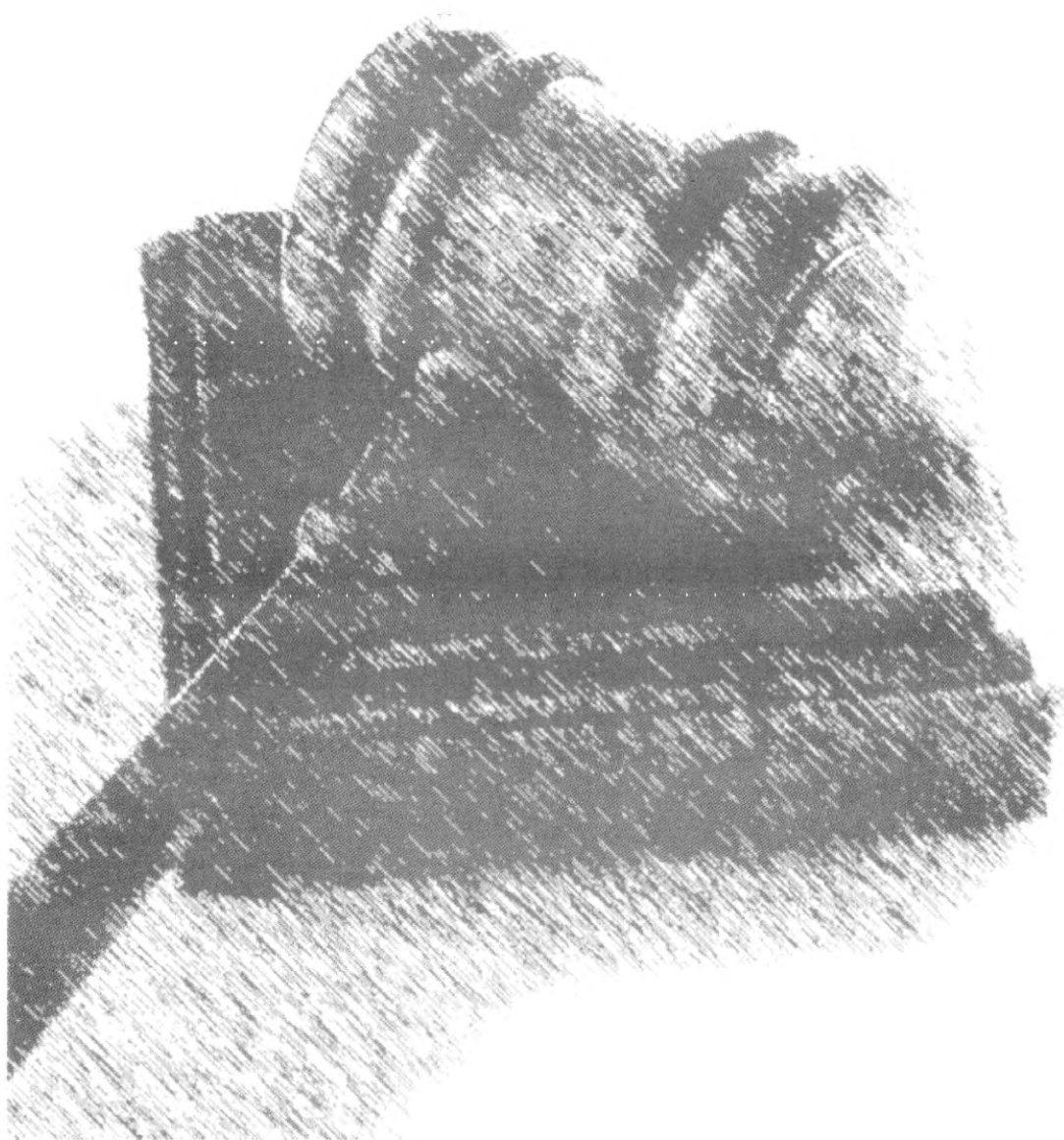


The AFP and DPP: partners in justice



The current annual report for the Director of Public Prosecutions provides an insight into the way criminals are brought to justice for offences committed against Commonwealth laws.

Federal law enforcement is a co-operative process between a number of allied federal law-enforcement agencies. However, no matter which agency conducts the investigation, the decision to prosecute and the conduct of the prosecution is in the hands of the DPP.

The DPP's primary role is to prosecute offences against Commonwealth law, including the Corporations Law, and to recover the proceeds of Commonwealth crime.

