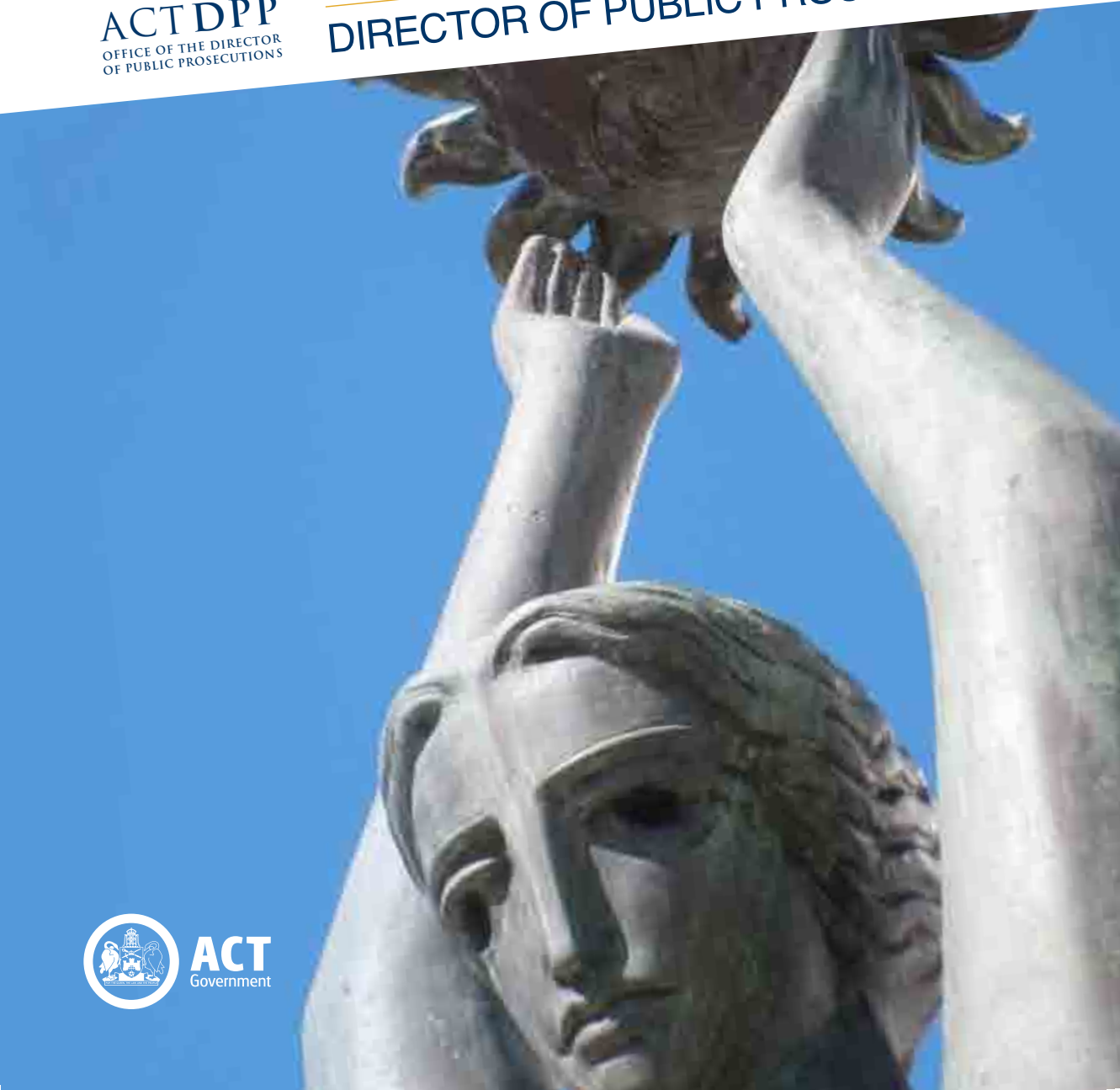
ACT DPP
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

ANNUAL REPORT 2010-11

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.

ISBN-978-0-642-60563-4

GPO Box 158, Canberra City ACT 2601.

Produced by Publishing Services for the: Office of the Director of Public Prosecution

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Publication No 11/0997

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CONTENTS

22 September 2011

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 2011.

This Report has been prepared under section 6(1) of the *Annual Reports (Government Agencies) Act 2004* and in accordance with the requirements referred to in the Chief Minister's 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 an honest and accurate account and that all material information on the operations of the Office during the period 1 July 2010 to 30 June 2011 has been included and that it complies with the Chief Minister's Annual Report Directions.

I also hereby certify that fraud prevention has been managed in accordance with Public Sector Management Standard 2, Part 2.4.

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

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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	Department of Justice and Community Safety
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 is sometimes referred to as such
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 which must be dealt with in the Magistrates Court
victim	a person who suffers harm arising from an offence

DIRECTOR'S OVERVIEW

The 20th year of operation of the DPP - just concluded - was also the busiest. Record numbers of Supreme Court trials and appeals were conducted, while the balance of the work of the Office continued apace. That this was achieved within existing resources is testament to the dedication and professionalism of all my staff. It is a great honour to be leading such a team.

The independence of the DPP is a cornerstone of our system of government, and should never be taken for granted. It is certainly not the job of a DPP to be popular. Indeed a proper discharge of the DPP's functions requires the making of decisions which are bound to be unpopular in one quarter or another.

In this regard it was gratifying to see that in his review of the ACT Public Service, Dr Hawke noted that the DPP was an office whose role, at arm's length from the government, was "part of the foundation of the ACT system of government and accountability frameworks". [Hawke report page 103].

Dr Hawke recommended that, in keeping with its independence, the DPP should receive appropriation funding in its own right. "While the level of resourcing for those officers is properly a matter for the Government to determine in setting the Budget, it is appropriate that funding for independent office holders be appropriated directly to their offices." [Hawke Report loc.cit.].

I understand the government is now considering this recommendation. It is to be hoped that in relation to this Office at least it is speedily adopted, and the independence of the DPP is thereby irrevocably secured.

This was indeed an extraordinary year for litigation in the Office. Murder trials were conducted by senior prosecutors Chris Todd, John Lundy, Alyn Doig, and by myself. This confirmed the trend to in-house counsel for all matters, in marked contrast to the policy previously pursued. Many other significant matters were prosecuted, including an alleged attempted murder, and serious sexual crimes. Some of these matters are detailed in the case reports.

The conduct of Supreme Court trials places high demands on all sections of the Office, and those demands are all the greater with significant matters like murders. From the paralegals who prepare the brief and organise witnesses, to the corporate area who arrange travel and accommodation, to witness assistants who deal with nervous or distressed witnesses, to the instructing officers and counsel - all are called upon for a tremendous effort. I wish to record my thanks to all members of my Office who in various ways contributed to the Herculean labours of the past year.

Amongst the many legislative reforms having an impact upon the Office was the welcome provision of a prosecution election to retain matters with a maximum penalty of 5 years imprisonment in the Magistrates Court. It is expected that this will fairly significantly

reduce the numbers of straightforward matters being committed for trial, thereby ensuring speedier hearings for those matters and freeing up Supreme Court lists.

I report at length herein on the SARP reforms which were bedded down this year. Reforms which facilitate witnesses giving their evidence from a remote room linked by AV to the court have been a notable success. This Office has recommended that consideration be given to expanding the categories of witnesses able to give evidence in such a way. Indeed, we have made a number of suggestions for reform in the areas of SARP, sexual offences, and victim impact statements, which, while uncontroversial, would make a significant difference to the experience of victims in the criminal justice system. It is to be hoped that these suggestions will receive the consideration they deserve.

There have been numerous matters of law reform and legislative change upon which this Office has been asked for comment. While the reforms are often welcome, and indeed while some suggestions for legislative change emanate from this Office, these matters have to be attended to by prosecutors in addition to their already busy schedules. It is a testimony to the professionalism of my officers that a significant effort is mounted in this area.

As reported previously, security in the courts has been an issue of ongoing concern. It was gratifying therefore to see provision in the last budget which has enabled the creation of position of security controller for the courts, and provided funding for some infrastructure changes.

Much has been happening within the Office. Great attention was paid to the paralegal area of the practice and this is detailed herein. Paralegals are vital to our efficient and effective conduct of litigation. This year, senior paralegals Phoebe Burgoyne-Scutts and Amy Dyde assisted as instructors in major trials, an initiative which proved highly successful. We are exploring ways of enhancing the career progression of paralegals, including options for vocational training.

This was the first year of the operation of the Office's computerised case management system CASES. Before CASES could start a major effort of back-capturing data was necessary. Then staff had to familiarise themselves with the new system, and just about every office procedure had to be amended. I would like to record my gratitude to all my staff for their efforts in introducing the new system, juggling this with their existing high workloads. It seems wrong to single out individuals, but I must laud the sterling efforts of Cam Tang, the administrator of the system, while Catherine Zaal and Margaret Jones worked indefatigably on detailed refinements, and practice managers Shane Drumgold, Louise Taylor and Chris Todd were enthusiastic implementers of the system.

As detailed in this report, the move to an electronic delivery of library services continued under the guidance of librarian Rick Clarke. The library fittings were also extensively renovated – at minimal cost – with much effort of the librarian. The effect has been to create a modern communications hub responsive to the changing technologies of the modern legal world.

Unacceptable delays continue in the listing of Supreme Court trials. The government has instituted a review of Supreme Court listing practices, and a discussion paper has been issued. This provides a promising framework with which to deal with this problem.

The stark fact is that in other Australian jurisdictions, matters are dealt with more expeditiously, and more is expected of the profession, than is the case in the ACT. This is not just a question of resources – it is more fundamentally a question of the culture of the profession. No doubt a healthy debate will ensue. But we must avoid knee jerk reactions, such as suggestions that measures to ensure speedier trials somehow undermine the rights of an accused person. There reforms suggested – which have already come about in one form or another in just about every other Australian jurisdiction – are fundamentally about allowing criminal trials to proceed on the real issues. Indeed the use of the expression "defence disclosure" is best avoided. What is proposed is an appropriate attempt by both sides to define the real issues to be determined at a trial. This has nothing to do with any weakening of the right of an accused person to silence, nor does it require the disclosure of any defence. It is simply a mechanism to achieve – as much as it can be achieved – an identification of issues so that the trial can be conducted on the real issues.

It should be borne in mind that the right to a speedy trial is a right enjoyed by all of the community. It is not just an accused who benefits from a speedy trial. Delays particularly affect victims, many of whom feel that their life is on hold until the determination of criminal proceedings. Delays can also affect the ability of the prosecution to mount an effective case.

The Territory will inevitably be compared unfavourably to other jurisdictions until we achieve substantial reforms. My Office is of course contributing in a detailed fashion to the debate.

In the twenty years of the operation of the ACT DPP I am only the fourth Director, my predecessors being Ken Crispin QC, Terry Buddin SC and Richard Refshauge SC. The Office's 20th anniversary was marked by a modest ceremony at which we particularly celebrated the contributions of those officers who joined the Office its first year and are still with us (although some have had time away during that period). Those officers are: Alyn Doig, Margaret Hunter, Dean Sahu Khan, Catherine Zaal and Geoff Howard.

