



SOUTH

AUSTRALIA

**DIRECTOR OF
PUBLIC PROSECUTIONS**

Annual Report

1998-1999

29 September 1999

The Honourable K Trevor Griffin MLC
Attorney-General
Parliament House
North Terrace
ADELAIDE SA 5000

Dear Attorney-General

In accordance with section 12 of the Director of Public Prosecutions Act, 1991, I am pleased to present you with the 1998-99 Annual Report from the Office of the Director of Public Prosecutions.

Yours faithfully

P J L ROFE, QC
Director of Public Prosecutions

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1 FROM THE DIRECTOR

The year under review is the seventh and final year of my appointment as the first Director of Public Prosecutions for South Australia. Although I have been reappointed as Director for a further seven years, it is an opportune time to evaluate the present situation of the Office, its achievements to date and the challenges it faces into the new millennium.

To my mind there have been three key events in the first seven years of the Office. They are the formation of the Committal Unit in 1994, the independent review of the Office in 1997 (the Costello Report) and the publication of a comprehensive Prosecution Policy and Guidelines in July 1999. Each of these events has in its own way reflected the commitment of the Office to provide the people of South Australia with an independent and effective criminal prosecution service. I am satisfied that the Office has fulfilled that commitment to date and will continue to do so in the future. The present situation is due entirely to the dedication, enthusiasm and hard work of the legal, clerical and secretarial staff. I take this opportunity on behalf of the community to thank all of them for their commitment.

In evaluating the present situation of the Office it is important to remember that to a great extent we are a responsive agency. The matters coming in are determined almost exclusively by police investigation and charging. The manner in which those matters are dealt with again is largely within the control of the courts particularly as to when they are listed. To be a successful prosecuting agency it is essential the Office has procedures and people in place to deal with all matters charged by police in a timely, efficient and just manner and also to comply in a similar fashion with the listing requirements of the court. I am pleased to report that the Office is meeting those demands extremely well.

Committal Process

The formation and development of the Committal Unit has been the most significant individual achievement of the Office in its first seven years. Its success has been in no small measure due to the efforts of its managers - Patricia Kelly, Geraldine Davison and presently David Whittle together with a talented and dedicated mixture of junior and senior lawyers and an excellent support staff. It has not been easy operating from an office physically separated from the main Pirie Street Office and covering four suburban courts as well as the Adelaide Magistrates Court. It is planned to relocate the Unit back to Pirie Street in the coming year.

It is generally accepted now that applying resources to criminal matters at the earliest opportunity results in the most efficient disposal without any compromise to justice or the interests of the community and the accused. However, it is important that all parties share that commitment, namely police, courts and defence as well as the prosecution. It is essential also for this initiative to work that appropriately senior personnel on both sides are in place able to make binding decisions. This was a key recommendation of the best practice model agreed to by the Australian Directors of Public Prosecution and the National Legal Aid Directors. It has also been adopted by the Australian Institute of Judicial Administration working party on committals of which I am a member. There is a continuing commitment nationally to maximising the available resources but ever mindful of the need to ensure that the interests of justice are not compromised.

Witness Assistance Service

Another key development in the short history of the Office has been the development of the Witness Assistance Service. It provides invaluable and essential assistance to victims and witnesses. Although seriously under-resourced in terms of providing personal contact with all victims and witnesses, the addition of a Child Witness Assistance Officer on a permanent basis has been a

significant improvement to the Service. Filomena Merlino and Anna Whittam have worked tirelessly to achieve a level of service that hardly seemed possible on its inception. The achievements of the Service include excellent publications and reviews which are detailed later in this Report. It is anticipated that continuing government support in relation to victims will enable the employment of a third officer in the coming year.

