



ACT DPP
OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS

ANNUAL REPORT 2011-12

DIRECTOR OF PUBLIC
PROSECUTIONS



ACT
Government



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ETHOS: THE SPIRIT OF THE COMMUNITY

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

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GPO Box 158, Canberra City ACT 2601.

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Enquiries about this publication should be directed to:

GPO Box 595 Canberra City,

ACT 2601

Phone 6247 3800

www.dpp.act.gov.au

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<http://www.act.gov.au>

Telephone: Canberra Connect 13 22 81

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24 September 2012

Mr Simon Corbell MLA
Attorney General
Legislative Assembly
CANBERRA ACT 2601

Dear Attorney,

ANNUAL REPORT

I present my Annual Report for the year ended 30 June 2012.

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

I hereby certify that the attached Annual Report is and is an honest and accurate account and that all material information on the operations of the Office during the period 1 July 2011 to 30 June 2012 has been included.

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

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

Yours faithfully

Jon White
Director of Public Prosecutions

ACT DIRECTOR OF PUBLIC PROSECUTIONS

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

GLOSSARY

ACRONYMS

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

TECHNICAL TERMS

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

DIRECTOR'S OVERVIEW

This year has been another busy one. In many ways the year was dominated by the Blitz (details of which are given in this report) but the day to day work of the Office continued unabated. A supreme effort was called for - and delivered - by every section of the office. It is an honour to be leading such a dedicated and talented team.

For the second year in a row, almost double the long term average number of Supreme Court trials were completed. In addition, there was a significant increase in Magistrates Court matters completed during the year. The year was marked also by the conducting of some significant appeals, particularly Crown appeals involving sentencing in sexual offence matters.

In line with the existing policy of prosecuting matters in house, all Blitz trials were allocated to prosecutors within the Office. This provided great opportunities to emerging advocates, many of whom were conducting their first trials in the Supreme Court. They took to the task with dedication and enthusiasm. The future of the Office is bright.

The renewed attention paid to the paralegal area has continued this year, as is detailed in this report. The goal of having all paralegal staff undertake professional development has been realized. Senior paralegals again instructed in Supreme Court trials, in particular during the Blitz. I am keen to engage senior paralegal staff - who are generally in the later stages of legal studies - in court work, including appearing in routine list matters such as traffic lists and the like.

This Office continues to contribute to discussions about law reform in criminal law and procedure in the Territory. It was somewhat disappointing to see a Bill which incorporated many worthwhile reforms in the SARP area lapse at the end of the current Assembly. It is certainly hoped that those proposals (and some additional ones which are referred to in detail in this Report) can be resurrected as soon as possible in the life of the new Assembly.

I commented last year on the recommendation by Dr Hawke in his review of the ACT Public Service that in keeping with the vital independent role of the DPP, the DPP should receive appropriation funding in its own right. It is hoped that this important matter will be on the agenda of the next government.

As detailed in this report, the regulatory practice presents particular challenges to the Office. In general prosecution matters, charges have already been laid before the matter is referred to the Office. With regulatory matters on the other hand, briefs are received from regulatory agencies with recommendations for charges, but without charges having been laid. Regulatory agencies take their responsibilities very seriously. The matters they investigate - and on occasion refer for consideration of prosecution - are of significance to the community and often involve complex issues of fact and law. However, the briefs of evidence are sometimes compiled by agency staff who are not highly trained as investigators or experienced in investigations. Often detailed advice is

required from my Office as to the adequacy of the brief of evidence and the necessity of completing further inquiries before charges can be laid.

The prosecution of such matters places a significant burden on the resources of my Office, and there is every indication that the number of matters which will be referred to my Office will increase in the coming year. In those circumstances, I have been anxious to find ways to assist regulatory agencies in their tasks of investigating and preparing briefs. Existing resources within the Office simply do not allow this. In the coming year I will continue to seek ways to support regulatory agencies with their important task.

Despite the magnificent work of the Blitz - and I must acknowledge the contribution not just of my officers but of all parts of the criminal justice system – delays still plague the Supreme Court. Of concern are the number of verdicts in judge alone trials which are still outstanding. At time of writing there are still a number of matters awaiting judgment including a matter from July 2010, five matters from 2011, and two matters from early 2012. (It must be noted in this context that the Supreme Court has completed an enormous number of trials in the last two years.)

However the real vice of delay is the burden it places on accused persons, victims, witnesses, and the community generally, and the potential it has to distort the criminal justice system. It should be the aim of the criminal justice system to visit consequences upon the guilty, and absolve the innocent, as soon as possible. Accused persons and victims alike need certainty. We are often told by victims that they feel that their whole life is on hold until they can put a criminal matter behind them one way or another. Even victims who can give evidence early in a pre trial hearing are not able to move on with their lives until a verdict is ultimately delivered – one way the other – in their trial.

The Blitz was one response to the problems of delays in the listing of matters in the Supreme Court. While it certainly had a great effect on clearing the backlog, long term changes are needed. The proposed docket system is the start of a co-ordinated response.

The basic principle of any response should be to achieve a trial listing as soon as possible after committal. The aim of reforms should be to cut down the time from committal to trial to say 6 months. The experience of the Blitz has shown that accused persons only concentrate on giving instructions if their trial is an immediate prospect. In fairness it must be said that this also concentrates the mind of the prosecution. The other benefit of bringing matters on earlier for trial is to prevent double handling – it is more likely that the same prosecutor and defence counsel can be involved at all times.

I remain strongly of the view that the most important component of a more efficient Supreme Court listing system is an expansion of the existing requirements for the exchange of material in criminal matters. The docket system can only be effective if there is a framework for a robust exchange of material and an early identification of the issues in the trial.

Jurisdictions with successful case management ensure that a matter comes before the court as few times as possible between committal and trial. It follows that the identification and narrowing of issues should be largely dealt with even before matters are allocated to a docket judge.

One practical matter may be to empower the Court to order parties to do anything that in the court's opinion will or may facilitate the case being conducted and concluded efficiently and expeditiously. This could include the power to order the parties to confer on a "without prejudice" basis and to attend before the court for the purpose of dealing with case management issues. Such a provision would provide a proper framework for case management by the court, although the real work of an efficient system will be in the obligations of pre trial issue identification from both sides. Similar mechanisms exist in other Australian jurisdictions.

Another matter worth consideration is to apply the docket system where it will have its biggest impact – in relation to the more complex trials. Short trials - which were so successfully dealt with in the Blitz context - should be reserved for more flexible listings.

I have contributed to a discussion for reform of Magistrates Court listing processes, including the creation of a separate bail list, and reform of case management hearings. There is general support for these proposals in the profession, and I believe they have received favourable consideration in the Magistrates Court itself. Hopefully the coming year will see progress on this front.

Many people have contributed to the success of this year and it would be wrong to single anyone out. Across the Office the contribution has been magnificent.

However, I must record that the whole Office was very proud when Geoff Howard was named the winner of the "Directorate Support" category of the 2012 ACT Public Service Awards for Excellence. Geoff is an integral part of the Office. He has dedicated his career to the ACT criminal justice system. In doing so he has been a loyal, supportive, and fun colleague. He is particularly remembered by generations of young prosecutors who he has guided through the terrors of presenting the 'A' List in the Magistrates Court. Indeed, Geoff has just assisted in "breaking in" a new crop of outstanding young prosecutors. It is the contribution of people like Geoff which make the job stimulating, enjoyable and fulfilling for all my officers.

Jon White

Director of Public Prosecutions





SECTION A

PERFORMANCE AND FINANCIAL MANAGEMENT REPORTING

A.1 THE ORGANISATION

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

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

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

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

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

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

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

The principal duties of the Director are:

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

The Director has some important statutory functions, including:

- to institute a prosecution on indictment where there has been no committal for trial (known as an ex officio indictment);
- to decline to proceed further in a prosecution and bring it to an end;

- to take over and conduct, or discontinue, prosecutions instituted by another person (other than the Attorney General);
- to give to a person an undertaking that specified evidence will not be used against them, or that they will not be prosecuted for a specified offence or conduct; and
- to give directions or furnish guidelines to the chief police officer and other persons specified in the Act, including investigators and prosecutors.

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

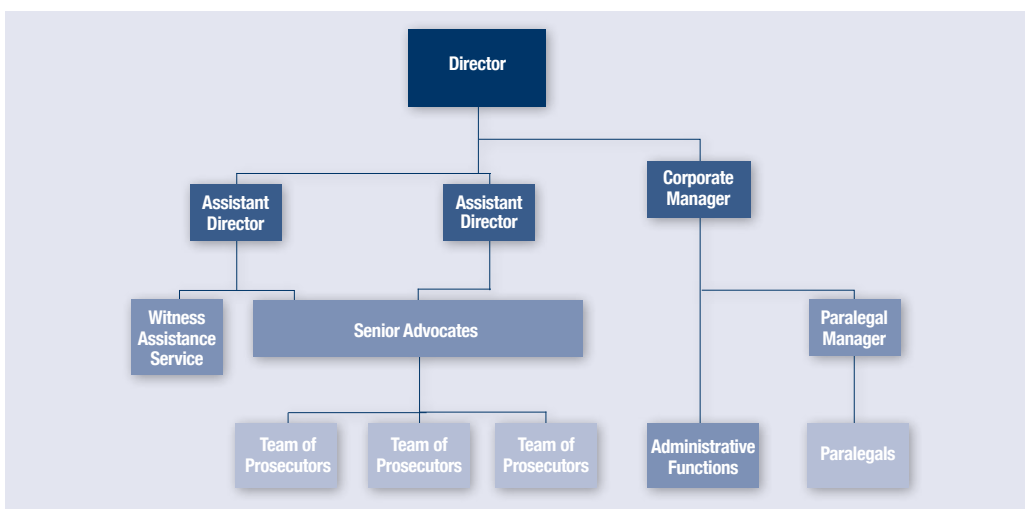
In making decisions in the prosecution process, prosecutors are guided by the procedures and standards which the law requires to be observed, and in particular by the Prosecution Policy promulgated by the Director. The Prosecution Policy is available on the website of the Office and is appended to this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

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

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

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

The Office structure during the reporting period was as follows:



A.2 OVERVIEW

This was a year dominated by the intensity of the Blitz, and a significant increase in Magistrates Court matters.

The completion of the prosecutors' work value review saw significant and long overdue increases in prosecutor salaries. The year also saw much internal focus on the professional development of paralegals.

The Office was very engaged in discussions concerning listing arrangements in both the Supreme Court and Magistrates Court. The Office continued to contribute on law reform issues.

A high level of liaison is maintained with the Courts, the AFP, the JACS directorate and the legal profession. There are a myriad of other liaison and consultation arrangements many of which are referred to in this report.

The essential business of the office is criminal litigation. The office continues to operate in an environment of externally imposed deadlines and very high work volumes. The statistics and case reports in the body of this report give an idea of the detailed work of the office.

A.3 HIGHLIGHTS

Noteworthy operational achievements during 2011-2012 were:

- The completion of a work value review of prosecutor positions, which recognised the increased complexity of their roles. This led to significant salary increases for prosecutors and a more competitive alignment with similar positions interstate;
- The Blitz, which involved supreme efforts from all parts of the Office;
- The prosecution of a number of significant Crown appeals, especially in relation to sentencing in sexual offences;
- The prosecution of a large number of complex and difficult cases including 57 completed trials, the second highest number on record;
- Implementation of the new professional development package for paralegals, and the consolidation of the re-structure of the paralegal area;
- Contribution to law reform in the Territory, notably in the SARP area;
- Consolidation of the move towards electronic delivery of library services, particularly the supporting of tablet devices and the like for prosecutors;
- Recruitment and training of junior lawyers;
- Revision of the external internet website to make it more responsive to community needs;
- The introduction of the ACT Smart Office program to reduce the impact of operations on climate change and greenhouse gas emissions.

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

- continued delays in the finalisation of cases, particularly in the Supreme Court;
- the prosecution of an increasing number of regulatory matters, often investigated by agency staff who are not highly trained as investigators or experienced in investigations;
- maintaining appropriate staff development and training in the face of workload and budgetary pressures;
- dealing with issues of security of staff outside the Office, specifically in Court and on the way to Court;
- retention of paralegal staff;
- contributing to legislative reform proposals within existing staffing levels and workload.

A.4 **OUTLOOK**

Priorities for the coming year include:

- Participating in the reform of case management and listing processes in both the Supreme Court and Magistrates Court;
- Finding ways to contribute to the improvement of the investigation of regulatory matters within the Territory;
- Enhancing continuing legal education opportunities for prosecutors, particularly through in-house training, mentoring, and advocacy exercises;
- Enhance the reporting capability of CASES, thereby assisting in management decision making;
- Exploring ways of doing business electronically, particularly in the acceptance and service of briefs of evidence.

