending 30 June 2022, staff turnover for legal staff increased marginally to 17.45% and support staff to 3%, reflective of greater post-COVID mobility, with most legal staff moving to higher paid roles outside of the organisation. This reflects an office structure that promotes staff growth and experience, and results in staff becoming highly sought after by other agencies. Such mobility is healthy for the office and the profession as a whole, just as it is healthy for our office to draw experienced staff from other areas of the law and other legal offices.

Staff absenteeism was anticipated to be around 5%. For the reporting period ending 30 June 2021, we recorded 3.7% absenteeism, which needs to be read in light of a higher than usual number of staff working from home during COVID lockdowns. During the reporting period ending 30 June 2022, this further reduced to 2.63% suggesting the healthy, happy and committed workforce that I observe within the office day to day.

Growth in matters finalised was anticipated to be 3-4% p/a. The reporting period ending June 2021 saw a significant increase of 10%, which has softened to a flattening growth in the reporting period to 30 June 2022. As noted, however, we have seen a significant increase in the number of serious and complex matters being prosecuted by the office.

In the business plan, we set a target of the percentage of matters committed for trial that result in a not-guilty verdict to be around 30-40%. The reporting period ending 30 June 2021 saw a figure of 12% of matters committed for trial resulting in a verdict of not guilty, with 21% of all matters finalised in the Supreme Court resulting in a verdict of not guilty. In the reporting period ending 30 June 2022 there were 183 matters committed for trial, with only six matters recording a verdict of not guilty, representing just 3% of matters committed for trial returning a verdict of not guilty. As previously outlined, only six of the 81 matters listed for trial, or about 7% returned a verdict of not guilty, a significant improvement over the 21% recorded in the reporting period ending 30 June 2021.³ This again is reflective of a combination of a dedicated committals unit, and a maturing Crown Chambers to prosecute our trial matters.

This performance represents the significant achievements of the staff of the office. Such results can only be achieved through firstly setting up the correct structure, however, more importantly attracting and retaining suitably skilled and dedicated professionals to populate that structure.

Staff wellbeing

Wellbeing training is a very high priority for the office and has included resilience training through 'The Resilience Project', vicarious trauma training through Blue Knot, and we have trained the entire office in mental health first aid through Mental Health First Aid Australia. Each of the respective training programs were directed at different challenges that present themselves when dealing with confronting subject matter under stressful situations.

As part of the Resilience Project training, staff were given personal diaries and an associated app to chart their mood and daily challenges, as well as acknowledging things such as exercise, sleep and diet. The vicarious trauma training was directed at assisting staff to identify the signs and symptoms of trauma in themselves. This includes the warning signs of dealing with confronting subject matter and involves diarising any concerns or warning signs. The Mental Health First Aid training assists staff to identify the warning signs of mental stress in others, by looking at key behaviours ranging from physical appearance to changes in the way they talk about both life and work in general. Such mental wellbeing maintenance is a central part of the office operations and remains a very high priority.

³ Note: these figures may differ from Table B.214.6, that reflects matters finalised during the reporting period, rather than matters conducted, potentially including matters conducted in the last reporting period but finalised in the current.

B. Organisational Overview and Performance

B.1 Organisational Overview

B.1.1 The Role and Functions of the Office

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

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

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

The Director makes prosecutorial decisions independent of political influence or control. The Director's prosecuting role is independent of the police and other investigative agencies. Once a prosecution has been instituted, all prosecutorial decisions are made by the Director. There were no such directions given in the financial year.

The principal duties of the Director include the following:

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

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

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

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

B.1.2 Internal Accountability

Since late 2019, the ODPP has five prosecutors holding executive positions at the Senior Executive Service ('SES') level. They are Chief Crown Prosecutor, Mr Anthony Williamson, who heads the Crown Chambers, Deputy Director, Mr Joel Hiscox, who oversees the Criminal Practice, and three Crown Prosecutors attached to Crown Chambers, Ms Rebecca Christensen SC, Ms Skye Jerome and Mr Trent Hickey.

The responsibilities of the Senior Executives at the ODPP, as at 30 June 2022 are provided below.

B.1.2.1 Senior Executives and their responsibilities

Chief Crown Prosecutor

The Chief Crown Prosecutor is responsible for assisting the Director with the management of the ODPP. The position also manages the ODPP's professional staff and ensures effective deployment of those resources. The Chief Crown Prosecutor reports directly to the Director and provides the necessary leadership and support in representing the Director and the ODPP. The Chief Crown Prosecutor heads Crown Chambers. As such the Chief Crown Prosecutor recruits and manages a team of Crown Prosecutors, Crown Advocates and Advocates. The Chief Crown Prosecutor exercises discretion to initiate, vary and discontinue serious criminal charges and appeals. The Chief Crown Prosecutor conducts more complex litigation in the Supreme Court, including in relation to committals and trials on indictment, and appears for the prosecution in appeal matters. The position also develops policy and procedures relevant to the ODPP and ensures effective working relationships with criminal justice agencies within the ACT are maintained.

Deputy Director Criminal Practice

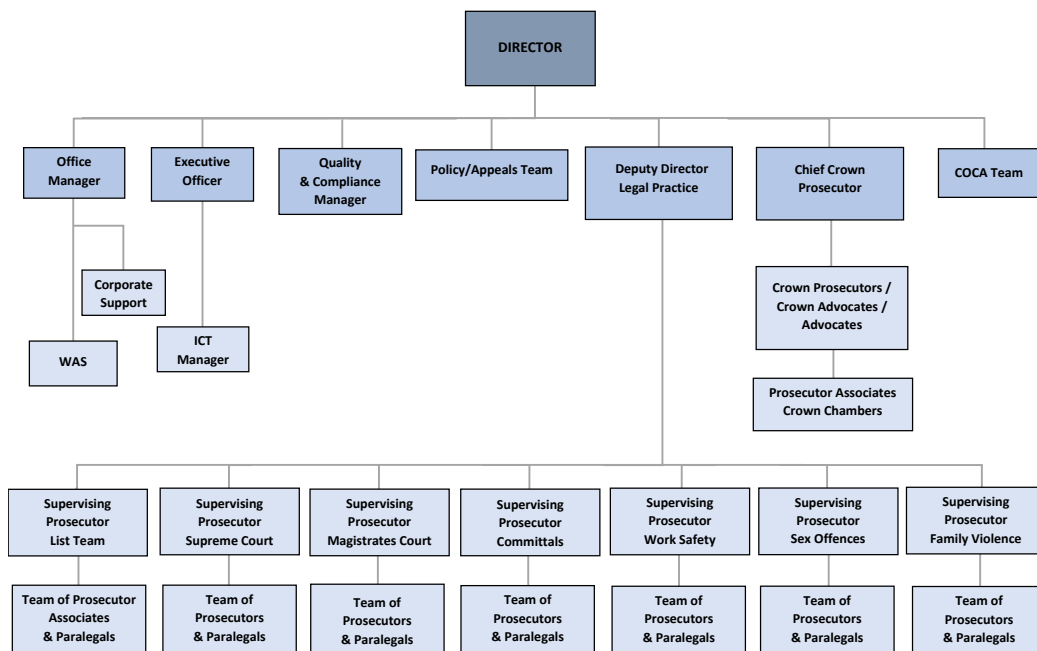
The Deputy Director manages the Criminal Practice at the office and reports directly to the Director. The Deputy Director Criminal Practice provides the necessary support in both representing the Director and the ODPP, and effectively managing the caseload of the office. The Deputy Director Criminal Practice is responsible for managing the allocation of prosecution work and for advising staff on evidentiary and procedural rules and providing advice to the police. The position also has responsibility for prosecution staff. Besides appearing as lead counsel in superior court criminal trials, the Deputy Director Criminal Practice role contributes to the training, mentoring and the performance management of prosecutors. The role conducts complex prosecutions, appeals and related proceedings. The Deputy Director Criminal Practice also plays an active role in training and enhancing legal staff development within the Office and contributes to the development of policy and procedure.

Crown Prosecutors

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

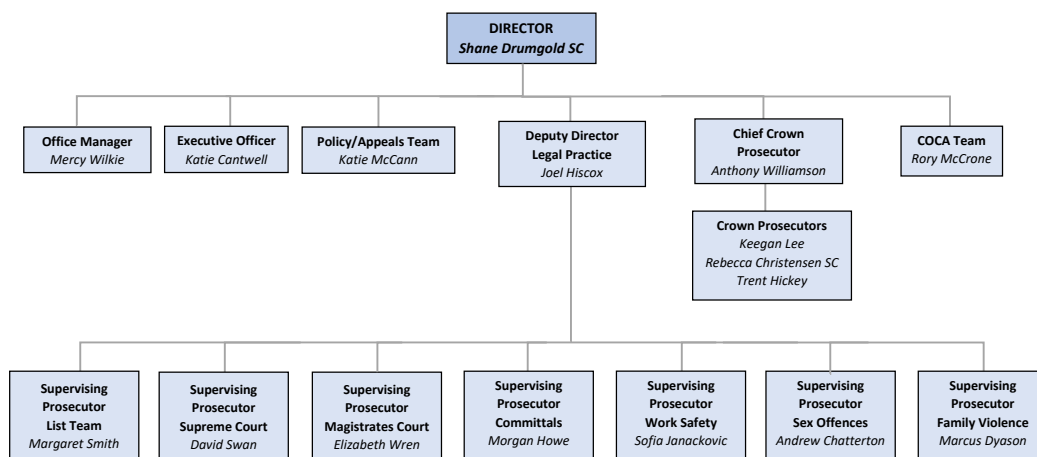
B.1.3 Organisational Structure

The Office structure as at 30 June 2022 is as follows:



B.1.4 ODPP Core Team

The ODPP core team structure as at 30 June 2022 is as follows:



B.1.5 ODPP Working Committees

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

B.1.5.1 Executive Committee

The operations of the Office (both legal and administrative) are overseen by the Executive Committee comprising the Director, Chief Crown Prosecutor, Deputy Director Criminal Practice, Office Manager and the Executive Officer.⁴ The Executive Committee is headed by the Director and its charter encompasses a wide range of issues including staff, policy (including legal and administrative), budget, resource allocation and legal matters. The Committee meets weekly to deal with immediate operational issues. At these meetings, Committee members provide advice and guidance to the Director on the strategic direction and management of activities.

B.1.5.2 Working Environment Group

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

- › foster co-operation in relation to the working environment and workplace safety issues;
- › disseminate information and consult about employment conditions, the working environment, and health and safety at work; and
- › co-ordinate health and wellbeing activities for the Office.⁵

B.1.5.3 Continuing Professional Development - Ad hoc Committee

The Continuing Professional Development ('CPD') - Ad hoc Committee ('Ad hoc Committee') assists in the planning and delivery of CPD programs within the ODPP. The CPD - Ad hoc Committee is normally made up of the Director, Chief Crown Prosecutor, Deputy Director and Crown Prosecutors from Crown Chambers.⁶

The CPD program is a vital training tool for all legal staff that focuses on professional development of legal staff in the technical aspects of the criminal justice process and laws of evidence.⁷ A series of fortnightly sessions are presented, concentrating on practical issues, enhancing the skills and knowledge of prosecutors.

⁴ Refer to the Executive team mentioned in B.1.1 (The Role and Functions of the Office) on page 34

⁵ Refer to B.11 (Human Resources Management) on page 93

⁶ Refer to B.2.4 (Crown Chambers) on page 46

⁷ Refer to B.11 (Human Resources Management) on page 93

B.1.6 ODPP Stakeholders

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

B.2 Performance Analysis

B.2.1 ODPP's Criminal Practice

The core work of the ODPP is performed between two jurisdictions. Matters conducted in the Magistrates Court (summary matters and matters where parties can consent to the Magistrate Court exercising jurisdiction) and those conducted within the Supreme Court.

The Magistrates Court of the Australian Capital Territory has an increased jurisdiction compared to other States who operate with a District court. Accordingly, while less serious matters are primarily dealt with in the Magistrates Court, serious matters are also prosecuted to finality within this jurisdiction. Grade 1-3 prosecutors regularly appear in the Magistrates Court, while prosecutors Grade 3 and above regularly appear in the Supreme Court.

Developments in the criminal practice

Within the past financial year, the office had to contend with the various COVID related restrictions and isolations. While it was a difficult time for everyone, the staff of the office performed admirably and in such a way that it would be hard to tell that it was anything other than business as usual. All staff adapted to the challenges and used technology to advance prosecutions in an expeditious fashion. Then in early 2022, the effects of COVID spreading through Canberra naturally affected operations as staff were exposed. While proportionate to the ACT community, again the response of our staff has been superb. The continued operations of the office performing to a high standard is a testament to the attitude and capability our employees.

During the 2021-2022 reporting period we introduced further technological advancements. This past year saw the solidification and embedding of those new technologies and procedures into the regular mainstream, albeit significantly disrupted practice. We have now automated a significant portion of the regular notifications to external agencies concerning court outcomes.

Other developments and achievements across the 2021-2022 reporting period include:

- › All brief's, barring an exceptional few are now being served via electronic means, predominantly via "Sharepoint".
- › Bail conditions are being automatically provided to the AFP within minutes of the courts entering such data into their systems. Within the 2022-2023 financial year, work will be performed to achieve the same result with respect to sentence outcomes.

- › Recruiting at the highest levels being Crown Prosecutor and Crown Advocates occurred in 2020. This will have significant flow on effects for recruitment into the 2022-2023 financial year.
- › For the first time, and as a direct result of the steps taken to integrate within the profession, a Crown Prosecutor who undertook the Bar Exams and Readers course transitioned seamlessly to the private bar. Likewise, our office seamlessly integrated a prominent criminal barrister into Crown Chambers.
- › Recruiting was also conducted as needed at Grade 3 and 4 levels as well as Grade 1-2 and Prosecutor Associate levels. A testament to the career progression now enabled from law student to fully admitted lawyer has been the successful promotion of a number of staff through the ranks of PAC to PAL and now Grade 1-2 prosecutors.
- › The office has met or surpassed key performance indicators.

B.2.2 Magistrates Court

All criminal matters prosecuted by this Office commence in the Magistrate's Court. While some proceed to trial or sentence in the Supreme Court, the vast majority remain in the Magistrate's Court and are finalised either by way of pleas of guilty or defended hearings. The Magistrate's Court hears a variety of matters from minor traffic infringements through to serious assaults and dishonesty offences. Prosecutors of all levels within the office maintain caseloads of Magistrate's Court files, and regularly appear in complex sentences and defended hearings before Magistrate's.

Hearings in the Magistrate's Court are often listed during dedicated special fixture sitting weeks, in which the court over lists hearings on the assumption that many will resolve and will not need to proceed to hearing. Prosecutors are routinely allocated a number of matters during these weeks and run multiple hearings within a short period of time. In addition to assisting court efficiency, the block listing periods upskill junior prosecutors, allowing them to develop their knowledge base and advocacy skills.

The COVID-19 pandemic continued to present challenges to the Magistrate's Court during the last reporting period. During the lockdown period between August and October 2021, the Magistrate's Court continued to conduct sentences and hearings, with prosecutors, defendants and their representatives often appearing via audio-visual link. The office was able to navigate this period efficiently and effectively due to the experience gained from the 2020 shutdown.

B.2.2.1 MC Cases

Police v Roberts and Walters

The two co-offenders were sentenced prisoners at the Alexander Maconochie Centre. Earlier in the day, Mr Roberts had an argument with the victim, who was also a sentenced prisoner, over a tattoo gun. The co-offenders later entered the victim's cell, and an associate closed the

door. At the time, the victim was lying down on the bottom bunk in the cell. The co-offenders dragged the victim off the bed and then assaulted him by kicking him in the head. While he was unconscious they lifted his arm onto the bed and stomped on it in an attempt to break it. The victim sustained serious injuries including swelling and a mild traumatic brain injury.

Both co-offenders plead not guilty to a charge of assault occasioning actual bodily harm by joint commission. The hearing proceeded before a Magistrate over seven days between March and November 2021. Fifteen prosecution witnesses were called at the hearing, including other detainee's, ACT Corrections staff and AFP forensic experts. The victim's cellmate who witnessed the entire incident also gave evidence. The co-offenders relied upon the submission that it could have been another detainee (including the cellmate) who committed the assault.

Both co-offenders were found guilty. At sentencing, the Magistrate noted that the offending was at the higher end of objective seriousness due to the harm and significant violence. The Magistrate observed that the offenders were 'no doubt relying on the code of silence that exists in prison to avoid any repercussions.' Both offenders received terms of imprisonment of 18 months.

Police v Tony Dawes and David Miller

In the early morning of 23 May 2021, police attended an address in Gungahlin and interrupted the two co-offenders using an electric saw to cut through the undercarriage of a car, in order to steal the vehicle's catalytic converter (a part of the car's exhaust). Police searched Miller's vehicle which was nearby and located an electric saw, three catalytic converters and an additional exhaust piece from a motor vehicle. Around the corner from Miller's car, police located a second car that was missing its converter. While both co-offenders pleaded guilty to the charge of attempted theft for the converter they had been caught attempting to take, they pleaded not guilty to the theft of the converter from the car around the corner.

The matter ran to a defended hearing, in which the prosecution proved that one of the catalytic converters located in the back of Miller's vehicle belonged to the car parked around the corner. The prosecution relied upon forensic analysis of paint samples taken from the undercarriage of the second vehicle, the converter and the electric saw. The prosecution also relied upon forensic comparisons between the tool marks left on the vehicle, the converter and the blade of the saw.