In their own way each of these officers has made a significant contribution to the ACT community. Geoff Howard has performed many important roles but is particularly remembered by generations of nervous young lawyers whom he has guided through the terrors of presenting the A List in the Magistrates Court. Geoff epitomises the contribution – unsung, unassuming but vital – of many DPP officers in the history of the Office.

The work we do is often rewarding but sometimes confronting and disturbing.

The experience of Andrew Dyer and his parents is particularly distressing.

Mr Dyer was the victim of a vicious assault the details of which are given elsewhere in this report. The injuries that Andrew Dyer suffered were so horrific that he recorded that the perpetrator had taken his life as he knew it. "My quality of life has been destroyed"

Mr. Dyer wrote in a victim impact statement. Mr. Dyer's parents have also had their lives devastated. They have taken on caring for their son, an extremely taxing task both physically and emotionally.

Prosecuting such cases is a humbling experience, but it does remind us why we do what we do.

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 assist the coroner in inquests and inquiries;
- to restrain and confiscate assets used in, or derived from, the commission of criminal offences; 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.

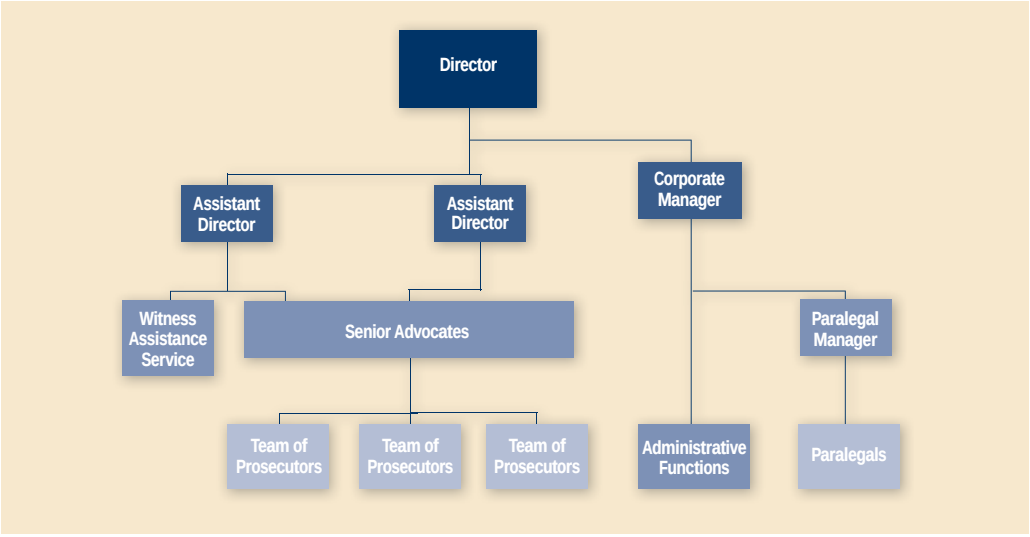
In prosecuting matters, the Director acts on behalf of the community. Prosecutors have strikingly been called “ministers of justice”, a phrase which sums up the unique position of the prosecutor in the criminal justice system. It has been said that prosecutors must always act with fairness and detachment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

During the reporting period there was a restructure of the legal teams within the Office. The resulting structure looks like this:



A.2 OVERVIEW

This year saw a major effort of litigation conducted by the Office. Never before in the 20 year history of this organisation have so many complex and difficult matters been conducted within a space of a year – including four murders (two of which were multiple murders), and numerous other difficult cases.

It was not just the complexity, but the volume of matters. Some 66 Supreme Court trials were conducted during the year, more than double the previous year's number. Indeed the most number previously conducted in one year in the 20 year history of the Office was 42. Supreme Court trials are particularly resource intensive for all areas of the Office.

Numbers of appeals were also up significantly, to record highs.

The temporary increase in judicial resources in the Supreme Court - while welcome in the face of the Supreme Court back log - was not accompanied by any increase in the resources available to the Office. This meant that existing resources were stretched beyond their limit.

As well, significant and welcome reforms to sexual offence procedures – including the taking of pre-trial evidence from children and other vulnerable witnesses – had to be given effect to. As with any new law and procedure a number of issues had to be worked through all of which required significant effort by the Office.

The underlying litigation work of the Office continued unabated throughout the period. The installation of CASES has led to fundamental changes in office practice and procedure. The opportunity has been taken to revise the paralegal structure and to document work flows, develop a paralegal manual and revise precedents and templates. There were of course no additional resources for any of this: it all had to be fitted in by work areas already busy with existing work.

The executive of the Office comprises the Director, Assistant Directors, and Corporate Manager. The executive meets weekly with a senior management committee comprising the executive the Paralegal Manager and Practice Managers. There are also frequent meetings of prosecutors and paralegal staff and these meetings are used to communicate proposals and requests, and invite feedback.

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 operates 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 2010-2011 were:

- The prosecution of a large number of complex and difficult cases including four murders, an attempted murder, and numerous sexual offence cases;
- The conducting of a record number of appeals;
- The bedding down of the new case management system, CASES, which required the back capture of information from open files and has necessitated a full scale revision of business processes and procedures throughout the Office;
- The re-evaluation of the roles of paralegals to align them more closely with the litigation practice of the office;
- The implementation of a new paralegal structure including recruitment of an assistant Paralegal Manager and other paralegals;
- The establishment of the position of Supreme Court Practice Manager, to take responsibility for the Supreme Court practice and identify matters that are not supported by evidence or may be appropriate to be included in a charge bargaining process;
- A complete revision of records management including moving to a new service provider and instituting internal procedures for closing and storing files, and the storage of files electronically;
- Reorganisation of the FV section to make it more responsive to the needs of the FV practice of the Office;
- Consolidation of the establishment of the sexual offences unit and the establishment of Office procedures for the new SARP special measures;
- The consolidation of the refurbishment of the Office;
- Participation in major policy discussions including on double jeopardy, SARP amendments, sexual offences, judge alone trials and the jurisdiction of the Magistrates Court and bringing to the attention of the executive issues and difficulties that have arisen in criminal law and procedure;
- Reinvigoration of the intranet and its establishment as the communications hub of the Office;
- Consolidation of the move to electronic delivery of library services;
- Revision of the physical layout of the library, reducing hard copy holdings and increasing the working ambience of the library;
- Participation in the work value review relating to prosecutors;
- Refining of the legal team structure with the institution of a new 3 team structure with senior lawyer attached to each team to provide support and mentoring to junior lawyers;
- Recruitment and training of junior lawyers.

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

- retention of legal and paralegal staff;
- 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;
- delays in the finalisation of cases, particularly in the Supreme Court;
- contributing to legislative reform proposals within existing staffing levels and workload.

A.4 OUTLOOK

The priorities for the coming year will include:

- Complete a review of paralegal vocational stream requirements and competencies;
- Review of the office legal structure following the (hoped for) successful conclusion of the work value review and recruitment against the new structure;
- Participate in discussion of case management and listing processes in both the Supreme Court and Magistrates Court;
- Enhance the reporting capability of CASES, thereby assisting in management decision making;
- Continue to enhance the effectiveness of CASES and revise internal procedures including implementation of training and completion of a paralegal manual for each paralegal area;
- Consolidate the electronic delivery of library services;
- Consolidate the position of the intranet as the communication hub of the office;
- Revise the external internet site to make it more responsive to the needs and community obligations of the Office.

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 remuneration levels, and pressure on prosecutorial services imposed by the tight fiscal environment. The Office has moved decisively toward an in-house counsel model. As noted in the last report, 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.

A.5 MANAGEMENT DISCUSSION AND ANALYSIS

The outcome for the 2010-2011 financial year was broadly in line with budget.

Salary costs were contained within budget. However, as anticipated last year cost pressures across a range of budget areas including witness expenses and IT costs led to a cost overrun in supplies and services. This was exacerbated by far greater than anticipated Supreme Court trial numbers. As noted elsewhere, this was caused by an increase in resources to the Supreme Court which was not mirrored in an increase to resources available to the Office.

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 2011 are subsumed within the audited financial statements of the JACS Directorate. The following are the operating costs of the Office for the reporting year and should be read in conjunction with those financial statements.

OUTPUT 1.4 – OFFICE OF THE DPP

Item	Budget $'000	Outcome $'000
Government Payment for Outputs Other	8,509 8,509	8,569 117 8,686
Employee Expenses	5,768	5,728
Superannuation Expenses	905	795
Supplies and Services	2,018	2,495
Depreciation and Amortisation	253	180
Borrowing Costs	4	17
Other Expenses	-	8
Total Expenses	**$8,948**	**$9,223**

Note: Total Expenses include allocated JACS Departmental overheads

A.7 STATEMENT OF PERFORMANCE

The following is extracted from the audited JACS financial statements for 2010-2011:

Output Class 1 : Justice Services			
Output 1.4 : Public Prosecutions			
Output Description			
Prosecution of summary and indictable matters, at first instance and on appeal, provision of assistance to the Coroner, and provision of witness assistance services.			
Accountability Indicator	Original Target 2010-11	Actual Result 2010-11	Variance %
Total Cost ($'000)	8,948	9,223	3%
Government Payment for Outputs ($'000)	8,509	8,569	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

A NOTE ON THE NUMBER OF SUPREME COURT TRIALS

The Office has completed its 20th year of operation. A key statistic is the number of Supreme Court trials conducted each year. Those trials account for a significant part of the resources of the Office.

This year as detailed below there were 66 trials conducted, more than in any previous year in the Office's history. The figures for Supreme Court trials conducted since the establishment of the Office are as follows:

Supreme Court Trials	
Year	Trials
1991/1992	29
1992/1993	28
1993/1994	30
1994/1995	26
1995/1996	26
1996/1997	21
1997/1998	31
1998/1999	31
1999/2000	38
2000/2001	41

Supreme Court Trials	
Year	Trials
2001/2002	36
2002/2003	30
2003/2004	22
2004/2005	34
2005/2006	42
2006/2007	42
2007/2008	29
2008/2009	37
2009/2010	30
2010/2011	66

Source: DPP Annual Reports

The long term average from 1991-2 to 2009-10 was 31.7 per year.

A NOTE ON THE NUMBER OF APPEALS

The number of appeals conducted this year was markedly higher than in previous years. The figures for appeals in both the Supreme Court and Court of Appeal since the establishment of the Office are as follows, noting that figures are not available for all years:

Year	Supreme Court	Court of Appeal*
1991/1992	33	16
1992/1993	25	16
1993/1994	nfa	nfa
1994/1995	28	20
1995/1996	13	14
1996/1997	nfa	nfa
1997/1998	nfa	nfa
1998/1999	22	5
1999/2000	33	24
2000/2001	33	24
2001/2002	30	15
2002/2003	30	14
2003/2004	39	12
2004/2005	48	15
2005/2006	29	16
2006/2007	26	14
2007/2008	58	11
2008/2009	70	19
2009/2010	53	12
2010/2011	78	23

Source: DPP Annual Reports
Nfa – no figures available
* Previously, Federal Court

The long term average from 1991-2 to 2009-10 was 35.6 per year Supreme Court appeals, and 15.4 Court of Appeal appeals.