Management of the Office

The independent review of the Office in 1997 produced the Costello Report, which indicated generally a very satisfactory operation although under-resourced in a number of areas. The concerns identified have been addressed and will continue to be so with the support and assistance of Government for which I thank the Attorney-General, the Honourable Trevor Griffin MLC. In particular we have addressed the management structure of the Office. I record my appreciation to my Executive Group, Associate Director Wendy Abraham QC, Managing Prosecutor Trish Kelly, Managing Solicitor Pauline Barnett and more recently General Manager Tim Goodes. In passing I note with some satisfaction that the majority of the Executive Group is female and that that proportion applies also to the professional positions, both prosecutors and solicitors, within the Office (of some 42 lawyers employed, 22 are women). When I joined the prosecuting authority some 22 years ago there were no women employed as lawyers and that remained the situation for some years. I hope that the development within this Office will be reflected in judicial appointments in years to come.

Challenges Ahead

There are a number of challenges to be faced during the term of my reappointment. The impact of the Commonwealth cuts to the legal aid budget will begin to have real impact in the next two to three years. Apart from expressing our disapproval of this short sighted initiative, it is important that this Office maximises its efforts to ensure that prosecutions are properly conducted. We are conscious that prosecution obligations such as full and timely disclosure and appropriate charging are essential to the effective administration of criminal justice. However, there is a corollary namely that the criminal defence profession fulfils its obligations to identify the real issues in a trial and where appropriate facilitate the early entry of a guilty plea to obtain the maximum advantage for their clients. I believe that some practitioners refuse to take full instructions from their clients even when there has been proper and timely disclosure by the prosecution. In that situation it is impossible to achieve just and effective case flow. I fear that unless there is a change in the defence culture, governments will intervene with legislation that will erode entrenched rights of accused persons and a consequent diminution of criminal justice.

The issue of the prosecution of summary offences remains under consideration. Although I remain committed to the philosophy that the Director of Public Prosecutions should prosecute all criminal matters in a jurisdiction, it is apparent that factors such as resources and geography are proving almost insurmountable obstacles. As ever the police prosecution section under Superintendent Hank Ramm has performed extremely well. The community of South Australia is indebted for their skill and dedication to discharging the prosecution function in accordance with the policy and guidelines of my Office.

In July 1999 the Office released a booklet containing the revised prosecution policy and guidelines for the Office of the Director of Public Prosecutions in South Australia. Apart from providing essential guidance for all prosecutors, the publication is designed to inform all members of the public of the basis on which all prosecutions are conducted in this State. I am extremely grateful to my senior policy and research officer, Geraldine Davison, who was responsible for the production of the publication.

I conclude by recording my appreciation for the efforts of my clerical and secretarial staff over the last seven years. The performance and standing of the Office would not have been achieved without their dedication and commitment. In particular I thank my office manager Kate McBain and my personal assistant Marlene Lehmann for their efforts which may not have always received the immediate appreciation they deserved.

2 STRATEGIC ORGANISATION

Mission Statement

To provide the people of South Australia with an independent and effective criminal prosecution service which is timely, efficient and just.

Vision

The Director and staff are committed to providing a criminal prosecution service which:

- ~ applies the highest ethical and professional standards instituting, and where necessary terminating, proceedings without fear or favour in order to provide public confidence in the administration of justice within South Australia;
- ~ is recognised for its independence, professionalism and standards of excellence;
- ~ endeavours to deal with victims of crime with sensitivity and respects their special needs; and
- ~ strives for excellence, efficiency and effective communication in its work with police, the courts and other entities within the criminal justice system.

Values

The values which shape the work of the Office are:

- ~ the highest standard of ethical and professional conduct, objectivity, honesty and sensitivity;
- ~ full public accountability for the quality of service provided by the Office and for the administration of public funds;
- ~ a commitment to excellence by regular review and continuous improvement of its performance;
- ~ a commitment to the promotion of competence and professionalism in staff through training and continuous staff development; and
- ~ sensitivity to and understanding of the needs of victims and witnesses.