The majority of Commonwealth prosecutions, other than the occasional private prosecution, are conducted by the DPP. The remaining cases consist mainly of high-volume matters which, for reasons of convenience, are conducted by other agencies under arrangement with the DPP. State authorities also conduct some Commonwealth prosecutions, again for reasons of convenience.

The DPP also has responsibility for the

conduct of prosecutions for offences against the laws of Jervis Bay and Australia's external territories, other than Norfolk Island.

In general terms, the DPP's charter for the recovery of the proceeds of crime is to ensure that Commonwealth offenders who have derived significant financial benefits, and who have accumulated assets, are not only prosecuted but are also stripped of those assets.

The DPP is not an investigative agency. It can only act when there has been an investigation by the Australian Federal Police or another investigative agency. However, the DPP often provides legal advice and other assistance during the investigative stage, particularly in large and complex matters.

The Commonwealth's main investigative agencies are the Australian Federal Police, the National Crime Authority and the Australian Securities Commission. However, many other agencies have an investigative role as part of their administrative function and the DPP receives briefs of evidence from, and provides legal advice to, a wide range of different agencies.

All decisions in the prosecution process are made in accordance with the guidelines laid down in the Prosecution Policy of the Commonwealth.

The DPP is created by statute and only has those functions and powers which are given to the Director by legislation. Those functions and powers are to be found in sections 6 and 9 of the *DPP Act* and in specific legislation like the *Proceeds of Crime Act 1987*.

The DPP has a Head Office in Canberra and regional offices in Sydney, Melbourne, Brisbane, Perth and Adelaide. There is also a sub-office of the Brisbane office in Townsville.

In Tasmania and the Northern Territory, prosecutions and criminal assets work is carried out by the Australian Government Solicitor as part of the general work of the office.

During the 1994-95 financial year the DPP prosecuted the following AFP investigations.

Operation Bull had a Russian connection

In January 1993, officers of the Australian Customs Service intercepted a Russian sailor, Ovcharuk, as he departed the Port of Melbourne after arriving in Australia as a crew member on the Russian merchant vessel the Maxim Mikhailov. Customs officers found a bag in Ovcharuk's possession which contained 5.6 kilograms of heroin and 165 grams of cannabis resin.

The AFP were called and Ovcharuk agreed to assist in undertaking a controlled delivery of the narcotics. Ovcharuk delivered the bag to a man named Shlakht who later met with another man, Krasnov. Shlakht and Krasnov were arrested by police.

Ovcharuk pleaded guilty in the County Court in Melbourne to two counts of importing prohibited imports. He was sentenced to an effective term of six years imprisonment with a non-parole period of four-and-a-half years. He received a substantial discount for his cooperation.

Ovcharuk made a statement to police in which he said he had been given the narcotics in Vladivostok by another Russian sailor, Levitsky. Levitsky had also given Ovcharuk a note containing telephone numbers. Ovcharuk was told to ring one of the numbers on the note and say: "It's Igor, regards from Nikolai, I'm standing near the telephone box". He was told the bag containing the narcotics would be collected from him. Ovcharuk could not directly implicate Krasnov or Shlakht in the importation of the narcotics.

Police travelled to Vladivostok and spoke with Levitsky. Levitsky made a statement implicating Krasnov as the principal in this importation. Levitsky was however, unwilling to come to Australia and give evidence. Accordingly, the prosecution arranged for Levitsky's evidence to be taken before a Russian Court in Kharbarovsk in the Russian Far East.

Australian lawyers and police travelled to Russia for the hearing. Levitsky's evidence was video recorded and counsel for Krasnov and Shlakht were given the opportunity to cross-examine him.

After the evidence had been taken in Russia, Krasnov and Shlakht pleaded guilty to various charges under the Customs Act. Krasnov was sentenced to an effective sentence of 16 years with a non-parole period of 14 years. Shlakht was sentenced to an effective sentence of seven years with a non-parole period of five years.

An appeal against those sentences is now pending before the Supreme Court in Melbourne.

Turf roller concealed cannabis resin

Franic was convicted on a charge of importing 4 tonnes of cannabis resin from Tonga. The drugs were worth approximately \$38 million.