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

The significant risks facing the Office continue to centre on the retention and recruitment of legal staff, given workload pressures, and pressure on prosecutorial services imposed by the tight fiscal environment. The Office has moved decisively toward an in-house counsel model. As previously noted, the risks associated with this are the increased pressure on prosecutors, and reduced flexibility leading to the possible unavailability of counsel for matters listed in court.

The other significant risk centres on the prosecution of regulatory matters, in circumstances where such matters are complex, and significant to the community. Limited resources within the Office to cope with the expected increase in this sort of work, and deficiencies in the training and resourcing of investigators, are causes for concern.

A.5 MANAGEMENT DISCUSSION AND ANALYSIS

The outcome for the 2011-2012 financial year was broadly in line with budget.

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

It is a matter of much regret that at a time that the workload of the Office is expanding, the resources available to it are contracting. What exacerbates this is the fact that the Office is a downstream agency, and is not in control of its workload, nor the services it is required to deliver, nor the timeframes in which it delivers them. All of those matters are determined by external forces.

A.6 FINANCIAL REPORT

The financial transactions of the Office for the year ending 30 June 2012 are subsumed within the audited financial statements of the JACS Directorate. For information related to the budget outcomes please refer to the audited JACS financial statements for 2011-12 (Output 1.4). It should be noted that total expenses in Output 1.4 include allocated JACS Directorate overheads.

A.7 STATEMENT OF PERFORMANCE

The following is extracted from the audited JACS financial statements for 2011-2012:

Output Class 1 : Justice Services				
Output 1.4 : Public Prosecutions				
Prosecution of summary and indictable matters, at first instance and on appeal, provision of assistance to the Coroner, and provision of witness assistance services.				
Accountability Indicator	Original Target 2011-12	Amended Target 2011-12	Actual 30 June 2012	Variance %
Total Cost (\$'000)	8,912	9,859	9,816	0%
Government Payment for Outputs (\$'000)	8,512	9,298	9,222	-1%

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

A.8 STRATEGIC INDICATORS

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

A.9 ANALYSIS OF AGENCY PERFORMANCE

THE BLITZ

A major focus of the Office in the reporting period was what became known as the Blitz. Following a government announcement of extra resources to tackle the backlog of matters awaiting trial in the Supreme Court (including some extra resources for the Office) there was a frenetic period of planning and recruiting to get ready. For criminal matters the Blitz consisted of two six week periods where large numbers of trials were listed each week. (The second of those periods actually extended past the reporting period, but it will be convenient to report here on the entire Blitz.)

The office recruited additional prosecutors, paralegals and administrative staff to deal with the additional workload. The extent of that workload is attested to by the statistics. Combining the figures from both Blitz periods, there were 99 trials listed, and only 3 of those were not reached. Eight matters were vacated for various reasons. Of the remainder, there were 50 pleas of guilty, 13 matters discontinued by the prosecution, and 25 trials that ran. Of the trials that ran, there were 16 verdicts of guilty and 9 of not guilty.

This means that 51% of all matters ended in a plea of guilty, as against 25% that ran to trial. It must be emphasised that these are all matters that were listed for trial – in other words instructions had originally been given for a not guilty plea. Many of the pleas of guilty were achieved by negotiation – sometimes to counts being “rolled up”, sometimes with pleas to some counts in full satisfaction of the indictment, and sometimes by agreement as to the facts with the indictment remaining the same. Similarly, some matters were discontinued on the basis that pleas of guilty would be entered in the Magistrates Court, while other matters that were discontinued had more appropriate summary charges which may now proceed in the Magistrates Court.

The preparation of 99 additional trials - on top of all the normal court work - required a supreme effort from staff in all sections of the Office. Briefs of evidence had to be compiled, witnesses had to be contacted, subpoenas issued, conferences arranged, travel and accommodation organised – and of course prosecutors had to prepare matters for presentation in court. The experience was that pleas of guilty were usually only confirmed just before trial, when most of the work of preparing the trial had already been done. All this affirmed what experienced litigators already know – that it is proximity of the impending trial which concentrates the mind of both accused persons and prosecutors and leads to resolution of matters.

PARALEGALS

STAFFING RE-STRUCTURES

The 2011-12 year has seen a continuation and consolidation of the previous year's re-structure within the legal support service of the DPP, which was reported last year.

The re-structure included the classification of all paralegal positions to reflect the complexity and responsibility of the work they undertake. Paralegals now sit within the classification Grades 1 – 5, reflecting the classification level of the prosecutorial staff they assist and the level of legal complexity at which they operate.

The current structure of the legal support section consists of the Paralegal Manager with 13 paralegals between the Grade 1 to Grade 5 Paralegal level and the Court Listing Officer (rostering assistant). The Paralegals are separated into a Magistrates Court section and a Supreme Court section. The Family Violence and Sexual offences area has dedicated paralegals who come under the Magistrates Court area in the team structure. Each of these areas is headed up by a Paralegal Grade 5 who assists the Paralegal Manager in the day to day management of tasks, work flows and personnel management.

TRAINING

Another aim of the re-structure was to enhance retention of staff within the paralegal stream, by providing clear career progression and job competency training and assessment.

On average, DPP paralegals have 4 years of experience in criminal law paralegal duties and typically have additional legal background and training. All permanent employees in the paralegal area are currently undertaking further legal or criminal justice system related studies at the tertiary level.

In this reporting period the goal for having all paralegal staff undertake professional development and further training at a tertiary level has been realised with all paralegals either having obtained or being in the process of obtaining as a minimum a Certificate III in Business Administration (Legal). In addition to this minimum qualification, the majority of paralegals are undertaking further studies to complete their Certificate IV in Legal Services. Those employed at the Paralegal Grade 4 and above have either obtained or are in the process of obtaining a Diploma of Legal Services.

This process has been valuable in recognizing the current professional skills of the paralegal team, and allowing for professional development within the paralegal stream.

Last year the DPP ran a trial of allocating a dedicated Grade 3 and (above) paralegals assisting counsel in major matters with administrative and research tasks associated with running major trials in the Supreme Court. This has now been implemented on a permanent basis, with two of the previous participants being successful in gaining Prosecutor positions within the Office upon their admission to legal practice.

This year, two senior paralegals close to completing their law degrees instructed prosecutors in several of the Supreme Court's Blitz trials. This practice has proven to be a great support to senior counsel in their preparation of trials, and provides an excellent environment for senior paralegals to learn about and participate in the preparation of complex criminal matters. This adds to the overall professionalism and experience of both the paralegals and prosecutors.

SUPREME COURT AND APPELLATE ACTIVITIES

SUPREME COURT

The significant upswing in the number of trials conducted, noted last year, continued during the reporting period. In this the twenty first year of operation of the Office some 62 trials were conducted. This was the second highest on record, eclipsed only by last year. The long term average for the first 20 years was 33.5.

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

Year	2007/2008	2008/2009	2009/2010	2010/2011	2011/2012
Trials	29	37	30	66	62

The large number of trials reflects an upswing in Supreme Court work generally, and is not just attributable to the Blitz, which is detailed elsewhere in this report.

All of the trials were prosecuted in-house, in contrast to the practice of former years when many matters were briefed out at significant cost.

BAIL

Bail hearings in the Supreme Court continue to place a significant workload on the Office. The problem with self represented applicants being allowed to proceed with their applications despite those applications not complying with the Court Procedures Rules respecting such applications continues. Two developments reported last year have however proven positive: a CCTV link with the prison has enabled some bails to be conducted remotely without the necessity of transporting persons in custody to the courts; and legislation which will requires two bail applications to be heard in the Magistrates Court before the Supreme Court's jurisdiction can be invoked has restricted the number of such matters going to the Supreme Court.

APPEALS

The number of appeals continued to be high. Supreme Court appeals totalled 60 (the third highest on record). Court of Appeal appeals totalled 18. By way of comparison the long term average for the first 20 years of the operation of the office was 38.2 Supreme Court appeals per year, and 15.9 Court of Appeal appeals per year.

MAGISTRATES COURT

Some 4237 matters were completed during the year, with 3144 been found proved. This was an increase of 9.4% in matters completed over the previous year. Coming as it did on top of the Blitz in the Supreme Court, the increase placed great pressure on the Office. All indications are that the Magistrates Court is as busy as it has been in recent years. A full complement of Magistrates - the first time for some years this had been achieved - was no doubt partly responsible for the increased completion rate.

The number of accused committed to the Supreme Court for trial or sentence was up slightly this year (254 this year, 240 last year).

Meeting the timetable set out in a Practice Direction for the service of briefs continues to be a challenge, and the rate of compliance was well under target during the reporting period. Certainly, the Office is dependent upon the AFP to provide material in a timely manner and this is part of the explanation. However, the main reason lies in the enormous burden on resources required to service the Supreme Court practice this year.

CHILDRENS COURT

The Court remains busy. During the reporting period some 454 summary matters were concluded (with 344 being proved), and 29 matters were committed from the Court to the Supreme Court. These figures were in line with last year.

RESTORATIVE JUSTICE

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

RJ is only available in the Childrens Court and only applies to those offences that can be dealt with summarily, and do not involve family or sexual violence. RJ aims to provide the victim with an opportunity to express how an offence has affected them, while offering a young offender an opportunity to accept responsibility for their actions and repair the harm that their actions have caused. While RJ is a proper sentencing consideration for the court, successful completion of the RJ process or agreement will not necessarily result in a discontinuation of the prosecution.

This Office is very supportive of the RJ process. The DPP is one of six entities that have the power to refer matters to the RJU for a suitability assessment for participation in the RJ process. The Office refers eligible matters to RJ where a prosecutor has formed the opinion that the objects of the Act would be served by such a referral, and in particular that the victim may benefit from the process. Of course a number of other entities can refer matters for RJ at various stages of the criminal process. Indeed the Court itself frequently refers matters for RJ, after being assured by the prosecutor that a referral is appropriate.

GALAMBANY COURT

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

Galambany means 'we all, including you' and is intended to reflect the inclusive nature of the Court. The Circle aims to:

- reduce barriers between Courts and the Aboriginal and Torres Strait Island communities;
- provide culturally relevant and effective sentencing options for indigenous offenders;
- involve Aboriginal and Torres Strait Islander communities in the sentencing process;
- provide offenders with support services that will assist them to overcome their offending behaviour;
- enhance the rights of victims in the sentencing process; and
- reduce repeat offending.

An offender who identifies as an Aboriginal or Torres Strait Islander and who pleads guilty to an offence may be referred to the Circle for sentencing, if the offence and the offender fit the guidelines.

The Circle is presided over by a Magistrate and includes a panel of elders or respected community members. The offender, their legal representative, and a prosecutor also participate. Corrective Services attend if they have supervised the offender during the remand period. The victim is invited to participate in the Circle and can be accompanied by a witness assistant from the Office or other supporter. Having heard the facts of the offence, information about the offender, and the impact of the offence upon the victim, the panel makes recommendations to the Magistrate concerning sentencing. The Magistrate then sentences the offender, taking into account the recommendations of the panel.

Circle, by its very nature, takes a more expansive approach than conventional sentencing as a wider range of subjective factors are considered to arrive at a sentence that promotes the rehabilitation of the offender but also takes into account the expectations of the community. This process is significantly longer and more complicated than the conventional sentencing process and involves a significant amount of resources from the courts and by this Office.

CORONERS COURT

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

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

With changes in the organisation of the Coroners Court, the move to centralisation has somewhat petered out.

During the reporting period there were:

Appearances in Coronial Hearings	24
Appearances in Coronial Directions	17
Hearing inquests concluded	11
Matters in which a Coronial Brief was received by the DPP	43
Matters in which the Coroner decided no inquest was required	20

SEXUAL OFFENCES UNIT

The Sexual Offences Unit continues to provide a best practice approach to prosecution of sexual offences by developing specialist prosecutors, providing early support for victims, greater continuity in the conduct of matters, reducing delay in sexual offence matters, and utilising legislative measures to improve the court experience for victims.

The unit manages a large number of matters and while it endeavours to ensure sexual offence matters are resolved as quickly as possible there continues to be delays in getting matters to trial. Elsewhere in this report it has been noted that the recent Blitz was a success in reducing some of the backlog of matters. This has also been reflected in sexual offence matters. However, there continues to be lengthy delays before trial.