PARALEGALS

The year has seen a significant re-structure with in the legal support service of the DPP and in particular within the paralegal stream.

This has 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 14 paralegals between the Grade 1 and Grade 5 Paralegal level.

This restructure has allowed for further professional development within the paralegal stream. Paralegal staff who have specialist vocational training have been identified and this has provided flexibility in the level of support provided to DPP prosecutors and through them to the courts.

It is hoped that this restructure will address the traditionally poor retention of staff within the paralegal stream, by providing a clear career progression path and clear job competency training and assessment.

On average, DPP paralegals have 4 years of experience in the criminal law area and typically have additional legal backgrounds and training.

Approximately 40 % are undertaking further legal or criminal justice system related studies at the tertiary level.

The Office is currently investigating options for vocational training for those paralegals not undertaking legal or criminal justice studies.

Under the unique provisions of the *Director of Public Prosecutions Act 1990* DPP paralegals (unlike other jurisdictions) have the right to appear in the Magistrates Court callover list.

In the last 12 months the DPP has run a pilot program of allocating a dedicated Grade 3 and above paralegals to assist counsel in major trials in the Supreme Court. Such paralegals have performed instructing, research and administrative tasks.

Judging by prosecutor and court feedback about the quality and level of organisation of prosecution cases, this pilot has been very successful, and has led to the expansion of the paralegal role. Paralegals now attend Magistrates Court and Supreme Court lists to provide assistance. This enhances the link between the legal procedures required by the courts and the performance of tasks by the paralegal group.

An example of how this has increased efficiency is within the case management hearing area of practice. The attending paralegal is able to make note of any procedures not complied with or any outstanding material required, and can then follow up matters speedily to ensure consistent adherence to practice directions and court orders. In the three months from March to June in the reporting period this practice has lead to a doubling of compliance in providing briefs to defence and self represented clients, a significant savings in terms of court time.

During the reporting period, an extensive recruitment effort was undertaken, which led to the filling of the assistant Paralegal Manager position and other senior paralegal roles.

SUPREME COURT AND APPELLATE ACTIVITIES

SUPREME COURT

There has been a significant increase in the number of trials conducted during the year. Some 66 trials were conducted. This is more than double the number conducted the previous year, and more than double the long term average. Indeed the previous most number of trials conducted in a year was 42.

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

Year	2006/2007	2007/2008	2008/2009	2009/2010	2010/2011
Trials	42	29	37	30	66

(The numbers since the establishment of the Office are set out elsewhere in this report).

The greater number of trials reflects a temporary increase in judicial resources for the Supreme Court. It must be borne in mind that there were no matching resource increases for the Office, and the greatly increased number of trials had to be met out of existing resources. Further, all of the trials were prosecuted in-house in line with the new Office approach, in contrast to previous years when many matters were briefed out at significant cost. When it is considered that no fewer than 4 murders trial were prosecuted during the period, each of which required a massive effort from all areas of the Office, the year is put in further perspective.

Nor was there a compensating decrease in workloads in other areas of practice, with Supreme Court sentences were up slightly, and appeals were greatly increased.

Servicing the Supreme Court trial workload was not without cost, and such an effort would be unsustainable on a long term basis. As recorded elsewhere in this report, rates of compliance with both Supreme Court and Magistrates Court requirements for filing were disappointingly low. As well, the issue of retention of legal staff continued to be a problem. Clearly heavy workloads are a factor in that.

It is hoped that the large number of trials during last year, and jurisdictional changes that will see more matters dealt with in the Magistrates Court, will have an effect on the backlog in Supreme Court trials.

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 positive developments have been the establishment at long last of a CCTV link with the prison, so that bail hearings can be conducted without the necessity of transporting persons in custody to the courts, and the passing of legislation which will require two bail applications to the heard in the Magistrates Court before the Supreme Court's jurisdiction can be invoked.

APPEALS

There was a significant increase in the number of appeals. Supreme Court appeals totalled 78 (up from 53 for the previous year). Court of Appeal appeals totalled 23 (up from 12 for the previous year). This meant that numbers of appeals were at an all time high.

As reported last year a more proactive approach is taken to appeals within the Office with one paralegal and a team of three prosecutors regularly reviewing all appeals within the Office. Unrepresented appellants in custody continue to burden the office with the preparation of appeal books. The Office continues to encourage unrepresented appellants to prosecute their appeals in a timely manner.

MAGISTRATES COURT

Some 3872 matters were completed during the year, with 3020 been found proved. As remarked elsewhere, because of the new way in which statistics are now produced, there is no direct comparison available to previous years. However, the indications are that the Magistrates Court is as busy as it has been in recent years.

The number of accused committed to the Supreme Court for trial or sentence was down this year (240 this year, 312 last year).

Meeting the timetable in the 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. It should also be mentioned that much time and effort had to be put into the introduction of the CASES system, including an Herculean effort in back-capturing existing files at the time of changeover to the new system, and this, too, took resources away from the Magistrates Court practice.

CHILDRENS COURT

The Court remains busy. During the reporting period some 474 summary matters were concluded (with 375 being proved), and 16 committal matters were finalised.

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 will refer 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. Three offenders were referred by the Office during the reporting period.

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.

During the reporting period, 22 offenders with a total of 54 matters were dealt with at the Circle. (A matter is a related series of charges against one offender). This was a significant increase from recent years. The Circle was this year widened to include young offenders.

It should be remembered that the process of the Circle is one that is significantly longer and at times more complicated than the conventional sentencing process. It also involves a significant amount of resources from the courts and by this Office. The significant increase this year has had to be met from existing resources within the 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.

This was the second year of a new approach to the coronial practice of the Office. Last year the Office centralised the coronial practice into a co-ordination prosecutor role, mirroring a new approach by the court.

This process has provided a greater level of transparency in the coronial practice of the Office and created a more efficient cooperation between the Office, the Court and the AFP. Fortnightly case tracking involving those three bodies has continued, and this has resulted in matters progressing more speedily through the coronial process.

The centralised role at the Office has also resulted in a greater provision of services to the community. Family members now have a contact point within the Office who can provide detailed and relevant information.

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.

During the reporting period there were:

28 Appearances in Coronial Hearings

31 Appearances in Coronial Directions

18 hearing inquests concluded

112 matters in which a Coronial Brief was received by the DPP

37 matters in which the Coroner decided no inquest was required

There was one well publicised hearing inquest arising out of a four-fatality motor vehicle accident at Narrabundah in March 2010. More details of this are given in the Case Reports.

The review into the *Coroners Act 1997* referred to in the last annual report has resulted in a Bill being tabled in the Legislative Assembly. The Bill provides for the strengthening of the current scheme, rather than for extensive change. One significant change is to clarify the right of the coroner to make recommendations about the prevention of deaths and the promotion of general public health and safety. The Bill also confirms that the Director may be appointed counsel assisting by a coroner, or the coroner may appoint another lawyer. The functions of counsel assisting are also set out.

SEXUAL OFFENCES UNIT

As reported last year, a Sexual Offences Unit has been created to allow specialisation in the prosecution of sexual assault matters. The aims of the Sexual Offences Unit include to:

- improve the way the Office prosecutes sexual offences;
- provide early, sustained and appropriate contact with complainants;
- provide for continuity of prosecutor throughout proceedings;
- reduce delay in sexual offence matters;
- ensure maximum use is made of the special measures provided for as part of the recent legislative reforms.

The Sexual Offences Unit continues to manage a significant number of matters. While there are currently more than 100 defendants charged with sexual offences before the courts for matters at various stages, fewer than 30 sexual offence prosecutions were finalised in the last financial year.

The Unit comprises two full-time prosecutors and one prosecutor employed in both the Sexual Offences and Family Violence Units. The prosecutors of the Unit work closely with the members of the Witness Assistance Service (WAS) and the AFP Sexual Assault and Child Abuse Team (SACAT).

Members of the Unit conduct most sexual assault prosecutions and retain some involvement where a prosecutor from outside the Unit has carriage of the matter. The head of the Unit has a say in all decisions on whether sexual offence prosecutions should be discontinued, or whether appeals should be lodged.

Relevant matters are allocated to a member of the Unit as soon as they come into the Office, and as far as possible, that prosecutor maintains involvement with the matter until it is concluded. This ensures consistency for complainants and avoids the need for complainants to re-tell their story when a change of prosecutor occurs. It also ensures that consideration can be given at an early stage to the sufficiency of evidence and the appropriateness of charges.

Prosecutors within the Unit meet regularly with complainants and their families from an early stage of the criminal justice process and have worked hard during the last year in collaboration with the WAS to keep complainants aware of relevant developments in their matters.

Last year's annual report made note of the impact of continuing delays in sexual offence prosecutions. While delay has a negative impact in all matters, this is especially the case in sexual offences, where victims often feel that their lives are on hold until criminal proceedings are finalised.

The SARP reforms of 2009, which enable witnesses in sexual offences to give pre-trial evidence in certain circumstances, are being regularly utilised. In particular, the ability to use the police interview with child witnesses as their evidence-in-chief has reduced the stress of giving evidence for child complainants and helped to alleviate the impact of delays between the commission of offence and pre-trial evidence.

However, delay continues to be a cause for concern. Between 1 July 2011 and the end of 2011, there are at least eight sexual offence trials listed, many of which were committed in late 2009/early 2010. While the SARP provisions have allowed for the admission of interviews as evidence-in-chief or the giving of pre-trial evidence in a number of these matters, the delay in having matters finalised continues to be a cause of stress and frustration for complainants and their families.

Further details of the progress of the SARP reforms are given below.

Some significant matters dealt with by the Unit included the following:

ALFRED CHATFIELD

Alfred Chatfield was sentenced on 22 June 2011 in relation to one count of sexual assault in the third degree, two acts of indecency and an aggravated robbery. The offender attacked the complainant in September 2009 as she was walking home in the early hours of the morning. He grabbed her and pulled her off the footpath holding a knife to her neck, indecently assaulted her and took her money. The victim eventually managed to escape and ran into the street. Chatfield had a lengthy criminal history including three prior convictions for aggravated rape.

Chatfield was sentenced to a total head sentence of five and a half years' imprisonment with a non-parole period of four years, which included a sentence of four and a half years for the count of sexual assault in the third degree. The Director has filed an appeal against the sentence on the basis that it was manifestly inadequate.

JOHN WALKER

In February 2010 John Walker was acquitted of a number of sexual offences. During the course of the trial, the judge had made a number of legal rulings which the Crown had contested. The Director instituted a reference appeal to test these rulings. A reference appeal even if successful does not affect the result of the trial.

On 3 February 2011 the Court of Appeal handed down its decision. While it declined to make a final ruling in relation to some matters, its reasoning was favourable to the DPP in relation to all grounds of appeal. The Court held that the trial judge had erred in a number of respects, namely:

1. In relation to an offence of sexual intercourse without consent prior to legislative amendment in August 2008, and an offence of committing an act of indecency without consent, the Crown was not required to particularise between knowledge and recklessness on the indictment;
2. The test of recklessness applicable to the offence of sexual intercourse without consent was the common law test of recklessness, not the Code test;
3. Complaint evidence is prima facie admissible both to support the credibility of the complainant and for a hearsay purpose.