Both Dawes and Miller were found guilty of the theft of the converter from the second vehicle, as well as the damage caused to it. They received terms of imprisonment of between three and six months for the offences.

Police v Joshua Asfour

In June 2020, the defendant was sentenced for three offences including trafficking in a controlled drug. He was given an intensive corrections order for a period of 15 months, which is a term of imprisonment to be served in the community. The order required him to complete community service and be subject to supervision. He was also required not to commit any further offences.

In December 2020, police raided the defendant's home and located, amongst other things a black gel blaster firearm, a significant amount of prescription only medication for which he did not have a prescription and 35 grams of cocaine, being approximately six times the trafficable quantity. He was charged with possessing a prohibited firearm, possessing declared substances without authorisation and trafficking in a controlled drug.

The defendant initially plead not guilty, and the matter was set for hearing on 9 March 2022. On the morning of the hearing, the defendant plead guilty to the charges. He was sentenced on 21 June 2022. In sentencing him, the Magistrate identified that he had committed the offences six months into his intensive corrections order. The defendant had said that he committed the offence to pay back a debt of \$120,000 that he had incurred as a result of the earlier trafficking offence. The Magistrate did not accept this as any kind of mitigating factor, nor that the defendant had any significant remorse for his conduct. The Magistrate expressed reservations about whether, despite the defendant's assertions, he had moved into a more productive lifestyle. That the defendant had committed the same offence while subject to an intensive corrections order for drug trafficking was a significant factor on sentencing, and the Magistrate concluded that a term of imprisonment that did not include time spent in custody would prioritise the defendant's rehabilitation over the need to deter both him and the community from engaging in the conduct. The defendant was sentenced to an overall term of imprisonment of one year and seven months imprisonment, with a non-parole period of 12 months.

B.2.3 Supreme Court

Notwithstanding a further extended lockdown in the ACT during 2021 and the continuation of social distancing measures and public health protocols, matters have continued to progress through the Supreme Court as efficiently as possible throughout the 2021 – 2022 reporting period.

Between 1 July 2021 and 30 June 2022, 25 trials commenced in the Supreme Court, totalling 151 trial days. Of these 25 trials⁸:

- › 10 trials returned guilty verdicts
- › Seven trials returned verdicts of not guilty
- › The remaining matters returned verdicts of not guilty by virtue of mental impairment (three), returned no verdict due to the jury being hung (two), were discontinued during the proceedings (two), or resolved with the accused pleading guilty during the course of the trial (one).

Several trials were vacated and re-listed due to the lockdown period during 2021 or were vacated as a result of issues arising from the Covid-19 pandemic response.

⁸ Note: these figures correspond with Table B.2.14.6.

Sentence proceedings before the Supreme Court progressed with limited disruption. During the reporting period, 147 sentence proceedings were conducted, which included:

- › 119 sentence proceedings following either a plea of guilty in the Magistrates Court or a change of plea following committal for trial
- › 28 sentence proceedings which arose as a result of breaches of sentencing orders previously imposed by the Supreme Court

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

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

Notwithstanding the issues presented by the continuing COVID-19 pandemic, the Office was greatly assisted by the courts, court staff and the broader legal profession within the ACT in ensuring that matters continued to progress through the Supreme Court.

B.2.3.1 SC Cases

R v Rafterty

The offender pleaded guilty to the theft of \$292,240.70 in 18 separate transactions over a period of some six months.

The victim of his theft was a vulnerable elderly lady who was living alone and had dementia. The offender met the victim by doing odd jobs around her residence. He engaged in some handyman work for the victim, but otherwise would visit her and sums of money were transferred into his bank account.

The offending was detected when the victim's bank put a hold on the account due to unusual transactions. The offender became "cranky" about this when the victim told him, and a family member of the victim become involved and reported the matter to police. When spoken to by police, the offender agreed that he had received the money into his bank account and said that he had spent the money to pay off debts and for gambling.

The offender had a lengthy criminal history with previous convictions for offences of deception. He had a drug and gambling addiction, and physical and mental health issues.

The sentencing judge described that "*...stealing from an elderly person, nearing 90 years of age and suffering from the beginnings of dementia, is reprehensible.*"

The offender was sentenced to 15 months imprisonment, reduced to 12 months and 21 days on account of his plea of guilty. The imprisonment was ordered to be suspended after four months with a good behaviour order for a period of two years.

R v Arora, Mohit

The offender pleaded guilty to an offence of Participation in a Criminal Group contrary to s. 652 *Criminal Code (ACT)*.

The offender was the director and shareholder of a company that operated two Vodafone stores, one in Tuggeranong and one in Queanbeyan. Over a three-month period in 2019, 43 people attended at the store in Tuggeranong for the purpose of entering into phone contracts or adjusting existing contracts. On each occasion, the person provided identification documents as required for verification of their identity. The identification information was provided to a criminal group by the offender in circumstances where he was reckless in doing so, the offender contributed to the group's offending conduct. The criminal group used the identification documents on 86 occasions to apply for credit cards, debit cards and personal loans in the name of the relevant Vodafone customer. The applications were approved and then used, with a total of \$928,661.66 ultimately dishonestly obtained and lost by the credit providers.

The Vodafone customers whose identifies were used to obtain the financial services were unaware of this until they were contacted for non-repayment of the money advanced. A number of the customers provided victim impact statements in which they expressed their "*...considerable mental anguish and/or inconvenience, some loss of economic opportunity and particularly a common thread, adverse effect upon credit rating. It has shaken the confidence of each of the victims in their faith in commercial enterprises protecting their privacy.*"

The offender was sentenced to two years and six months imprisonment, reduced to two years imprisonment on account of the plea of guilty. The sentence of imprisonment was wholly suspended with a good behaviour order for a period of three years.

B.2.3.2 Drug and Alcohol Sentencing List

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

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

To be eligible, participants must:

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

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

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

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

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

The DATO is split into three phases:

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

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

There are currently 33 offenders subject to a DATO, two of whom currently have outstanding

warrants for breach of a DATO. Five offenders are in a residential rehabilitation facility while the rest are in the community.

Five offenders completed their DATO in 2021/2022, with three of them having graduated through all three phases.

Eight DATOs were cancelled for non-compliance with the program. The non-compliance involved ongoing drug use and unsatisfactory engagement with the treatment program. For some of the offenders, the non-compliance also included fresh offending. Of these eight offenders, four had sentences of full-time imprisonment imposed and four are yet to be re-sentenced.

B.2.4 Crown Chambers

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

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

The prosecutors in Crown Chambers deal with the most complex and serious trials, sentencing and appellate matters. Its members appear predominantly in the ACT Supreme Court and the Court of Appeal. Crown Chambers has carriage of the prosecution of homicide matters, and the most serious charges of sexual offending, crimes involving personal violence, serious drug trafficking matters, and prosecutions involving outlaw motor-cycle gangs (OMCGs). Crown Chambers also oversees referrals for prosecutions made by the ACT Integrity Commission. Crown Chambers also assists in strategic litigation, appearing in matters in the Magistrates Court which appear to have significant legal or public policy implications.

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

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

B.2.4.1 Involvement with external criminal justice agencies

The Act ODPP has again continued its involvement with criminal justice agencies in other jurisdictions. In the reporting period, this included continuing support to the Chief Legal Officer (CLO) of the Solomon Islands ODPP Family and Sexual Violence with the implementation of a policy and guidance manual for the prosecution of sexual violence matters. This support is facilitated through the Australian Government Attorney General's Department (AGDs) and AGDs have recently advised that the manual developed in Solomon Islands is being utilised as a model for other Pacific Island prosecution agencies.

In addition, in November 2021, Crown Prosecutor Rebecca Christensen SC and Supervising Prosecutor of the Family Violence Unit, David Swan, conducted a training session for Solomon Island prosecutors at the Solomon Islands ODPP inaugural Prosecutor's Conference, titled "The Evolving Role of the Prosecutor." Utilising lessons learned from the pandemic, this session was conducted via AVL, with Christensen SC and Swan presenting from the ACT ODPP conference room in Canberra to the Solomon Islands ODPP Prosecutors and Police Prosecutors based in Honiara. The session covered the topic "Prosecuting Sexual Violence Cases: Listening to Victims" and included the sharing of experiences and knowledge as to engaging with vulnerable victims, as well as tips on recognising and addressing vicarious trauma for prosecutors.

Unfortunately, during the last part of the session, civil unrest erupted in Honiara and, for safety reasons, the remaining days of the Solomon Islands 2021 Prosecutors Conference were cancelled. The Solomon Islands Director of Public Prosecutions, Ms Rachel Olutimayin, corresponded with her gratitude for our contribution, saying that it set the tone for a very promising three days of learning for the prosecutors that was disappointingly interrupted by the civil unrest. Ms Olutimayin expressed that – "Our spirits have not been dampened. We hope to reconvene in the New Year to look at how we can improve the way we work with the most disadvantaged in our community."

B.2.4.2 Notable Cases by Crown Chambers

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

R v Tuifua

On 19 July 2020 Frederick Tuifua (the offender) murdered Pitasoni Ulavalu at the Kokomos nightclub in the Canberra city.

At about 11:30pm on 18 July 2020 the offender, in company with eight friends and associates, attended the Kokomo's nightclub in Canberra City. The club was at capacity with 116 patrons in attendance. Already present in the club were a number of members of the Comanchero Outlaw Motorcycle Gang (OMCG), including Mr Ulavalu, who was the Commander of the Canberra chapter of the Comanchero OMCG, and Mr Zac Robb. A short time later a disagreement occurred between some of the offender's party and the Comanchero members. During the course of that disagreement the Comanchero members came to be in possession of a small bag belonging to one of the offender's associates. The offender and his associates then left the nightclub.

17 minutes later the offender and his associates returned to the nightclub. They were refused entry by security. Some of the offender's party then began to remonstrate with security. Whilst the offender was waiting at the entrance, he produced a knife with a blade that was 10 cm long and 2.5 cm wide. The offender and his party pushed past security and entered the club. Almost immediately a large brawl erupted. During the course of the brawl the offender stood back with the knife in his hand. When Mr Ulavalu had his back turned to the offender, the

offender approached him from behind and stabbed him to the right side of his neck, just below the ear, with considerable force. Blood began spurting from his neck immediately.

Mr Ulavalu sustained a gaping stab wound to the neck measuring 44mm in length and 10cm in depth situated just below his right ear. The knife passed through the external carotid arteries and the jugular vein. Mr Ulavalu also suffered a fracture to the transverse process of his C1 vertebrae. After being stabbed the deceased stumbled outside where he collapsed and died in front of numerous members of the public.

After having stabbed Mr Ulavalu, the offender approached Mr Robb from the rear as he was being restrained in a 'bear hug' by one of the offender's party. The offender then stabbed Mr Robb in the upper left thigh. Mr Robb sustained a deep puncture wound to his left gluteal area as a result.

The precise nature of the dispute concerning the bag has never been identified. None of the people who would reasonably be expected to know this information, ever provided it to police. It is a matter of concern that the catalyst for the dispute leading to the death of Mr Ulavalu remains unknown, and reprisal remains an ever present fear.

During sentencing proceedings for the murder, the Crown argued that the aggravating features forming part of the murder included:

- › The offending was cowardly in that the Mr Ulavalu was approached from behind and had no opportunity to defend himself;
- › It was committed in company;
- › There was an element of pre-meditation; and
- › The offending occurred in a crowded nightclub and would have had a traumatic effect on the patrons that witnessed it.

Whilst in custody the offender participated in a gratuitous assault on another inmate without any apparent provocation. Liability arose for this offending pursuant to section 45A of the *Criminal Code 2002*. The victim was bashed in a frenzied assault by six detainees, including the offender. He was punched and kicked about his body and face. The attack occurred because the detainees held the mistaken belief that the victim was a paedophile. The Crown submitted that the offending was serious given that the victim was vulnerable as a detainee and was a misguided form of vigilante violence against someone who was, in fact, innocent of the purported offending which gave rise to the attack.

In relation to all of the offending, the offender was sentenced to 20 years imprisonment. He is eligible to apply for parole after serving 11 years imprisonment.

The Crown has appealed the sentence on the basis that it is manifestly inadequate.

R v White

Mr White was tried before a jury for perjury. Mr White's wife, Sarah-Jane Parkinson, was previously convicted of making a false allegation of offending to police. She falsely claimed that

her former finance, an ACT Corrective Services officer, had violently raped and bashed her. At her hearing Mr White was called to give evidence. He was a serving NSW Police officer at the time. During the course of giving evidence, Mr White testified under oath that he had never used condoms with Parkinson during their relationship. That was untrue. The Crown tendered SMS messages that clearly showed the couple did use condoms. The question assumed particular significance during the hearing because part of Ms Parkinson's false complaint was that the victim used a condom when he was alleged to have raped her. Mr White knew the question assumed some significance because he had previously been questioned about his use of condoms by police, and the question asked at hearing went to the question of whether Ms Parkinson was lying about the victim using a condom when he raped her.

Mr White was convicted by the jury of perjury.

During sentencing proceedings the Crown submitted that the perjury arose as a result of a misguided effort to protect Ms Parkinson from being convicted. The Crown argued that as a serving police officer at the time the offence was committed, the offending was particularly serious as Mr White was someone who had sworn an oath to uphold the rule of law and the administration of justice. Accordingly, the Crown submitted that nothing other than a sentence of full-time imprisonment was appropriate. Ultimately the Court disagreed. Having regard to the fact that Mr White was otherwise of good character and there was a risk to his safety in prison as a former police officer (despite the Court accepting that there was no evidence of this, or Corrections ability to mitigate this risk), the Court imposed a sentence of 18 months imprisonment which was fully suspended.

R v BC

The offender, BC, pleaded guilty to three counts of sexual intercourse with a person under 16 years of age, contrary to s 55(2) of the *Crimes Act 1900* (ACT), and one count of an act of indecency with a person under 10 years of age, contrary to s 61(1) of the *Crimes Act*. All four offences were committed against the offender's younger cousin in 2004 and 2010.

In relation to the first incident, the offender was 15 years old and the victim was aged 9. The offender told the victim to lie on the couch, he removed his pants and pulled the victim's pants down to her ankles. The offender climbed on top of the victim and rubbed his penis against her vaginal area. The offender's penis became erect. The victim began to cry which caused the offender to cease rubbing against the victim.

In relation to the second incident, the offender and victim were staying overnight at their grandparent's home. The offender was 20 years old and the victim was 14. The victim had gone to bed and was alone in a bedroom. The offender entered the bedroom, climbed on top of the victim and held her hands down above her head so that she could not get up. The offender pulled down the victim's pyjama pants and underwear and pushed his erect penis into her vagina. He thrust in the victim for several minutes before leaving. He did not use a condom. The victim had never had sexual intercourse before. She found it painful and bled as a result.

In relation to the third incident, the offender and victim were at their grandparents' house. The offender was 20 years old and the victim was 15. The offender asked the victim to go for a

drive so that they could talk. He drove the victim to a mountain near Woden and stopped the car. The offender told the victim to walk over to a big rock with him. He grabbed the victim, pushed her against the rock and then pulled her pants down. The offender then had penile-vaginal intercourse with the victim. He did not use a condom and ejaculated inside the victim. As a result, the victim became pregnant. The pregnancy was aborted and police ultimately conducted DNA testing of the foetus and ascertained that the offender was the father.

In relation to the fourth incident, the offender and victim were staying overnight at their grandparents' house. The offender was now 21 years old and the victim was 15. The victim was in bed. Some family members were directly outside the bedroom window. The offender approached the bed and pulled the sheet and blanket off the victim. He removed his pants and climbed on top of the victim. He then rubbed himself up against the victim until his penis was erect. He removed the victim's pants and inserted one finger in the victim's vagina. He then got on top of the victim and inserted his penis into her vagina. He did not use a condom. He thrust into the victim and placed his hand over her mouth because of the people outside the bedroom.

The offender was initially sentenced to a total term of 4 years and 6 months imprisonment, with a non-parole period of 18 months.

The Crown appealed the sentence on the basis that it was manifestly inadequate. The Crown argued that:

- › The sentence did not reflect the gravity of the offending;
- › The sentencing judge placed too much weight on the offender's prospects of rehabilitation;
- › The sentencing judge placed too much weight on the hardship that would be occasioned to third parties; and
- › The length of the non-parole period was particularly inadequate.

The Court of Appeal upheld the appeal and doubled the length of the offender's non-parole period.

B.2.5 Appeals

To ensure an independence of the decision-making process for appeals, the appeals unit and criminal justice policy sit outside of Crown Chambers. The unit consists of two junior prosecutors led by a Crown Prosecutor under the direction of the Director.

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

B.2.5.1 Supreme Court

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

The total number of appeals in the Supreme Court for the 2021-2022 reporting period was 30 appeals, consisting of 26 defence appeals (against convictions and severity of sentence) and four Crown appeals.

B.2.5.2 Court of Appeal

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

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

The number of self-represented appeals are increasing. This presents a challenge both to the ODPP and the Court. Self-represented often have few clear points identified in the Notice of Appeal, and rarely provide submissions. Dealing with such appeals can be time consuming, however, the Court has extended latitude in the procedures to those who are not represented. The Court relies upon the ODPP as a model litigant to assist in the conduct of such appeals.

The total number of appeals in the Court of Appeal for the 2021-2022 reporting period was 38 appeals, consisting of 31 defence appeals (against convictions and severity of sentence) and seven Crown appeals against inadequacy of sentence.

B.2.5.3 High Court

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

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

In the reporting period of 2021-2022, the ODPP appeared in five applications for special leave to appeal, including one application by the Crown.