As mentioned in previous reports delay is particularly unfortunate in sexual offence matters, where victims often feel that their lives are on hold until criminal justice process is finalised. It remains to be seen whether the newly introduced docket system in the Supreme Court will minimise these delays and whether sexual offence matters will be given priority listing by the court. This Office remains committed to doing what it can to address the underlying causes.

Currently the unit comprises 2.5 prosecutors who are solely assigned to sexual assault matters. The unit works closely with the Witness Assistance Service (WAS) and the AFP Sexual Assault and Child Abuse Team (SACAT). These specialist prosecutors appear in most of the sexual offence matters in the Territory and the unit is consulted on all decisions to appeal or discontinue matters.

Continuity of prosecutors is an important feature of the approach and ensures consideration of the evidence is made at an early stage. It also provides consistency for victims. Pleasingly, the legislative reforms of the past few years (SARP) are becoming entrenched and this has reduced some of the delay between commission of the offence and the victim giving evidence in court, and accordingly some of the stress on victims.

Sexual offence trials in the Supreme Court during the reporting period were as follows:

Description	Matters
Trials	
Trials	24
Trial Outcomes	
Guilty Verdicts	7
Not Guilty Verdicts	13
Hung Juries	2
Awaiting verdict	2
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/changed plea or re-sentenced after breach	11
Notices declining to proceed further	11

Note: Trials with an outcome of hung jury and trials awaiting verdict are not included in matters completed.

Relevant statistics for the unit for all matters for the reporting period 2011-12 are as follows:

	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual offence matters commenced	42	3	30	75
Sexual offence matters completed	63	2	43	108
Sexual offence matters proved	18	-	18	36
Sexual offence matters discontinued	9	-	11	20

Note: Matters completed include matters committed to the Supreme Court.

By way of comparison, here are the figures for the previous financial year 2010-11:

	Magistrates Court	Childrens Court	Supreme Court	Total
Sexual offence matters commenced	34	-	32	66
Sexual offence matters completed	49	1	32	82
Sexual offence matters proved	8	-	25	33
Sexual offence matters discontinued	5	-	2	7

Note: This table has been included for comparison purposes. It should be noted that it was reported in the 2010-2011 Annual Report that fewer than 30 sexual offence matters were completed in that reporting period. This was a (slightly inaccurate) reference to Supreme Court completions. However, overall 82 sexual offence matters (including matters committed to the Supreme Court) were completed in that period.

Some significant matters dealt with by the unit during the reporting period included:

KAON BELL

On 11 May 2012 Kaon Bell was sentenced for counts of aggravated robbery, unlawful confinement and several counts of sexual intercourse without consent. Bell had been in a relationship with the victim but her feelings began to wane and by June 2011 the relationship ended. Bell did not accept this. On 31 July 2011, sometime after midnight, the victim was woken by Bell standing next to her bed and holding a knife. The victim's adult child was in another room. Bell held the knife against her throat and bound her hands to the bed. He stuffed a gag in her mouth and used the knife to cut off her clothes. Over the next few hours Bell repeatedly sexually assaulted the victim. He also sexually assaulted her with the knife.

Bell was sentenced to a total head sentence of 20 years imprisonment with a non-parole period of 15 years.

ROBERT DICK

In 1 March 2012 Robert Dick was found guilty by a jury of two counts of sexual intercourse without consent. In June 2007 Dick assisted in running a brothel out of a house in inner Canberra and in providing Thai women as sex workers. Three days after the victim, a Thai national who spoke very little English, arrived in Canberra, Dick entered her bedroom and demanded sex. The victim resisted and physically struggled against him but he sexually assaulted her with a vibrator. A month later Dick again demanded sex and offered her money but she refused. Dick held the victim down and again sexually assaulted her.

At the time of the trial Dick was suffering from a rare type of blood cancer. The trial was logistically challenging as Dick required regular breaks for rest as well as to receive pre-arranged treatment at hospital. Before he could be sentenced, Dick died.

SARP REFORMS

In last year's Annual Report I acknowledged the significant legislative reforms as a result of the SARP legislation. I commented on some further reforms which would further improve the experience of giving evidence for victims of sexual offences, and family violence offences.

There were a number of reform suggestions that this Office supported in this area. Some of those reforms were in a Bill which has now lapsed before the current Assembly. The Bill will have to be re-introduced in the next Assembly if the measures are to proceed. The salient features of the Bill included:

- extending the definition of sexual intercourse to include common sexual acts currently not covered (acts that are within the definition in the majority of Australian jurisdictions);
- making it an offence for a person to engage in sexual acts with a young person under the age of 18 if the young person is under the person's special care. This includes school teachers, step parents, foster carers, employers, coaches, counsellors, health professionals, and custodial officers. This provision would bring the ACT in line with all other Australian jurisdictions and provide greater protection for young people in the ACT;
- significant reforms to how witnesses give evidence. Police interviews as evidence in chief are currently limited to children or intellectually impaired victims of sexual offences and some violence offences. The Bill extended this provision to all child or intellectually impaired *witnesses* in prosecutions for such matters. This recognises the challenges facing children and intellectually impaired people in giving evidence many months or years after the event apply equally whether giving evidence as a victim of an offence or as a witness more generally;
- victims of sexual offences currently give evidence from a remote location. The Bill

contained amendments which would permit such evidence to be recorded and thus available to be used in any subsequent proceedings, for example, following a successful appeal against conviction. This is a significant reform, reflecting provisions in other jurisdictions, and will ensure victims in such matters will not have to give evidence more than once.

It is to be hoped that these measures will come before the new Assembly for debate as soon as possible.

Indeed, further reforms should be considered. I commented in my report last year that the provisions permitting victims in family violence assault matters to give evidence by CCTV was having a positive impact in family violence prosecutions. It remains the case that victims of breaches of protection orders and damage property offences are not permitted to give evidence remotely. Rather they must be in the court room with the alleged offender. Consideration should be given to including those offences in the range of offences where CCTV is available.

In the area of general prosecutions, victims of serious violent crimes can give their evidence using CCTV and this has likewise had a positive impact on these prosecutions. However it is anomalous that victims of burglaries, especially those present at their dwelling when the burglary takes place, are not permitted to give evidence using CCTV.

Both those reforms are well worth consideration for inclusion with the matters in the lapsed Bill, if it re-introduced.

FAMILY VIOLENCE INTERVENTION PROGRAM

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

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

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

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

A significant challenge for FV prosecutors is prosecuting matters where the complainant is a reluctant participant in the proceedings. The reasons for this vary but issues such as financial reliance and pressure from the defendant and other family members play a major role. As with all prosecutions, the FV team proceeds with charges where there

are reasonable prospects of conviction bearing in mind the strong public interest in denouncing family violence. The specialist FV prosecutors undertake in-house training in evidence law and courtroom skills. They are greatly assisted and supported by the Witness Assistance Service and dedicated specialist paralegals.

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

Significant statistics during the reporting period include:

	Magistrates Court	Childrens Court	Supreme Court	Total
FV matters commenced	432	49	22	503
FV matters completed	479	43	46	568
FV matters proved	356	30	18	404
FV matters discontinued	48	4	6	58
FV defendants diverted under Mental Health Provisions	9	-	-	9
FV matters finalised before hearing	303	35	11	349
FV matters proceeding to hearing	155	7	4	166
Proved	112	5	2	119
Discontinued	13	2	2	17

PROSECUTING FV MATTERS

The prosecution of family violence matters is a unique challenge. In most cases women are the victims. The offences take place in private and are often not reported to the police. The challenges associated with convincing a court that an offence has been committed in a person's home, often without any witnesses apart from the victim and in circumstances where there are emotional, financial and physical pressures placed on the victim, should not be underestimated. Very often, by the time the matter comes to court the victim is reluctant for the matter to proceed.

The following case reports from matters prosecuted by FV prosecutors during the reporting period illustrate some of the challenges in the area and demonstrate the issues that arise when one family member is charged with offending against another:

POLICE V MR

MR was charged with assaulting her partner, Ms M, and occasioning to her actual bodily harm. A day after the alleged incident, Ms M was injured in a serious car accident and suffered head trauma which affected her memory. At the hearing of the matter the defence suggested Ms M's memory had been reconstructed by recovered memory techniques such as hypnotherapy and that her evidence should be excluded as unreliable.

In cross-examination, it was put to Ms M that she had no independent memory of the incident her evidence was what she had been told by her counsellor and friends and family. After this suggestion of re-constructed memory, the prosecution re-examined Ms M under s 108(3) of the *Evidence Act 2011* to re-establish her credibility by virtue of a prior consistent statement of complaint. Ms M's written statement to police, made within hours of the incident (and before her accident) and containing her complaint of the assaults, was tendered by the prosecution under this provision. The prosecution also called Ms M's counsellor to give evidence that no recovered memory techniques had been employed in his treatment of Ms M and that he had no knowledge of the events regarding the assaults. The magistrate ruled Ms M's evidence was admissible and that she was a credible witness whose memory had recovered naturally. MR, who had no criminal record, was found guilty of one count of assault and given a non-conviction order.

POLICE V AM

In August 2011, AM was charged with assaulting his son by striking him with a wooden spoon to his hand and leg.

When the matter came on for hearing in February 2012, the essential facts were not in dispute. The defence argued that, even though AM's actions had caused bruising to his son, AM should not be found guilty of assault because he had merely applied lawful chastisement to the child after the child had sworn at his mother.

The Prosecution argued that whilst AM striking his son may have been in response to what the child had said to his mother, AM's behaviour went beyond lawful chastisement because his actions caused bruises to the child.

The Court found that AM's actions could not be held to be lawful chastisement, particularly in light of the fact that his actions had resulted in an injury that was not transient or fleeting. AM was found guilty of assault, but because of his good background, his personal circumstances and the circumstances of the offence, received a non-conviction order.

POLICE V RB

RB was charged with leaving his two small children (aged 3 years and 9 months respectively), unattended for such a period of time and in such circumstances that they could suffer injury, sickness or be in danger.

On 19 January 2012 the mother of the children left for work. RB had sole parental responsibility for the children throughout the day.

At about 6:20pm police officers attended RB's home for unrelated matters. They noticed that the house was secure. They knocked on the front door but no one answered. A short time later, the older child ran to the door crying and screaming. The child tried unsuccessfully to open the door. The police broke a window and climbed into the house as they were concerned for the safety of the child. They found the older child crying hysterically and sweating profusely. The temperature outside was about 30 degrees but it was hotter inside the house. The police found the younger child crying and sweating in her cot.

RB was later located at the shops some kilometres from the home. He spoke poor English but later gave an interview with police with the assistance of an interpreter.

The matter came on for hearing in June 2012. The prosecutor called an expert witness from the ACT 'Child at Risk Health Unit'. That witness gave evidence to the effect that the children were so young that they were incapable of caring for themselves and that because they were left unattended, the risks they had faced were considerable. These ranged from heat exhaustion, injury from accident to possible physiological damage that would be hard to quantify.

Evidence of RB's interview with police was admitted over objection. RB told the police that he had left the children alone to go to the shops for a short period of time to buy food.

Ultimately, the court found the charges proved, accepting the expert witness's opinion that the children had been in 'a perilous position'. RB was convicted and placed on a good behaviour order.

WITNESS ASSISTANCE SERVICE

The Witness Assistance Service has continued to provide a range of services to complainants in sexual offences and Family Violence; victims suffering significant trauma; and family members where a death has occurred as a result of crime.

The service also continued to provide training to, and receive training from, the AFP, DVCS, Victim Support ACT and the Canberra Rape Crisis Centre. The service has also provided in-house training to legal and administrative staff within the office with particular emphasis on working with children, and complainants of family violence and sexual assault. They also provided training to the new members of the Victim of Crime Volunteer Program.

The Witness Assistants were involved in the evaluation (conducted by the Australian Institute of Criminology) of the Sexual Assault Reform Program (SARP) reforms. This included being interviewed in relation to the experience of a Witness Assistant pre and posts the SARP reforms, and also assisting in arranging victims to be interviewed in relation to their experience in the criminal justice system.

The Witness Assistants assisted in the creation of an ACT DPP Victim Impact Statement Protocol. The Witness Assistants are often involved in assisting victims in the preparation of Victim Impact Statements and use this opportunity to review common issues encountered in assisting victims preparing and presenting Victim Impact Statements to the court.