SARP AND SEXUAL OFFENCES REFORM

The report *Responding to sexual assault: the challenge of change* published in early 2005 paved the way for significant reform culminating in legislative amendments which took effect in 2009 (commonly referred to as the SARP legislation). This past year has seen the impact of those reforms in a tangible way. For child complainants in sexual or other violent offences, their evidence in chief can now be tendered in the form of a recording of an interview between the child and the police. This has the advantage of ensuring the child's evidence is obtained as early as possible. It also ensures the child does not have to recount a traumatic incident over and over again. Fairness to the accused is ensured through having the child attend court for cross examination. While it is early days yet, such evidence does seem to sometimes lead to earlier resolution of matters through pleas of guilty. This may be due to the accused knowing exactly what the evidence will be that is going to be led at the trial.

Child witnesses are required to attend court for cross examination, and the SARP reforms have also provided for the pre recording of the evidence given in court in sexual offence proceedings. This means all the child's evidence is taken at court in a separate hearing prior to the trial. The child then does not have to attend the trial. This ensures that child witnesses are able to get on with their lives without the stress of looming court

proceedings. To date, bar a few teething issues with technology, the provisions have been working well, and there has been a significant improvement in the experience of child witnesses in sexual offence proceedings.

Like any new legislation, there will be ways to improve its operation and effectiveness through legislative change. The Office has continued to submit proposals for amendments to the SARP legislation to improve its effectiveness, resolve anomalies, and expand the provisions to other vulnerable witnesses. To date, our proposals have not been accorded priority, but we look forward to working on this with justice agencies in the coming year.

Likewise, more generally in the area of sexual offence prosecutions the Office continues to reflect on best practice, and consider developments in other jurisdictions, providing comments to JACS and the Attorney-General which may assist in future policy development. An example is the suggestion that the age of consent for sexual activity be increased to 18 years of age in cases involving school teachers, step parents and other authority figures. The ACT is one of the only Australian jurisdictions where it is legal for such authority figures to have sexual relations with children once they turn 16 years of age. In other jurisdictions it is either 18 years of age or in the case of step parents in Victoria, there is a prohibition on any sexual relations.

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 and continues to represent best practice in criminal justice interventions.

The Office continues to devote significant resources to the FVIP. The Family Violence (FV) team has been increased to 5.5 specialist prosecutors in recognition of 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 to increase, although with the change-over in the way statistics are captured within the office it has been difficult to make exact comparisons to the last reporting period.

Family violence matters are identified at the charging stage by the police, and once before the Magistrates Court, are transferred to a specialist family violence list. The coming year will see the evolution of those lists into the Family Violence Court although it is not expected there will be any significant change in current processes.

FV prosecutors appear in the majority of family violence matters. This provides consistency of approach and continuity for victims. An innovation during the year has been the allocation of prosecutor case loads according to defendants' surnames, to enable prosecutors to be familiar with the background history of repeat offenders and ensure appropriate outcomes.

A significant challenge for FV prosecutors continues to be 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 significant 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 domestic violence. As a result 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.

As noted in last year's report the use of CCTV for victims giving evidence continues to have a positive impact in family violence prosecutions. All victims in assaults, sexual offences and serious violent offences give evidence from a remote location. Experience shows that victims continue to be less likely to recant or change their evidence than might have been the case if they gave their evidence in the court room. However, it remains disappointing that the opportunity to give evidence from a remote location has not been extended to other common FV offences, such as contravene protection order and damage property offences.

FV prosecutors continue to work closely with all the FVIP participating agencies. In particular the Office continues to work closely with the AFP advising on 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	Children's Court	Supreme Court	Total
FV matters completed	449	44	52	546
FV matters finalised before hearing	359	39	44	442
FV matters proceeding to hearing	90	3	8	102
Guilty	50	1	5	
Not guilty	24	1	3	
Discontinued	16	1		
Defendants found guilty	342	31	23	396
Conviction	287	8	23	
Non-conviction	55	23	0	
FV matters discontinued	59	9	4	72
FV defendants diverted under Mental Health provisions	9	4		13

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 police. The challenges associated with convincing a court that an offence has been committed

in a person's home, most 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:

POLICE V SD

In August 2010 SD walked to his ex-partner, Ms Y's, house and asked for a lift home. Ms Y had just returned home from grocery shopping and refused to give him a lift. An argument quickly followed. Ms Y took the grocery bags from the car and ran inside the house and locked the front screen door. However, SD forced his way into the house by kicking the screen door several times causing the screen to break off the door. Inside the house a struggle occurred during which Ms Y threatened to call police. SD grabbed the mobile phone off her and threw it on the ground. Ms Y was able to run outside and got in her car to leave. However, SD quickly followed and opened the driver's door and reached inside and grabbed the keys from the ignition. He grabbed Ms Y by her clothing and shoved her backwards – in the process striking her in the jaw. Ms Y pushed SD away and ran back inside the house and locked the main wooden door. Ms Y called police and could hear SD kicking the door.

Police charged SD with assault and damaging the screen door.

At hearing in April 2011 the prosecution led evidence from Ms Y. In a familiar pattern for family violence victims, Ms Y's evidence at the hearing was quite different from the information she told police. She could not remember significant parts of the incident. The prosecutor sought leave to cross-examine Ms Y as an unfavourable witness under s38 of the *Evidence Act 1995*. The magistrate agreed, noting that Ms Y was not making a genuine attempt to recall the incident. Eventually the prosecution was able to get out the version that she had told police.

Following this SD changed his plea to guilty. The magistrate sentenced him 7 days imprisonment and placed on a 2 year good behaviour order. At the time of the offence SD was also serving a suspended sentence. He was committed to the Supreme Court to be dealt with for breaching that suspended sentence.

POLICE V JD

JD was charged with 2 charges of assaulting his partner occasioning to her actual bodily harm. JD had been in a relationship with Ms C for 3½ years. In January 2011 JD arrived home under the influence of alcohol and was abusive to her. An argument started and a short time later he dragged Ms C to the bathroom and threw her in the bathtub. He put his hands around her neck and threatened to beat her with a crow bar. Ms C didn't call police because she was afraid of what JD would do.

Some days later Ms C was driving JD home from the AMF Bowling Centre. During the

trip another argument occurred and Ms C told JD that she wasn't going to stay the night and would drop him off. While the car was stopped at traffic lights JD pushed the lit cigarette he had been smoking into Ms C's hand burning her skin. Ms C pulled the car into a nearby service station and JD got out of the car and walked away. Ms C called police who arrived a short time later.

At the hearing Ms C explained away the injuries she had sustained on both occasions, claiming they were a result of an accident. This was different to the information she had provided to police. The prosecutor was given leave to cross-examine Ms C as an unfavourable witness on the basis of her prior inconsistent statement. The magistrate was satisfied, after listening to the emergency call, looking at photos of the injuries and noting Ms C's apparent motivation to support her partner, that Ms C's initial complaint to police was correct. The magistrate convicted JD and sentenced him to 18 months imprisonment with 6 months of that sentence suspended.

POLICE V TH

TH and Ms M had been living together for 12 months. In August 2010 TH and Ms M were out at the Vikings Club. During the evening Ms M left TH with his adult daughter at the club and returned home to go to bed. Early the following morning TH returned home drunk. He went into the bedroom where Ms M was asleep and demanded sex and tried to undress her. Ms M told him to go to sleep, however, he persisted. Ms M got out of the bed to put more clothes on. An argument began and as she was bending down to pick clothes off the floor TH kicked her in the jaw. TH got out of bed and walked towards Ms M with fists raised and screamed at her "*I am going to hit you and do a good job before the police come". Ms M grabbed her mobile phone from the bedside and tried to call police, however, TH grabbed the phone off her. Ms M ran out of the house and went to the police station and reported the incident.*

At the hearing both Ms M and TH gave evidence. While the case was largely word-on-word, the Magistrate noted TH was affected by alcohol and was satisfied that his recollection of the incident was unnatural and rehearsed. TH was convicted and fined.

WITNESS ASSISTANCE SERVICE

The Witness Assistance Service (WAS) provides a range of services to meet the needs of victims and witnesses involved in matters prosecuted by the Office. The service aims to reduce the trauma associated with being a victim or witness of crime.

The main role of the WAS is to provide information to victims and witnesses about the criminal justice system. Additionally, WAS officers make referrals, prepare clients for court, support clients at court, and provide assistance after court. The WAS also assists prosecutors in dealing with victims and witnesses, and provides training to internal staff and external agencies in relation to supporting victims and witnesses of crime, with particular emphasis on working with children, and complainants of family violence and sexual assault.

In the 2010-2011 period, with the resignation of an experienced WAS officer, the Witness Assistance Service saw a decrease in the number of WAS Officers from 3 full-time workers to 2 full time-workers. This caused an overall decrease in the number of witnesses supported in this period.

Despite this, the WAS has continued to provide a range of services to complainants of sexual assault, Family Violence and those 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.

WAS officers attend the following meetings for the purpose of referrals:

- monthly wraparound (sexual assault) meetings
- monthly meeting with Victim Support ACT;
- weekly FV case-tracking meetings;
- monthly meetings with the AFP Criminal Investigations Victim Liaison Officers;
- monthly meetings with the AFP Sexual Assault and Child Abuse team.

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
Family Violence (non SA)	133	36.44
Sexual Assault	71	19.45
Child sexual assault	90	24.66
Historical sexual assault	29	7.94
Child pornography	2	0.55
Significant Trauma	27	7.4
Death	4	1.1
Other	9	2.46
Total	**368**	**100**

Apart from a small decrease in family violence matters and an increase in sexual assault matters, the categories have remained relatively similar from the previous reporting period.

WAS CONFERENCE

The national bi-annual WAS Conference was held in Melbourne in March and was attended by both ACT WAS officers. The conference was attended by around 25 WAS Officers from around Australia and was a great chance to network with others and compare knowledge and skills. WAS officers quite often share information between States in terms of support for those who were offended against in one State, but reside in another.

SEXUAL ASSAULT OFFENCES

The WAS have continued to support all complainants of sexual assault. The sexual offences unit has been in existence for over a year, and communication between the prosecutors and the WAS has improved. This has meant more information sharing and contact with complainants of sexual assault.

A high proportion of sexual assault offences are committed in a family context. This includes by partners, parents, and other relatives. Accordingly, many sexual assault matters are also considered family violence matters, as this table shows:

All Sexual Assault matters	Number	Percentage
Family Violence	60	31.25
Non Family violence	132	68.75
Total	**192**	**100**

The table below shows the ages of complainants in sexual assault matters. These have been categorised by the age at the time of offence and the age when court proceedings commence.