B.2.5.4 Appeal cases

Supreme Court

Song v McLennan

The appellant, Xiwei Song, was found guilty of a single count of intentionally and unlawful choking, strangling or suffocating another person by Special Magistrate Campbell following a two-day hearing in the Magistrates Court.

The prosecution case was that the appellant argued with his wife, the complainant, about one of their daughters. The complainant had an “emotional breakdown” and knelt down on the floor. The appellant was alleged to have held his hands around the complainant’s neck and said “I’d rather the daughter have a murderer father instead of letting the daughter see you ... crying.” The complainant told several friends what happened and went to a GP and the Canberra Hospital. Two days after the alleged assault she went to the police station and participated in an evidence-in-chief interview. The officer who conducted the interview gave evidence that he noticed bruising on her neck and right arm. The complainant’s evidence in court differed from that in her evidence-in-chief interview. She said she now believed the appellant was trying to stop her from hurting herself. In cross-examination by counsel for the appellant, the complainant stated she did not know if she heard the appellant make the “murderer father” comment. The prosecutor made an application to cross-examine the complainant about this aspect of the evidence, but it was subject to objection from the appellant and the application was refused.

The appellant’s version in a record of interview, was that the complainant had harmed herself following an argument and he made contact with her arm and neck while trying to prevent her from further self-harm. There was therefore a factual dispute about the exact conduct that constituted the choking and whether that occurred in the context of a lawful defence. The prosecution submitted that the difference between the complainant’s evidence-in-chief interview and evidence in court coincided with a realisation that the appellant’s visa could be cancelled. It was submitted that the appellant’s actions were done out of stress and anger, not defence, and that the complainant’s evidence in the evidence-in-chief interview should be accepted.

The Magistrate ultimately accepted the complainant’s evidence during the evidence-in-chief interview, which was corroborated by photos and complaint evidence, and rejected various parts of her in-court testimony. Her Honour rejected the parts of the appellant’s account that

suggested the possibility that the injuries occurred as a result of his attempts to stop the complainant from hurting herself. As a consequence, she found that there was not a lawful excuse for the appellant choking the complainant and found the offence proved.

The appellant appealed his conviction to the Supreme Court on the grounds that the conviction was unreasonable or unsupported having regard to the evidence, the Magistrate erred in the application of the Liberato direction⁹, and that the Magistrate's rejection of the complainant's evidence given in court, absent cross-examination by the prosecution, led to a miscarriage of justice.

The appeal was heard by Mossop J in July 2021. In relation to the third ground of appeal, His Honour was not satisfied that there was any improper conduct on the part of the prosecution in not cross-examining the complainant and nor was there any unfairness to the appellant in the way the Magistrate addressed the relevant aspects of the complainant's evidence. In terms of the aspects of the complainant's evidence that the prosecutor did seek to cross-examine the complainant on, Mossop J noted the appellant's objection to this application at first instance and stated that "[t]he appellant should not be permitted on an appeal to approbate and reprobate in this way.": at [170]. His Honour further found the appellant's submissions in relation to the Magistrate's Liberato direction were "without merit" and also concluded that he did not consider the finding of guilt was not open to the Magistrate. As a result, the appeal was dismissed.

Pappas v Mirenda

John Pappas, the appellant, received a speeding fine on 1 February 2020, for speeding in a non-school zone by less than or equal to 15 km/h. A speed camera detected his vehicle travelling at 83 km/h in a 70 km/h zone. The charge identified the time of the offence as 9:50am and an image captured by the speed camera recorded the time as 9:50:11.

The appellant disputed the speeding fine and the matter went to a hearing before Chief Magistrate Walker. The appellant argued before the Magistrate that 9:50am and 9:50:11am were two different times so there was a reasonable doubt as to whether the vehicle was travelling the speed limit at 9:50am. The Magistrate rejected that argument. Her Honour found that the concept of 9:50am can extend to the full 60 second captured by the descriptor 9:50am, so 9:50:11am falls within the particularisation in the charge.

The appellant appealed to the Supreme Court on a number of grounds. The appellant submitted that, for the purposes of a speeding offence, the prosecution was required to prove beyond reasonable doubt that the offence occurred at the exact time recorded in the charge. It was said that, as a consequence, the prosecution had to prove that the speeding occurred at 9:50am and it was insufficient to prove that it happened at 9:50:11am.

⁹ A direction in cases where there is a significant conflict in the evidence given between the complainant and the accused, the judge directs that even if the fact finder prefer the evidence of the prosecution they should not convict unless satisfied beyond reasonable doubt of the truth of the evidence. Even if the fact finder does not positively believe the evidence of the defence, they cannot find an issue against the accused contrary to that evidence if the evidence gives rise to a reasonable doubt about that issue.

Mossop J held that the terms of the offence provision made clear that time is not an element of the offence. It is a matter of particularisation, which is an incident of the requirement of procedural fairness. His Honour concluded that there was no procedural unfairness to the appellant in the prosecution proceeding on the basis of particularisation to the minute, rather than to the second. The appeal was dismissed and, as a consequence, the appellant was required to pay the \$440 fine imposed by the Magistrate.

Court of Appeal

The Queen v Ware

The offender was sentenced in the Supreme Court for sexually abusing his biological son between 1998 - 2002. The offender had pleaded guilty to the offences, which included an offence of maintaining a sexual relationship with a young person and was sentenced to a total sentence of three years and two months' imprisonment, with a non-parole period of 20 months. At the time of sentence, the offender was aged 69 years, he had no previous convictions and had been a pastor for 34 years.

The Director appealed against the sentence on a basis that it was manifestly inadequate. It was submitted that the sentence did not reflect the maximum penalty and reference was made to decisions from the ACT and all other jurisdictions in Australia as to the matters that must inform the assessment of objective seriousness for offending of this type. It was submitted by the ODPP to the Court of Appeal that (see at [52], [54], [55], [58] of decision) –

...even in the absence of serious penetrative acts, a frequency of serious sexual conduct over an extended period, particularly where there is a familial relationship, merits a sentence beyond four years imprisonment [which was the starting point of the sentence before applying a discount on account of the guilty plea]...there is no sound basis upon which ACT sentences for sexual offending, particularly against children can be inherently more lenient than in other jurisdictions...sentencing practice for sexual offending must appropriately reflect punishment of the offender, specific and general deterrence, denunciation, and recognition of serious harm to the victim...[to allow the sentence to stand] would mean an erosion of the standard of sentencing for offences of this kind and would undermine public confidence in the administration of justice in the ACT.

The Court of Appeal upheld the appeal, finding that the sentence imposed was manifestly inadequate. The Court said (at [103]) –

...the conduct was clearly egregious, occurring over a protracted period, in the victim's home, and at the hands of his own father. The victim suffered greatly from his father's betrayal of him.

The offender was resentenced to a sentence with a starting point of six years imprisonment.

Vunilagi v The Queen

In the early hours of 3 November 2019, a 22-year-old woman met and began socialising with Simon Vunilagi, Isimeli Vatanitawake, Josefa Masivesi and Ratu Macanawai at a bar. They all travelled to Mr Masivesi's unit where the Crown alleged that each man sexually assaulted the complainant. Each man was charged with a number of offences and all were due to face trial in 2020.

As a result of the COVID-19 pandemic, jury trials were suspended and the ACT Government passed a number of legislative amendments to the Supreme Court Act 1933 (ACT) to facilitate the continuation of judge alone trials. One such amendment introduced s 68BA, which allowed the court to order an accused be tried by judge alone, notwithstanding the absence of that accused's election for trial by judge alone, if satisfied it would "ensure the orderly and expeditious discharge of the business of the court; and ... is otherwise in the interests of justice.": s 68BA(3).

Given the length of the trial and the number of co-accused, the matter was not able to proceed by way of a jury trial in mid-2020 and in the short to medium term thereafter. Mr Vatanitawake, Mr Masivesi and Mr Macanawai were remanded in custody awaiting trial. All three supported the making of an order for a judge alone trial. Mr Vunilagi was on bail and opposed the order. On 13 August 2020, Murrell CJ made an order under s 68BA for the trial to proceed before a judge sitting alone.¹⁰

The trial ran before Murrell CJ for 13 days in September 2020. The Crown case was that the complainant was heavily intoxicated when she met the four men. It was alleged that when she arrived at the unit Mr Vunilagi took the complainant into the bedroom and, followed by Mr Vatanitawake, Mr Macanawai and Mr Masivesi, engaged in various acts of sexual intercourse and acts of indecency with the complainant without her consent. At the conclusion of the trial, Murrell CJ reserved her reasons and in October 2020 handed down her judgment. Her Honour found Mr Vunilagi guilty of eight of the 11 counts with which he was charged, Mr Vatanitawake guilty of the sole count charged and Mr Masivesi guilty of the three counts with which he was charged. Her Honour found Mr Macanawai not guilty of all counts.¹¹

Each of the three accused found guilty appealed their convictions to the Court of Appeal. The grounds alleged that the verdicts were unreasonable and unsupported having regard to the evidence, and that the trial judge "impermissibly and unfairly introduced evidence into her deliberations that was not before her Honour...". Mr Vunilagi also appealed on further grounds asserting that the order for a judge alone trial was made under a constitutionally invalid provision and consequently caused a miscarriage of justice. Given the constitutional nature of these grounds, the Attorney-General of the ACT intervened in the appeal.

The Court of Appeal (Mossop, Loukas-Karlsson JJ and Abraham AJ) unanimously dismissed the appeals. The Court rejected the ground asserting that the verdicts were unreasonable. To the extent that the second ground involved submissions that the trial judge reasoned

¹⁰ *R v Vunilagi; R v Vatanitawake; R v Masivesi; R v Macanawai* [2020] ACTSC 225.

¹¹ *R v Vunilagi; R v Vatanitawake; R v Masivesi; R v Macanawai (No 2)* [2020] ACTSC 274.

through “gender stereotyping”, the Court rejected this argument and agreed with the Crown’s submission that “it ought to go without saying, engaging in ‘amorous’ and consensual behaviour with men earlier in the evening does not provide carte blanche consent to sexual activity (with all men) later”: at [140].

The Court also rejected each of Mr Vunilagi’s challenges to the validity of s 68BA and held that there was no basis to suggest that the making of the order for a judge alone trial precluded Mr Vunilagi from receiving a fair trial or occasioned a miscarriage of justice. Mr Vunilagi appealed the Court of Appeal’s decision (only in relation to the constitutional grounds) to the High Court and a hearing before the full bench will take place later in 2022.

The Queen v Newby

At approximately 1:30am on 11 January 2020, Jayscen Newby murdered Frankie Prineas by stabbing him 37 times. The murder occurred in the context of the breakdown of an intimate relationship between Mr Newby and Ms Adams (a pseudonym), which was marred by violence. Mr Newby and Ms Adams remained in contact as they shared a child, but Mr Newby struggled to come to terms with the end of the relationship. Ms Adams began seeing new people and in October 2019 met Mr Prineas through a dating app.

On Saturday, 11 January 2020, Mr Prineas was with Ms Adams at her house. Unbeknown to the two of them, Mr Newby gained access to Ms Adams’s residence using a house key. He heard Ms Adams and Mr Prineas in the bedroom. He walked into the kitchen, took a kitchen knife with a 25cm blade from the drawer and entered the bedroom. He switched on the light and began to attack Mr Prineas with the knife. The attack on Mr Prineas was vicious and unprovoked. The two men had never previously met. After the attack, Mr Newby left the house and drove away while Ms Adams called an ambulance. She tried to provide Mr Prineas with first aid, but he was gravely injured and died on route to the hospital.

In June 2021, Mr Newby was sentenced by Murrell CJ to 20 years’ imprisonment for the sole count of murder, with a non-parole period of 10 years. The Crown appealed to the Court of Appeal on four grounds. These included that the sentencing judge failed to consider s 35(4) of the Crimes (Sentencing) Act 2005 in relation to Mr Newby’s plea of guilty, that she erred in affording a discount to law enforcement authorities under s 36 of the Crimes (Sentencing) Act, that there was a failure to give adequate reasons, and the sentence was manifestly inadequate.

The appeal was heard by Elkaïm, Mossop JJ and Bromwich AJ. In May 2022 the Court handed down a joint judgment, upholding the Crown appeal on three of the four grounds of appeal. The Court held that the Crown case as to Mr Newby’s guilt was overwhelmingly strong and that, as a consequence, the sentencing judge erred in allowing Mr Newby a significant reduction for his plea of guilty. The Court rejected the Crown’s arguments that the sentencing judge erred in providing a discount for voluntarily attending the police station and not opposing a forensic procedure application, finding that such a discount may be given even if the value of the cooperation is limited. The Court also held that both the head sentence and non-parole period imposed were manifestly inadequate having regard to the objective seriousness of the offending and Mr Newby’s lack of remorse, and that the sentencing judge gave inadequate reasons for the length of the non-parole period.

The Court re-sentenced Mr Newby, reducing the discount for the plea of guilty, so that the head sentence was increased to 24 years with a 15 year non-parole period.

High Court

Will v The Queen

In February 2021, the Court of Appeal heard an appeal from a sentence imposed by Mossop J in relation to the offending of David Will. The appellant was sentenced to 10 years and 10 months' imprisonment, with a six year non-parole period, for aiding and abetting the aggravated robbery of the Mawson Club by Mark Munro and Sam Melkie in 2004.

The appellant had recruited Mr Munro and Mr Melkie to carry out the robbery on a Chubb Security van, using information provided to him by an employee of Chubb Security. In the course of the robbery, Mr Munro and Mr Melkie stole approximately \$150,000 and shot a security guard. Following the robbery, the three co-offenders split the money in accordance with an existing agreement. There was a lengthy police investigation, and Mr Munro and Mr Melkie were only identified following DNA testing on a cigarette found at a bus shelter near the Mawson Club. They were charged with aggravated robbery in 2010.

In May 2010, the appellant was compulsorily examined by the Australian Crime Commission ("ACC") and gave evidence inculcating himself in the robbery. Mr Melkie pleaded guilty to his role in the offending, but Mr Munro went to trial. The appellant was subpoenaed to give evidence at the trial. He had not given an undertaking to do so and resisted giving evidence. However, the prosecutor with carriage of the trial had possession of the transcripts from the appellant's ACC examination. The prosecutor advised the appellant that given his evidence to the ACC, there would be serious consequences if he did not give evidence at the trial consistent with his evidence to the ACC.¹² The appellant ultimately gave evidence at the trial and Mr Munro was found guilty.

The appellant was charged with aiding and abetting an aggravated robbery in 2014 and indicated he would enter a plea of guilty in March 2018, about a week before his trial was due to commence. He was sentenced by Mossop J in May 2018. Following the granting of leave to appeal out of time, the appellant appealed to the Court of Appeal on the ground that he ought to have received a discount for assistance to law enforcement under s 36 of the Crimes (Sentencing) Act for the evidence he gave at the trial of Mr Munro,¹³ and that the sentence was manifestly inadequate.

The Court of Appeal (Murrell CJ, Loukas-Karlsson J and Charlesworth AJ)¹⁴ unanimously rejected the manifest excess ground. The Court split on the ground in relation to s 36. All three judges agreed that the Director of Public Prosecutions is a "law enforcement authority" for the purpose of s 36. However, the majority, Murrell CJ and Charlesworth AJ, held that

¹² The trial pre-dated the High Court's decisions in *X7 v Australian Crime Commission* (2013) 248 CLR 92 and *Lee v The Queen* (2014) 253 CLR 455.

¹³ Notwithstanding that the appellant did not submit for a discount under s 36 at the sentencing hearing.

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

evidence given under a subpoena cannot constitute “assistance”. This is because, given the historical rationale for an ‘assistance discount’ as the encouragement for offenders giving truthful information, voluntariness or willingness are essential requirements in enlivening the discretion to award a discount under s 36. The compulsion affected by a subpoena, absent other evidence of willingness such as an undertaking or statement, meant that the giving of evidence in such circumstances did not constitute assistance. Loukas-Karlsson J, in dissent, held that the sentencing judge erred in not providing a discount under s 36 because nothing in the provision or explanatory material, either expressly or by necessary implication, limits the discount to voluntary assistance. Her Honour’s reasoning relied on the community benefit from offender assistance and the fact that such benefit may be the same regardless of whether the assistance is voluntary or compelled.

In June 2021, the appellant made an application for special leave to the High Court to appeal the decision of the Court of Appeal. The appellant sought to contend that the majority erred in finding that voluntariness or willingness were preconditions for the exercise of sentencing discretion to award a discount under s 36, and in finding that oral evidence given under a subpoena without a police statement or undertaking to give evidence does not constitute assistance for s 36. The application was subject to an oral hearing before Keane and Edelman JJ on 10 December 2021. Both justices questioned how compliance with a legal duty could constitute assistance to law enforcement authorities. The Court ultimately held that the proposed appeal “does not enjoy sufficient prospects of success to warrant the grant of special leave” and the application was dismissed.

The Queen v Smith

In June 2020, following a trial by judge alone, Mossop J found John Smith (a pseudonym) guilty of one act of indecency without consent and two counts of sexual intercourse without consent. The offending was alleged to have occurred against the same complainant on 28 April 2018.

The complainant and Mr Smith were both 17 years old at the time. They would often chat and hang out and had engaged in sexual activity on three prior occasions. On the night of the alleged offending, the complainant picked Mr Smith up from a party and they stopped at an oval and engaged in consensual sexual activity inside the complainant’s car. The complainant said that, without her consent, Mr Smith attempted to engage in cunnilingus and licked her thigh, and then engaged in penile-vaginal intercourse without her consent. The complainant made complaints to a friend very soon after, followed by another friend and her parents. Mr Smith gave evidence that he did not lick the complainant’s thigh and that the complainant positively consented to the sexual intercourse. As such, the issues at trial were whether the alleged act of indecency occurred and whether the Crown proved that the relevant sexual acts occurred without consent.