Goals for 1998-99

Through 1998-99, the goals of the Office continued to be:

- ~ To ensure the timely and just resolution of criminal cases and to contribute to improving the operation of the criminal justice system by:
 - a) ensuring that the Office and the police work co-operatively in the effective collection, processing and presentation of evidence to courts;
 - b) recognising the special needs of victims of crime and ensuring that victims are well informed about the prosecution process; and
 - c) ensuring that Crown witnesses are well informed about the prosecution process and to minimise any inconvenience occasioned by their appearance in court.
- ~ To ensure that the Office acts in an independent manner that maintains the confidence of the people of South Australia in its prosecution service;

- ~ To define the scope of the Office to facilitate the regulation of all criminal prosecution and related matters in South Australia;
- ~ To further develop management systems that facilitate efficient and effective operations of the functions of the Office.

Organisational Performance Monitoring

As part of the implementation of Budget Reform within the State public sector, the Office developed a set of key performance indicators for monitoring the quantity, quality and timeliness of the service provided. The indicators submitted for the 1999-2000 budget cycle are:

Quantity

The number of matters finalised by the Committal Unit.
The number of defendant files finalised by the Office of the Director of Public Prosecutions.
The number of clients seen by the Witness Assistance Service.

Quality

The percentage of matters committed through the Committal Unit in which the Crown enters a nolle prosequi after committal.
The percentage of committed matters which are finalised by a guilty verdict or guilty plea.
The percentage of referring agencies who rate the standard of service by the Witness Assistance Service as high.

Timeliness

The percentage of trials where the Office meets the court timetable requirements for the trial list.

Management of the Office

In accordance with the recommendation of the Costello Review conducted in the 1997-98 financial year and reported on in the last annual report, the management structure of the Office was clarified and formalised.

The Executive

The Executive Committee is comprised of:

- Director
- Associate Director
- Managing Solicitor
- Managing Prosecutor
- General Manager

The Executive is chaired by the Director, meets fortnightly and has overall responsibility for the establishment, implementation and evaluation of the strategic direction of the Office. It has final responsibility for policy and will also determine the appropriate response to the important legal issues affecting the Office generally.

Management Committee

The Management Committee is comprised of:

Managing Solicitor
Managing Prosecutor
General Manager
Senior Solicitors
Senior Prosecutors
Senior Witness Assistance Officer
Administration Manager

The Management Committee is chaired by the General Manager and meets monthly. It has responsibility for operational issues including accommodation, information technology, staffing movements, finance proposals, coordination of business planning, performance management and enterprise bargaining issues. On a number of issues, the Management Committee will be required to forward proposals to Executive for final approval.

Strategic Direction

The Executive has established a process to ensure the development of a business plan for the Office early in 1999-2000. Staff from all sections of the Office will have opportunity for involvement in its development.

Until its finalisation, work will continue on the existing Key Result Areas, previously articulated as:

- ~ taking over summary prosecutions;
- ~ improving information technology and statistics;
- ~ policy and research;
- ~ liaison with key agencies;
- ~ liaison with the Attorney-General and Treasury to secure funding;
- ~ maximising the use of legal and paralegal resources;
- ~ continuing the core business of the Office

Policy Development

In accordance with the recommendations in the Costello Report the Office established a Policy Committee to provide advice and initiatives in relation to legislative changes and internal policy. This advice is provided to the Director and at his discretion to other bodies.

During the 1998-1999 year the Committee provided advice on a range of proposed legislative changes introduced by both the Government and private members of Parliament. This included proposed changes to the laws relating to intoxicated offenders committing crimes. This was an area that attracted much public interest and a wide variety of views on the legislative change. However the Committee provided advice based upon the need to ensure that any proposed changes were workable in the criminal justice system and could be implemented by the courts.

The Committee provided advice in relation to legislation that dealt with the difficulties being encountered as a result of the *Dietrich* case in the High Court. A number of problematic areas were identified in the draft legislation and communicated to the Policy and Legislation Section of the Attorney-General's Department. The Government is yet to finalise the legislation and it is hoped that the Office will be given another opportunity to comment on the legislation as it progresses.