Age of Complainant in SA matter	Number	Percentage
Child	83	43.23
Child at time of offence, Adult now	38	19.79
Adult	71	36.98
Total	**192**	**100**

As can be seen, there are roughly similar numbers of adult and child complainants in matters handled by the office (age at time proceedings commence). Of interest is the 20% of complainants who were children at the time of offence and are adults at the time of court proceedings. Historical matters account for 29 of these meaning there were 9 matters where the person turned 18 either shortly before or shortly after court proceedings commenced. This has raised some issues in terms of what these complainants may be entitled to under the SARP legislation given each was a child when proceedings begin, but had become an adult before giving evidence.

OUTCOMES

The court outcomes for matters with WAS support vary with the majority being finalised with a plea or finding of guilt. The below table shows the outcomes for WAS supported matters.

Outcomes of WAS supported matters	Number	Percentage
Guilty (plea of guilty or found guilty)	112	55.45
Found not guilty	32	15.84
Prosecution Withdrawn	19	9.41
Other	39	19.3
Total	**202**	**100**

Where there is a finding of not guilty the WAS will spend time explaining the outcome and offering any additional support or information needed. Where a prosecution may be withdrawn the prosecutor, in consultation with the WAS, will discuss the matter with the complainant and consider her or his views. Those classified as "other" include complainants who decide they no longer require WAS support.

CONFISCATION OF CRIMINAL ASSETS

The *Confiscation of Criminal Assets Act 2003* provides an additional significant strategy to address criminal activity in the Territory. 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.

There has been a marked increase in the overall value of the property restrained by the Office compared to the last reporting period. At present, over $2.6 million dollars worth of property is restrained. Contributing to the larger value has been the successful restraint of 5 houses. Apart from houses, property which is commonly the subject of restraint includes cars, drug paraphernalia, cash, computers, televisions and other household items.

Despite this greatly increased overall value, there has been a slight decrease compared with the last reporting period in the number of matters referred from the AFP to the Office (36 last reporting period) and a corresponding decrease in the number of applications for the restraint of property (28 last period).

During the reporting period the following activity took place.

Number of matters referred by the AFP	30
Value referred	$2,711,067.63 (includes 5 houses)
Value of restrained property	$2,666,065.63 (includes 5 houses)
Value of forfeited property	$55,758.00
Applications to restrain property	15
Applications for conviction forfeiture orders	5
Applications for Buy Back Order	nil
Applications for unclaimed tainted property	1

REGULATORY MATTERS

The Office prosecutes regulatory matters referred to it by ACT Government agencies and the RSPCA in respect of legislation those agencies administer. These matters can sometimes involve tricky or complex legal and factual issues.

Within the Office, the regulatory practice is managed by a dedicated prosecutor. Each regulatory matter is allocated to a particular prosecutor who has carriage of the matter from the beginning until the end of the prosecution.

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

Act/Section	Number	Proved
A.C.T Road Transport (Public Pass. Services) Regs.2002	3	0
A.C.T. - Health Professionals Act 2004	1	1
Animal Welfare Act 1992	6	6
Australian Road Rules	1	0
Building Act 1972	2	2
Domestic Animal Act 2000	1	1
Electoral Act (ACT) 1992	1	0
Environment Protection Regulation 2005	1	1
Fair Trading Act 1992	1	0
Food Act 2001	1	1
Liquor Act 1975	3	2
Nature Conservation Act 1980	1	1
Sale of Motor Vehicles Act 1977	1	0
Utilities (Water Conservation) Regulations 2006	1	0
Utilities Act 2000	1	1
TOTAL	**25**	**16**

PARKING MATTERS

The Office prosecutes those parking offences which end up in court. There were 193 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.

CRIMINAL LAW RESOURCE CENTRE

Under the guidance of Rick Clarke the hard copy library and the other legal resources have evolved into the Criminal Law Resource Centre. The emphasis is on the provision of information electronically, including materials that lawyers were accustomed to getting in paper form, such as legislation and reported cases. Indeed, all information is now circulated electronically, and the preferred method of communication is the intranet, rather than email. The Criminal Law Resource Centre, and the librarian, sit at the centre of the communications hub of the Office.

With minimal funds and a good deal of honest labour on the part of the librarian, the Criminal Law Resource Centre was completely refurbished with recycled shelving and new furniture, providing clients with a light, open and more user-friendly workspace.

The Centre was also successful this year in implementing a new intranet in the Office which delivers quick and easy access to key resources. Used as the primary communication device within the organisation, the new intranet functionality also assists staff by providing useful 'Who's-Not-In' information and News Bulletins.

Finally, the Librarian has taken on the role of the administrator of all electronic information for the Office, providing prosecutors with advice on their use as well as access to online resources such as subscriptions and legislation for use in Court.

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.

R V REBECCA MASSEY

On 3 May 2011 after a four week trial, a jury found Rebecca Massey guilty of murdering Elizabeth Booshand at the Charnwood shops in July 2008.

Ms Booshand, who was acquainted with Ms Massey, died in hospital as a result of stab wounds inflicted by Ms Massey during an altercation between the two. The trial was vigorously defended and raised issues of intent, self defence and causation. The causation issue raised by the defence was that Ms Booshand's death may have been contributed to by the emergency procedures that she underwent at The Canberra Hospital. A large number of medical staff from the Hospital were required to give evidence and the jury clearly accepted that they did everything they could to save Ms Booshand.

Ms Massey was sentenced to a head sentence of 16 years imprisonment.

This was the first jury trial for a charge of murder for a number of years in the Territory. Under legislation recently passed by the Legislative Assembly, all murder offences (and certain other serious offences) must now be tried by a jury.

R V MCDOUGALL

Scott Alexander McDougall was charged with the murders of Straun Bolas and Julie Tattersall, in addition to one charge of arson.

On Wednesday 10 September 2008 at 10.35pm ACT Fire Brigade attended a house fire at 4 Raine Place Downer in the ACT. Neighbours had reported smoke billowing from the premises, and had been unable raise the occupant, Mr Bolas.

Whilst inside the premises members of the fire brigade located and removed the bodies of Mr Bolas and Ms Tattersall, both of whom appeared to have suffered significant injuries to the face and torso. Both were deceased.

Soon after Scott Alexander McDougall was arrested and charged with the murders of Mr Bolas and Ms Tattersall.

At the outset of the trial, on advice from his legal counsel, Mr McDougall made some 27 formal admissions. These included that on 10 September 2008 he committed the acts which caused the deaths of Mr Straun Bolas and Ms Julie Tattersall, that in causing the deaths he used a wooden handled meat cleaver found at the scene, and that he had deliberately set fire to 4 Raine Place Downer. Mr McDougall also pleaded guilty to the charge of arson.

The trial of the accused commenced on 5 October 2010, before Gray J and ran for ten days.

The evidence of pathologist Dr Malcolm Dodd detailed the horrific injuries sustained by Mr Bolas and Ms Tattersall. Both died as a result of a numerous sharp force injuries to the head and neck in addition to significant blood loss. Evidence of biomechanist Simone Lewis described significant defensive injuries sustained by both deceased in the course of the attack, revealing Mr Bolas and Ms Tattersall had been conscious and attempting to protect themselves.

Toxicological evidence revealed that both Mr Bolas and Ms Tattersall were significantly impaired by the effects of alcohol at the time of their deaths.

On the evidence lead at trial Mr McDougall, Mr Bolas and Ms Tattersall were friends. They regularly socialised together, and Mr McDougall had stayed at the home of Mr Bolas on occasion. On 10 September 2008 Ms Tattersall and Mr McDougall had spent the day together before attending 4 Raine Place in the evening.

Mr McDougall gave evidence at trial. He stated that on the evening of 10 September 2008 he had been drinking heavily and had taken a pill, which he believed to be Xanax. He stated that during the evening, he and Mr Bolas became involved in a

heated argument over a person who had been staying with Mr Bolas that Mr McDougall believed was a police informant. The argument escalated, and Mr McDougall then accused Ms Tattersall of being *"a dog"*. On his evidence, Mr McDougall stated that Mr Bolas then "*picked up the meat cleaver, and come at me. As simple as that."* In the process of wrestling the cleaver from Mr Bolas, Mr McDougall *"lashed out, just fucking lashed out"*. In giving evidence Mr McDougall did not recall what happened to Ms Tattersall.

From the premises in Downer Mr McDougall drove to the place in Queanbeyan where he had been staying. His housemates, Mr Stan Djokic and his wife Ms Heidi Matthews both gave evidence. Both stated that Mr McDougall woke Mr Djokic, and that they had a conversation in the back room of the house. Mr Djokic gave evidence that Mr McDougall told him he had *"fucked up"*, *"he killed two people, double murder"*.

Justice Gray delivered his judgement on 25 March 2011. On both charges of murder, Scott McDougall was found guilty.

It was accepted by the Court that Mr Bolas was first in possession of the meat cleaver and that he advanced towards the accused at the time of the event that resulted in his death. The Court has also found that Mr McDougall's account to Mr Djokic of them Mr McDougall and Mr Bolas, *' just fucking around playing, just guys being guys I suppose on the piss'* was an accurate account of what happened and, that the disarming of Mr Bolas should not have incited Mr McDougall's extreme reaction. Further, the Court found that Mr McDougall *'had no justification in proceeding to as he said, "finish him off."*

Justice Gray held that the response was beyond what Mr McDougall believed to be necessary to defend himself and he was satisfied beyond reasonable doubt that the infliction of those blows was done with the intent to cause Mr Bolas' death.

His Honour rejected claims of intoxication as raised by Mr McDougall; *"I do not regard the effect of alcohol on his thought processes or cognitive abilities as affecting the formation of an intent to kill at that stage."*

In respect of Ms Tattersall, the Court was not prepared to conclude that it was reasonably possible that Ms Tattersall was a threat to Mr McDougall or was perceived by him to be so. The blows that he struck Ms Tattersall were simply as a consequence of her being there at that time. His Honour was satisfied beyond reasonable doubt that the accused inflicted the blows on Ms Tattersall with the intent to cause her death or with reckless indifference to the probability of causing her death.

On 21 July 2011 Scott Alexander McDougall was sentenced to life imprisonment for the murders of Straun Bolas, and Julie Tattersall. He was sentenced to 5 years imprisonment on the arson charge. He is not eligible for parole.

RUSSELL NORMAN FIELD

Mr Field admitted killing two men with a shotgun on 24 March 2009. He was tried for the murder of those two men by Chief Justice Higgins sitting without a jury. His Honour identified the issue in the trial as follows:

> The issue to be resolved in the case of each deceased is whether, at the time of the fatal shot, the objective circumstances were such that the accused could reasonably perceive himself to be at risk of death or serious injury in the circumstances as were presented to him.

One of the two deceased was a member of the Rebels Motorcycle Gang. The other man had no connection with that organisation. The two deceased and Mr Field had a connection through a woman who had, at different times, been in a relationship with each of the three men.

On 8 March 2011 the Chief Justice acquitted Mr Field of the murders. His Honour accepted that when Mr Field was told that "two Rebs" were at the door looking for him "he reasonably believed he was in a life threatening situation if they should choose to attack him as they then appeared to do." His Honour reached that conclusion even though it shown that neither deceased had any weapons with them at the time of their deaths.