The trial judge accepted beyond reasonable doubt the evidence of the complainant. His Honour rejected Mr Smith’s evidence about the critical events that occurred in the car. Having

rejected that evidence, the trial judge was satisfied beyond reasonable doubt that the relevant sexual activity occurred, that the complainant did not consent, and that the accused was at least reckless as to her lack of consent.

Mr Smith appealed against the convictions on two grounds. Firstly, that the verdicts were unreasonable having regard to the evidence and the trial judge's failure to adhere to the Liberato direction. There were two limbs to this argument, being an asserted error in the trial judge rejecting Mr Smith's evidence and in failing to properly assess the complainant's credibility in light of a number of matters. The second ground of appeal was that there had been a miscarriage of justice caused by the trial judge's impermissible consideration of 'common knowledge' material that had not been the subject of evidence or submissions.

The appeal was heard by Murrell CJ, Loukas-Karlsson J and Charlesworth JJ in February 2021.¹⁵ All three judges rejected or did not consider the second ground of appeal. In relation to the first ground of appeal, Murrell CJ rejected each of the matters raised by Mr Smith regarding the reasonableness of the verdicts and concluded that they were "well open to the trial judge": at [208]. The majority (Loukas-Karlsson J and Charlesworth AJ), writing separately, upheld the unreasonable verdict ground. The reasons of each judge differed but both found that the Crown had not established the element of recklessness. As a result, the verdicts were set aside and substituted with verdicts of acquittal.

In July 2021, the Crown made an application to the High Court for leave to appeal the decision of the majority of the Court of Appeal. The foundation for the Crown's application was that recklessness was not the subject of any real contest during the trial and was never raised during the appeal proceedings. Notwithstanding this, Loukas-Karlsson J held that the critical issue was that the Crown did not establish recklessness. Charlesworth AJ found an absence of recklessness of the part of Mr Smith based on the complainant's account of Mr Smith's post-assault conduct. However, Mr Smith had denied that conduct in evidence and did not embrace any submission on appeal that, even accepting the complainant's evidence, the requisite state of mind could not be made out. The Crown contended that the matter therefore raised questions of law relating to whether an appellate court's independent assessment of the whole of the record in accordance with *M v The Queen* (1994) 181 CLR 487 permitted it to decide a conviction appeal on a basis not argued before it; and whether procedural fairness requires an appellate court taking such a course to provide the parties with an opportunity to be heard on the issue.

The application was heard at an oral hearing before Keane and Edelman JJ on 18 March 2022. Both parties were required to make oral submissions and the Court adjourned before determining that the appeal foreshadowed would not turn "upon any issues of general principle of sufficient importance to warrant the grant of special leave to appeal". The application for special leave was therefore dismissed.

¹⁵ *Smith (a pseudonym) v The Queen* [2021] ACTCA 16.

B.2.6 Sexual Offences Unit

The Sexual Offence Unit ("SOU") is made up of a specialist team of prosecutors experienced in the preparation and prosecution of sexual offence matters within the ACT.

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

The most recent special measure legislated is the use of intermediaries for prescribed witnesses (child sexual offence victims or child witnesses involved in serious violence involving the death of a person) and witnesses with a communication difficulty. Since January 2020, the SOU prosecutors have worked jointly with the Intermediary Program and the Human Rights Commission (ACT). SOU Prosecutors regularly appear in ground rule hearings where the intermediary report can be accepted or challenged by the parties. The adopted recommendations in the intermediary report are intended to effectively assist the witness communicate their evidence.

The SOU continue to work collaboratively with the Sexual Assault and Child Abuse Teams (SACAT) of ACT Policing. The SOU Leader meets on a monthly basis with the SACAT Leaders to discuss current issues and ensure the optimum service is delivered to victims of sexual offences. SOU Prosecutors regularly provide advice to SACAT regarding the admissibility of evidence and extradition matters. SOU Prosecutors delivered training to the SACAT groups in 2021 and biannual training to the new recruits at the AFP College.

In July 2021, the ACT Government established a Sexual Assault Prevention and Response Program (SAPRP) to coordinate the community, the service sector, unions and relevant stakeholders on responses to sexual assault in the ACT. A senior member of the SOU was an active member of the SAPR Law Reform Working Group which recommended several justice system reforms and legislative amendments, including the affirmative communicative model of consent. The Steering Committee accepted all of the recommendations made by the SAPR Law Reform Working Group and 'Listen. Take Action to Prevent, Believe and Heal Report' (the report) was presented to Government on 13 December 2021. The report made 24 recommendations to improve how the ACT prevents and responds to sexual violence in our community.

In May 2022, recommendation 15, which was the establishment of an independent cross-agency taskforce to undertake a review of all sexual assault cases reported to ACT Policing that were not progressed to charge, was implemented by the ACT Government. This

recommendation was made in response to the alarmingly low number of sexual offence complaints (2.8%) that proceed to charge in the ACT within an acceptable period. The Director and a senior member of the SOU participate in the cross-agency taskforce and are committed to identifying the systemic issues leading to the low number of sexual assault reports proceeding to the point of charge and to identify ways that victim rights can be better upheld, including ways to reduce the re-traumatisation that many victims experience when they engage with the justice system.

On 05 May 2021, the Crimes (Consent) Amendment Bill 2022 introduced new principles of consent and a legal definition of consent into the Crimes Act 1900 where consent is based on a free and voluntary agreement. The amendments are intended to ensure that consent to sexual activity must be actively and affirmatively communicated. There were further amendments to s67 Crimes Act 1900 which updated the existing set of circumstances in the Crimes Act 1900 whereby a person does not consent to a sexual act, to align with community expectations and with law reform in other Australian jurisdictions. Due to the recent amendments, there has not yet been a trial conducted which deals with the new amendments.

Due to the ongoing COVID-19 pandemic, sexual offence trials continued to be conducted by judge alone pursuant to s 68B of the Supreme Court Act 1933 (ACT). The use of audio visual technology has been integral for the continuation of hearings and trials in the ACT.

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

B.2.6.1 Sexual Offences: Trials and Sentences in the Supreme Court – 1 July 2021 to 30 June 2022

Description	Matters
Trials	
Trials	8
Trial Days in Court	71
Trial Outcomes	
Guilty Verdicts	4
Not Guilty Verdicts	2
Other	2
Awaiting verdict	0
Sentencing Proceedings	11
Accused sentenced after committal for sentence or after committal for trial/changed plea	11
Accused re-sentenced after breach	0
Notices declining to proceed further	2

B.2.6.2 Breakdown of Sexual Offence matters in different courts – 1 July 2021 to 30 June 2022

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

Description	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual Offence matters commenced	88	1	25	114
Sexual Offence matters completed	36	1	22	59
Sexual Offence matters proved	22	1	16	39
Sexual Offence matters discontinued	7	0	2	9
Sexual Offence breach matters	4	0	0	4

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

B.2.6.3 Sexual Offence Cases

R v Garay

R v Garay (No 3) [2021] ACTSC 215, was a judge alone, three-week trial, which alleged historical and systematic sexual abuse of a young boy when he was six to 14 years of age. The offender was a close family friend who was considered a father figure by the complainant child.

The trial alleged 16 counts of Acts of Indecency on a young person and two counts of sexual intercourse with a young person. The prosecution also led tendency evidence which alleged other offending in NSW and an ongoing sexual interest in male children. The victim's evidence was recorded entirely, and he was able to have his support dog with him during his cross examination. The victim was also assisted by an intermediary. The trial judge convicted the offender of six counts of acts of indecency of a young person and two counts of sexual intercourse with a young person. At the sentence proceedings, the offender also pleaded guilty to one count of possessing child exploitation material. During the sentence, the victim and his wife read aloud their victim impact statements to the court. The sentencing judge stated at paragraph 40, 'The Court recognises the serious, long-lasting and tragic effect of the crimes on the victim. It must be stated that the Court in this case acknowledges the devastating impact that the offences have had on both the victim and his wife.'

The offender was sentenced to a total of five years imprisonment with a non-parole period of three years.

R v Atai

This was a judge alone trial which alleged the sexual abuse of a 16-year-old female victim by a 26 year old male.

The pair had met earlier during the day at Woden Shopping Centre and travelled back to the offender's unit with a second male. At the unit, the males spoke to each other in a foreign language and the second male left the unit. The offender commenced his sexual attack on the young teenager by holding her arms and kissing her head, attempting to penetrate her vagina with his penis, forcing his penis into her mouth and then masturbating and ejaculating on her face and shirt. The offender then laughed at the victim. The victim gave her evidence from a remote witness room, and it was pre-recorded for the trial proper. The trial judge found the offender guilty of all counts. At sentence, the prosecutor read aloud the victim's impact statement.

The offender was sentenced to a head sentence of 27 months imprisonment with a non-parole period of 16 months.

Madders v Tiffen and Tiffen

Madders v Tiffen and Tiffen, was a hearing in the Magistrate Court which alleged (amongst other individual charges) that the defendant twin brothers were involved in a joint commission to capture the visual data involving the invasion of privacy and indecency, contrary to s 61B of the Crimes Act 1900 (ACT) and s 45A of the Criminal Code 2002 (ACT).

It was alleged that the identical twin brothers owned a house in Canberra and that they, by agreement, covertly fitted and used a number of hidden cameras in the bedrooms of the house to observe the private activities of three female tenants, and used another camera, located outside the house, to covertly observe the private activities of a female neighbour through her bathroom window. The prosecution relied upon hidden cameras found by police behind the front plastic housing of television sets and behind small glass windows on timber coat rack fittings located within two bedrooms, and the associated wiring connecting the coat rack cameras to a power supply in the roof space. Videos and still images of the tenants and neighbour were located on one of the twin brother's mobile phone. Whatsapp messages between the brothers was also located on the mobile phone. The Whatsapp conversation was extensive and included discussions about existing and potential cameras, current and future tenants and the private activities of the women viewed by using the cameras. The Magistrate convicted the twin brothers of capturing visual data of the three tenants.

The offenders are yet to be sentenced as the matter is pending appeal.

R v Baker Ned Ashton

The offender was sentenced for one charge of engaging in a sexual relationship with a child (section 56 Crimes Act). The offender commenced sexually offending against his biological daughter when she was aged six, after he and his ex-partner (the victim's mother) had separated. There was a shared custody arrangement, where he had his daughter on regular weekends. The period of offending lasted for eight years until it was detected and the victim

disclosed it. The sexual offending escalated in nature, commencing with conduct that may be described as acts of indecency, and escalating to sexual intercourse as the years went on. The sexual intercourse over the course of the 'relationship' involved digital penetration, fellatio, cunnilingus, penile/vaginal intercourse, penile/anal intercourse. The offender admitted to sexually offending against his daughter at least once a month during this period. In the last few years of the offending period (late 2017 – early 2021), he admitted to having sexual intercourse with her at least twice each time she was staying with him, and she was staying with him every second or third weekend. At sentence the judge calculated, as a conservative estimate, that the offender had sexual intercourse with his daughter on 76 occasions during that period alone.

The Crown contended this was, if not the 'worst case', just shy of it – on account of the age at which the offending started its duration, the frequency and nature of the sexual contact, the risk of pregnancy and the grave breach of trust. The Court accepted that characterisation of the objective seriousness of the offence was not worst case, but just below it. The judge specifically noted that "the objective facts of the matter I am dealing with now are more serious than any of the identifiable supposedly comparative cases in this jurisdiction at least."

The offender sought a discount on sentence for the assistance given to the authorities by making admissions about the offending that went beyond what the victim could remember. The Crown argued that the nature of persistent child sexual abuse offending is such that child victims are less likely to remember each incident, because it occurs when they are young and, often, as in this case, it is so frequent. The Crown relied on the Explanatory Statement to the Bill that introduced the latest amendments to section 56 – the offence provision the offender was being sentenced under – which referred to the 'perverse paradox' that occurs in such offending, where the more extensive the offending the harder it is to prosecute. In those circumstances, the Crown argued, it would be inappropriate to afford an adult offender greater leniency for remembering more of his sexual abuse than the child victim. The Court declined to give the offender this discount that he sought.

The maximum penalty for this offence is 25 years imprisonment. The offender was sentenced to 12 years imprisonment (reduced from 16 years for his early plea of guilty), with a non-parole period of seven years and six months. The Crown has appealed against sentence as manifestly inadequate.

R v Okwechime

The accused was charged with four counts of sexual intercourse without consent and one count of choking.

The Crown case was that, in May 2021, the accused met the victim at Kokomo's nightclub in Canberra City. At some point in the evening the victim's phone was not working and she believed she needed to charge it. She agreed to go with the accused to his friend's house where she intended to charge her phone. When they arrived, the accused's friend and another woman went into a bedroom and closed the door, leaving the complainant and the accused in the lounge room. The accused then sexually assaulted the complainant.

The Crown alleged that at this time the accused started kissing the complainant on the face. She pulled away, and repeatedly said, “stop, I don’t want this”. The accused then pulled her underwear down a few centimetres and began to digitally penetrate her (Count 1). The accused then performed cunnilingus on the complainant (Count 2), before moving with her to another room in the apartment where he undressed her. The Crown alleged the accused then digitally penetrated the complainant’s anus (Count 3), while biting and sucking at her neck. The complainant was trying to get away and asking the accused to stop. The accused then penetrated the complainant’s vagina with his penis (Count 4). The complainant was crying. The accused then placed both his hands around her neck, applied pressure and said words to the effect of “stop saying that, I hate you telling me to stop.” (Count 5) The complainant said “Stop, you’re killing me” or “I can’t breathe”. At this time the accused let go of the complainant, and she crawled towards her clothing. The accused grabbed her leg and dragged her back toward him. At some point the complainant was able to stand up and get her clothing. She left the apartment and the accused followed her into the lift and offered to order her an Uber. As they exited the apartment complex, the complainant ran away and sought help from a nearby resident.

The matter went to jury trial, and the accused was found guilty of counts 2, 4 and 5. He was found not guilty of counts 1 and 3. The offender has appealed the verdicts of guilt.

B.2.7 Family Violence Unit

During the 2021-2022 reporting period, the office continued to maintain a specialist family violence unit (‘FV unit’), responsible for conducting and overseeing prosecutions of offences committed in the context of family relationships. This includes offences of violence, offences involving contraventions of family violence orders and damage to property.

The FV Unit consists of a supervising lawyer, a senior lawyer, five prosecutors and has recently expanded to include three paralegals, rather than the two from the last reporting period. A number of prosecutors within the FV Unit came into the team at the start of 2022, with some other prosecutors who have been in the unit for approximately twelve months expected to be transitioned out in the coming months.

Prosecutors in the FV Unit appear in the weekly family violence list held in the Magistrate’s Court. This list deals with mentions, pre-hearing mentions, committals to the Supreme Court and sentencing proceedings. The prosecutors in the FV Unit also maintain caseloads of hearing matters that proceed in the Magistrate’s Court, and some serious offences that will ultimately be committed to the Supreme Court for trial or sentence.

The FV Unit strives to provide a consistent approach to FV matters which is achieved by reviewing files at a very early stage of the proceedings prior to the first mention, and by the early allocation of FV matters to a prosecutor immediately following a plea of not guilty. This assists in identifying particularly vulnerable complainants and engaging with them early to ensure they are supported by the appropriate agencies throughout the court process. The Unit continues to be supported by the office’s Witness Assistant Service who regularly provide updates and support to complainants in family violence matters.

During the last reporting period, the FV Unit has continued to work closely with external agencies including ACT Policing’s Family Violence Coordination Unit, the Domestic Violence Crisis Service, Child and Youth Protection Services and Victim Support ACT. The supervising lawyer of the FV Unit attends a weekly meeting with these external stakeholders (‘case tracking’) to ensure that relevant information is shared between agencies. The FV Unit is also involved in provision of training to ACT Policing in relation to conducting Family Violence Evidence in Chief Interviews and dealing with vulnerable witnesses.

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

B.2.7.2 Breakdown of FV cases in different courts - 1 July 2021 to 30 June 2022

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

Description	Magistrates Court	Childrens Court	Supreme Court	Total
FV matters commenced	602	35	17	654
FV matters completed	447	26	12	485
FV matters proved	356	16	6	378
FV matters discontinued	35	2	0	37
FV breach matters	85	9	5	99

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

B.2.7.3 FV Cases

R v Yeaman

In October 2021, Chief Justice Helen Murrell handed down the decision in *R v Yeaman* [2021] ACTSC 252. Mr Yeaman had been charged that, while residing as an involuntary patient at Dhulwa Forensic Unit, he recklessly caused grievous bodily harm to his mother. Mr Yeaman entered a plea of not guilty by way of mental impairment. After receiving evidence and hearing legal argument the Court concluded [at 58]:

The conduct of the accused caused grievous bodily harm to the complainant. The deliberate and forceful blow to the back of the complainant’s head caused her to stumble and fall. Inferentially, she fractured her ankle when she fell. The nexus between the forceful blow and the injury to the ankle is clear; it was the blow that “caused” the ankle

injury. Consequently, putting aside any issue of mental impairment, the accused should be found guilty of an offence against s 25 of the Crimes Act.