WAS CASELOAD

A breakdown of all matters dealt with in the reporting period can be seen in the following table:

Offence type categories	Number of clients	Percentage
Adult Sexual Assault	71	26.9
Child sexual assault	75	28.4
Historical sexual assault	36	13.6
Violent Offence	54	20.5
Death	9	3.4
Other	19	7.2
Total	264	100

THE WAS ROLE IN SUPPORTING COMPLAINANTS

The Witness Assistants possess professional qualifications and experience in order to assess the needs of each individual victim. They liaise with prosecutors and court staff in relation to any specific needs or concerns. In supporting and preparing victims and witnesses for court the WAS do not discuss evidence or coach witnesses.

THE BLITZ

The WAS experienced a very busy time during the Blitz, organising support for complainants and updating complainants on changes to dates and times for trials. For each Blitz period the WAS identified all matters where there was a complainant and met with external agencies to ensure there was a support person for each matter where one was needed. In being prepared early for the Blitz the WAS avoided last minute referrals and liaised with the prosecutors to ensure there was a support person available for each matter.

SUPPORTING MULTIPLE COMPLAINANTS OF ONE OFFENDER

The Witness Assistance Service has experienced a few cases throughout the year where there are multiple complainants of sexual offences for a single offender. This is an especially busy time for the witness assistants due to the amount of contact that must

be made with each complainant each time the matter appears in court. There are also reasons for urgency in contacting some of the complainants due to high media coverage. It is important for a complainant to be informed of the progress of a matter before it appears in the media. This can involve making contact with up to 8 individual people for one matter. These cases can often be slower in their progress through the criminal justice system due to the amount of evidence needing to be gathered and analysed and also in finding suitable periods of time in court. Complainants often express frustration and disbelief at the amount of time the matter takes to get to trial.

The service was also involved in a matter in which six complainants gave evidence via a remote facility in the one trial. The WAS supported most of the complainants while also ensuring none of the complainants came in to contact with the others to protect the integrity of their evidence. In this particular case both Witness Assistants were involved in this trial for about a week.

ACT DPP FEEDBACK SURVEY

Within the next financial year it is proposed to roll out an ACT DPP feedback survey. This is to collect information on victims' experiences with the Office and data will be used to improve the service provided to victims. The survey will initially be sent to complainants who were supported by a Witness Assistant, and after review will likely be sent to a broader sample of victims.

CONFISCATION OF CRIMINAL ASSETS

The *Confiscation of Criminal Assets Act 2003* has proven to be an effective tool in the fight against serious crime. The Office continues to pursue the restraint and forfeiture of property in cases where there is clear evidence that property was either used in the commission of an offence, or was the proceeds of crime. The Office believes that restraint and forfeiture can be a significant deterrent value on offenders. Given the value of the property involved, restraint and forfeiture can, in some cases, be more daunting to offenders than the prospect of short a custodial sentence.

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

Of note, in the latest reporting period the Office dealt with the restraint or forfeiture of:

- a car in which the rape of a juvenile was committed;
- a house to satisfy a penalty order relating to a fraud against the ACT Catholic Education Office of over \$1 million; and
- two cars and electrical equipment that were purchased with cash that was the proceeds of crime from an armed robbery on a licensed premises.

Given proceedings under the Act are akin to civil proceedings, the Office was able to

reach an out of court settlement in another matter where a house had been used in relation to the cultivation of cannabis. In that case the defendant agreed to pay the Territory a significant sum of money to discharge a forfeiture action for his house.

There was a decrease in the number of matters pursued in the last financial year due, in large part, to prosecutorial resources being focused on the Blitz. There will however, be a significant increase in actions pursued in the following reporting period, and the Magistrates Court has agreed to standing confiscation of criminal assets list to facilitate this.

During the reporting period the following activity took place:

- Number of matters referred to DPP by AFP – 14
- Value referred - \$1,338,585.00
- Value of restrained property for financial year - \$1,273,890.00
- Value of forfeited property for financial year - \$549,572.83
- Applications to restrain property – 3
- Applications for conviction forfeiture orders – 1
- Applications for buy back order – 1 (agreed by this office)
- Applications for unclaimed tainted property – nil

REGULATORY MATTERS

The Office prosecutes regulatory matters referred to it by ACT Government agencies and the RSPCA in respect of legislation those agencies administer.

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

Within the Office, the regulatory practice is managed by a dedicated prosecutor who has responsibility for allocating regulatory files and liaising with the regulatory agencies. Each regulatory matter is allocated to a particular prosecutor who retains carriage of it from the beginning to the end of the prosecution.

Discussions with a variety of regulatory agencies suggest a dramatic increase in the number of regulatory matters being referred to the Office within the next financial year.

The variety of matters is shown by the following table, and some regulatory matters are set out in the Case Reports section of this report. During the reporting period, the following matters were finalised:

Act	Matters	Proved
ACT Road Transport (Public Passenger Services) Regulation 2002	3	2
Agents Act 2003	1	1
Animal Welfare Act 1992	1	
Australian Road Rules 2008	1	
Construction Occupations (Licensing) Act 2004	3	1
Domestic Animal Act 2000	1	1
Electoral Act (ACT) 1992	3	
Food Act 2001	9	9
Occupational Health & Safety Act 1989	4	3
Public Health Act 1997	4	4
Trespass on Territory Land Act 1932	1	1
Work Safety Regulation 2009	1	
TOTAL	32	22

PARKING MATTERS

The Office prosecutes those parking offences which end up in court. There were 170 parking matters completed in the reporting period.

SENTENCE ADMINISTRATION BOARD

The Sentence Administration Board is established under the *Crimes (Sentence Administration) Act 2005*. The Board has functions in relation to parole, periodic detention and release of offenders on licence. One of the functions of the Director is to attend meetings of the Board to make submissions in relation to specific matters, especially in relation to the law on sentencing and the interpretation of applicable legislation. Senior prosecutors from the Office appear before the Board when occasion demands, although it must be said that the Board as presently constituted rarely requires such assistance from the Office.

CRIMINAL LAW RESOURCE CENTRE

The Criminal Law Resource Centre (CLRC) provides DPP staff with access to a wide range of online resources which include subscriptions, current awareness bulletins, new resources via the intranet and also material loaded onto iPads and similar devices. The use of these tablet devices in the Office has grown exponentially with the CLRC playing a key role by providing advice when purchasing (both devices and apps), as well as training, support and facilities for staff to update files such as legislation. If prosecutors do

not have their own device it is also possible to borrow a number of these devices just like a book and carry them off to use in court.

Pivotal to the administration of electronic information is the office intranet which gives staff quick and easy access to a wide range of information, including internal office communication. The intranet has quickly established itself as the main communication tool of the Office, and the CLRC is constantly engaged in improving ways to access key resources, as well as adding new material and providing link to new external resources. The CLRC pages on the Intranet provide access to our online subscriptions and prosecutors can search the internal catalogue for relevant sentencing transcripts, judgments and submissions.

CASE REPORTS

The following cases are included in the report to illustrate the breadth of work of the Office or because they involve significant issues. Cases specific to particular areas of work are also reported elsewhere in this report.

R V CHATFIELD

In the early hours of the morning, the female victim was walking north along Northbourne Avenue from the direction of Civic while she was speaking to her male friend on her mobile phone. While she was still on her phone, the victim was walking past the ABC Radio Station building on the corner of Northbourne Avenue and Wakefield Avenue in Dickson, when she turned around and saw Chatfield walking about 100 metres behind her. A few moments later she noticed he was only about 10 metres behind her, and that he was running towards her. She stepped aside hoping that he would run past her, but he grabbed hold of her from behind and grabbed her hair. The victim screamed into the phone for help. Chatfield told the victim that he had a knife and he placed the knife against her neck. He dragged her off and sexually assaulted her.

Shortly before he was due to stand trial, Chatfield pleaded guilty to a number of serious offences including sexual assault in the third degree. The sentencing judge sentenced Chatfield, to a total head sentence of five years and six months, with a non-parole period of 4 years.

The Director appealed against the inadequacy of the sentence. Amongst other matters, the Director pointed to the atrocious record of the offender, which included a number of previous convictions for aggravated rape.

The Court of Appeal unanimously upheld the Director's appeal, and re-sentenced Chatfield to seven years nine months imprisonment with a six year non parole period.

The Court of Appeal's judgment is notable for what it held in relation to the so called "principle" of double jeopardy on Crown sentence appeals. The Court accepted that the reasoning of the High Court in *Bui v Director of Public Prosecutions (Cth)* (2012) 284 ALR 445 applied to the relevant ACT sentencing legislation. The Court held:

As we have already said, the High Court in Bui v Director of Public Prosecutions (Cth) said that s 16A(2) [of the relevant Commonwealth Act] did not accommodate the "principle" of double jeopardy. Moreover, the High Court said that if on re-sentencing the court had regard to the "principle" of double jeopardy, the court would not thereby be imposing a sentence which is of a severity appropriate in all the circumstances of the offence.

For the same reasons, in our opinion, if this Court is to re-sentence the respondent, this Court should not have regard to the "principle" of double jeopardy, because to do so would be inconsistent with the terms of s 7(1)(a) of the [ACT] Sentencing Act, which require the Court to impose a sentence on an offender to ensure that the offender is adequately punished for the offence. If regard were had to the "principle" of double jeopardy, and the sentence was thereby reduced, it could not be said that the offender was being adequately punished.

R.V. TW

TW was sentenced to a total term of imprisonment for seven years with a total non-parole period of four years and six months on his plea of guilty to three counts of committing an act of indecency upon a child, five counts of using a child for the production of child pornography, two counts of possessing child pornography, a count of using a carriage service to access child pornography, a count of using a carriage service to distribute child pornography and a count of using a carriage service to transmit child pornography. The conduct was of the gravest kind, and the children used by TW included his own son and children of people known to him.

The Director appealed against the inadequacy of the sentence. The Court of Appeal upheld the Director's appeal, and re-sentenced TW to a total sentence of nine years and seven months with a total non-parole period of five years and six months.

R. V. COOPER

When police executed a search warrant on Cooper's home in Canberra on 6 January 2010 they found an enormous volume of child pornography located on numerous computers and data storage devices, as well as a large number of printed images. The volume of images seized almost defied complete examination. However there were approximately 684,559 child pornography images and 1,061 child pornography videos in the seized material. Some of the material was of the grossest kind, being classified in category 5 in the Oliver scale, widely used to categorise such material.

The material was stored in a highly organised manner, with computer disks being labelled and the material on the disks being saved into named folders.

On 22 April 2008 Cooper had posted on a publicly accessible news group two video files containing child pornography. It was this posting that brought Cooper to the notice of the authorities.

Cooper pleaded guilty to 2 counts:

- One count of using a carriage service to publish child pornography material between 22 April 2008 and 23 April 2008 contrary to section 474.19 (1)(a)(v) of the *Criminal Code (C'th)* (maximum penalty of 10 years imprisonment); and
- One count of intentionally possessing child pornography between 24 May 2003 and 6 January 2010 contrary to section 65(1) of the *Crimes Act 1900* (maximum penalty of 5 years imprisonment or 500 penalty units or both).

Cooper was sentenced by the sentencing judge as follows:

- For the offence of publishing child pornography material imprisonment for 1 year; and
- For the offence of intentionally possessing child pornography imprisonment for 1 year 7 months, partly cumulative on the first count.

This gave a total head sentence of 2 years. His Honour ordered that 1 year be served by way of periodic detention and that the balance of the sentence be suspended upon the prisoner entering an undertaking to comply with good behaviour obligations for a period of 1 year.

The Director appealed against the inadequacy of the sentence on the second count of intentionally possessing child pornography.

The Court of Appeal unanimously upheld the Director's appeal and increased the sentence on this count to 2 years and 7 months imprisonment. Cooper was re-sentenced to a head sentence of 3 years, of which 18 months was to be served by way of periodic detention. (The fact that Cooper had already served a significant proportion of his sentence when the appeal came to be heard ameliorated the increase in his sentence.)

Of particular significance, the Court accepted authorities from other jurisdictions that in cases such as this, limited weight should be attached to the prior good character of the offender as such offences are committed frequently by persons of otherwise good character.

R V COUSINS

In 1979, Mr Cousins began employment as a payroll officer with the Catholic Education Office for the Archdiocese of Canberra and Goulburn. By May 1998 Cousins had advanced to the position of Senior Payroll Officer. As such he had responsibility for the disbursement of income payments to teachers, support staff and religious organisations for 56 schools within the Archdiocese of Canberra and Goulburn. In performing this role, he had exclusive access to the payroll system, which included administrator rights.

Cousins used this access to perpetrate a sophisticated fraud, creating fictitious employees and utilising the names of existing casual employees to obtain funds.