This type of offence is one where if the trial were to be conducted under the recent legislative changes it would be for a jury to determine whether the actions of Mr Field in shooting the two unarmed deceased at close quarters with a shotgun was justified in self-defence.

R V SC

In the early hours of 1 Sept 2008 in adjacent to Telopea Park SC (a young woman of 17 years) stabbed Mr Cameron Anderson 8 times and as a result Mr Andeson died. The knife used by SC to stab Mr Anderson was obtained by her from Mr Nicholas Brown, who at that time was a bar manager at Filthy McFaddens in Kingston. SC and Mr Anderson had each been drinking at that establishment earlier in the evening and had met there - for the first time - shortly before Mr Anderson's death.

SC was charged with Mr Anderson's murder. She pleaded not guilty and elected to be tried by judge alone. The trial took place before Chief Justice Higgins in January and February 2011.

The key issue at the trial was whether in stabbing Mr Anderson, SC was acting in self defence. The Crown relied on numerous circumstantial factors to show that the accused was not acting in self defence. In mounting the circumstantial case, the Crown contended that the various pieces of circumstantial evidence should not be considered piecemeal - each circumstance should be considered in the light of all the other circumstances, and must not be assessed separately from the rest of the evidence. There were many parts to the circumstantial case, far too many to

conveniently summarise here. At the end of the case the Crown made detailed written submissions running to over 100 pages referring to the evidence.

After hearing the extensive evidence and the submissions of counsel concluding on Friday 25 February 2011, His Honour adjourned to Monday 28 February 2011 on which day he delivered an ex tempore judgement finding the accused not guilty.

R V ISLAM

On 4 July 2009 Isa Islam stabbed Andrew Dyer in a takeaway food shop at the Ainslie Shopping Centre. Mr Dyer received devastating injuries and was rendered a tetraplegic by the attack. Mr Islam was charged with attempting to murder Mr Dyer, and in the alternative, with intentionally inflicting grievous bodily harm upon him.

The accused pleaded not guilty and elected to be tried by judge alone. The trial proceeded before Justice Matthews for a number of days in November and December 2010, and the verdict was handed down on 2 March 2011. Her Honour found Islam not guilty of attempted murder but guilty of intentionally inflicting grievous bodily harm. Her Honour was not satisfied beyond reasonable doubt that the accused intended to kill Mr Dyer, but was satisfied that he intended to inflict grievous bodily harm.

During the sentencing proceedings, evidence was put before the court of the horrific nature of the injuries suffered by Mr Dyer. What the judge referred to as "an extremely moving" victim impact statement of Mr Dyer was put before the court. As Her Honour noted:

> *Mr Dyer's statement testifies to the extent to which every aspect of his life has been completely devastated as a result of the injuries he sustained in this assault. …As Mr Dyer said in his victim impact statement, "Islam took my life as I knew it. My quality of life has been destroyed".*
>
> *The victim impact statement of Mr Dyer's parents, Barbara and Sid Dyer, give further testament to the devastation caused by this assault. They have taken it upon themselves to be their son's principal carers, at great sacrifice to themselves. Not only has this changed every aspect of their daily lives, but they have found the task extremely taxing emotionally, listening to their son expressing his misery at the fact that he now has no control over his life and effectively has nothing to live for. They express great fears for his future.*
>
> *It goes without saying that the extent of Mr Dyer's injuries is a major aggravating feature of this offence.*

On 25 May 2011, Mr Islam was sentenced to nine years imprisonment with four years and six months non parole. Mr Islam has appealed against his conviction. The Crown too has appealed, against the inadequacy of the sentence.

R V AB AND R V JB

On the 16 September 2010, Higgins CJ sentenced AB (a male) and JB (his wife) to total sentences of 20 years with a minimum of 15 years for AB and 10 years with a minimum of 5 years for JB. Each had been charged with and pleaded guilty to a range of incest offences in relation to their 2 daughters. The offending commenced when the girls were approximately 7 years old and continued into their teens. Whilst AB was the primary offender, JB also assisted and participated in the offending.

This was a significant sentence and the length of the sentences imposed reflected the gravity of the offending. AB has lodged an appeal against the severity of his sentence.

AARON HOLLIDAY

On 24 November 2010 Justice Refshauge sentenced Mr Holliday for a number of offences including two separate offences of intentionally possessing child pornography, committing acts of indecency against a person under 16 and eight separate offences of engaging in sexual intercourse with a person under 16.

In total there were three child victims of the "contact" offences but, as His Honour said in his written judgment, "the victims of the child pornography offences … are many victims whose names and identities are unknown and may never be known".

The offences were in two series. Mr Holliday was bailed in connection with the first set of offences and it was while he was on bail that he committed the second set of offences. That bail prohibited Mr Holliday from approaching or contacting persons under 14.

In the second series of offences Mr Holliday recruited his child victims by promising to purchase a dune buggy and by telling them that he was working with the police to catch paedophiles.

At the time of his arrest in connection with the second series of offences Mr Holliday was awaiting trial in NSW on similar offences.

Justice Refshauge sentenced Mr Holliday to 16 and a half years imprisonment and ordered that he serve at least 7 years before becoming eligible for parole.

Mr Holliday has lodged an appeal against the severity of the sentence and this Office has filed a cross-appeal against the inadequacy of the sentence imposed.

R V DR

(note: trial is reported as “R v DR” and sentence reported as “R v MD”)

DR pleaded not guilty to the possession of child pornography and using a child under the age of 16 for the production of child pornography. On 22 June 2009 the wife of DR looked on his laptop after being concerned at how much time he was spending on the computer by himself away from the rest of the family. She discovered the computer contained videos of her daughter (the accused’s step-daughter) dressing and undressing in the ensuite of her bedroom. DR’s wife then discovered a small video camera had been used by the accused to film her daughter before and after she had her shower.

DR was arrested and interviewed and during the interview put forward an explanation that the videos must have been inadvertently recorded. However further investigations revealed that the videos had been recorded on the video camera and transferred to the laptop on multiple occasions.

During the course of the trial DR conceded that he had made the videos deliberately after – as he claimed - inadvertently recording his step-daughter on the first occasion. He admitted he had lied to police during the interview, but maintained he had not made the videos for the purpose of sexual gratification, which was an element of the offence. It was further argued that the covert recording of the child did not amount to ‘using’ her for the production of child pornography.

Justice Mathews found the accused guilty of both the possession of child pornography and the use of a child for the production of child pornography.

On 4 May 2011 Her Honour sentenced DR to 2 years imprisonment to be served by Periodic Detention. DR has appealed against the conviction for ‘using’ a child for the production of child pornography. The DPP has appealed against the inadequacy of the sentence imposed.

R V EISENACH

From at least 2007 Benjamin James Eisenach, was the full-time carer for the mother of a 14 year old girl, CN. When CN’s mother died unexpectedly in 2008, she named Mr Eisenach as the testamentary guardian of her two children, that is CN and her sister.

Later, CN’s cousin became the carer of CN and reported to the authorities conversations between CN and Mr Eisenach, later identified as Mr Eisenach “grooming” CN. A police investigation ensued, as a result of which Mr Eisenach was arrested and charged with four counts of engaging in sexual intercourse with a person under the age of 16, one count of committing an act of indecency in the presence of a person under the age of 16 and one count of using a carriage service to groom a person under 16 years of age. The charges involved two complainants, CN, and a female friend of CN’s, NS.

The sentencing judge accepted that Mr Eisenach had committed the offences against

CN while he was in loco parentis to CN, and that NS had been under the protection of the household when these events took place. He sentenced Eisenach to a total term of imprisonment of four years and six months with a non-parole period of two years and six months.

The Director appealed against the inadequacy of the sentence. The Court of Appeal upheld the Director's appeal, and substituted a sentence of eight years imprisonment with a non-parole period of four years six months. The Court referred to the significant breach of trust involved in the offending behaviour and noted that sexual offences involving children were particularly serious as "they generally impair the opportunity for the victims to develop into mature adults addressing their sexuality in a timely and appropriate way".

The Court indicated that because of considerations of double jeopardy, "the [re-imposed] sentence should be moderated and be less than should otherwise have been imposed at first instance".

R V CREIGHTON

This was a Crown appeal against sentence imposed by the Supreme Court for 2 charges of culpable driving causing death and 1 charge of culpable driving causing grievous bodily harm.

The essential facts were that Mr Creighton was driving his vehicle at about 1.10am on 29 March 2009 in Clift Crescent Richardson. This is a suburban street with a posted speed limit of 60kph. There were three passengers in the car, Ms Rochelle Taylor in the front passenger seat and Ms Megan Minney and Mr Stephen Rial in the rear. Mr Creigton was driving at excessive speed – estimated to be 113kph – and lost control of the vehicle on a slight bend in the road. The vehicle hit a tree. Ms Minney and Mr Rial died as a result of the injuries they received in the accident. Ms Taylor suffered very serious injuries.

Mr Creighton pleaded guilty. The sentence imposed by the court at first instance was a total term of imprisonment of 2 years and 6 months with 6 months to be served by full-time imprisonment, 12 months to be served by periodic detention and the remaining 12 months to be suspended for a period 2 years.

The Crown appealed, arguing that the sentence was manifestly inadequate in that the Court erred in failing to properly cumulate the sentences and that the sentences did not adequately reflect the objective seriousness.

Whilst the Court of Appeal was of the opinion that the sentences were towards the lower end of sentences for such offences, and that if they were sentencing at first instance then they may have sentenced differently, their Honours were of the opinion that the sentence was in the acceptable range when referring back to the maximum penalties that could be imposed. The appeal was dismissed.

The issue of the appropriate maximum penalties for such offences is now being considered by the Legislative Assembly.

IN THE MATTER OF A BAIL APPLICATION BY ISA ISLAM

In this landmark judgment the Supreme Court found the *Human Rights Act* was incompatible with part of the *Bail Act* and issued a declaration of incompatibility.

The prosecution of Mr Islam is dealt with above. While awaiting trial

Mr Islam applied for bail in the Supreme Court. Because he was charged with attempted murder he was subject to the presumption against bail set out in s9C of the *Bail Act*. To rebut that presumption Mr Islam had to show special or exceptional circumstances favoring the granting of bail. This had previously been interpreted as requiring the court to find circumstances affecting Mr Islam that are in some way unusual or uncommon. Mr Islam pointed to the delay in bringing him to trial. Mr Islam had been in custody for 10 months and, at that stage, his trial was not likely to take place until June 2011 (13 months away). However, the court did not find the delay was so excessive as to amount to special or exceptional circumstances.

Mr Islam also submitted that s9C of the *Bail Act* was inconsistent with the human right recognised in s18(5) of the Human Rights Act that *'anyone who is awaiting trial must not be detained in custody as a general rule'.* After lengthy consideration the court found that there was no interpretation of s9C of the *Bail Act* (ie presumption against bail) that was consistent with this human right. As a result the court issued a declaration of incompatibility. The declaration has no immediate effect on the application of s9C of the *Bail Act*. Rather, the declaration was forwarded to the Attorney-General and any change to the *Bail Act*t will be a matter for the Legislative Assembly. In the meantime Mr Islam remained in custody as no special of exceptional circumstances were established.