In addition to these bills, the Committee commented on a number of other pieces of legislation including the *Confidential Communications* amendment to the *Evidence Act*, the *Verbal Victim Impact Statement* amendment to the *Criminal Law (Sentencing) Act* and the amendments in relation to the way children give evidence in our courts.

The Committee has been active in the production of the Director of Public Prosecutions' *Prosecution Policy and Guidelines (Appendix C)*. The prosecution policy that had originally been issued at the commencement of the Office of the Director of Public Prosecutions in 1992, was reviewed and amended in some areas. The changes were considered by the Policy Committee and the senior members of the Office. A number of interested parties were consulted before the final policy was delivered by the Director. The Director has issued formal guidelines that provide direction for those who prosecute on behalf of the State in South Australia.

The Committee has established a database for Opinions in relation to both substantive Criminal Law and procedural Criminal Law. These opinions are provided by the legal staff either on request from the Allocation Committee or from the course of the trial work and can be accessed by all staff. It is one of the first steps in a sharing of knowledge resources through our information technology.

The future of the Committee will include providing advice on proposed legislation that impacts on the criminal justice system and initiating change when appropriate. It is hoped that the Committee can have a greater role in considering the direction of the Office as a whole and the policy implications of the changes that will bring us into the next millennium.

3 EXTERNAL ISSUES FOR THE OFFICE

Briefing the Private Bar

The Office briefed out 18 matters in the 1998-99 financial year, at a cost of \$46,503.57. This is a decrease on last year of seven matters and a saving of \$4,793.43.

This reduction is once again as a result of a decrease in the number of trials heard and as a result of the more effective allocation of trials to prosecutors by the Allocation Committee.

Dietrich Applications

In the case of *Dietrich*, the High Court held that where an indigent person charged with a serious offence is unable to obtain legal representation through no fault of his/her own, then the trial should be adjourned, postponed or stayed until such representation is available.

As in previous years the "Dietrich" problem has been exacerbated by the decreasing funds available for representation by the Legal Services Commission and the reduction of the funding cap.

During 1998-99 many of the Dietrich applications made were in relation to appeals or re-trials where the Legal Services Commission funding cap had been exhausted. There is a need to clarify the procedures to be adopted in these instances.

In August 1998 the Attorney-General introduced two bills into Parliament in an attempt to deal with the issues arising out of the Dietrich decision. These bills lapsed and further consideration is being given to the matter, however, to date the issues remain unresolved.

Costello Report

The Costello Report was received by the Department at the end of 1997 and has been the focus of reform for the Office throughout the financial year. Following this review a recommendation for an increase in base funding to the Office of the DPP of \$1.5m was considered by Government. Treasury agreed to increase funding by \$400,000 in 1998-99 and by an additional \$350,000 from 1999-2000 (total being half of that recommended).

For the year 1998-99 a budget surplus of approximately \$200,000 is anticipated. This is primarily due to new positions, recommended by Costello, not being created due to a lack of accommodation.

The surplus for 1998-99 will be used to redesign Level 7 of 45 Pirie Street and a portion of Level 8, to accommodate these extra staff, as well as the Committal Unit, currently located with Police Prosecution Services.

The Costello Report contained 75 recommendations, the majority of which were accepted as valid by the Director. The following actions, which relate to Costello recommendations, were taken during the 1998-99 financial year:

- ~ The Costello Review report was made available to all staff;
- ~ The Office has commenced the development of a Confiscations Policy and negotiations with SAPOL in regards the clear delineation of responsibilities under the Criminal Assets Confiscations Act;