Mr Cousins pleaded guilty to 10 counts. 8 counts related to the appropriation of money from the Catholic Education Office and 2 counts related to his unauthorised modification of data within the payroll system, being the mechanism through which the appropriation of money took place. The total amount appropriated over a period of 8 years was just over \$1.19 million. The conduct of Mr Cousins, who was the Senior Payroll officer represented a sophisticated fraud and was a breach of trust. In sentencing Cousins, Higgins CJ observed:

It need not be thought that this is a victimless crime save in the sense that there is no particular person who is a victim, but it has defrauded the Catholic Education System, teachers, parents, the church itself and governments of a considerable sum of money over the period of time.

His Honour sentenced Mr Cousins to 6 ½ years imprisonment reduced from 8 years on account of his plea of guilty and other subjective factors. A non parole period of 4 years was set, with the first 2 years to be served by way of full time imprisonment and second 2 years to be served by way of periodic detention.

Action was also taken against Cousins under the *Confiscation of Criminal Assets Act 2003*.

R V FORTALEZA

On 16 August 2011, Kim-Rae Fortaleza was sentenced for seven counts of engaging in sexual intercourse with a person under the age of 16 years ("MEG") and one count of sexual intercourse with a person under the age of 16 years ("DC"), to which he had pleaded guilty. The offender, who had been 20 years old at the time of the offences, had befriended MEG aged 13 and DC aged 14 and engaged in sexual activity with them. In sentencing the offender, Justice Refshauge adopted the principle expressed in previous cases that the legislation creating these offences is directed at the protection of children regardless of their own burgeoning sexual feeling.

Fortaleza was sentenced to a total period of six years and six months' imprisonment with a non-parole period of three years.

On 8 February 2012, Fortaleza was further sentenced, following a plea of guilty, on one count of sexual intercourse with a person under 16 (a third victim). This offence had been committed while Fortaleza was on bail for the offences referred to above. Her Honour Justice Penfold found that on the face of it, the offender should have been aware by the time he committed this offence that sex with under-age girls was illegal and a dangerous activity, but found there was no basis to find that he committed the offence in deliberate disregard of how the law expected him to behave.

A sentence of two and a half years' imprisonment was imposed partly cumulatively on the existing sentence, making a total sentence of eight years' imprisonment, with the non-parole period extended to three years nine months.

DRUG DRIVING MATTERS

New laws relating to drug-driving within the Territory are now in effect, and matters are coming before the Courts in increasing numbers.

A recurring theme is the absence of a representative scale to indicate to what extent a driver was impaired; all that is required is the presence of the drug in the driver's oral fluid. The offence carries a period of licence disqualification that corresponds with a Level 4 PCA offence, and arguments have been raised about this giving the difficulty about making a comparison to level of intoxication. No doubt the law will continue to develop in this area.

K-FORM STRUCTURAL SYSTEMS PTY LTD (CITY WEST OFFICES CONCRETE COLLAPSE)

On 27 October 2008, the cement floor at the City West Offices construction site collapsed during a concrete pour.

There were a number of parties involved in the construction:

1. Leighton Contractors Pty Ltd (the primary contractor for construction of City West Offices)
2. K-Form Structural Systems Pty Ltd (the contractor who carried out the formwork and back-propping)
3. Greg Mohammed (K-Form's site supervisor)
4. John Milton Morgan (the engineer contracted to inspect and certify the formwork)

The floor collapsed after Leighton had directed Mr Mohammed to replace the formwork supports on the basement level with back-propping. The back-propping was unable to support the weight of the concrete being poured.

A charge against Leighton was dismissed after the prosecution offered no evidence. The other three parties pleaded guilty to failing to comply with a safety duty.

Chief Magistrate Lorraine Walker found the offences proven against Mr Mohammed and Mr Morgan but did not record a conviction.

Chief Magistrate Walker convicted K-Form of failing to comply with a safety duty and fined the company \$15,000 (the maximum penalty being \$50,000). K-Form had significant control of and a permanent presence at the workplace, and its failure to meet its safety duties was the most causative of the collapse (when compared to the input of the other two defendants). K-Form received a 25% sentencing discount for pleading guilty.

K-Form's level of culpability was described as 'towards the mid-level of seriousness for an offence'.

The Chief Magistrate considered that:

The authorities make clear that general deterrence has a particular significance in this type of case, even where no actual injury has resulted from the breach occasioned. Specific deterrence remains a consideration, however, particularly in relation to a person, corporate or otherwise, [who] will continue to practice in the industry ... As with any criminal matter, the likelihood of further offending is a relevant consideration.

Chief Magistrate Walker cited the importance of general and specific deterrence, as well as the seriousness of occupational health and safety offences. Since K-Form was likely to continue operating in the industry, the Chief Magistrate found it necessary to record a conviction against K-Form to meet the sentencing objectives of OHS legislation.

X Y HOSPITALITY PTY LTD TRADING AS XY DIM SIM DUMPLING HOUSE

There have been an increasing number of matters referred to the Office for prosecution involving breaches of food standards and hygiene regulations. One such matter arose after the XY Dim Sim Dumpling House at the Deakin Soccer Club was subject to an inspection by an Inspector from the Health Protection Service. A number of breaches of the **Food Act 2001** were identified. Those included handling food in a way that is likely to render the food unsafe, handling food in a way that is likely to render the food unsuitable and failure to comply with the Food Standards Code.

The conduct involved having unclean premises and using unclean equipment, storing food in containers and wrappers which were not suitable for the purpose, not having accessible and appropriate hand washing facilities and a lack of skill and knowledge in relation to food handling and storage standards. The company also failed to comply with a notice to remedy these breaches of hygiene standards.

A prosecution was commenced against XY Hospitality Pty Ltd and pleas of guilty were entered by the corporation in relation to all matters. The maximum penalties in relation to the charges included fines of between \$55,000 and \$275,000.

XY Hospitality Pty Ltd was sentenced by the Chief Magistrate who imposed fines totalling \$49,500. A clear distinction was made between a fine ordinarily imposed upon an individual for similar offences (usually ranging from \$2000 to \$4000 for each charge), and that imposed upon a corporation, setting a useful legal precedent.

QUIANG HUA FAN

On 14 and 16 July 2010 Public Health Officers and officers from the ACT Planning Land Authority inspected five severely overcrowded residential premises in the ACT. The houses were 3, 4 or 5 bedroom suburban houses with between 13 and 32 people living in

them. The residents, who were mostly migrants, were living in overcrowded, unsafe and dirty conditions. Whole families shared a single room, rooms were divided with partitions and people were living in caravans and sheds. The bathroom and kitchen facilities were inadequate for the numbers of people living the houses. In some of the houses the common facilities were in an appalling state. Residents were paying between \$80 a week for shared rooms up to \$200 for a family.

Notices were served requiring vacation of the premises and emergency housing was required for 80 people including children. The defendant Quiang Hua Fan owned four of the houses, and his wife, Li Wei owned the fifth, which was managed by Mr Fan. After initially pleading not guilty, Mr Fan pleaded guilty to five charges of operating a boarding house without a licence and one charge of allowing insanitary conditions to exist. A further four charges of allowing insanitary conditions to exist were taken into account on sentence.

The maximum penalty for carrying on an unlicensed boarding house is 6 months imprisonment or a fine of \$5,500, and the maximum penalty for insanitary conditions is a fine of \$5,500 without any imprisonment. Mr Fan was convicted and ordered to perform 450 hours of community service work in relation to the boarding house offences, and fined \$3,300 on the other charge. This was considerably less than the available maximum penalties on all offences. The prosecution submitted that the amount of profit made by the landlord was a relevant consideration in determining the appropriate penalty. However the court rejected this submission, while noting that the fact that it was a commercial enterprise was relevant.

Such operations, while still not common in the ACT, are becoming increasingly prevalent in Australia. In the light of the profits to be made from such conduct, it may be questioned whether the current level of penalties is adequate.

STATISTICS

A NOTE ON STATISTICS USED IN THIS REPORT

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

Prior to CASES, the statistics used in DPP Annual Reports were in the main provided by the courts. Those statistics were generally based on individual charges, rather than on defendants.

However, most of the statistics used in this report are generated from CASES. These new statistics comply with the Australian Bureau of Statistics (ABS) standards for the characteristics of defendants dealt with by criminal courts (see ABS 4513.0). A fundamental aspect that is different is that the ABS standard reports against defendants rather than charges.

As ABS 4513.0 (Criminal Courts Australia) at para 20 puts it: "the principal counting unit for the Criminal Courts collection is a defendant. A defendant is a person or organisation against whom one or more criminal charges have been laid and which are heard together as the one unit of work by a court at a particular level."

Generally, matters reported are those finalised within the reporting period. As set out in ABS 4513.0 at para 24 and following, "finalisation" describes how a criminal charge is concluded. Matters are concluded as set out in Paragraphs 30, 31 and 32 depending on the court involved. Of particular note, a transfer to another court level (for example a committal either for trial or sentence) concludes the matter in one court level and initials it in another court level.

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

TABLE 1: TOTAL MATTERS FINALISED BY JURISDICTION

Description	Matters	Proved
Children's Court	454	344
Magistrates Court	4237	3144
Supreme Court	315	196
Court of Appeal	18	
Total	5024	3684

Note: These are matters finalised in each jurisdiction (excluding committals).

TABLE 2: MATTERS FINALISED DISAGGREGATED BY MATTER TYPE

Description	Matters	Proved
Homicide and related offences		
Children's Court	4	
Magistrates Court	5	2
Supreme Court	3	2
Court of Appeal	2	
Sub Total	14	4
Acts intended to cause injury		
Children's Court	84	68
Magistrates Court	557	391
Supreme Court	78	42
Court of Appeal	5	
Sub Total	724	501
Sexual assault and related offences		
Children's Court	2	
Magistrates Court	63	18
Supreme Court	43	18
Court of Appeal	3	
Sub Total	111	36
Dangerous or negligent acts endangering persons		
Children's Court		
Magistrates Court	23	10
Supreme Court		
Court of Appeal		
Sub Total	23	10
Abduction and related offences		
Children's Court		
Magistrates Court	11	6
Supreme Court	12	11
Court of Appeal		
Sub Total	23	17

Description	Matters	Proved
Robbery, extortion and related offences		
Children's Court	23	12
Magistrates Court	58	10
Supreme Court	33	31
Court of Appeal		
Sub Total	114	53
Unlawful entry with intent/burglary, break and enter		
Children's Court	61	44
Magistrates Court	127	57
Supreme Court	54	46
Court of Appeal	4	
Sub Total	246	147
Theft and related offences		
Children's Court	89	78
Magistrates Court	297	218
Supreme Court	14	6
Court of Appeal	1	
Sub Total	401	302
Deception and related offences		
Children's Court		
Magistrates Court	25	15
Supreme Court	6	4
Court of Appeal		
Sub Total	31	19
Illicit drug offences		
Children's Court	10	8
Magistrates Court	166	112
Supreme Court	23	18
Court of Appeal	1	
Sub Total	200	138

Description	Matters	Proved
Weapons and explosives offences		
Children's Court	12	10
Magistrates Court	45	37
Supreme Court	3	3
Court of Appeal		
Sub Total	60	50
Property damage and environmental pollution		
Children's Court	53	40
Magistrates Court	128	91
Supreme Court	10	6
Court of Appeal	2	
Sub Total	193	137
Public order offences		
Children's Court	9	7
Magistrates Court	65	44
Supreme Court	1	
Court of Appeal		
Sub Total	75	51
Road traffic and motor vehicle regulatory offences		
Children's Court	67	61
Magistrates Court	2146	1919
Supreme Court	24	4
Court of Appeal		
Sub Total	2237	1984
Offences against justice procedures, government security and government operations		
Children's Court	33	15
Magistrates Court	266	153
Supreme Court	11	5
Court of Appeal		
Sub Total	310	173

Description	Matters	Proved
Miscellaneous offences		
Children's Court	7	1
Magistrates Court	244	61
Supreme Court		
Court of Appeal		
Sub Total	251	62
Total	5013	3684

Note: The offences are classified against the Australian Standard Offence Classification (ASOC). The Australian Bureau of Statistics (ABS) has formulated ASOC to provide uniform national statistics. The sixteen divisions within ASOC are set out in ABS 1234.0.