The Attorney-General has appealed against the declaration of incompatibility. See further section C.17 of this report.

BAILIFF V R

Matters such as this highlight the difficulties faced by all participants in the criminal justice system when issues of mental health intersect with issues of criminal justice.

The Supreme Court had held that the appellant was fit to plead. An appeal was instituted to the Court of Appeal. The issue for determination was whether or not the judge at first instance could take into account the behaviour of the appellant in court in determining the issue of fitness.

By way of background the court assumes a person is fit to plead and the issue is only ventilated when specific issues arise. The appellant in this matter had previously been found unfit to plead in earlier proceedings.

The Court held that the judge was entitled to take into account the behaviour of the appellant in court as the proceedings were inquisitorial rather than adversarial. The issue was whether the appellant was fit to plead and not guilt. Whilst there were reports detailing the issues faced by the appellant, the judge was also able to view the appellant in court,

in particular, watch the interjections of the appellant in court, watch how the appellant communicated with his counsel and his general behaviour within the court setting.

The Court of Appeal determined that the judge at first instance had made no errors and dismissed the appeal.

INQUEST INTO THE DEATHS OF SCOTT OPPELAAR, SAMANTHA FORD, BRODIE OPPELAAR AND JUSTIN WILLIAMS

In March 2010 a car driven by Mr Justin Williams, with a female passenger, was driven at high speed from Queanbeyan into the ACT, with a NSW police car in pursuit for part of that time.

The car driven by Mr Williams drove along Canberra Avenue and, under the Monaro Highway overpass, collided at high speed with another car, containing Mr Oppelaar, Ms Ford and Master Oppelaar. The Oppelaar family died at the scene. Mr Williams later died in hospital, while his female passenger sustained serious injuries from which she ultimately recovered.

The matter was treated as a death in custody pursuant to s3C(1)(i) *Coroners Act 1997*. A coronial hearing took place commencing 7 March 2011. The hearing went for 12 days and 60 witnesses were called to give evidence. The NSW police force was represented, as were the 2 NSW police officers who were the driver and passenger of the NSW police car.

At the conclusion of the evidence the coroner reserved his findings to a date to be fixed.

BRIGGS V MONTAZER

Hossein Montazer, a taxi driver, was charged with contravening "the first taxi's right to the next hiring" by picking up a passenger from the middle of the Alinga Street taxi rank in December 2010.

On the evening in question Mr Montazer was observed by a taxi marshall to pick up a passenger from the fourth position on the rank and then attempt to drive away. The marshall stopped and spoke with Mr Montazer, who he had observed perform a similar action the previous week, warning him that it was an offence to pick up a passenger from the middle of a taxi rank. Mr Montazer was unswayed by the marshall's warning and proceeded to take the fare.

After disputing liability for a subsequent fine for the offence, Mr Montazer's matter was heard in the ACT Magistrates Court.

The prosecution led evidence from the marshall about his observations of Mr Montazer and their conversation, including the fact that Mr Montazer had claimed on the evening that the passenger was his auntie (despite being some 20-30 years his junior and of an entirely different ethnic heritage). Mr Montazer's defence consisted of general statements that, quite often, passengers would get into his cab before he reached the front of the rank

and would refuse to leave if asked (under cross-examination Mr Montazer conceded that he did not recall asking his passenger on the evening of the offence to leave his taxi).

The Magistrate noted that, based on the testimony of the marshall (which was based upon contemporaneous notes and which remained unshaken in cross-examination), the Court could be satisfied, beyond a reasonable doubt, that Mr Montazer had indeed picked up a passenger from the middle of the Alinga street taxi rank and thereby contravened the first taxi's right to the next hiring.

Mr Montazer was convicted of the offence and fined $110.

This matter was the first prosecution undertaken on information from the Office of Regulatory Services for this offence and recognises the need to maintain order at taxi ranks, particularly during periods of peak activity (such as in the lead up to the Christmas period).

HUDSON V KIM WONG WAH

Mr Kim Wah Wong was a restauranteur who, as at February 2009, operated a restaurant known as Tak Kee Roast Inn in Woolley Street, Dickson. Following an observation of unsafe practices, Public Health Officers inspected the premises on 26 February 2009. Three offences were detected as part of that inspection. The facts in relation to each charge were briefly:

- s.27(1) *Food Act 2001* food preparation areas were in an unclean condition
- s.23(1) *Food Act 2001* the defendant permitted meat for the restaurant to be defrosted in a nearby car park without protection from contamination
- s.22(1) *Food Act 2001* the defendant permitted food intended for sale in the restaurant to be handled in the carpark and in the unclean premises and with a rusty knife and unclean chopping block

Before the Magistrate, the defendant pleaded guilty to all charges and was fined a total of $1,500. As this was well short of the maximum penalties provided, the Director appealed to the Supreme Court against the inadequacy of the sentences.

The Supreme Court upheld the Director's appeal, and increased the fines imposed to a total of $6,900. In doing so the court noted:

> *The public who eat in restaurants and who buy food from takeaway food shops have the right to expect and are entitled to expect that food intended to be sold and offered for sale will be prepared and cooked in a clean and healthy environment, by people who adopt and maintain a high standard of personal cleanliness and hygiene, using clean and safe equipment and utensils which are free of any contamination. As I have said already, the respondent had the responsibility to devise, implement and maintain a system to ensure that the restaurant was operated in accordance with and in compliance with the regulatory requirements, a responsibility that had to be taken seriously by the respondent, but a responsibility that he failed dismally to meet.*

WHONO'S PTY LTD (TRADING AS DOMINO'S DICKSON)

In January 2011 Whono's PTY Ltd (trading as Domino's Dickson) was summonsed to court on a number of charges arising out of a public health investigation.

The company was charged with 3 counts against s23 *Food Act 2001* and one count against s27 *Food Act 2002*. The three counts against s23 *Food Act* were for 3 separate occasions (over a period of a month) where customers had purchased food from the Domino's Dickson and had found a cockroach in the food (1 pizza and 2 pasta dishes). Each of the customers had drawn the matter to the health protection service.

It was on the basis of the 3 complaints that health inspectors attended at Domino's Dickson. The premises were found to be in an unfit state, leading to the charge under section 27. There was a cockroach infestation together with unsafe food standards such as leaking refrigeration, unrefrigerated food and dirty floors, walls and equipment.

After initially pleading not guilty a plea of guilty was entered to all 4 charges. The company was fined a total of $7,125.

STATISTICS

A NOTE ON STATISTICS USED IN THIS REPORT

This reporting period is the first 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.

In previous reports, the statistics used 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.

Because this report contains statistics which are collated in a different way from those in previous reports, comparison with previous years may not be possible. However, into the future, a solid basis of comparison will be built up.

TABLE 1: TOTAL MATTERS FINALISED BY JURISDICTION

Description	Matters	Proved
Childrens Court	474	375
Magistrates Court	3872	3020
Supreme Court	257	231

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		
Childrens Court	-	-
Magistrates Court	1	1
Supreme Court	7	3
Sub total	**8**	**4**
Acts intended to cause injury		
Childrens Court	93	66
Magistrates Court	504	358
Supreme Court	70	61
Sub Total	**667**	**485**
Sexual assault and related offences		
Childrens Court	-	-
Magistrates Court	15	6
Supreme Court	27	23
Sub Total	**42**	**29**
Dangerous or negligent acts endangering persons		
Childrens Court	6	4
Magistrates Court	35	30
Supreme Court	5	5
Sub Total	**46**	**39**
Abduction and related offences		
Childrens Court	2	1
Magistrates Court	17	12
Supreme Court	3	3
Sub Total	**22**	**16**
Robbery, extortion and related offences		
Childrens Court	12	12
Magistrates Court	14	12
Supreme Court	17	17
Sub Total	**43**	**41**
Unlawful entry with intent/burglary, break and enter		
Childrens Court	72	65
Magistrates Court	43	36
Supreme Court	45	44
Sub Total	**160**	**145**

TABLE 2: CONTINUED

Description	Matters	Proved
Theft and related offences		
Childrens Court	122	105
Magistrates Court	285	239
Supreme Court	17	17
Sub Total	**424**	**361**
Deception and related offences		
Childrens Court	-	-
Magistrates Court	12	8
Supreme Court	6	4
Sub Total	**18**	**12**
Illicit drug offences		
Childrens Court	10	9
Magistrates Court	143	115
Supreme Court	22	19
Sub Total	**175**	**143**
Weapons and explosives offences		
Childrens Court	9	7
Magistrates Court	44	31
Supreme Court	4	4
Sub Total	**57**	**42**
Property damage and environmental pollution		
Childrens Court	24	16
Magistrates Court	94	77
Supreme Court	7	7
Sub Total	**125**	**100**
Public Order Offences		
Childrens Court	18	14
Magistrates Court	121	86
Supreme Court	1	1
Sub Total	**140**	**101**
Road traffic and motor vehicle regulatory offences		
Childrens Court	59	53
Magistrates Court	1969	1779
Supreme Court	-	-
Sub Total	**2028**	**1832**

TABLE 2: CONTINUED

Description	Matters	Proved
Offences against justice procedures, government security and government operations		
Childrens Court	18	6
Magistrates Court	182	73
Supreme Court	26	23
Sub Total	**226**	**102**
Miscellaneous Offences		
Childrens Court	29	17
Magistrates Court	393	157
Supreme Court	-	-
Sub Total	**422**	**174**
Total	**4603**	**3626**

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
Childrens Court	16
Magistrates Court	224
Total	**240**

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

Description	Trial	Sentence	Total
Homicide and related offences	2	-	2
Acts intended to cause injury	52	17	69
Sexual assault and related offences	27	3	30
Dangerous or negligent acts endangering persons	5	2	7
Abduction and related offences	3	1	4
Robbery, extortion and related offences	7	16	23
Unlawful entry with intent/burglary, break and enter	20	17	37
Theft and related offences	22	10	32
Deception and related offences	-	2	2
Illicit drug offences	9	2	11
Weapons and explosives offences	1	3	4
Property damage and environmental pollution	5	4	9
Public order offences	1	-	1
Road traffic and motor vehicle regulatory offences	2	1	3
Offences against justice procedures, government security and government operations	3	2	5
Miscellaneous offences	-	1	2
Total	**159**	**81**	**240**

TABLE 5: SUPREME COURT MATTERS

Description	Matters
Trials	
Trials	66
Accused	69
Trial Outcomes	
Guilty Verdicts	31
Not Guilty Verdicts	24
Other	2
Awaiting Verdict	9
Sentencing Proceedings	
Accused sentenced after committal for sentence, after committal for trial/changed plea or re-sentenced after breach	200
Notices Declining to Proceed Further	**13**

Note: There were 3 trials with more than one accused.