- ~ An internal policy committee has been formed and an additional solicitor allocated to policy and research work with the Managing Solicitor;
- ~ A commitment exists from Government for the continuation of provision of “in-house” prosecution services through the Office of the DPP;
- ~ The Witness Assistance Service advertised the position of Child Witness Assistance Officer as an ongoing position (this initiative was only possible due to the commitment of funding for at least four years from the Community Development Fund, ie not an initiative to be funded through increased appropriation);
- ~ Work has commenced on a corporate Vision and Mission Statement;
- ~ Business planning was commenced by the Witness Assistance Service;
- ~ The position of General Manager was created. This position has been filled for 12 months with a decision regarding ongoing requirements to be made in 1999-00;
- ~ Appropriate management training opportunities for MLS1’s have been offered. Two senior solicitors attended a week long training course in July 1999;
- ~ A performance management system has been developed for legal staff and training of supervisors and staff has been conducted;
- ~ The Training Committee has taken responsibility for the management of monthly Continuing Legal Education Sessions for all legal staff;
- ~ An MLS-1 position has been created to head the second team of prosecutors. This position has been filled;
- ~ A paralegal training program has begun for current Law Clerk staff who show ability in this area;
- ~ The roles of the Director, Associate Director, Managing Prosecutor and Solicitor and General Manager have been the subject of clarification;
- ~ The Executive Committee has been formalised;
- ~ The Management Committee has been created;
- ~ An accommodation review has been conducted and additional space on Level 8 of 45 Pirie Street has been secured from late 1999. When this additional space becomes available the Committal Unit will return from its current location in Wright Street (SAPOL Prosecutions Building);
- ~ Key performance indicators for external reporting were developed for the 1999-2000 Budget papers.

Activities and initiatives planned for 1999-2000 which relate directly to the Costello Review include:

- ~ Completion of accommodation review, update and fit out;
- ~ Further examination of the feasibility of the Office conducting summary prosecutions;
- ~ Employment of an additional Witness Assistance Officer to work with adult witnesses;
- ~ Completion of Divisional strategic plan;
- ~ Appointment of additional Law Clerk/Paralegal staff;
- ~ Investigation of appropriate support structures for staff;
- ~ Development of more appropriate management and personnel reports;
- ~ Information Technology upgrade to CRIMES System (ODPP data base).

A number of recommendations contained in the Costello Review, while accepted by the Office as having potential benefits, cannot be implemented in the foreseeable future due to the level of additional funding approved. These include:

- ~ That administrative support to senior staff and Manager and project staff for information technology issues be employed.

It is not anticipated that the following recommendations will be pursued by the Office:

- ~ The Office be funded independently of the Department of Justice and simply purchase support services as required;
- ~ A classification of LEC 6 be created;
- ~ That the key performance indicators for the Office should be the same as those in Western Australia (in reality, our set of key indicators will include most of the Western Australian set of five);

Year 2000 compliance

The Office has had an ongoing involvement in the Year 2000 compliance project undertaken by the Attorney-General's Department to ensure that the Office will not be adversely affected by the millennium bug. All hardware and software applications have been tested and deemed Year 2000 compliant in accordance with the Attorney-General's Department and Office of the Year 2000 standards.

The Office has developed a contingency plan for Year 2000 problems which may arise through software and hardware non-compliance.

Interagency Child Abuse Assessment Panel (ICAAP)

The Interagency Child Abuse Assessment Panel was first funded by the Community Development Fund in 1996. A multi-disciplinary panel consisting of representatives from participating agencies (ODPP, Police, Child Protection Services, Family & Youth Services) initially focused on approximately 300 child cases from the southern metropolitan region.

From this work the ICAAP Steering Committee agreed that a number of identified system issues needed addressing in order to improve outcomes for victims. A new work plan was approved for the final phase of ICAAP's work.

Key features of that work plan were:

- ~ the development of a Code of Practice for child interviewing to be implemented across all agencies in interviewing children and/or non-offending care-givers involved in child sexual abuse matters;
- ~ the development of a Code of Practice for an accredited staff training program;
- ~ a report to the Attorney-General as to whether the vulnerable witness provisions of the Evidence Act, 1921 have been enhanced by recent amendments to the Supreme Court and District Court Criminal Rules and the recent Supreme Court decision in *Question of Law Reserved (No 2 of 1997)*.