Franic appeared to be a businessman specialising in returfing of lawns and playing fields. On the pretext of fulfilling a contract to re-turf the sports stadium in Tonga, Franic arranged for two massive rollers to be built in Australia. Each roller was approximately 1.8m long and 2.4m high and weighed 3 or 4 tonnes. The rollers were filled with sand in Australia, supposedly to provide ballast, and were shipped to Tonga where it was clear they were unsuitable for the work at hand. The prosecution alleged that the sand was removed from one of the rollers and replaced with 4 tonnes of cannabis resin. The roller was then welded closed and shipped back to Australia by Franic.

The roller was intercepted by the AFP Franic was arrested in New Zealand and was ultimately extradited to stand trial in Sydney.

Franic was sentenced to 10 years imprisonment with a non-parole period of seven-and-a-half years. He has appealed against conviction and sentence and the DPP has appealed against sentence.

Bogus tax returns earn a four year sentence

Ornelas pleaded guilty to tax frauds and related offences and was sentenced to a total of four years imprisonment with a non-parole period of one year. Ornelas was initially a registered tax agent but after losing his registration, he worked as an employee of another agent.

The principal count alleged that, over a three year period, Ornelas prepared 35 false income tax returns in various names which caused the Australian Taxation Office to pay \$97,750 which were not payable. Ornelas was also charged with being involved in a fraud by another person and with attempted fraud.

The prosecution arose out of a joint AFP and ATO investigation. The investigators seized documents under search warrants which showed that Ornelas was planning to lodge false returns in another 14 names seeking refunds totalling \$51,000. Those documents were the subject of a charge of forgery. Ornelas also pleaded guilty to, or had taken into account, a number of other offences involving smaller amounts of money.

The DPP recovered \$25,000 from the bank account of a company controlled by Ornelas. ATO set off a further \$25,000 in outstanding tax refunds that were owed to Ornelas and \$10,000 was paid on his behalf. The court made a reparation order against Ornelas for the balance of \$47,000.

Social security and tax fraud uncovered

This case arose from a joint AFP/ATO operation which originally involved an investigation into the illegal activities of an unregistered tax agent, Brian Napthine, but which expanded into an investigation into the activities of a number of his clients.

Napthine prepared tax returns for a significant number of members of the Vietnamese community in Brisbane. He failed to declare the income derived from this work on his yearly income tax returns and also failed to notify the Department of Social Security of this income and continued to claim unemployment benefits. Napthine also assisted some of his clients who ran small businesses to defraud the Commonwealth by submitting false income details on the tax returns that he prepared for them.

Napthine defrauded \$48,000 in tax and \$41,000 in Social Security payments. He was knowingly concerned in fraud by his clients which totalled \$198,000.

Napthine pleaded guilty to two counts of defrauding the Commonwealth and 12 counts of being knowingly concerned in defrauding the Commonwealth. He was sentenced to four years imprisonment with a non-parole period of 12 months. He cooperated with authorities and gave evidence in the trials of some of his former clients. The court indicated that but for his cooperation his sentence would have been five years with a non-parole period of 18 months.

Sales tax dodge relied on false invoices

In January 1995, Fernandez pleaded guilty to one count of defrauding the Commonwealth of \$1.6 million in unpaid sales tax.

Fernandez was the managing director of Cheben Pty Ltd, an importer and wholesaler of household electrical goods. From December 1988 to September 1990, the company sold goods worth over \$12 million. An AFP investigation revealed that sales tax was only paid in respect of nine per cent of those sales.

Fernandez used two sets of invoices to record the company's wholesale transactions. One set of invoices only recorded the sales upon which sales tax had been paid and was designed to mislead ATO. The investigation located a further 820 invoices recording sales upon which no sales tax had been paid.

Fernandez was sentenced to four years imprisonment with a non-parole period of three years. He has lodged an appeal against the sentence.

Drug runners had 'fishy' excuse

In this matter the AFP in Cairns obtained information about the location of a large quantity of cannabis recently imported into Australia. The AFP established surveillance on storage premises at Cairns.

Robert Myles and Anthony Myles were observed arriving at the storage premises in a truck. They loaded 60 nylon woven bags and two carry bags containing compressed cannabis into the rear of the truck. Police maintained surveillance on the truck as it was driven south to a point near Proserpine where it left the highway.

The AFP intercepted the vehicle on a dirt road several kilometres from the highway. The bags were found to contain almost one-and-a-half tonnes of compressed cannabis.

The defendants were arrested and charged under State legislation with possession of a dangerous drug. At their trial, the defendants claimed that they thought they were collecting packages of dried shark fin from the storage premises for delivery to an address at Mackay. Each was convicted and sentenced to 10 years imprisonment.