When turning to consider the issue of mental impairment, significant consideration was given to the “burden of proof” and who held the onus. The then Chief Justice opined [at 121 – 122]:

It is for the prosecution to negative the possibility that, at the time of offending conduct, a mental impairment had any s 28(1) effect.

For the reasons advanced by the prosecution, it is very likely that the legislature intended that the defence would bear the legal burden of proving that a mental impairment had any s 28(1) effect. However, the words of the Criminal Code fail to give effect to such an intent.

Effectively, the Court was asserting that although the evidential burden was on the accused to prove they were mentally impaired, they need only raise the reasonable possibility that such impairment had one of the s 28(1) effects which the Crown must then rebut beyond a reasonable doubt.

Accordingly, Mr Yeaman was found not guilty of the charge by way of mental impairment on the basis that the Crown had not negated the reasonable possibility that Mr Yeaman’s mental impairment had the effect that he could not control his conduct.

Legislative Reform

The legislative interpretation in this matter and the precedent it set was of significant concern to the Director. As outlined by the then Chief Justice, this effect was unlikely the intention behind the legislation and placed an almost impossible onus on the prosecution. As such, the Director sought legislative reform. Section 28 was then amended to make it clear that the accused must prove, on the balance of probabilities that they suffered from a mental impairment that had an effect mentioned in subsection (1).

Bishop v Police

The defendant was charged with contravening a family violence order. The matter proceeded to hearing and a plea of not guilty by way of mental impairment was raised. The alleged offending conduct occurred prior to the legislative reform of Section 28 of the *Criminal Code 2002*, which followed the decision of *R v Yeaman* [2021] ACTSC 252 (discussed above).

The prosecution successfully argued in this matter that the relevant test was one of ‘on the balance of probabilities’ rather than a ‘reasonable possibility’ as it was a procedural amendment and therefore the presumption against retrospectivity did not apply. The prosecution cross-examined the expert, who originally opined the defendant was so mentally impaired they could not control their conduct, and the expert conceded they were referring to a diminished ability to control their conduct, rather than a complete inability, and that they could not state with certainty that the diminished ability was due to the mental impairment or consumption of alcohol.

Ultimately, Magistrate Lawton was not satisfied on the balance of probabilities that the defendant's mental impairment had the effect that they could not control their conduct. The charge was proven, and the defendant found guilty.

Of note, Counsel in both matters was Mr Bernard Collaery and the medical expert relied upon by both accused persons was Dr Olav Nielssen. The argument adopted by Counsel in the later matter strongly suggested he was not aware of the reform to the Legislation.

Police v Ron Kelly

The victim in this matter was the 15-year-old son of the defendant. In January 2022, the defendant accused the victim and his twin sister of stealing his alcohol. When this was denied, the defendant became enraged, and grabbed the victim by the throat and pinned him up against the kitchen cupboard. He choked the victim which caused him to be unable to breathe. He then punched him a few times in the body and grabbed his head and slammed it down onto the kitchen bench. This was witnessed by the victim's twin sister.

The defendant was charged with one count of choking, and two counts of common assault. He pleaded not guilty, and the hearing proceeded before a Magistrate over three days. The court heard evidence from the victim, his twin sister who witnessed the assault, his older sister who was present upstairs and who spoke to him shortly after the assault, his mother, and two of his teachers from school.

The defendant gave evidence at the hearing. He told the court that the victim was screaming at him and attempted to knee him, so he *'put one hand on his upper chest'*, and at that time the victim *'walked backwards towards the cupboard whilst I walked forwards with him'*. He said at no time did he apply any pressure to the victim's body and denied punching the victim. He told the court that after this the victim continued to yell at him, so he *'placed one hand on his shoulder'* so that *'he could try and understand him'*. He said when he did this the victim *'bent over at a 90-degree angle towards the kitchen bench'*, for no apparent purpose. He described it as *'weird'*, and again denied that he applied any pressure to the victim.

The prosecution invited the court to reject the defendant's evidence for several reasons, including that it was implausible and was an attempt to explain away the observations and evidence of the victim's twin sister. The Magistrate agreed and found the defendant guilty of all charges. In his reasons, the Magistrate commented that he found the prosecution witnesses to be *'honest and reliable'* and found the defendant's evidence *'difficult to accept'* and *'not convincing'*. He therefore rejected the defendant's evidence and accepted the direct evidence of the victim and his twin sister beyond reasonable doubt.

The defendant will be sentenced at a later date.

Police v Wine

The defendant and the victim had been in a relationship for approximately eight years. On the evening of 30 December 2021, they started arguing while walking home after dinner and drinks. When they arrived home, the defendant stood in between the front door of the house

and the victim and would not let her leave despite multiple requests. Throughout the course of the incident, the defendant pushed the victim several times as she attempted to move away from him. The defendant broke a number of doors in the house, and at one point grabbed the victim by the throat and pinned her against the wall during which she had difficulty breathing. A neighbour heard this incident and called police.

The defendant was charged with forcible confinement, choking, common assault and two counts of damaging property. In sentencing the defendant, the Magistrate noted the seriousness of the choking offence, pointing to research that indicates it is a precursor in relationships to the ultimate killing of a partner. The Magistrate also expressed concern that the defendant's children may mirror his conduct if they are exposed to violence. The defendant was sentenced to 19 months imprisonment to be served by way of an intensive corrections order.

B.2.8 Witness Assistance Service

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

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

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

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

B.2.8.1 Intermediary Program

The ODPP has increasingly utilised the Intermediary Program¹⁶ to assist vulnerable victims and witnesses, specifically those of sexual offences committed on young people and those who may benefit from assistance with communication.

Communication and collaboration between WAS and the Intermediary Program have increased since the introduction of the program. WAS are increasingly referring more victims and witnesses to the program for assessment if the victims/witnesses are required to give evidence.

B.2.8.2 Disability Liaison Officer

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

In the 2021-2022 reporting period, the role of DLO has emerged as an important part of the WAS. Throughout the past 12 months, the DLO has assisted and supported over 50 victims and witnesses in the WAS space. This has included:

- › Making support referrals to outside agencies;
- › Ensuring victims are up to date with Court proceedings;
- › Supporting victims at hearings or trials; and
- › Making reasonable adjustments for victims with disabilities within the criminal justice space.

Alongside the practical element of the role, the DLO has been working on systemic change and improving office functions within the ODPP. Information for victims available on the DPP website is now also in a Plain English format. The DLO has also created DPP specific 'Social Scripts', a resource useful for people on the autism spectrum that uses storytelling techniques to explain new and potentially stressful experiences. Court storyboards were also created for victims and witnesses and able to be specifically tailored to the individual. These have assisted in visually explaining the Court process and next steps. Improvements and software upgrades to CASES continue, with data capturing, consistency in information sharing, and identification of disability all contributing to the ODPP's commitment to the pillars of the Disability Justice Strategy.

A Disability Action and Inclusion Plan (DAIP) is underway, with DPP members of staff attending masterclass workshops on how to research and create a DAIP for the office. The DAIP will ensure that the office has a roadmap to improving the justice system for people with disabilities. It is expected that the DAIP will be completed by the end of 2022.

¹⁶ The ACT Intermediary Program provides intermediaries to assist the police and court's engagement with victims and vulnerable witnesses (e.g., children and mentally impaired witnesses) in criminal matters. Intermediaries help witnesses to communicate their best evidence. The witness intermediary is not a support person and is an impartial participant in the process.

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

B.2.8.3 Impact of COVID-19

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

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

B.2.8.4 Breakdown of WAS matters – 1 July 2021 to 30 June 2022

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

Offence type Categories	Number of WAS matters	Percentage*
Adult Sexual Assault	98	33.1
Child Sexual Assault	55	18.6
Historical Sexual Assault	22	7.4
Less Serious Violence Off (adult)	9	3.0
Less Serious Violence Off (child)	0	0
Serious Violence Offence (adult)	37	12.5
Serious Violence Offence (child)	2	0.7
Child Pornography	0	0
Other	58	19.6
Significant Trauma	4	1.4
Death	10	3.4
Total	295	99.7

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

B.2.9 Confiscation of Criminal Assets

The Director’s powers under the *Confiscation of Criminal Assets Act 2003* (‘COCA Act’) remain effective tools in combatting serious and organised crime. The COCA Act is founded on the core tenet of public policy that a person should not be enriched by the commission of an

offence. To this end, the ODPP pursues the restraint and forfeiture of property where there is clear evidence the property was either used in the commission of an offence or the property is the proceeds of crime. The restraint and forfeiture of assets also acts as a key deterrent to criminal activity.

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

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

In September 2021, staff from the COCA Unit attended the biennial National Proceeds of Crime Conference (**NPOCC**). The NPOCC was spearheaded by the Commonwealth and its AFP-led Criminal Assets Confiscation Taskforce (**CACT**) and sees the coming together of legal professionals and investigators from the relevant bodies across Australia responsible for confiscations proceedings. The NPOCC is a great opportunity for confiscations lawyers and investigators to share their experiences in confiscations matters. Coinciding with the success of the NPOCC, the National Proceeds of Crime Network (**NPOCN**) held its first meeting in 2022. Initiated by the AFP CACT on behalf of the Commonwealth, the NPOCN meets quarterly and provides a forum where investigators and litigators can share legal developments in their jurisdiction, trends from investigations and partake in professional development training specific to confiscations. The NPOCN has resulted in invaluable knowledge sharing between jurisdiction and has significantly enhanced the technical legal knowledge of the COCA Unit.

The diversion of AFP resources to deal with the COVID-19 lockdown in the Territory and subsequent 'Convoy to Canberra' protestors somewhat hindered the efficient administration of matters under the COCA Act. Throughout the course of the lockdown in 2021, ACT Policing had to temporarily redirect resources to accommodate new functions including border control and Covid-19 compliance checks. The 'Convoy to Canberra' protests resulted in further resource diversion as more personnel and longer hours were required to manage the protestors. While these measures were necessary, the dedication of personnel to these areas impacted the ability of the CAIT to undertake time intensive confiscations investigations.

Over the financial year, the ODPP had restrained property with an estimated accumulated value of \$4.5 million. Property that was restrained during the financial year included five residential properties, seven motor vehicles, 11 motorcycles, five bank accounts and nine seizures of cash totalling \$238,633.

B.2.9.1 COCA Cases

Operation Geoben

On 26 March 2021, the ODPP successfully obtained a restraining order over the real property and bank accounts of an individual alleged to be running an illegal prostitution ring across the ACT, NSW and QLD. It was also suspected that the Defendant was obscuring the profits of their illegal operation through different family member's bank accounts and company structures. The Defendant's extensive property portfolio and apparent income significantly outstripped their income as declared to the Australian Taxation Office. On 17 June 2021, the ODPP brought further proceedings against the Defendant seeking a penalty order and unexplained wealth order in relation to their alleged offending.

Within three months of the further proceedings being brought, the Defendant and the ODPP settled the proceedings with the Defendant agreeing to a penalty order of \$2.25 million and the forfeiture of their Canberra property.

Operation Yasen

In August 2021, after a lengthy investigation into the operations of a notable Canberra restaurateur, and his links to a suspected drug dealer, charges were brought against the restaurateur for alleged money laundering.

Separate to their criminal charges, the ODPP brought proceedings under the COCA Act against the restaurateur and the alleged drug dealer to restrain their property. The property included cash, bank accounts, cars and real property.

While the criminal proceedings are ongoing, the alleged co-offenders are now unable to deal with any of the restrained property which preserves the ODPP's right to seek forfeiture of the suspected proceeds of crime should the Co-Defendants be found guilty. This prevents the defendants from gaining any material benefit from their alleged crimes.

B.2.10 Work Safety

The Office has a Work Safety Unit which is comprised of a six prosecutor team, headed by a Supervising Prosecutor who is dedicated to prosecuting offences against the Work Health and Safety Act 2011 (ACT) and who works closely with WorkSafe ACT in relation to matters proceeding to prosecution before the courts.

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

B.2.10.1 WHS Cases

Multiplex Pty Ltd & RAR Cranes Pty Ltd

This financial year, the Office finalised the prosecution which arose from the fatality in 2016 at the University of Canberra Hospital construction site where a crane was overloaded and overturned, killing a worker. The contested hearing of Multiplex Pty Ltd and RAR Cranes Pty Ltd was due to commence in the ACT Industrial Court in September 2021 and was estimated to run for four weeks. However, following negotiations between the parties, both Multiplex and RAR Cranes pleaded guilty to Category 2 charges (Failure to comply with health and safety duty). Multiplex was convicted and fined \$150,000 (reduced from \$200,000 due to its guilty plea) and RAR Cranes was convicted and fined \$300,000 (reduced from \$400,000 due to its guilty plea). The crane operator had previously been sentenced in April 2020 for a Category 1 charge (Reckless conduct) to a suspended term of imprisonment.

Better Building Holdings Pty Ltd

Additionally, the Office prosecuted a construction company, Better Building Holdings Pty Ltd, after a 60-year-old carpenter died after falling more than six metres from the second storey of the building which was being constructed. The defendant failed, amongst other things, to ensure the consideration and completion of a safe work method statement for the high-risk construction work and failed to provide an adequate fall prevention device. The defendant pleaded guilty to a Category 2 charge (Failure to comply with health and safety duty) and was convicted and fined \$450,000 (reduced from \$600,000 due to its guilty plea) by the ACT Industrial Court.

B.2.10.2 Breakdown of WHS matters

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

Act	Matters (No.)	Proved/Fine Paid
Work Health and Safety Act 2011	6	3 (proved)

B.2.11 Regulatory Matters

In addition to prosecuting the typical criminal offences that occur in the ACT, the Work Safety team also has responsibility for prosecuting offences which relate to the contravention of various regulations. These regulations are created to ensure that appropriate health, safety and protection standards are adhered to in the ACT. These matters cover a diverse range of regulatory offences; and they are referred to our office from various regulatory agencies, such as offences relating to the neglect or mistreatment of animals, referred by the RSPCA; offences relating to improper handling or preparation of food sold by restaurants or cafes referred

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

B.2.11.1 Breakdown of regulatory matters

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

- › The RSPCA
- › Access Canberra

Act	Matters (No.)	Proved/Fine Paid
<i>Animal Welfare Act 1992</i>	2	2 (proved)
<i>Working with Vulnerable People (Background Checking) Act 2011 (AC)</i>	1	1 (proved)
<i>Construction Occupations (Licensing) Act 2004</i>	1	1 (not proved)
<i>Long Service Leave (Portable Schemes) Act 2009</i>	10	3 (proved)
Total	14	6 (proved)

When a regulatory matter is referred to our office, the regulatory agency ordinarily provides a full Brief of Evidence relating to the potential offences alleged to have occurred. Often this agency will also provide our office with a recommendation as to what potential charges it believes arises. The ODDP then carries out a review and assessment of this evidence. Following this, and in consultation with the relevant regulatory agency, our office determines whether a prosecution should commence and what charges are warranted.

Regulatory offences do not generally carry lengthy or, in some cases, any terms of imprisonment. However, there are certain regulatory matters that can attract a term of imprisonment due to the nature and severity of the offence. These matters can also garner some public interest. One case is a recent RSPCA matter where the defendant was sentenced to a period of imprisonment for 3 months (which was suspended), and banned from owning any animals for five years, following their conviction in the Magistrates Court for fatally stabbing a pet dog. In other types of regulatory matters, the offence may deal with relatively less serious conduct, but can still raise interesting legal issues. One example was a recent matter where the defendant was sentenced by the Magistrates Court for the offence of failing to provide paid driving lessons in accordance with the conditions imposed on their relevant registration. This matter raised a potential issue with respect to what could be regarded as a mistake of fact as opposed to what could be regarded as a mistake of law.

B.2.12 Parking Matters

The ODPP also prosecutes parking infringements.¹⁷ As shown in the table below, there were a total of 476 parking matters completed in the financial year. This was inclusive of 41 convictions, seven dismissed charges and 10 charges proven but no convictions recorded. For the majority of the remaining parking infringements there was no evidence offered by the prosecution. Often this happens because the offender has responded to the infringement notice and paid the fine before the hearing date.

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

	Matters
Conviction	41
Proved no conviction	10
Dismissed	7
Withdrawn	2
No Evidence to Offer	416
Total	476

B.2.13 List Team

The list team continues its work appearing in the daily Magistrates Court A1 general list and A2 bail list. The list team also appears in the Childrens Court list, which deals with bail applications, sentences, mentions and other applications in relation to young people charged with criminal offences. Nearly all criminal matters in the ACT commence in one of these lists, so the work of the list team is critical to the operation of the office.

In 2022, the list team has also appeared in the newly established Galambany Bail Court. The Galambany Bail Court sits fortnightly to hear applications from eligible Aboriginal or Torres Strait Islander defendants who wish their bail application to be heard in that court rather than the A2 bail list.

The list team is currently comprised of six prosecutor associates, a senior prosecutor and a supervising prosecutor. The team also includes three paralegals who assist in the administrative preparation of files and provision of material to defence practitioners. The prosecutor associates are junior lawyers, and the list team is generally their first experience of appearing in court as an advocate. Prosecutor associates appear in two to three substantive lists per week.

¹⁷ Infringements are issued by Access Canberra and the AFP for breaching the current *Road Transport (Road Rules) Regulation 2017* and the *Road Transport (Safety and Traffic Management) Act 1999*.

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

B.2.14 ODPD Statistics (from 1 July 2021 to 30 June 2022)

The statistics used in this Annual Report are generated from the ODPD's Criminal Advocacy Support and Enquiry System ('CASES'). These statistics comply with the Australian Bureau of Statistics ('ABS') standards for the characteristics of defendants dealt with by criminal courts.¹⁸ A fundamental aspect that is different, is that the ABS standard reports against defendants rather than charges.