The appointment of the Child Witness Assistance Officer was of great benefit to children involved in the ordeal of being involved as witnesses or victims in the criminal justice system. The success of the position has led to funding from the Community Development Fund being made available for the next four years to retain the position.

The involvement of the Office in the Interagency Child Abuse Assessment Panel continued during 1998-99 with representation on the ICAAP Steering Committee and on specific ICAAP project committees, and with ICAAP providing the funding for the Child Witness Assistance Officer employed on a ten month contract.

In June 1999, the three year funding allocation for ICAAP officially concluded and the results and recommendations of the Panel were presented to the Attorney-General.

The research project completed by the Child Witness Assistance Officer as a component of ICAAP funding made a series of recommendations including several recommendations with respect to Office policy and practice in dealing with victims and their non-offending family members involved in child sex matters.

An additional recommendation of the project was that the research should be replicated for the 1999 calendar year to enable the monitoring and evaluation of strategies to promote the use of vulnerable witness provisions for children. This recommendation has been supported by the Office and will be implemented by the Child Witness Assistance Officer.

4 OPERATIONAL ISSUES

The work of the Office is conducted through the Committal Unit, Solicitor Section, Prosecutor Section and Witness Assistance Service with all groups supported by administrative staff. The organisational chart is attached as *Appendix A*.

Committal Unit

The principal work of the Committal Unit is to conduct committal proceedings where major indictable offences have been charged in the Magistrates Courts at Adelaide, Holden Hill, Elizabeth, Port Adelaide and Christies Beach. Committal proceedings will also be held where a person charged with a minor indictable offence has elected for a trial by jury. During the committal proceedings, the prosecution case is disclosed to the person charged by filing in the Magistrates Court the statements of witnesses and other materials upon which the prosecution is founded. A copy of those materials is also provided to the person charged or to his or her legal representatives. Prosecution witnesses will not ordinarily be called to give evidence during committal proceedings but this may occur where a magistrate finds that special reasons exist to do so. If a magistrate finds, on a consideration of the statements filed in the court and any evidence taken, that there is sufficient evidence to put a defendant on trial, the defendant is then committed for trial to the District Court or the Supreme Court. Alternatively, if the defendant pleads guilty to the charge during committal proceedings the magistrate will commit that person to be sentenced in the District Court or the Supreme Court.

The Committal Unit ensures that early consideration is given to the appropriateness of charges and that early negotiations identify matters which can be resolved by way of pleas of guilty, especially to appropriate lesser charges which can be finalised in the Magistrates Court. Early intervention by the Committal Unit also identifies matters which should proceed on appropriate lesser charges in the Magistrates Court or which should not proceed at all. This ensures that the superior courts are not called upon to deal with criminal cases which may be appropriately and more economically dealt with in the Magistrates Courts.