TABLE 3: COMMITTALS TO THE SUPREME COURT

Court	Matters
Children's Court	29
Magistrates Court	225
Total	254

**TABLE 4: COMMITTALS TO THE SUPREME COURT
DISAGGREGATED BY MATTER TYPE**

Description	Childrens Court		Magistrates Court		Total
	Trial	Sentence	Trial	Sentence	
Homicide and related offences	4		3		7
Acts intended to cause injury	1		26	8	35
Sexual assault and related offences	1	1	22	6	30
Dangerous or negligent acts endangering persons			1		1
Abduction and related offences			2		2
Robbery, extortion and related offences	5	5	27	18	55
Unlawful entry with intent/burglary, break and enter	4	5	19	34	62
Theft and related offences			3	8	11
Deception and related offences			1	5	6
Illicit drug offences			15	6	21
Weapons and explosives offences		1	2		3
Property damage and environmental pollution	1		9	4	14
Public order offences					0
Road traffic and motor vehicle regulatory offences					0
Offences against justice procedures, government security and government operations	1		4	1	6
Miscellaneous offences			1		1
Total	17	12	135	90	254

TABLE 5: SUPREME COURT MATTERS

Description	Matters
Trials	
Trials	62
Trial Outcomes	
Guilty Verdicts	31
Not Guilty Verdicts	23
Other	3
Awaiting verdict	5
Sentencing Proceedings	
Accused sentenced after committal for sentence; after committal for trial/ changed plea; or re-sentenced after breach	165
Notices declining to proceed further	37

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

TABLE 6: APPEALS

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	59	1	60
Court of Appeal	16	2	18
High Court			0
Total	75	3	78

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

A.10 TRIPLE BOTTOM LINE REPORT

		2010-11 Result	2011-2012 Results	% Change
ECONOMIC	Employee Expenses			
	• Number of staff employed (head count, not FTE)	63	70	11%
	• Total employee expenditure (dollars)	\$5,728,000	\$6,839,000	19.39%
	Operating Statement			
	• Total expenditure (dollars)	\$9,223,000	\$9,816,000	6.42%
	• Total own source revenue (dollars)	0	0	
	• Total net cost of services (dollars)	\$9,223,000	\$9,816,000	6.42%
	Economic Viability	\$2,000,000	\$2,000,000	0%
	• Total assets (dollars)	Refer JACS	Refer JACS	
	• Total liabilities (dollars)	Financial Statements	Financial Statements	
ENVIRONMENTAL	Transport			
	• Total number of fleet vehicles	Nil	Nil	N/A
	• Total transport fuel used (kilolitres)	N/A	N/A	N/A
	• Total direct greenhouse emissions of the fleet (tonnes of CO ₂ e)	N/A	N/A	N/A
	Energy Use			
	• Total office energy use (megajoules)	471.78	441.63	-6.39%
	• Office energy use per person (megajoules)	7.43	6.33	-14.8%
	• Office energy use per m ² (megajoules)	0.36	0.34	-5.55%
	Greenhouse Emissions			
	• Total office greenhouse emissions – direct and indirect (tonnes and CO ₂ e)	116.45	116.35	0%
	• Total office greenhouse emissions per person (tonnes of CO ₂ e)	1.83	1.67	-8.7%
	• Total office greenhouse emissions per m ² (tonnes of CO ₂ e)	0.09	0.09	0%
	Water Consumption			
	• Total water use (kilolitres)	Unavailable	Unavailable	
	• Office water use per person (kilolitres)	Unavailable	Unavailable	
	• Office water use per m ² (kilolitres)	Unavailable	Unavailable	
	Resource Efficiency and Waste			
	• Total co-mingled office waste per FTE (litres)	647.6L	665.1L	2.7%
	• Total paper recycled (litres)	48240L	49680L	2.9%
	• Total paper used (by reams) per FTE (litres)	34.6L	36.4L	5.2%

		2010-11 Result	2011-2012 Results	% Change
SOCIAL	INDICATOR			
	The Diversity of Our Workforce			
	• Women (Female FTE's as a percentage of the total workforce)	63.6%	63.6%	0%
	• People with a disability (as a percentage of the total workforce)	0%	0%	0%
	• Aboriginal and Torres Strait Islander people (as a percentage of the total workforce)	3%	2.6%	13.3%
	• Staff with English as a second language (as a percentage of the total workforce)	6.1%	9.1%	49%
	Staff Health and Wellbeing			
	• OH&S Incident Reports	0	1	100%
	• Accepted claims for compensation (as at 31 August 2010)	0	0	0%
	• Staff receiving influenza vaccinations	16	12	-25%
	• Workstation assessments requested	3	4	33.3%





SECTION **B**

CONSULTATION AND SCRUTINY REPORTING

B.1 COMMUNITY ENGAGEMENT

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

B.2 INTERNAL & EXTERNAL SCRUTINY

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

B.3 LEGISLATIVE ASSEMBLY COMMITTEE INQUIRIES AND REPORTS

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

B.4 LEGISLATION REPORTS

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



SECTION C

LEGISLATIVE AND POLICY BASED REPORTING

C.1 RISK MANAGEMENT AND INTERNAL AUDIT

RISK MANAGEMENT

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

This approach emphasises that the management of risk is the responsibility of all employees within the Office and is incorporated in the JACS Business Risk Management Plan 2010-2012.

INTERNAL AUDIT

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

C.2 FRAUD PREVENTION

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

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

C.3 PUBLIC INTEREST DISCLOSURE

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

The Procedures cover the following:

- how to make a public interest disclosure;
- receiving public interest disclosures;
- declining a disclosure;
- referral to another agency/authority without investigation;
- referral to another agency/authority after preliminary investigation;
- no referral where there is a risk of unlawful reprisal;
- investigation process;

- action on completion of investigation;
- relocation of officers subject to unlawful reprisals;
- civil claims;
- confidentiality;
- false or misleading information;
- protection for the person making the public interest disclosure; and
- progress reports and reports on disclosure.

The Office did not receive any disclosures during the year ending 30 June 2012.

C.4 FREEDOM OF INFORMATION

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

SECTION 7 STATEMENT

The following statement made pursuant to section 7 of the FOI Act is correct as at 30 June 2012 and replaces all previous statements.

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

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

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

The following documents are available upon request without charge:

- Annual Reports;
- Prosecution Policy.

Facilities for the inspection of documents (where appropriate) and preparation of copies or extracts (if required) are available at the Office. Requests may be sent to the Director, Office of the Director of Public Prosecutions, Reserve Bank Building, 20-22 London Circuit, Canberra ACT 2601 (GPO Box 595). Business hours are 8:30am to 4:30pm Monday to Friday (public holidays excepted).

SECTION 8 STATEMENT

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

SECTION 79 STATEMENT

During the reporting year:

- there was/were 3 application(s) made during the reporting year to access documents. Of these applications:
 - full access to the documents was granted in 0 case(s);
 - partial access to the documents was granted in 3 case(s);
 - access was refused to all documents in 0 case(s);
- there was/were 1 application(s) made during the reporting year for the internal review of decisions under section 59;
- there was/were 0 application(s) made during the reporting year to the Tribunal for the review of decisions;
- there was/were 0 charge(s) or application fees collected during the reporting year in relation to FOI requests and other applications made under the FOI Act; and
- there was/were 0 request(s) received during the reporting year to amend records under section 48.

C.5 INTERNAL ACCOUNTABILITY

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

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

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

The operations of the Office are overseen by the executive comprising the Director, senior executives, and the Corporate Manager. The executive meets weekly with a senior

management committee comprising the executive, the Paralegal Manager and Senior Advocates.

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

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

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

C.6 HR PERFORMANCE

As reported last year the office undertook an internal review of the specific skills, educational qualifications and attributes necessary for improved paralegal support within the office. This review was concluded and a training and development plan was implemented. This included paralegal staff being provided with support to complete certificates for level III in Business Administration (Legal) and level IV in Legal Services, under new vocational training arrangements.

This year has also seen the continuation of training and development opportunities for legal staff with regular continuing Legal Education Training (CLE) sessions.

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

Turnover rates of paralegal staff continue to be of concern. The major factor influencing rates of retention are wage rates and workloads for paralegals.

C.7 STAFFING PROFILE

The statistics provided in the following tables includes employees in receipt of salary as at 30 June 2012. The figures are expressed in full time equivalent terms.

FTE AND HEADCOUNT

	Female	Male
FTE by Gender	43.3	24.4
Headcount by Gender	49	28
% of Workforce	64%	36%

CLASSIFICATIONS

Classification Group	Female	Male	Total
Administrative Officers	9	4	13
Executive Officers		2	2
Legal Support	15		15
Professional Officers	2		2
Prosecutors	21	20	41
Senior Officers	2	1	3
Statutory Office Holders		1	1
TOTAL	49	28	77

EMPLOYMENT CATEGORY BY GENDER

Employment Category	Female	Male	Total
Casual	1	0	1
Permanent Full-time	33	21	54
Permanent Part-time	3	0	3
Temporary Full-time	12	7	19
Temporary Part-time	0	0	0
TOTAL	49	28	77

LENGTH OF SERVICE BY AGE-GROUP BY GENDER

Average Length of Service	Pre-Baby Boomers		Baby Boomers		Generation X		Generation Y		Total	
	F	M	F	M	F	M	F	M	F	M
0-2					5	3	18	6	23	9
2-4			2	1	5		6	2	13	3
4-6			1		1	3	5	2	7	5
6-8				1						1
8-10				1	1	1	1		2	2
10-12				1	1	2			1	3
12-14			1	1					1	1
14+ years			1	3	1	1			2	4

THE FOLLOWING EXPLAINS THE GENERATIONS IN THE ABOVE TABLE:

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

AVERAGE LENGTH OF SERVICE BY GENDER

Gender	Average length of service
Female	3.4
Male	6.4
Total	4.5

AGE PROFILE

Age Group	Female	Male	Total
<20	1		1
20-24	7		7
25-29	14	7	21
30-34	10	4	14
35-39	7	7	14
40-44	4	1	5
45-49	3	1	4
50-54	1	3	4
55-59	2	3	5
60-64		2	2
65-69			
70+			

AGENCY PROFILE

Branch/Division	FTE	Headcount
CORPORATE	6.3	8
EXECUTIVE	4.0	4
LEGAL SUPPORT	24.5	26
PROSECUTOR	32.9	39
Total	67.7	77

AGENCY PROFILE BY EMPLOYMENT TYPE

Branch/Division	Permanent	Temporary	Casual
CORPORATE	5	2	1
EXECUTIVE	1	3	
LEGAL SUPPORT	21	5	
PROSECUTOR	30	9	
Total	57	19	1

EQUITY AND WORKPLACE DIVERSITY

	A	B	C		
	Aboriginal and/or Torres Strait Islander	Culturally & Linguistically Diverse	People with a disability	Employees who identified in A, B or C*	Women
Headcount	2	7	0	9	49
% of Total Staff	2.6%	9.1%	0.0%	11.7%	63.6%

C.8 LEARNING AND DEVELOPMENT

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

Training initiatives focus on the professional development needs of staff.

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

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

During the reporting period the office completed a review of the paralegal classification group and implemented specific training and development requirements for this vocational group. This included paralegal staff being provided with support to complete certificates for Level III in Business Administration (Legal) and Level IV in Legal Services, under new vocational training arrangements.

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

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

C.9 **WORKPLACE HEALTH AND SAFETY**

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

SUMMARY OF INCIDENTS

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

Note to table: Dates of incidents is in the range 1/07/2011 to 30/06/2012

WORKPLACE HEALTH STRATEGIC PLAN 2008-2012

The Office focussed on the following broad areas:

1. LEADERSHIP:

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

- Respect, Equity and Diversity (RED) training;
- training to deal with difficult and aggressive clients;
- the opportunity to participate in flu vaccinations; and
- first aid training.

2. INJURY PREVENTION:

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

3. INJURY MANAGEMENT:

The Office's OH&S responsibilities are encapsulated in the *Work Health and Safety Act 2011*. The Office OH&S policy, which reflects the principles of this legislation, outlines our commitment to the provision of a healthy and safe workplace. Because of the nature of work in the Office, staff are encouraged to avail themselves of counselling services whenever necessary. The Office had one elected Work Safety Representative for the entire year.

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

C.10 **WORKPLACE RELATIONS**

The office operates within the framework of the Department of Justice and Community Safety Enterprise Agreement 2011-2013, which includes a requirement for a joint staff – management consultation process.

AWA/SEA REPORTING

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

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

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

C.11 **HUMAN RIGHTS ACT 2004**

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

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

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

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

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

LITIGATION

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

C.12 STRATEGIC BUSHFIRE MANAGEMENT PLAN

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

C.13 STRATEGIC ASSET MANAGEMENT

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

The current utilisation rate is 18.7m² per employee which is down from last year's rate of 19.8m². The utilisation rate is based on a benchmark of 15.9m² per employee. Seventy staff occupied a total floor space of 1,308m². Factors such as: the need to provide for witness interview and waiting rooms for vulnerable witnesses a conference room and a specialist criminal law library; and the need for professional staff undertaking sensitive and confidential work and dealing with acutely personal and intimate issues to be appropriately accommodated, are all relevant to the utilisation rate.