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

Generally, matters reported are those finalised within the reporting period. As set out in ABS 4513 "finalisation" describes how a criminal charge is concluded by a criminal court level. Matters are concluded, as explained by ABS 4513.0,¹⁹ depending on the court involved. Of particular note, a transfer to another court level (for example a committal either for trial or sentence) concludes the matter in one court level and initiates it in another court level.

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

All offences in CASES are classified against the Australian and New Zealand Standard Offence Classification ('ANZSOC'). The ABS has formulated ANZSOC to provide uniform national statistics. The 16 divisions used for the classification of offences for statistical purposes within the ANZSOC are set out in ABS 1234.0.²⁰ Where tables refer to matters being "disaggregated

¹⁸ See *Criminal Court, Australia - National statistics about defendants dealt with by criminal courts including demographic, offence, outcome and sentence information* at <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release> (previously referred to as catalogue 4513.0).

¹⁹ See *Criminal Court, Australia - National statistics about defendants dealt with by criminal courts including demographic, offence, outcome and sentence information* at <https://www.abs.gov.au/statistics/people/crime-and-justice/criminal-courts-australia/latest-release> (previously referred to as catalogue 4513.0).

²⁰ See *catalogue 1234.0, Australian and New Zealand Standard Offence Classification (ANZSOC)*, 2011 at <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0>.

by matter type”, this is a reference to the ANZSOC divisions. The National Offence Index (‘NOI’)²¹ is a ranking of all ANZSOC groups and supplementary ANZSOC codes.²² This ranking is based on the concept of ‘offence seriousness’. Where a finalised defendant has multiple charges, the principal offence is determined by the type of finalisation and/or the highest ranked ANZSOC using the NOI.

B.2.14.1 Total matters finalised by jurisdiction

Description	Matters
Childrens Court	218
Magistrates Court	4440
Industrial Court	6
Supreme Court	224
Court of Appeal	34
High Court	5
Total	4927

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

B.2.14.2 Matters finalised disaggregated by matter type

Description	Matters
Homicide and related offences	
Childrens Court	
Magistrates Court	11
Industrial Court	
Supreme Court	8
Court of Appeal	6
High Court	1
Sub Total	26

²¹ See 1234.0.55.001 - National Offence Index, 2018 at <https://www.abs.gov.au/ausstats/abs@.nsf/mf/1234.0.55.001>

²² The NOI has been developed by the ABS as a statistical tool to enable the output of nationally comparable offence information within the field of crime and justice statistics. The NOI is a tool which provides an ordinal ranking of the offence categories in the ANZSOC according to perceived seriousness in order to determine a principal offence. The purpose of the NOI is to enable the representation of an offender by a single offence in instances where multiple offences occur within the same incident or where defendants have multiple charges in criminal cases.

Description	Matters
Acts intended to cause injury	
Childrens Court	60
Magistrates Court	518
Industrial Court	
Supreme Court	34
Court of Appeal	4
High Court	
Sub Total	616
Sexual assault and related offences	
Childrens Court	1
Magistrates Court	66
Industrial Court	
Supreme Court	28
Court of Appeal	14
High Court	2
Sub Total	111
Dangerous or negligent acts endangering persons	
Childrens Court	11
Magistrates Court	140
Industrial Court	
Supreme Court	17
Court of Appeal	1
High Court	
Sub Total	169
Abduction and related offences	
Childrens Court	2
Magistrates Court	88
Industrial Court	

Description	Matters
Supreme Court	6
Court of Appeal	
High Court	
Sub Total	96
Robbery, extortion and related offences	
Childrens Court	25
Magistrates Court	55
Industrial Court	
Supreme Court	45
Court of Appeal	
High Court	1
Sub Total	126
Unlawful entry with intent/burglary, break and enter	
Childrens Court	19
Magistrates Court	101
Industrial Court	
Supreme Court	34
Court of Appeal	5
High Court	1
Sub Total	160
Theft and related offences	
Childrens Court	34
Magistrates Court	233
Industrial Court	
Supreme Court	8
Court of Appeal	2
High Court	
Sub Total	277

Description	Matters
Deception and related offences	
Childrens Court	
Magistrates Court	20
Industrial Court	
Supreme Court	4
Court of Appeal	
High Court	
Sub Total	24
Illicit drug offences	
Childrens Court	3
Magistrates Court	155
Industrial Court	
Supreme Court	21
Court of Appeal	
High Court	
Sub Total	179
Weapons and explosives offences	
Childrens Court	14
Magistrates Court	108
Industrial Court	
Supreme Court	5
Court of Appeal	
High Court	
Sub Total	127
Property damage and environmental pollution	
Childrens Court	16
Magistrates Court	108
Industrial Court	

Description	Matters
Supreme Court	6
Court of Appeal	1
High Court	
Sub Total	131
Public order offences	
Childrens Court	4
Magistrates Court	106
Industrial Court	
Supreme Court	
Court of Appeal	1
High Court	
Sub Total	111
Road traffic and motor vehicle regulatory offences	
Childrens Court	19
Magistrates Court	2407
Industrial Court	
Supreme Court	3
Court of Appeal	
High Court	
Sub Total	2429
Offences against justice procedures, government security and government operations	
Childrens Court	10
Magistrates Court	295
Industrial Court	
Supreme Court	4
Court of Appeal	
High Court	
Sub Total	309

Description	Matters
Miscellaneous offences	
Childrens Court	
Magistrates Court	29
Industrial Court	6
Supreme Court	1
Court of Appeal	
High Court	
Sub Total	36
Coronial	
Childrens Court	
Magistrates Court	
Industrial Court	
Supreme Court	
Court of Appeal	
High Court	
Sub Total	0
Total	4927

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

B.2.14.3 Committals to the Supreme Court

Description	Matters
Childrens Court	8
Magistrates Court	175
Industrial Court	
Total	183

B.2.14.4 Plea of Guilty after Committal for Trial

Description	Matters
Plea of guilty after committal for trial	61
Plea of guilty after trial listed	36
Total matters subpoenas issued	32
Plea of guilty on day of trial	11
Plea of guilty within one week of trial	10
Plea of guilty within 2-4 weeks of trial	7
Plea of guilty more than 4 weeks before trial	8

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

Description	Childrens Court		Magistrates Court		Industrial Court		Total
	Trial	Sentence	Trial	Sentence	Trial	Sentence	
Homicide and related offences			10	1			11
Acts intended to cause injury			8	8			16
Sexual assault and related offences			21	5			26
Dangerous or negligent acts endangering persons		1	4	10			15
Abduction and related offences			9	3			12
Robbery, extortion and related offences	3	1	20	13			37
Unlawful entry with intent/burglary, break and enter	1	2	12	13			28
Theft and related offences			6	6			12
Deception and related offences			3	2			5
Illicit drug offences			5	6			11
Weapons and explosives offences			2	1			3
Property damage and environmental pollution			2	3			5

Description	Childrens Court		Magistrates Court		Industrial Court		Total
	Trial	Sentence	Trial	Sentence	Trial	Sentence	
Public order offences			1				1
Road traffic and motor vehicle regulatory offences							0
Offences against justice procedures, government security and government operations				1			1
Miscellaneous offences							0
Total	4	4	103	72	0	0	183

B.2.14.6 Supreme Court Matters

Description	Matters
Trials	
Trials	25
Trial Days in Court	151
Trial Outcomes	
Guilty Verdicts	10
Not Guilty Verdicts	7
Other**	8
Awaiting verdict	
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/ changed pleas or re-sentenced after breach	119
Accused re-sentenced after breach	28
Total sentencing proceedings	147
Notices declining to proceed further	6

*Note: This includes trials which resulted in a hung jury or were aborted. Such matters are not "finalised" for the purposes of the table on 'Total matters finalised by jurisdiction' at B.2.14.1 at page 78 and the table on 'Matters finalised disaggregated by matter type' at B.2.14.2 on page 78.

B.2.14.7 Appeals

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	26	4	30
Court of Appeal	31	7	38
High Court	4	1	5
Total	61	12	73

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

B.3 Scrutiny

The ODPP is subject to scrutiny from the ACT Auditor-General and the ACT Ombudsman. There were no relevant reports during the financial year. From time to time, the Director appears before various committees of the Legislative Assembly. During the financial year, the Director appeared at Estimates on 26 October 2021, and Annual Report Hearings on 23 February 2022.

B.3.1 Audit of Reviewable Decisions

Pursuant to the recommendations in the *Criminal Justice Report* of the RCIRCSA,²³ *Director's Instruction No. 14.1*²⁴ and *Director's Instruction No. 14.2*²⁵ were issued. These Director's Instructions are in relation to decisions to discontinue prosecutions, and the review of such decisions. *Director's Instruction 14.2* specifically provides that an audit is to be conducted on decisions that have been subject to review during the financial year. This is to ensure that the relevant procedures have been complied with by the Office in relation to the reviews of decisions to discontinue prosecutions. Thus, an Audit Committee was formed at the end of the financial year to look into all the automatically reviewable decisions during the 2021-22 financial year. The *Audit Report* and its accompanying *Record of Reviewable Decisions - Audit 2021-2022* are located in Appendix D (page 132) and E (page 133) respectively.

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

24 Refer to Appendix B on page 123 for *Director's Instruction No. 14.1 - Review of a Decision to Discontinue a Prosecution*.

25 Refer to Appendix C on page 124 for *Director's Instruction No. 14.2 - Reviewable Decisions to Discontinue - Contact with Complainants, Review Processes and Auditing*.

B.4 Risk Management

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

B.5 Internal Audit

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

The JACSD's responsibility under the *Financial Management Act 1996* includes the maintenance of an Audit Performance and Improvement Committee ('APIC') to consider governance structures as outlined in the ACT Government's Internal Audit Framework. The APIC is an integral part of the governance arrangements of the JACSD, with particular emphasis being placed on better practices, continuous improvement, internal control mechanisms, risk management strategies, internal audit and ethical behaviour and integrity. Details of the APIC's arrangements can be found in the JACSD's 2021-22 Annual Report²⁶.

B.6 Fraud Prevention

The ODPP has a Fraud and Corruption Prevention Plan ('FCPP'), prepared in accordance with the requirements of the ACTPS Integrity Policy²⁷. The FCPP has been circulated to all staff.

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

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

²⁶ <https://www.justice.act.gov.au/about-us/annual-reports>

²⁷ This policy is issued by CMTEDD, and is designed to protect public money and property, protect the integrity, security and reputation of our public sector agencies while maintaining a high level of services to the community consistent with the good government of the ACT.

B.7 Freedom of Information

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

Under the FOI Act, the ODPP must make information proactively available via an open access scheme. If the information is not available on the Open Access Website,²⁸ the person seeking information is encouraged to contact the ODPP before resorting to the more formal FOI procedure. In many cases it may be possible to access information more quickly and efficiently through such an approach. However, if a formal access application is necessary under the FOI Act, then the application must include:

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

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

The ODPP is also required to maintain a disclosure log²⁹ in accordance with section 28 of the FOI Act. Information provided to an applicant through an FOI request is published on the disclosure log between three and 10 working days after the decision notice has been sent out to the applicant. The disclosure log includes the following information:

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

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

²⁸ <https://www.act.gov.au/open-access>

²⁹ <https://www.dpp.act.gov.au/publications/freedom-of-information>

B.7.1 FOI Access Applications

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

Access Applications	Total
On hand at the beginning of the financial period	0
Received during the financial period	6
Finalised / completed	5
On hand at the end of the financial period	1
Decided within timeframe (section 40)	5
Decided outside timeframes but within extended timeframes agreed to with the applicant (section 40)	0
Decided outside timeframes but within extended timeframes agreed to with the Ombudsman (section 40)	0
Not decided within the statutory timeframes in the FOI Act, i.e. deemed decisions.	0
Where a fee or charge was applied	0
For Ombudsman review (section 74)	0
Applications made to ACAT	0
Decisions confirmed through Ombudsman review (section 82(2)(a))	0
Decisions varied through Ombudsman review (section 82(2)(b))	0
Decisions set aside and substituted through Ombudsman review (section 82(2)(c))	0
Where a decision gave full access (section 35(1)(a)).	0
Where a decision gave partial access (section 35(1)(c)).	0
Where a decision refused access (section 35(1)(c)).	5
Decisions to publish open access information (section 24(1))	0
Decisions not to publish open access information (section 24(1))	5
Decisions not to publish a description of open access information withheld (section 24(1))	5
Requests made to amend personal information	0

B.8 Community engagement and support

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

The following sponsorship was provided by the Director during the year ending 30 June 2022.

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

B.9 Aboriginal and Torres Strait Islander Reporting

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

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

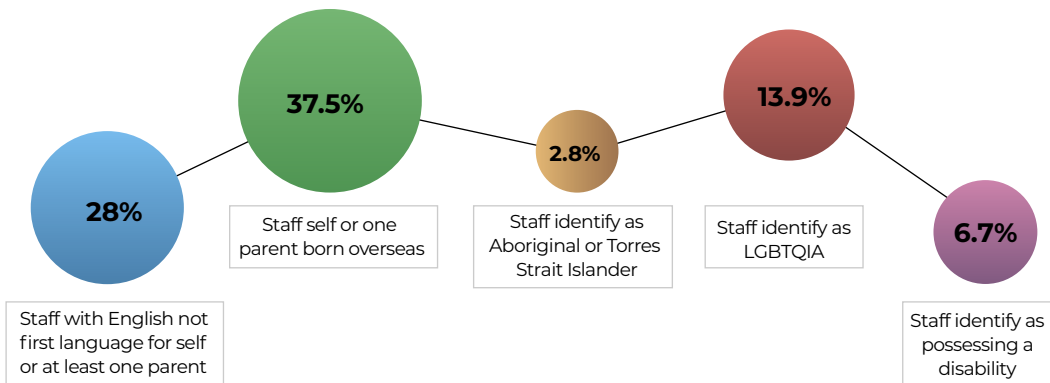
on a 12-month placement from September 2019. In the reporting period ending 30 June 2021, 5.41% of our staff identified as aboriginal or Torres Strait Islander. In the financial year ending 30 June 2022, this dropped to 2.86% due wholly to a number of our former aboriginal or Torres Strait Islander law students graduating and moving onto substantive lawyer positions either interstate or with the Commonwealth. We are currently working with both the ANU and University of Canberra Law Schools to identify our next cohort of aboriginal or Torres Strait Islander law students. This result reflects our proactive measures in attracting and retaining aboriginal or Torres Strait Islander lawyers at all levels and either retaining them or preparing them for legal practice outside of the office, and is an achievement not replicated in any other jurisdiction to my knowledge. This is the first program of its type in this Office and aims to get more indigenous lawyers appearing in court in gowns and wigs.

B.9.1 Office Employment Diversity Statement

The ODPP's OEDS is as follows:

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

Employment Diversity Statement



B.10 Work Health and Safety

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

Due to the challenging nature of work at the ODPP, staff are encouraged to avail themselves of the Employee Assistance Program ('EAP') and the services of specialised psychologists.³⁰

The Office works proactively with staff to prevent work related injuries, by offering ergonomic workstation assessments, and ergonomic office equipment, ensuring that staff are set up at their respective workstations or offices in a safe and correct manner. Further, the ODPP's WEGIEs³¹ is used as a forum to assess office or work-related injury data and develop injury prevention programs for implementation and monitoring within the Office.

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

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

- › Health and wellbeing checks;
- › Mental Health First Aid training;
- › ACT government-funded influenza vaccine;
- › Fire Warden training;
- › First Aid training;
- › Work life balance;³²

³⁰ Refer to B.11 (Human Resources Management) at page 93

³¹ Refer to B.1.5.2 (Working Environment Group) on page 38

³² Refer to B.11 (Human Resources Management) on page 93

B.10.1 Notifiable incidents

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

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

B.11 Human Resources Management

The ODPP has continued to support its staff wellbeing in a variety of ways including health and wellbeing initiatives and other professional training opportunities.³³ The Office has maintained its focus on supporting staff in dealing with the complex, challenging and confronting nature of work.

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

During the financial year, 98% of the staff at the Office participated in Mental health First Aid. The course covered the signs and symptoms of common and disabling mental health problems in adults, how to provide initial help, where and how to get professional help, what help has been shown by research to be effective, and how to provide first aid in crisis situations.

The Office continues to collaborate and promote opportunities in support of staff leading a healthy lifestyle. As mentioned in B.1.5.2, these are co-ordinated through the WEGIEs.³⁴

Legal staff also had the opportunity to participate in the training and seminar sessions organised as part of the ODPP's CPD program.³⁵

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

³³ Refer to B.10 (Work Health and Safety) on page 92

³⁴ Refer to B.1.5.2 (Working Environment Group) on page 38.

³⁵ Refer to B.1.5.3 (Continuing Professional Development - Ad hoc Committee) on page 38

B.11.1 ARIns Reporting

Nil ARIns were provided during the reporting year.