TABLE 6: APPEALS

Description	Defence Appeals	Crown Appeals	Total
Supreme Court	73	5	78
Court of Appeal	18	5	23
High Court	-	-	-

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

A.10 TRIPLE BOTTOM LINE REPORT

	INDICATOR	2009-10 Result	2010-11 Result	% Change
ECONOMIC	**Employee Expenses**			
	• Number of staff employed (head count, not FTE)	66	63	4.5%
	• Total employee expenditure (dollars)	$5,595,000	$5,728,000	
	Operating Statement			
	• Total expenditure (dollars)	$8,795,000	$9,223,000	4.8%
	• Total own source revenue (dollars)	0	0	
	• Total net cost of services (dollars)	$8,795,000	$9,223,000	4.8%
	Economic Viability			
	• Total assets (dollars)	$2,000,000	$2,000,000	0%
	• Total liabilities (dollars)	Refer JACS Financial Statements	Refer JACS 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 C02e)	N/A	N/A	N/A
	Energy Use			
	• Total office energy use (megajoules)	196.14	471.78	140%
	• Office energy use per person (megajoules)	2.97	7.43	150%
	• Office energy use per m2 (megajoules)	0.15	0.36	140%
	Greenhouse Emissions			
	• Total office greenhouse emissions – direct and indirect (tonnes and C02e)	44.16	116.45	163.7%
	• Total office greenhouse emissions per person (tonnes of C02e)	0.67	0.83	23.8%
	• Total office greenhouse emissions per m2 (tonnes of C02e)	0.04	0.09	125%
	Water Consumption			
	• Total water use (kilolitres)	Unavailable	Unavailable	
	• Office water use per person (kilolitres)	Unavailable	Unavailable	
	• Office water use per m2 (kilolitres)	Unavailable	Unavailable	

A.10 CONTINUED

	INDICATOR	2009-10 Result	2010-11 Result	% Change
ENVIRONMENTAL	**Resource Efficiency and Waste**			
	• Total co-mingled office waste per FTE (litres)	267.2L	647.6L	142%
	• Total paper recycled (litres)	16800L	48240L	187%
	• Total paper used (by reams) per FTE (litres)	28.7L	34.6L	20.5%
SOCIAL	**The Diversity of Our Workforce**			
	• Women (Female FTE's as a percentage of the total workforce)	67%	63.6%	5%
	• People with a disability (as a percentage of the total workforce)	3.2%	0%	-100%
	• Aboriginal and Torres Strait Islander people (as a percentage of the total workforce)	3.2%	3%	-6.2%
	• Staff with English as a second language (as a percentage of the total workforce)	6.8%	6.1%	-10%
	Staff Health and Wellbeing			
	• OH&S Incident Reports	2	0	-100%
	• Accepted claims for compensation (as at 31 August 2010)	1	0	-100%
	• Staff receiving influenza vaccinations	10	16	60%
	• Workstation assessments requested	1	3	200%

ACT DPP
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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 mooting 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.

ACT DPP
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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 2011.

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 2011 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 1 application(s) made during the reporting year to access documents. Of these applications:
    a. full access to the documents was granted in 0 case(s);
    b. partial access to the documents was granted in 1 case(s);
    c. 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 1 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.

There are two senior executives employed in the Office, John Lundy and Alyn Doig. Each is 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, Assistant Directors, and the Corporate Manager. The executive meets weekly with a senior management committee comprising the executive, the Paralegal Manager and Practice Managers.

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

With the performance management scheme now well developed, the main focus this year has been on fine turning the training and development needs of staff.

This year the office has commenced an internal review to consider the specific skills, educational qualifications and attributes necessary for improved paralegal support. This review is currently underway and when completed will provide a plan to improve the skill base and training requirements of this vocational group.

This year has also seen further targeted training and development opportunities for legal staff including advocacy training sessions. Further information is provided under learning and development in this report.

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

Retention rates of legal staff, although somewhat stabilised from before the current Director assumed office, continue to be of concern. The major factor influencing rates of retention are wage rates and workloads for legal staff.

C.7 STAFFING PROFILE

The statistics provided in the following tables includes employees in receipt of salary as at 30 June 2011. The figures are expressed in full time equivalent terms.

FTE AND HEADCOUNT

	Female	Male
FTE by Gender	39.5	24.0
Headcount by Gender	42	24
% of Workforce	64%	36%

CLASSIFICATIONS

Classification Group	Female	Male	Total
Administrative Officers	7	4	11
Executive Officers		2	2
Legal Support	14	1	15
Professional Officers	1	1	2
Prosecutors	18	14	32
Senior Officers	2	1	3
Statutory Office Holders		1	1
Total	**42**	**24**	**66**

EMPLOYMENT CATERGORY BY GENDER

Employment Category	Female	Male	Total
Casual			
Permanent Full-time	28	17	45
Permanent Part-time	2		2
Temporary Full-time	11	7	18
Temporary Part-time	1		1
Total	**42**	**24**	**66**

LENGTH OF SERVICE BY AGE-GROUP BY GENDER

Average Length of Service	Pre-Baby Boomers		Baby Boomers		Generation X		Generation Y		Total	
Employment Category	F	M	F	M	F	M	F	M	F	M
0-2			2		6		17	5	25	5
2-4			2	1	3	3	3	2	8	6
4-6				1	1	1	3	1	4	3
6-8				1						1
8-10				1	1	3	1		2	4
10-12			1	1					1	1
12-14				1						1
14+ years			1	2	1	1			2	3

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	3.2
Male	6.6
Total	**4.4**

AGE PROFILE

Age Group	Female	Male	Total
<20			
20-24	5		5
25-29	15	7	22
30-34	8	4	12
35-39	5	4	9
40-44	3		3
45-49	3	1	4
50-54	1	3	4

AGE PROFILE (CONTINUED)

Age Group	Female	Male	Total
55-59	2	3	5
60-64		2	2
65-69			
70+			

AGENCY PROFILE

Branch/Division	FTE	Headcount
CORPORATE	5.2	6
EXECUTIVE	4.0	4
LEGAL SUPPORT	23.2	24
PROSECUTOR	31.0	32
Total	**63.5**	**66**

AGENCY PROFILE BY EMPLOYMENT TYPE

Branch/Division	Permanent	Temporary	Casual
Corporate	4	2	0
Executive	1	3	0
Legal Support	18	6	0
Prosecutor	24	8	0
Total	**47**	**19**	**0**

EQUITY AND WORKPLACE DIVERSITY

	A	B	C		
	Aboriginal and/or Torres Strait Islander Employment	**Culturally & Linguistically Diverse (CALD) Employment**	**Employment of people with a disability**	**Number of employees who identify in any of the Equity & Diversity categories (A, B, C)***	**Women**
Headcount	2	4	0	6	42
% of Total Staff	3.0%	6.1%	0.0%	9.1%	63.6%

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

C.8 LEARNING AND DEVELOPMENT

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

Training initiatives focus on the professional development needs of staff.

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

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

During the reporting period the office commenced a review of the paralegal classification group which includes the identification of specific training and development requirements of this vocational group.

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	nil	nil

Note to table: Dates of incidents is in the range 1/07/2010 to 30/06/2011.

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:

- training to deal with difficult and aggressive clients;
- the opportunity to participate in flu vaccinations and boostrix (whooping cough) 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 Safety Act 2008*. 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 section 171 and 172 of the *Work Safety Act 2008* 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 2010-2011, 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 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.12 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 19.8m2 per employee which is consistent with the previous year's result. The utilisation rate is based on a benchmark of 15.9m2 per employee. Sixty-six staff occupied a total floor space of 1,308m2. Factors such as the need to provide for witness interview rooms and waiting rooms for vulnerable witnesses, a conference room, 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.13 CAPITAL WORKS

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

Capital Project	Original Project Value	Actual Cost	Estimated Completion Date	Actual Completion Date
Security - CCTV	21	21	Jun 2011	Jun 2011
Staff -Sick Room/ Nursing Mothers facilities	31	31	Jun 2011	Jun 2011

There were no works still in progress at year's end.

Contact details capital works officer:

Leeanne Hollow

Corporate Manager

Phone: 02 **6207 5399**

C.14 GOVERNMENT CONTRACTING

EXTERNAL SOURCES OF LABOUR AND SERVICES

During the year ending 30 June 2011 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 2011, no consultancy services were engaged.

C.15 COMMUNITY GRANTS/ASSISTANCE/ SPONSORSHIP

The following sponsorship was provided by the Director during the year ending 30 June 2011.

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.16 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.17 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

In the course of a Supreme Court bail application by one Islam, an issue arose as to whether section 9C of the Bail Act was incompatible with section 18(5) of the *Human Rights Act 2004*. The Court made a declaration of incompatibility, which is now the subject of an appeal to the Court of Appeal by the Attorney-General. A Victorian case before the High Court, *Momcilovic*, raises similar issues.

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 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.20 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.21 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

	Indicator as at 30 June	Unit	2009-10		2010-11	
Line	**General**		**Office**	**Total**	**Office**	**Total**
L1	Occupancy – staff full-time equivalent	Number (FTE)	66	66	63.5	63.5
L2	Area office space – net lettable area	Square metres (m2)	1308.50	1308.50	1308.50	1308.50
	Stationary Energy		**Office**	**Total**	**Office**	**Total**
L3	Electricity use	Kilowatt hours	54,483.00	54,483.00	131,051.00	131,051.00
L4	Renewable energy use (GreenPower + EDL land fill gases)	Kilowatt hours	11,856.00	11,856.00	22,142.00	22,142.00
L5	Percentage of renewable energy used (L4/L3 x 100)	Percentage	21.76	21.76	16.90	16.90
L6	Natural Gas use	Megajoules	Unavailable	Unavailable	Unavailable	Unavailable
L7*	Total energy use	Megajoules	196.14	196.14	471.78	471.78
L8	Energy intensity per FTE (L7/L1)	Megajoules/ FTE	2.97	2.97	7.43	7.43
L9	Energy intensity per square metre (L7/L2)	Megajoules/m2	0.15	0.15	0.36	0.36
	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
	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

C.21 CONTINUED

	Indicator as at 30 June	Unit	2009-10		2010-11	
	Resource Efficiency and Waste		**Office**	**Total**	**Office**	**Total**
L20	Reams of paper purchased	Reams	1800	1800	2180	2180
L21	Recycled content of paper purchased	Percentage	0	0	50%	50%
L22	Estimate of general waste (based on bins collected)	Litres	5280	5280	23280	23280
L23	Estimate of commingled material recycled (based on bins collected)	Litres	11500	11500	17520	17520
L24	Estimate of paper recycled (based on bins collected)	Litres	16800	16800	48240	48240
L25	Estimate of organic material recycled (based on bins collected)	Litres	N/A	N/A	N/A	N/A
	Greenhouse Gas Emissions		**Office**	**Total**	**Office**	**Total**
L26*	Total stationary energy greenhouse gas emissions (All scopes)	Tonnes CO2-e	44.16	44.16	116.45	116.45
L27*	Total transport greenhouse gas emissions (All scopes)	Tonnes CO2-e	N/A	N/A	N/A	N/A
	Intensities					
L28	Greenhouse gas emissions per person (L26/L1)	Tonnes CO2-e FTE	0.67	0.67	1.83	1.83
L29	Greenhouse gas emissions per square metre (L26/L2)	Tonnes CO2-e	0.04	0.04	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.22 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.23 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.24 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.

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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.

2.6 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 events 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

a. 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.

ALPHABETICAL AND COMPLIANCE INDEX