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

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

C.14 CAPITAL WORKS

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

Capital Project	Original Project Value \$'000	Actual Cost \$'000	Estimated Completion Date	Actual Completion Date
FV/SA Shared Work area upgrade	33	33	February 2012	Dec 2011
First Floor Shared Work area upgrade	24	24	February 2012	Dec 2011

There were no works still in progress at year end.

CONTACT DETAILS CAPITAL WORKS OFFICER:

Leeanne Hollow

Corporate Manager

Phone: 02 6207 5399

C.15 GOVERNMENT CONTRACTING

EXTERNAL SOURCES OF LABOUR AND SERVICES

During the year ending 30 June 2012 provision of external sources of labour and services where minor in nature and did not meet the reporting requirement of \$20,000 either individually or in total.

CONSULTANCY AND CONTRACTOR SERVICES

For year ending 30 June 2012, no consultancy services were engaged.

C.16 COMMUNITY GRANTS/ASSISTANCE/SPONSORSHIP

The following sponsorship was provided by the Director during the year ending 30 June 2012.

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

C.17 TERRITORY RECORDS

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

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

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

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

C.18 COMMISSIONER FOR THE ENVIRONMENT

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

C.19 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

Indicator as at 30 June		Unit	2010-11		2011-12	
Line	General		Office	Total	Office	Total
L1	Occupancy – staff full-time equivalent	Number (FTE)	63.5	63.5	69.8	69.8
L2	Area office space – net lettable area	Square metres (m2)	1308.50	1308.50	1308.50	1302.50
	Stationary Energy		Office	Total	Office	Total
L3	Electricity use	Kilowatt hours	131,051.00	131,051.00	122,675.00	122,675.00
L4	Renewable energy use (GreenPower + EDL land fill gases)	Kilowatt hours	22,142.00	22,142.00	13,482.00	13,482.00
L5	Percentage of renewable energy used (L4/L3 x 100)	Percentage	16.90	16.90	10.99	10.99
L6	Natural Gas use	Megajoules	Unavailable	Unavailable	Unavailable	Unavailable
L7*	Total energy use	Megajoules	471.78	471.78	441.63	441.63
L8	Energy intensity per FTE (L7/L1)	Megajoules/FTE	7.43	7.43	6.33	6.33
L9	Energy intensity per square metre (L7/L2)	Megajoules/m2	0.36	0.36	0.34	0.34
	Transport		Office	Total	Office	Total
L10	Total number of vehicles	Numeric	0	0	0	0
L11	Total vehicle kilometers travelled	Kilometres (km)	N/A	N/A	N/A	N/A
L12	Transport fuel (Petrol)	Kilolitres	N/A	N/A	N/A	N/A
L13	Transport fuel (Diesel)	Kilolitres	N/A	N/A	N/A	N/A
L14	Transport fuel (LPG)	Kilolitres	N/A	N/A	N/A	N/A
L15	Transport fuel (CNG)	Kilolitres	N/A	N/A	N/A	N/A
L16*	Total transport energy use	Gigajoules	N/A	N/A	N/A	N/A

Indicator as at 30 June		Unit	2010-11	2011-12		
	Water		Office	Total	Office	Total
L17	Water use	Kilolitres	Unavailable	Unavailable	Unavailable	Unavailable
	Intensities					
L18	Water use per FTE (L17/L1)	Kilolitres/ FTE	Unavailable	Unavailable	Unavailable	Unavailable
L19	Water use per square metre (L17/L2)	Kilolitres/m2	Unavailable	Unavailable	Unavailable	Unavailable
	Resource Efficiency and Waste		Office	Total	Office	Total
L20	Reams of paper purchased	Reams	2180	2180	2550	2550
L21	Recycled content of paper purchased	Percentage	50%	50%	75%	75%
L22	Estimate of general waste (based on bins collected)	Litres	23280	23280	23280	23280
L23	Estimate of commingled material recycled (based on bins collected)	Litres	17520	17520	23280	23280
L24	Estimate of paper recycled (based on bins collected)	Litres	48240	48240	49680	49680
L25	Estimate of organic material recycled (based on bins collected)	Litres	N/A	N/A	960	960
	Greenhouse Gas Emissions		Office	Total	Office	Total
L26*	Total stationary energy greenhouse gas emissions (All scopes)	Tonnes CO2-e	116.45	116.45	116.35	116.35
L27*	Total transport greenhouse gas emissions (All scopes)	Tonnes CO2-e	N/A	N/A	N/A	N/A

	Indicator as at 30 June	Unit	2010-11		2011-12	
	Intensities					
L28	Greenhouse gas emissions per person (L26/L1)	Tonnes CO2-e FTE	1.83	1.83	1.67	1.67
L29	Greenhouse gas emissions per square metre (L26/L2)	Tonnes CO2-e	0.09	0.09	0.09	0.09
L30	Transport greenhouse gas emissions per person (L27/L1)	Tonnes CO2-e FTE	N/A	N/A	N/A	N/A

Notes

- 1.* - calculated with information entered into OSCAR
2. Waste figures are based on number of bins collected
3. As the office occupies a multi tenanted building; individual water and gas usage information is not available

C.20 CLIMATE CHANGE AND GREENHOUSE GAS REDUCTION POLICIES AND PROGRAMS

The office has undertaken a number of changes to reduce our impact on climate change and greenhouse gas admission in line with current government policy.

The office is currently implementing the ACT Smart Office program. This will enable us to reduce the amount of waste that was previously being sent to landfill and bring about an awareness of the importance of conserving resources and energy through recycling our waste.

This program includes:

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

It is expected that the Office will shortly be fully accredited under this program.

The Office has also made other changes such as:

- increased the percentage of recycle content in our paper supplies from 50% to 75%;
- Implement a program of turning of computers and lights nightly; and
- Water saver taps have been fitted to office amenities.

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

C.21 **ABORIGINAL AND TORRES STRAIT ISLANDER REPORTING**

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

C.22 **ACT MULTICULTURAL STRATEGY 2010–2013**

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

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

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

C.23 **ACT STRATEGIC PLAN FOR POSITIVE AGEING 2010–2014**

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

- Social inclusion, participation and self-fulfilment;
- Respect and valuing;
- Support, independence and dignity;
- Partnerships; and
- Consultation.

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

- the Office prosecutes person alleged to have committed violence and other offences against the elderly and applies consistent policies to such prosecutions, in order to work to eliminate violence against the elderly and protect and support victims of crime;

- as reported elsewhere in this report, the Witness Assistance Service of the Office works to ensure that victims of crime and witnesses are informed and supported throughout their involvement with the criminal justice system; and
- the Office promotes policies addressing discrimination, harassment, equal employment opportunity and industrial democracy in the workplace.

C.24 **ACT WOMEN'S PLAN 2010–2015**

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

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

C.25 **MODEL LITIGANT GUIDELINES**

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

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

C.26 **NOTICE OF NONCOMPLIANCE**

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

ANNUAL REPORT CONTACT DETAILS:

First point of contact:

Leeanne Hollow

Corporate Manager

Phone 6207 5399

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



ACT DPP
OFFICE OF THE DIRECTOR
OF PUBLIC PROSECUTIONS

APPENDIX

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

PROSECUTION POLICY

1 INTRODUCTION

- 1.1 On 1 July 1991 the Australian Capital Territory acquired its own Office of the Director of Public Prosecutions. The ODPP, as the Office is known, was created by the *Director of Public Prosecutions Act 1990*. That Act, in effect, transferred the responsibility for prosecutions relating to alleged breaches of the laws of this Territory from the corresponding Commonwealth Office to its ACT counterpart.
- 1.2 The Commonwealth Act, passed in 1983, had made significant changes to the institution and conduct of prosecutions. In particular, it had removed the whole process from the political arena by creating an independent Office of the Director of Public Prosecutions. The Attorney-General retained the right to give guidelines and directions but only after consultation with the Director. Even then the Act required that any such directions or guidelines be published in the *Gazette* and tabled in Parliament. The ACT Act ensures similar independence.
- 1.3 The Act also ensures that the prosecuting role will be independent of the police. The legislature has chosen to separate the investigative and prosecutorial functions and, in fact, each is independent of the other. Of course, in practice, there will need to be cooperation and consultation between the respective bodies. Nonetheless, once the investigation has culminated in a prosecution any decision as to whether or not it should proceed will be made independently by the ODPP. In the ACT that independence extends to summary prosecutions as well.

2 THE DECISION TO PROSECUTE

GENERAL CRITERIA

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

"It has never been the rule in this country - and I hope it never will be - that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute 'whenever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution

in respect thereof is required in the public interest.' That is still the dominant consideration."

(HC Debates, Vol 483, col 681, 28 January 1951).

This statement has been widely quoted in Australia and overseas. The decision to prosecute should not be made lightly or automatically but only after due consideration. An inappropriate decision to prosecute may mean that an innocent person suffers unnecessary distress and embarrassment. Even a person who is technically guilty may suffer undue hardship if, for example, he or she has merely committed an inadvertent breach of the law in some minor respect. On the other hand, an inappropriate decision not to prosecute may mean that the guilty go free and the community is denied the protection to which it is entitled. It must never be forgotten that the criminal law reflects the community's pursuit of justice and the decision to prosecute must be taken in that context.

- 2.2 Whilst a number of general principles may be articulated it is not possible to reduce such an important discretion to a mere formula. Plainly, the demands of fairness and consistency will be important considerations but the interests of the victim, the alleged offender and the general public must all be taken into account.
- 2.3 The initial consideration will be the adequacy of the evidence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible in a court of law, that a criminal offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a *prima facie* case. The evidence must provide reasonable prospects of a conviction. If it is not of sufficient strength any prosecution would be unfair to the accused and a waste of public funds.
- 2.4 Any assessment of the prospects of conviction must involve an analysis of many factors, including the following:
 - a. Are the witnesses available to give evidence?
 - b. Do they appear to be honest and reliable?
 - c. Do any appear to be exaggerating, defective in memory, either hostile or friendly towards the defendant or otherwise unreliable?
 - d. Do any have a motive for being less than candid?
 - e. Are there any matters, which may properly form the basis for an attack upon the credibility of a witness?
 - f. What impressions are the witnesses likely to make in court?
How is each likely to cope with cross-examination?
 - g. If there is any conflict between witnesses-
Does it go beyond what might be expected?
Does it give rise to any suspicion that one or both versions may have been concocted?
Conversely are the versions so identical that collusion should be suspected?

- h. Where essential witnesses are children, is it likely that they will be able to give sworn evidence?
- i. Are there any grounds for believing the relevant evidence may be excluded as legally inadmissible or as a result of some recognised judicial discretion?
- j. Where the case is largely dependent upon admissions made by the defendant, are there grounds for suspecting that they may be unreliable given the surrounding circumstances including his or her age, intelligence and apparent understanding?
- k. If identity is likely to be an issue is the evidence that it was the defendant who committed the offence sufficiently cogent and reliable?
- l. Where several defendants are to be tried together is there sufficient evidence to prove the case against each?

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

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

- a. The seriousness or, conversely, the triviality of the alleged offence;
- b. Whether it is of a "technical" nature only;
- c. In appropriate cases, whether the defendant may not have known that the conduct in question was an offence and could not reasonably have been expected to have known;
- d. Any mitigating or aggravating circumstances;
- e. The youth, age, intelligence, physical health, mental health or special infirmity of the alleged offender or victim;
- f. The antecedents and background of the alleged offender;
- g. The staleness of the alleged offence;
- h. The degree of culpability of the alleged offender in relation to the offence;
- i. The effect on public order and morale;
- j. The obsolescence or obscurity of the law;
- k. Whether the prosecution would be perceived as counterproductive, for example, by bringing the law into disrepute;
- l. The availability and efficacy of any alternatives to prosecution;
- m. The prevalence of the alleged offence and need for deterrence, both personal and general;

- n. Whether the consequences of any resulting conviction would be unduly harsh and oppressive;
- o. Whether the alleged offence is of considerable public concern;
- p. Any entitlement of the Territory or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken;
- q. The attitude of the alleged victim to a prosecution;
- r. The likely length and expense of a trial;
- s. Whether the alleged offender is willing to cooperate in the investigation or prosecution of others, or the extent to which he or she has already done so;
- t. The likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- u. Whether the alleged offence is triable only on indictment; and
- v. The necessity to maintain public confidence in such basic institutions as the Parliament and the Courts.