B.11.1.1 Agency profile

Branch/Division	FTE	Headcount
Director of Public Prosecutions	97.4	100
Total	97.4	100

B.11.1.2 FTE and headcount

	Female	Male	Total
FTE by Gender	64.5	32.9	97.4
Headcount by Gender	67	33	100
% of Workforce	67.0%	33.0%	100.0%

B.11.1.3 Classifications

Classification Group	Female	Male	Total
Administrative Officers	9	1	10
Executive Officers	1	4	5
Legal Support	22	10	32
Prosecutors	32	16	48
Senior Officers	3	1	4
Statutory Office Holders	0	1	1
Total	67	33	100

B.11.1.4 Employment category by gender

Casual	0	0	0
Permanent Full-time	50	25	75
Permanent Part-time	11	0	11
Temporary Full-time	5	8	13
Temporary Part-time	1	0	1
Total	67	33	100

B.11.1.5 Equity and workplace diversity

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

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

	Headcount	% of Total Staff
Aboriginal and/or Torres Strait Islander	3	3.0%
Culturally & Linguistically Diverse	10	10.0%
People with a disability	1	1.0%

B.11.1.6 Age profile

Age Group	Female	Male	Total
Under 25	9	2	11
25-34	36	20	56
35-44	14	6	20
45-54	7	4	11
55 and over	1	1	2

B.11.1.7 Average years of service by gender

Gender	Female	Male	Total
Average years of service	5.4	5.3	5.4

B.11.1.8 Recruitment and Separation Rates

Classification Group	Recruitment Rate	Separation Rate
Total	31.1%	19.2%

B.12 Ecologically Sustainable Development

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

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

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

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Stationary energy usage				
Electricity use	Kilowatt hours	107782	122409	-11.94%
Natural gas use (non-transport)	Megajoules	N/A	N/A	N/A
Diesel use (non-transport)	Kilolitres	Unavailable	Unavailable	
Transport fuel usage				
Electric vehicles	Number	N/A	N/A	N/A
Hybrid vehicles	Number	N/A	N/A	N/A
Hydrogen vehicles	Number	N/A	N/A	N/A
Total number of vehicles	Number	N/A	N/A	N/A
Fuel use – Petrol	Kilolitres	N/A	N/A	N/A
Fuel use – Diesel	Kilolitres	N/A	N/A	N/A
Fuel use – Liquid Petroleum Gas (LPG)	Kilolitres	N/A	N/A	N/A
Fuel use – Compressed Natural Gas (CNG)	Gigajoules	N/A	N/A	N/A
Water usage				
Water use	Kilolitres	Unavailable	Unavailable	
Resource efficiency and waste				
Reams of paper purchased	Reams	2637	2980	-11.51%
Recycled content of paper purchased	Percentage	100%	100%	0%
Waste to landfill	Litres	37440	30000	24.8%
Co-mingled material recycled	Litres	37440	30000	24.8%
Paper & Cardboard recycled (incl. secure paper)	Litres	87360	71040	22.97%
Organic material recycled	Litres	0	0	0
Greenhouse gas emissions				
Emissions from natural gas use (non-transport)	Tonnes CO ₂ -e	0	0	100%

Indicator as at 30 June	Unit	Current FY	Previous FY	Percentage change
Emissions diesel use (non-transport)	Tonnes CO ₂ -e	N/A	N/A	N/A
Emissions from transport fuel use	Tonnes CO ₂ -e	N/A	N/A	N/A
Total emissions	Tonnes CO₂-e	0	0	100%

Notes

1. Please note that some data reported for FY 2020-21 in the table above may differ slightly from figures reported in the 2020-21 Annual Report. These are due to updates to agency occupancy and historical consumption data. Where actual data is not available, the Enterprise Sustainability Platform provides estimations using an accrual function. Accruals are calculated from the average annual daily consumption of the most current 12-month period applied for the number of days of missing data.
2. No water consumption data is captured in the ESP for the ODPP's occupancy. The ACT Government is not formally billed for its water consumption as it is factored into the landlord's rent.
3. Emissions reported for stationary energy and transport fuels include Scope 1 and Scope 2 emissions only. Scope 1 are direct emissions from sources owned and operated by the government including: emissions from transport fuel and natural gas use. Scope 2 are indirect emissions from mains electricity.
4. The ACT met its 100% renewable electricity target in 2019-20. As a result, the ACT Government reports zero greenhouse gas emissions from electricity use. The ACT Government is committed to maintaining 100% renewable electricity supply beyond 2020.

C. Financial Management Reporting

C.1 Financial Management Analysis

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

C.2 Financial Statements

The financial transactions of the Office for the year ending 30 June 2022 are subsumed within the audited financial statements of the JACSD. Any data that is provided below should be read in conjunction with those financial statements.

For information related to the budget outcomes please refer to the JACSD's audited financial statements for 2021-22 (Output 1.4).³⁶ It should be noted that total expense in Output 1.4 include the JACSD's allocated overheads.

C.3 Capital Works

The office had no Capital Works during the reporting period.

Contact details capital works officer:

Mercy Wilkie
Office Manager
Phone: 02 6207 5399

C.4 Asset Management

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

100 staff occupied a total floor space of 1,974m². The current utilisation rate is 19.74m² per employee which is a decrease from 20.35m² in the last period. The utilisation rate is referenced to a benchmark of 15m² per employee. Factors relevant to the utilisation rate include additional accommodation space on level 2 completed under the Screwdriver Ready Project in 2021, the need to provide facilities such as witness interview rooms, waiting rooms for vulnerable witnesses, conference rooms, the criminal law resource centre, areas for professional staff

³⁶ Refer to C.6 (Statement of Performance) on page 101

undertaking sensitive and confidential work, and areas for confidentially dealing with acutely personal and intimate issues. It is also significantly impacted by our requirement to establish facilities to appear in several courts remotely from the ODPP office, during the COVID lockdown period.

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

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

C.5 Government Contracting

For year ending 30 June 2022, the following suppliers of goods, services and works with a value greater than \$25,000 were undertaken.

Output Class	Name of Contractor	Description or Reason for Contract	Expenditure 2020-2021	Date services commenced	Procurement Type
1.4	Thomson Reuters	Research Resources	\$64,924.00	01 July 2021	Single Select
	Itec Pty Ltd	Case Management System	\$50,000.00	01 July 2021	Single Select

C.6 Statement of Performance

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

Output Class 1 Justice Services - Output 1.4 Public Prosecutions

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

	2021-22 Original Target	2021-22 Amended Target	2021-2022 Actual	YTD Variance
Total Cost (\$'000)	16,330		16,355	0%
Controlled Recurrent Payments (\$,000)	15,905		15,989	1%
Accountability Indicators				
a) Average cost per matter finalised	\$3,000		\$3,321	11%
b) The percentage of cases where the brief is served within two weeks of it being received from the ACT Police	80%		86%	7%
c) The percentage of cases where the indictment case statement and questionnaire are filed within the timeframes specified at directions in the Supreme Court	80%		95%	19%

The above target result is due to the implementation of new internal processes, including a new committal unit, resulting in stronger compliance to the target.

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

D. Territory Records

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

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

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

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

E. Appendices

Appendix A

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

Prosecution policy of the Australian Capital Territory

1. Introduction

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

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

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

2. The decision to prosecute

General criteria

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

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

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

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

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

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

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

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

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

Prosecution of juveniles

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

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

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

Prosecution of Corporations

- 2.15 As a general rule a reference in an Act to a person includes a reference to a corporation as well as an individual. Consequently, a corporation may be liable for any criminal offence except those that by their very nature cannot be committed by an artificial entity, for example sexual offences. From time to time the question arises whether it will be appropriate for a corporation to be charged with an offence, instead of, or as well as, an individual.
- 2.16 A thorough enforcement of the criminal law against corporate offenders, where appropriate, will have a deterrent effect, protect the public, and support ethical business

practices. Prosecuting corporations, where appropriate, will capture the full range of criminality involved and thus lead to increased public confidence in the criminal justice system. Prosecution of a corporation should not be seen as a substitute for the prosecution of criminally culpable individuals such as directors, officers, employees, or shareholders. Prosecuting such individuals provides a strong deterrent against future corporate wrongdoing. Equally, when considering prosecuting individuals, it is important to consider the possible liability of the company where the criminal conduct is for corporate gain.

- 2.17 As a general rule it is best to have all connected offenders - corporate and individual - prosecuted together at the same time.
- 2.18 There will be occasions when it will be appropriate to charge a natural person with being an accessory to an offence committed by a corporation, notwithstanding that there is no charge against the corporation itself. The situations where this might be appropriate may include where the corporation has ceased to exist, or is in administration, liquidation or receivership.
- 2.19 It should be noted that the fact that a corporation is insolvent will not of itself preclude the prosecution of the corporation.
- 2.20 In deciding whether the prosecution of a corporation is required in the public interest, without purporting to be exhaustive, the public interest factors at subparagraph 2.9 and those set out below may be relevant. The weight which should be accorded to them will depend upon the circumstances of each case:
 - (a) a history of similar conduct (including prior criminal and regulatory enforcement actions against it), and conversely, the lack of such a history;
 - (b) whether the corporation had been previously subject to warnings, sanctions or criminal charges and had nonetheless failed to take adequate action to prevent future unlawful conduct, or had continued to engage in the conduct;
 - (c) whether the corporation's board of directors or a high managerial agent of the corporation engaged in the conduct or authorised or permitted the commission of the alleged offence;
 - (d) whether the conduct alleged is part of, or was encouraged or tolerated by, an existing corporate culture within the corporation;
 - (e) the failure of the corporation to create and maintain a corporate culture requiring compliance with the contravened law, or conversely, the existence of a genuinely proactive and effective corporate culture encouraging compliance;
 - (f) the failure of the corporation to provide adequate systems for giving relevant information to relevant people in the corporation;
 - (g) failure to report wrongdoing within a reasonable time of the offending coming to light;

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

Discontinuing a prosecution

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

3. Other decisions in the prosecution process

Choice of Charges

- 3.1 In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 3.2 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.
- 3.3 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the Crimes Act 1900 or Criminal Code 2002 unless such a course

would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.

- 3.4 There is a particular need for restraint in relation to conspiracy charges. Whenever possible, substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where conspiracy charges are laid against a number of accused jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the accused.
- 3.5 Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

Mode of trial

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

Consent to prosecution

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

Charge negotiation

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

- (h) the views of the police or other referring agency; and
 - (i) the views of the victim, where those views are available and if it is appropriate to take those views into account.
- 3.14 An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused asserts or intimates that they are not guilty of an offence to which they are offering to plead guilty.
- 3.15 Sentencing of offenders is a matter for the court. It is not to be the subject of agreement or purported agreement between the prosecution and defence.

Jury selection

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

Retrials

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

Sentence

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

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

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

Sentencing indigenous offenders

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

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

4. Disclosure

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

- 4.5 The prosecution's duty of disclosure does not extend to disclosing material:
- › relevant only to the credibility of defence (as distinct from prosecution) witnesses;
 - › relevant only to the credibility of the accused;
 - › relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
 - › for the purpose of preventing an accused from creating a forensic disadvantage for themselves, if at the time the prosecution became aware of the material it was not seen as relevant to an issue in the case or otherwise disclosable.
- 4.6 The prosecution may refuse to disclose material on the grounds of public interest immunity or legal professional privilege.
- 4.7 Where material has been withheld from disclosure on public interest grounds, the defence should be informed of the claim of immunity and the basis for the claim in general terms unless to do so would reveal that which it would not be in the public interest to reveal. In some cases it will be sufficient to delay rather than withhold disclosure. For example, if disclosure might prejudice ongoing investigations, disclosure could be delayed until after the investigations are completed.
- 4.8 Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with their previous statement or adds to it significantly, including any statement made in conference and any victim impact statement, provided the disclosure of such records serves a legitimate forensic purpose.
- 4.9 The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the police and other investigative agencies to notify the prosecution of the existence and location of all such material. If required, in addition to providing the brief of evidence, the police or other investigative agency shall certify that the prosecution has been notified of the existence of all such material.
- 4.10 Where known, in accordance with Director's disclosure guideline which has been in effect since 3 August 2020 (see Annexure 1), the prosecution is under a duty to disclose the existence of:
- (a) Relevant protected material that is subject of a claim of privilege or immunity;
 - (b) Relevant material that is subject of a statutory publication restriction;
 - (c) Relevant unprotected material that is not subject to a claim of privilege or immunity or a statutory publication restriction.

5. The unrepresented accused

- 5.1 Particular care must be exercised by a prosecutor in dealing with an accused without legal representation. The basic requirement, while complying in all other respects with

this policy, is to ensure that the accused is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused's interests.

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

6. Private prosecutions

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

- (b) the prosecution is not in the public interest;
- (c) there are reasons for suspecting that the decision to institute a private prosecution was actuated by improper motives or otherwise constituted an abuse of the prosecution process; or
- (d) it would not be in the interests of justice for the conduct of the prosecution to remain within the discretion of a private individual having regard to the gravity of the offence and all the surrounding circumstances.

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

7. Undertaking that a person will not be prosecuted

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

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

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

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

- (a) the importance of the evidence which may be obtained as a result of the undertaking;
- (b) the extent of the criminal involvement of the person seeking the undertaking compared with that of the accused;

- (c) whether the person seeking the undertaking has given a full and frank statement of their prospective evidence, including an acknowledgement of their own role in the offences in issue;
- (d) the character, credibility and previous criminal record of the person concerned;
- (e) whether any inducement has been offered to the person to give the evidence sought; and
- (f) whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking such as under subsection 9(1) or subsection 9(4) of the DPP Act.

7.5 Any undertaking given by the Director will generally be subject to the condition that the recipient of the undertaking will give evidence as and when called to do so, and that any evidence the person is called upon to give will be given truthfully, accurately and on the basis that the person will withhold nothing of relevance.

7.6 Requests for consideration of the giving of an undertaking will usually come from the police. Where such a request is made, the Director should be provided with a full copy of the brief of evidence against the principal offender, a copy of the brief or other material against the proposed witness, a full and frank statement signed by the proposed witness, and a comprehensive report adverting to each of the standard indemnity criteria, as listed above. Given that undertakings will rarely be given, it is prudent for investigators to consult with the Director as soon as practicable if they intend requesting an undertaking for a potential witness in criminal activity under investigation.

7.7 Where an accomplice receives any concession from the Director in order to secure their evidence, for example, whether as to choice of charge, or the grant of an undertaking under the DPP Act, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court and to the defence.

8. Victims of crime

8.1 In exercising their functions, the Director and all members of the staff of the DPP must have regard to the governing principles in the Victims of Crime Act 1994 as well as the Director's Instruction Nos. 1, 2, 7, 13, 14.1 and 14.2 outlining victim's rights in relation to particular prosecutorial decisions.

8.2 Victims are to be accorded sympathetic and dignified treatment. They have a right to information about the progress of investigations and the prosecution of the offender, including the charges and any modifications to the charges. A victim should be told about any decision not to proceed with a charge against the accused. Further, a victim should be told about the trial process and of the rights and responsibilities of witnesses and be given an explanation of the outcome of criminal proceedings, including of any

8.3 There should be concern for the safety and wellbeing of victims, including protecting them from unnecessary contact with the accused and defence witnesses during the course of a trial or hearing.

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

9. Publication of reasons

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

10. Prosecutor's duties under the ACT Bar rules

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

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

- (g) the prosecutor believes on reasonable grounds that the testimony of a particular witness is plainly untruthful or is plainly unreliable by reason of the witness being in the camp of the accused; provided that:-
- (h) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (e), (f) or (g) together with the grounds on which the prosecutor has reached that decision.

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

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

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

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

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

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

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

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

Appendix B

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

Background

Under applicable instructions,³⁷¹ a decision to discontinue a prosecution or significantly amend a statement of facts must not be taken without first consulting the complainant (with child complainants, this includes the parent or guardian).

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

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

Procedure for review of a decision to discontinue

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

The procedure is:

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

³⁷ Director's Instruction No. 1: Discontinuing Prosecutions and significantly amending Statements of Facts in the Supreme Court; and Director's Instruction No. 2 - Causing prosecutions to be brought to an end and significantly amending statements of facts in the Magistrates Court.

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

Audit of compliance

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

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

Appendix C

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

Aim of Instruction

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

DPP complaints and oversight mechanisms

40. *Each Australian Director of Public Prosecutions should:*
 - a. *have comprehensive written policies for decision-making and consultation with victims and police*
 - b. *publish all policies online and ensure that they are publicly available*
 - c. *provide a right for complainants to seek written reasons for key decisions, without detracting from an opportunity to discuss reasons in person before written reasons are provided.*
41. *Each Australian Director of Public Prosecutions should establish a robust and effective formalised complaints mechanism to allow victims to seek internal merits review of key decisions.*
42. *Each Australian Director of Public Prosecutions should establish robust and effective internal audit processes to audit their compliance with policies for decision-making and consultation with victims and police.*

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

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

This Instruction should also be read in line with:

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

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

Application

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

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

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

A reviewable decision does not include:

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

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

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

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

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

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

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

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

Type of prosecution	Type of review available
Homicide offence ³⁸	
Sexual offence ³⁹	Automatic review
Serious violent offence ⁴⁰	
Less serious violent offence ⁴¹	Review at request
Any other offence against an identifiable complainant named in the information	

Recommending a Discontinuance

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

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

³⁸ A 'homicide offence' includes any offence where the death of a person has occurred.

³⁹ The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 41.

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

⁴¹ The offences listed in the *Evidence (Miscellaneous Provisions) Act 1991*, section 39.

compelling reasons not to contact the complainant, these should be documented in the RORD.