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

2.6 In many cases, of course, the interests of the public will only be served by the deterrent effect of an appropriate prosecution. Mitigating factors may always be put forward by an offender when the court is considering the appropriate sentence to be imposed and it will usually be appropriate that they be taken into account only in that manner. Nevertheless, the Director is invested with significant discretion, and, in appropriate cases, must give serious consideration to whether the public interest requires that the prosecution be pursued.

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

- a. The race, colour, ethnic origin, social position, marital status, sexual preference, sex, religion or political associations or beliefs of the alleged offender;
- b. Any personal feelings concerning the alleged offender or victim;
- c. Any political advantage or disadvantage to the Government or any political group or association; or
- d. The possible effect of the decision on the personal or professional circumstances of those responsible for the decision.

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

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

PROSECUTION OF JUVENILES

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

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

- 2.9 The factors set out in paragraph 2.5 are also relevant to any consideration as to whether a juvenile should be prosecuted. However, the following matters are particularly important:
- a. The seriousness of the alleged offence;
 - b. The age, apparent maturity and mental capacity of the juvenile;
 - c. The available alternatives to prosecution and their likely efficacy;
 - d. The sentencing options available to the court if the matter were to be prosecuted;
 - e. The family circumstances and, in particular, whether the parents appear willing and able to exercise effective discipline and control over the juvenile;
 - f. The juvenile's antecedents including the circumstances of any previous cautions that he or she may have been given; and
 - g. Whether a prosecution would be likely to cause emotional or social harm to the juvenile having regard to such matters as his or her personality and family circumstances.
- 2.10 Under no circumstances should a juvenile be prosecuted solely to secure access to the welfare powers of the court.

CHOICE OF CHARGES

- 2.11 In many cases the evidence will disclose conduct, which constitutes an offence against different laws. Care must be taken to choose charges, which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will enable the Court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
- 2.12 The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead one to conclude that it would be appropriate to proceed with some other charge or charges.
- 2.13 Circumstances may arise in which negotiations may properly occur in relation to the charges pending against the defendant. Discussions between defence and prosecuting counsel are a necessary and proper feature of the administration of justice and, from time to time, disclose adequate reasons for agreeing to proceed with some charges but not others. In some cases the public interest may be served by an arrangement, which results in a defendant pleading guilty to a lesser charge or a lesser number of charges than initially laid.

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

- 2.14 The provisions of a specific Act should normally be relied upon in preference to the general provisions of the Crimes Act unless such a course would not adequately reflect the gravity of the criminal conduct disclosed by the evidence.
- 2.15 There is a particular need for restraint in relation to conspiracy charges. Whenever possible substantive charges should be laid reflecting the offences actually committed as a consequence of the alleged conspiracy. However, there are occasions when a conspiracy charge is the only one, which is adequate, and appropriate to the circumstances revealed by the available evidence. Where conspiracy charges are laid against a number of defendants jointly it is important to give due consideration to any risk that a joint trial may be unduly complex or lengthy or may otherwise cause unfairness to one or more of the individual defendants.

3 PRIVATE PROSECUTIONS

- 3.1 Not all prosecutions are initiated by police officers or other officials acting in the course of their public duty. The right of a private individual to institute a prosecution has been described as “a valuable constitutional safeguard against inertia or partiality on the part of authority” (per Lord Wilberforce in *Gouriet v The Union of Post Office Workers* [1978] AC 435 at 477). Unfortunately this right is sometimes abused and, from time to time, private prosecutions instituted for quite improper motives. Furthermore, even where a prosecution has been initiated in good faith there may be sound reasons why the carriage of the matter should not remain within the discretion of a private individual. In some cases there may be sound reasons why it should not proceed at all. Consequently, section 8 of the Act enables the Director to take over the conduct of prosecutions initiated by another person. Thereafter the prosecution may be continued or brought to an end.
- 3.2 Section 13 of the Act provides that where the Director has taken over the conduct of a private prosecution or is considering doing so the informant must provide a full report of the circumstances giving rise to the prosecution together with copies of the statements of any witnesses and other documentary evidence and furnish any further information the Director requires. In addition, section 14 enables the Director to seek police assistance in investigating the matter. These provisions enable a full assessment to be made of the prosecution case before any decision is made or, alternatively, after the matter has been taken over.
- 3.3 Given the infinite range of circumstances which may give rise to a private prosecution it is impracticable to lay down any inflexible rules as to the manner in which the discretion will be exercised. In general, however, a private prosecutor will be permitted to retain the conduct of the proceedings unless:
- a. There is insufficient evidence to justify the continuation of the prosecution;
 - b. The prosecution is not in the public interest;
 - c. There are reasons for suspecting that the decision to institute a private prosecution was actuated by improper motives or otherwise constituted an abuse of the prosecution process; or
 - d. It would not be in the interests of justice for the conduct of the prosecution to remain within the discretion of a private individual having regard to the gravity of the offence and all the surrounding circumstances.
- 3.4 Where a private prosecution is instituted to circumvent an earlier decision of the ODPP not to proceed with a prosecution for the same offence it will usually be appropriate to take over the prosecution with a view to bringing it to an end.

4 APPEALS

- 4.1 The Australian legal system generally confers a right of appeal on any party to legal proceedings who is aggrieved by the result. The nature and extent of that right depends upon the nature of the proceedings, the type of order made and the rules of the particular court in which the proceedings were conducted. In criminal proceedings the prosecution normally has no right to appeal against a finding that the accused is not guilty of the offence charged though, in the Australian Capital Territory, there is a limited right to have the Supreme Court review decisions of law made by a Magistrate. Furthermore, where a conviction has been quashed on appeal there may be a further appeal against that decision. An accused may, of course, appeal against conviction.
- 4.2 Both the prosecution and the defence have the right to appeal against the sentence imposed following a conviction. However, appellate courts have stressed that the prosecutor's right to appeal against the perceived inadequacy of a sentence should be exercised with due caution. The principle was explained by Sir Garfield Barwick, then Chief Justice of the High Court of Australia, in an appeal from the District Court of New South Wales decided in 1977:

"Inadequacy of sentence ... is not satisfied by mere disagreement by the Court of Appeal with the sentence actually imposed. It means, in my opinion, such an inadequacy in the sentence as is indicative of error or departure from principle. No doubt, consistency in the sentences imposed by judges of the District Court is a desirable feature of criminal administration. Gross departure from what might in experience be regarded as the norm may be held to be error in point of principle ... But that consistency is not to be sought or secured, in my opinion, by the court of criminal appeal substituting in any case which the Attorney-General cares to bring before it, its own view of the appropriate sentence irrespective of the presence or absence of error on the part of the trial judge" (Griffiths v R (1977) 137 CLR 293 at 310).

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

5 UNDERTAKINGS

- 5.1 The Act also enables the Director to give undertakings that evidence will not subsequently be used against the person who gave it or produced it. This may sometimes enable the prosecution to obtain evidence from people who have themselves been guilty of criminal conduct and who might otherwise be entitled to claim privilege against self incrimination. In those circumstances the power may be used to ensure that the evidence is available to be used in the prosecution of others without prejudicing the position of the person who has given or produced it.
- 5.2 The Director also has a power to give an undertaking that a person will not be prosecuted for a specified offence or in respect of specified acts or omissions. Where such an undertaking has been given no proceedings may subsequently be instituted in respect of the offence or conduct so specified.

It is obviously a grave step to grant, in effect, immunity from prosecution to someone apparently guilty of a serious offence. However it has long been recognised that exceptional cases do arise in which the interests of justice demand that such a course be pursued. For example, the prosecution may be reluctantly forced to conclude that it will be impracticable to prosecute those primarily responsible for a particular criminal enterprise without the cooperation of one of their accomplices. Any decision as to whether or not such an undertaking should be granted will be made by the Director personally. The factors to be considered include the following:

- a. The importance of the evidence, which may be obtained as a result of the undertaking;
- b. The extent of the criminal involvement of the person seeking the undertaking;
- c. The character, credibility and previous criminal record of the person concerned;
- d. Whether any inducement has been offered to the person to give the evidence sought; and
- e. Whether there is any other means of obtaining the evidence in question, including by granting the person a more limited undertaking of the kind referred to in paragraph 5.1.

6. PUBLICATION OF REASONS

Where the Director decides to exercise the power conferred by the Act to decline to proceed further with a prosecution reasons may be given to any enquirer with a legitimate interest in the matter. For example, the person said to be the victim of the alleged offence or those responsible for the investigation will normally be informed. It is acknowledged that the media have a legitimate interest in the administration of justice and where a person has been publicly committed for trial there will generally be no objection to the reasons for any decision not to proceed with such a trial being made public.

However reasons will not be given where to do so might give rise to further harm or serious embarrassment to a victim, a witness or to the accused or where such a step might significantly prejudice the administration of justice. Similarly, even where reasons are given it may be necessary to limit the amount of detail disclosed. Under no circumstances will the Director engage in public debate concerning the reasons.

Reasons will not normally be given for a decision to discontinue proceedings before there has been any public hearing because to do so would involve publishing allegations against members of the community in circumstances where there is insufficient evidence to substantiate them or, for some other reason, a prosecution would not be justified. This policy should not be regarded as an inflexible rule. It may be appropriate to provide reasons in some circumstances even when there has been no public hearing. Where, for example, the arrest and charge has attracted significant public interest it may be necessary to consider providing at least some explanation for the decision to terminate the prosecution.

GUIDELINES FOR PROSECUTORS

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

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

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

(Rule 20)

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

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

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

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

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

4. In exercising the right to challenge prospective jurors the prosecution must not attempt to select a jury which is not representative as to age, sex, ethnic origin, marital or economic or social background.
5. Where the defence indicates that certain evidence should not be disclosed during the course of the Crown's opening and there appears to be reasonable grounds for that indication, care should be taken to ensure that nothing is said in the opening, which may lead to the subsequent discharge of the jury.
6. It is not a legitimate forensic tactic for the prosecution to engage in "trial by ambush" and there is a general duty to disclose the whole of the prosecution case to counsel for the accused. This duty is subject only to any overriding demands of justice such as the need to prevent risk to the lives or safety of potential witnesses. Even then it will usually be possible to apprise the defence of the general nature of the Crown case even if such details as the names and addresses of particular witnesses are withheld.
7. Where prosecuting counsel knows that a witness for the Crown has prior convictions and/or has been given an undertaking pursuant to section 9 of the Act the material facts should be revealed to the defence if it appears to the prosecutor that they could be of material significance in the trial.
8. In determining whether or not to call a particular witness the prosecutor presenting the case must pay due regard to the need to be fair to the accused. In general, it is the duty of the prosecution to call all witnesses capable of giving evidence relevant to the guilt or innocence of the accused. It is only in rare circumstances that the prosecution would be justified in concluding that the overriding interests of justice require that such a witness not be called. Where the prosecutor makes a *bona fide* assessment on reasonable grounds that the evidence in question would be unreliable the defence should be informed at the earliest possible time of the decision not to call that evidence. Even then all practicable steps should be taken to enable the defence to tender the evidence if desired. In particular, the defence should be informed of the existence, identity and whereabouts, if known, of any witness who is not to be called in the prosecution case but whose evidence may be relevant to the case, which the defence may wish to adduce.
9. Since the court has a discretion to exclude otherwise admissible evidence on the ground that it was illegally or improperly obtained prosecuting counsel will generally be obliged to inform defence counsel of any evidence which appears to fall into that category. This principle is enshrined in the rules of the New South Wales Bar Association.

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

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

b) Make a copy of such document or record available to his or her opponent.
(Rule 57)

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

10. Where prosecuting counsel are entitled to cross-examine an accused as to his or her credit or motive they must ensure that such an exercise is carried out fairly. In particular, accusations should not be put to an accused unless based on information, which appears to be accurate, and unless they are justified in the circumstances of the case.
11. In prosecuting charges of assault, especially sexual assault, there should be particular concern for the position of the victim. Many such people have suffered severe emotional and physical distress as a result of the offence and may be confused and apprehensive at the prospect of having to give evidence. Prosecutors should carefully explain to victims of such offences the role which they play in the prosecution process and, if appropriate, the steps that can be taken to ensure their protection. Where a decision is made not to proceed further with a particular prosecution or to accept a plea of guilty to a lesser charge the victim is entitled to be informed and given reasons for the decision in question. Conversely, where a victim does not wish the prosecution to proceed because, for example, the resultant trial would cause further humiliation and/or trauma, those wishes should receive due consideration. However, in some instances, the interests of the wider community may demand that the prosecution proceed.

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

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