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

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

3. Prosecutor saves all supporting documentation for RORD into Folder 22 on CASES.
4. Prosecutor sends RORD to supervising lawyer:
 - › For FV offences – FV supervising lawyer;
 - › For sexual offences – SO supervising lawyer;
 - › For all other matters – supervising lawyer of team.
5. Supervising lawyer records recommendation in RORD, and sends this document by email (copying in the prosecutor) to:
 - a. for strictly indictable matters⁴² – the Deputy Director (or, if unavailable, the Assistant Director);
 - b. for summary/indictable matters, or summary-only matters⁴³ – the Assistant Director (or, if unavailable, the Deputy Director).
6. Deputy Director or Assistant Director records decision in RORD, including the reason/s for the decision.
7. Deputy Director or Assistant Director sends email to prosecutor and supervising lawyer, advising of decision and obligation on prosecutor to contact the complainant, informant, defence, court and witnesses in accordance with this Instruction.
8. If the decision is to proceed, the prosecutor must advise the informant and the complainant.
9. If the decision is to discontinue, and the decision is subject to automatic review, go to 'Reviewing a discontinuance'.
10. If the decision is to discontinue, and the decision is subject to review at request, the prosecutor must advise the informant and the complainant of the decision. First contact with the complainant should be made by phone, and a file note should be made of this conversation.

⁴² See *Crimes Act 1900*, section 375.

⁴³ See *Crimes Act 1900*, section 375 and *Legislation Act 2001*, section 190.

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

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

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

Reviewing a discontinuance

1. If the decision is subject to automatic review, go to step 3.
2. If the decision is subject to review at request, the complainant has 7 days to request a review of the decision from the time they were first informed of the decision.⁴⁴ The complainant may request a review either over the phone or by email.

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

3. If the matter calls for an automatic review, or a review is requested in accordance with this Instruction, this must be brought to the attention of the Director⁴⁵ **as soon as possible**. The prosecutor should provide the Director with the CASES reference (with all relevant documentation saved therein) and a copy of the brief of evidence.
4. The Director has 7 days to review the decision (depending on the timeframe of the matter),⁴⁶ having regard to the documents saved on Folder 22 in CASES (including the file note documenting the complainant's views, the RORD and supporting documents and any request for review by complainant) and the brief of evidence. The decision will be considered in accordance with the Prosecution Policy.

⁴⁴ Depending on the court timetable, this timeframe may be shorter. If the request is received outside of this timeframe, the prosecutor should immediately raise this with the Director for further consideration.

⁴⁵ If the Director is unavailable, the matter should be reviewed by either the Deputy Director or the Assistant Director, depending on who made the original decision.

⁴⁶ If a trial is listed to commence within 7 days of a decision to discontinue, the request for review must be made as soon as possible, as the timeframe for the review process will be shorter. In some cases, it may not be possible to review the decision before notice of the decision is communicated to the court. In those circumstances, the decision will be still be reviewed by the Director, but the matter may not be able to be prosecuted.

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

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

5. Once the review is complete, the Director should record in the RORD whether the original decision is endorsed/not endorsed and notify the prosecutor and Deputy/Assistant Director of the outcome.
6. The prosecutor must then contact the complainant to explain the outcome of review. If the decision to discontinue is endorsed, the prosecutor should inform the complainant prior to informing the court, and should offer the complainant the right to both:
 - a. discuss the reasons for the decision with the Director in person (in the presence of a Witness Liaison Officer or support person, if desired);and
 - b. receive a letter containing the Director's written reasons for the decision (which must be requested within **14 days** of the final decision being communicated to the complainant).⁴⁷
7. If written reasons are requested for the decision, the Director should:
 - a. Provide written reasons to the complainant within **14 days**;
 - b. Consult with any allocated Witness Liaison Officer prior to providing written reasons to the complainant;
 - c. Ensure that written reasons are not provided in circumstances where:
 - i. statutory or other restrictions prohibit or limit the release of such information;
 - ii. the giving of reasons may affect a related case (for example, the prosecution of a co-offender) which is before the court.
 - d. If the circumstances in 7(c) are present at the time of the request, the request should remain under active review, so that if and when the circumstances are no longer applicable, further consideration may be given to the provision of reasons at that time.
8. Following the giving of reasons for the decision, the Witness Liaison Officer should follow up with the complainant to ensure that they are referred to agencies for further support as required.

⁴⁷ If the request is received outside of this timeframe, the prosecutor should immediately raise this with the Director for further consideration.

Audit of compliance

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

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

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

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

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

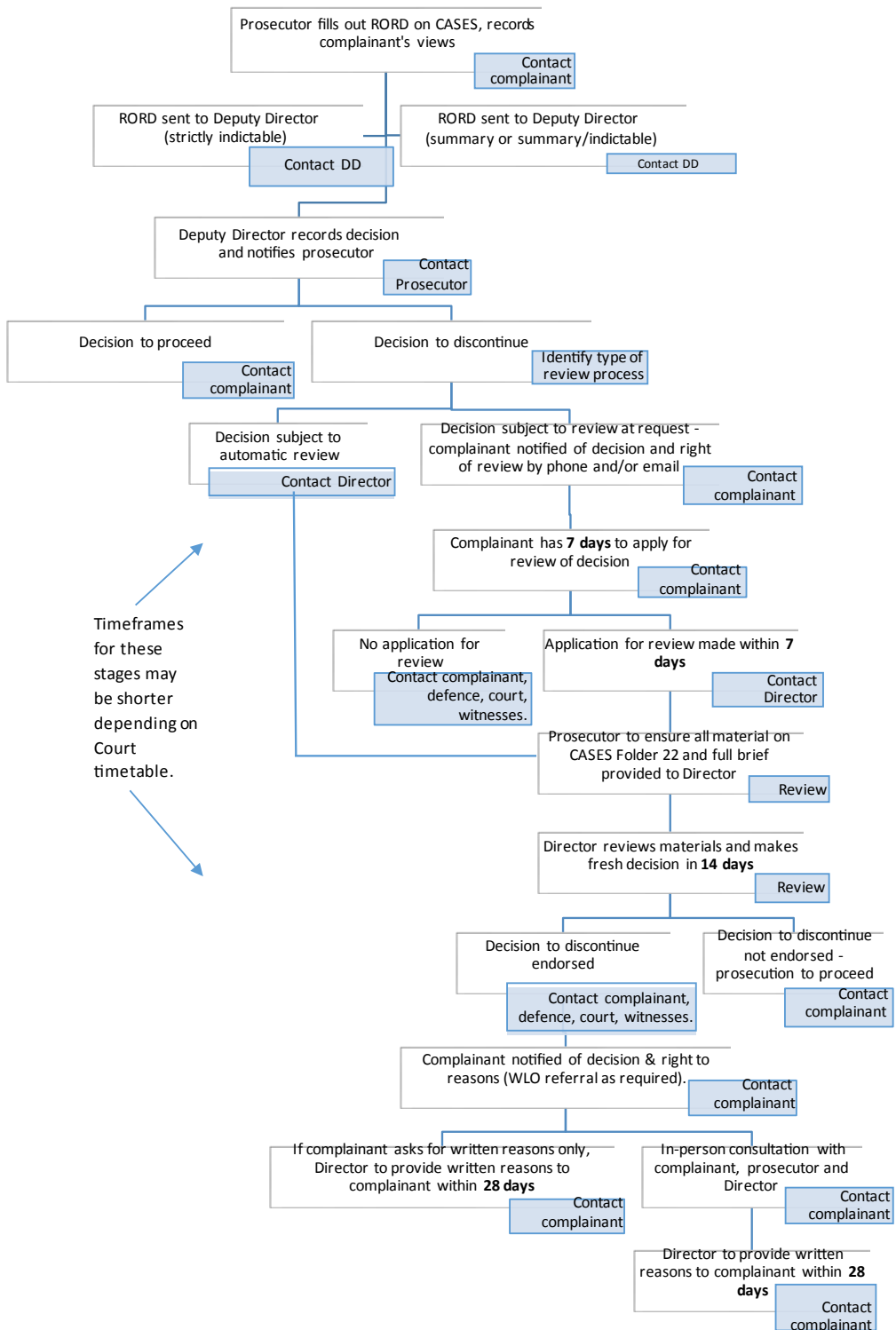
The results of the audit should be recorded on the 'Internal RORD Audit Form', which must be placed on the file. If, during the audit, it is discovered that the procedure undertaken in relation to a reviewable decision was not followed in accordance with this Instruction, the Audit Committee must review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

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

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

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

Reviewable decisions flow-chart



Appendix D

Audit Report on Legal Compliance of Procedures Relating to Reviewable Decisions⁴⁸

Shane Drumgold SC
Director of Public Prosecutions, ACT

Pursuant to *Director's Instruction 14.2 on Reviewable Decisions*, an audit committee comprising of Stafford Whitfield, Archita Sreekumar and Tina Vafaei, conducted an internal audit of the records of all reviewable decisions to discontinue prosecutions made between 1 July 2021 to 30 June 2022.

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

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

- shows that there were 100 reviewable decisions in the financial year ended June 2022;
- describes the type of offences of these reviewable decisions;
- the level of compliance with the procedures in *Director's Instruction 14.2*;
- provides a breakdown and summary of any compliance issues if any;
- compliance/all options explored were met in 92 matters;
- Non compliance occurred in 8 matters.

The following is a breakdown of the type of matters that made up the audit for the 2021-2022 financial year:

- 3 x traffic matters
- 27 x family violence matters
- 37 x theft/property/robbery matters
- 8 x sexual assault matters
- 17 x assault matters
- 2 x miscellaneous matters
- 1 x drug matter
- 5 x personal violence matters

This Audit Report is prepared solely for the purposes of the Office of the Director of Public Prosecutions' 2021-2022 Annual Report.

For the purposes of this Audit Report, the Audit Committee was appointed by the Director at the end of the 2021 - 2022 financial year on 1 August 2022 and held three separate meetings on 2 August 2022, 8 August 2022 and 11 August 2022 to conduct the required examination of documents against the relevant procedures in *Director's Instruction 14.2*.

11/8/2022

Date

Stafford Whitfield

Stafford Whitfield
Audit Team Leader

Office of the Director of
Public Prosecutions, ACT

⁴⁸ This audit report refers to the record of decisions that have been automatically reviewed by the ODPD over the financial year.

Appendix E

Record of Reviewable Decisions - Audit 2021-2022⁴⁹

No.	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
1.	J. A	202115796	Traffic matters	NO	Matter finalised
2.	J.A	202113116	FV	YES	Matter finalised
3.	T.A	202114303	Contravene PPO	YES	Matter finalised
4.	K.A	202111014	Driving offences	YES	Still proceeding on remaining charges
5.	M.A	202111732	FV	YES	Matter finalised
6.	M.B	201914072	Agg burg	YES	Matter finalised
7.	I.B	202200711	SO	YES	Matter proceeding on other charges
8.	T.B	202115707	Motor vehicle offences	YES	Matter proceeding on other charges
9.	H.B	202113118	Agg burg	YES	Matter finalised/ dealt with on other charges
10.	L.B	202200067	FV - AOABH	YES	Matter finalised
11.	A.B	202112523	Assault	YES	Matter finalised
12.	G.B	202113120	Agg burg	YES	Matter finalised
13.	J.B	202113098	Theft, burglary, take M/V, Ride/ drive M/V, Joint commission burg, joint commission take m/v	YES	Matter proceeding on other charges
14.	K. B	202200737	FV	YES	Matter finalised
15.	L.B	202114221	Possess stolen property	YES	Matter finalised
16.	M.B	202113687	Assault	YES	Matter proceeding on other charge
17.	S.B	202111543	Agg rob	YES	Matter finalised

⁴⁹ This is a record of decisions that have been automatically reviewed by the ODPP over the financial year.

No.	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
18.	M.B	202115240	FV	YES	Matter finalised
19.	B.B-P	202200346	Damage property	YES	Matter being dealt with by way of RJ
20.	M.B	202113330	Assault/trespass	YES	Matter finalised
21.	J.C	202112753	MV offences	YES	Matter finalised
22.	K.C	202113338	Arson/Affray	YES	Representations received/ some charges rolled up, addition charges laid
23.	M.C	202015983	Sexual offence	NO	Matter finalised
24.	S.C	202110801	Property offences	YES	Matter proceeding on other charges
25.	C.C	202014886	FV offences	YES	Matter finalised
26.	W.C	202113441	Property	YES	Matter finalised
27.	S.C	202014421	Drive MV w/o consent	YES	Matter finalised
28.	C.C	202112312	FV	YES	Matter finalised
29.	S.C	202110126	Driving offences/ assault	YES	Still proceeding on remaining charges
30.	A.C	202113261	Motor vehicle	NO	Matter finalised
31.	S.C	202113443	Property	YES	Matter finalised
32.	D.C	202112536	Property	YES	Matter proceeded on other charges
33.	B.C	202014928	Burg/assault	YES	Matter finalised
34.	A.D	202113968	M/V	YES	Matter finalised
35.	T.D	202111498	FV offences	NO	Matter finalised
36.	G. D	202113267	Arson/Affray	YES	Representations received/ some charges rolled up, addition charges laid
37.	S.D	202110210	Attempt minor theft	YES	Matter finalised
38.	M.D	202113459	Sexual offence	YES	Matter finalised (Although now listed for appeal against sentence. DPP appeal)

No.	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
39.	I.D	202016511	FV	NO	Matter finalised
40.	D.F	202015487	Indecent exposure/ act of indecency	YES	Continuing with indecent exposure charge
41.	A.F	202112075	Assault/ obstruct police & traffic offences	YES	Matter finalised
42.	T.F	202016523	Ride/drive MV w/o consent	YES	Matter proceeding on other charge
43.	W.G	202202045	FV – Contravene orders	YES	Charges to be withdrawn
44.	K.G	202110907	Assault	YES	Matter finalised
45.	B.H	202113603	S/O	NO	Matter proceeding on other charge
46.	J.H	202113496	Attempt Robbery	YES	Matter proceeding on alternative charges
47.	T.H	202111202	SO/FV	YES	Matter proceeding on one charge
48.	A.H	202115395	Contravene order	YES	Matter finalised
49.	R.H	202012515	PPO	YES	Matter finalised
50.	B.H	202114630	Agg rob	YES	Matter proceeding on other charges
51.	J.I	202110659	FV	YES	Matter finalised
52.	A.I	202201969	FV – Damage property	YES	Matter finalised
53.	S.J	202013504	Traffic offences	YES	Matter finalised
54.	P.J	202014220	Property offences	YES	Some charges still proceeding with
55.	A.J	202111987	Obstruct police	YES	Matter finalised
56.	M.K	202113358	FV	YES	Matter finalised
57.	Z. K	202201631	FV -Common assault	YES	Matter being dealt with by way of RJ
58.	Y.L	202111701	FV – Choke/ suffocate/strangle, common assault	YES	Matter finalised

No.	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
59.	J.M	202111922	FV matters	YES	Matter proceeding on other charges
60.	H.M-S	202112707	Assault	YES	Matter finalised
61.	H.M-S	202200058	Joint commission theft	YES	Matter finalised
62.	J.M	202113232	Motor vehicle	YES	Matter was NETO'd
63.	L.M	202113014	Assault	YES	Matter proceeding on other charges
64.	W.M	202112808	Theft	YES	Matter finalised
65.	J.M	202113237	FV	YES	Matter finalised
66.	D.M	202112474	Drive SMV	YES	Proceeding on other charges
67.	J.M	202113366	Motor vehicle offences	YES	Matter finalised
68.	J.M	199935036	Armed robbery	YES*	Matter finalised
69.	S.N	202013702	S/O	YES	Matter finalised
70.	A.N	202114445	Sexual assault	YES	Matter finalised
71.	A.N	202200217	SO – Act of indecency w/out consent	YES	Matter proceeding on other charges
72.	D.O	202114296	FV – Contravene orders	YES	Matter finalised
73.	B.O	202200424	FV/SO	YES	Matter proceeding on other charge
74.	R.P	202111386	MV	YES	Matter finalised
75.	M.P	202110578	FV offences	NO	Matter finalised
76.	M.P	202111748	FV	YES	Matter finalised
77.	C.P	202016540	Assault	YES	Charges to be withdrawn
78.	G.P	202111590	Assault	YES	Matter proceeding on other charges
79.	B.Q	202113198	Ride SMV	YES	Proceeding on other charges
80.	L.R	201712632	Ride/drive Mv w/o consent	YES	Matter finalised
81.	J.R	202016193	Contravene order	YES	Matter finalised

No.	Defendant	Cases no	Offence type	Compliance with <i>Director's Instruction 14.2</i>	Status of Prosecution
82.	L.R	202200011	Assault police	YES	Matter finalised
83.	J.R	202111197	Drive SMV	YES	Matter finalised
84.	G.R	202115698	Property offences	YES	Matter proceeding on other charges
85.	J.R	202112444	FV	NO	Matter finalised
86.	G.R	202111007	Assault	YES	Matter finalised
87.	D.R	202201853	FV – Contravene order	YES	Matter finalised
88.	L.S	202115888	Theft	YES	Matter proceeding to sentence on other charges
89.	D.S	202112756	Assault Police	YES	Matter finalised
90.	K.S	202114724	FV	YES	Matter finalised
91.	L.T	202015569	Assault	YES	Matter finalised
92.	S. T	202012520	PPO	YES	Matter finalised
93.	L.T	200531493	Minor Theft	YES (in terms of process)	Matter finalised
94.	L.T	202110800	Property offences	YES	Matter proceeding on other charges
95.	L.T	202201480	Pervert the course of justice/destroy conceal evidence	YES	Matter proceeding on other charges
96.	H. W	202015810	FV	YES	Matter finalised
97.	D. W	202200322	Minor theft, drive whilst disqualified	YES	Matter finalised
98.	C.W	202200313	Drug offences	YES	Matter adjourned for defendant to attend RJ proceedings
99.	R.W	202113313	Theft	YES	
100.	Y.W	202113734	FV	YES	Matter finalised

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