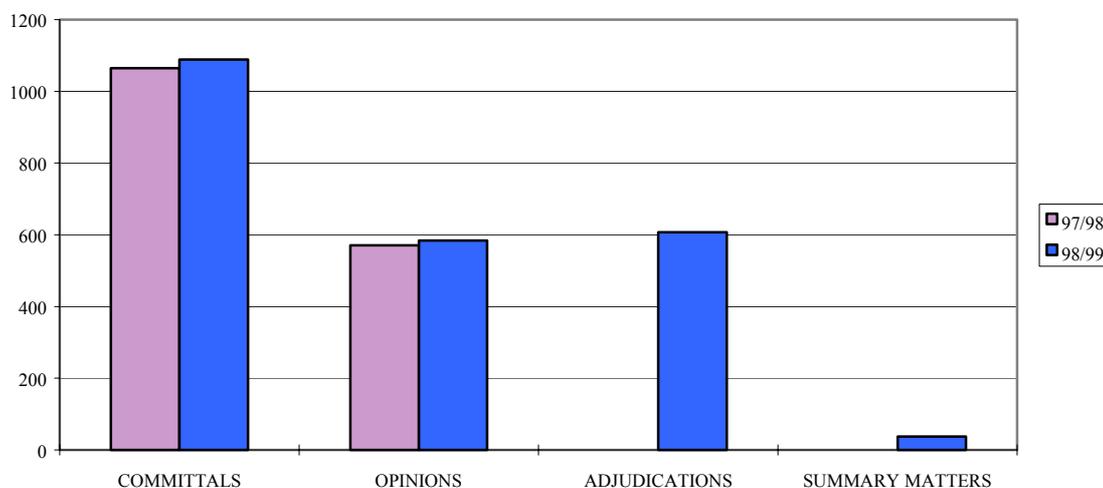
During the year the Committal Unit dealt with the committals of 1089 defendants. Of these matters, 494 were committed for trial and 82 were committed for sentence to the superior courts. The balance of 513 did not proceed to the superior courts due to the intervention of the Committal Unit.

In appropriate cases the Committal Unit also provides advice to police, prior to charging, as to the appropriate charges, if any, to be laid. In the financial year, police officers sought written advice as to the appropriate charges, if any, to be laid in 584 matters. Advice to lay major indictable charges was given in 129 of those cases.

Where a person has been arrested and charged by police with a major indictable offence, Committal Unit staff adjudicate on the appropriateness of that charge prior to the defendant's first appearance in court. Thus, if it is clear that major indictable charges are not appropriate, lesser charges which can be finalised in the Magistrates Court.

This has been the first year in which statistics have been maintained of these adjudications. There were 607 adjudications were undertaken and in 463 of those cases, the major indictable offences which had been charged were considered appropriate. The balance were identified at that very early stage as matters which could be appropriately dealt with in the Magistrates Court or which should not proceed at all.

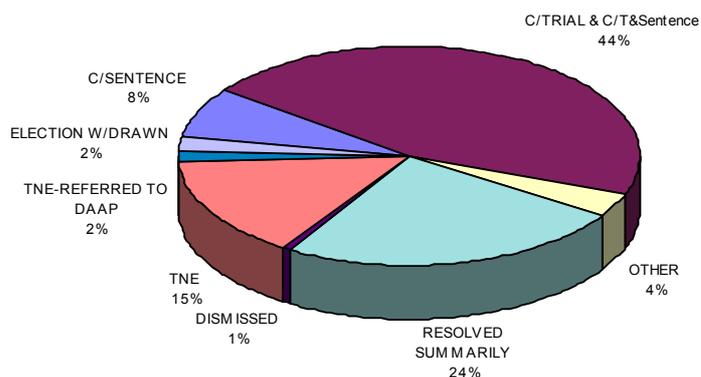
Comparison of Work Output - Committal Unit



NOTE: Statistics for adjudications and summary matters were not collected in 1997/98

Outcomes of Committal Unit

	<i>No</i>
C/SENTENCE (Convicted Sentenced)	82
C/TRIAL & C/T & SENTENCE (Committed Trial & Committed Trial and Sentenced)	494
OTHER	39
RESOLVED SUMMARILY	266
DISMISSED	6
TENDERED NO EVIDENCE (TNE)	164
TENDERED NO EVIDENCE (To Drug Assessment Aid Panel)	17
ELECTION WITHDRAWN	21
	1089



A decision has recently been made to relocate the Committal Unit from its present accommodation in the SAPOL Prosecution Services building to the main Office at 45 Pirie Street. This has become necessary to simplify staffing arrangements and to ensure that the high standard of staff at the Committal Unit, both legal and clerical, can be maintained in the longer term. It will also resolve long standing difficulties of provision of up to date information technology to the Unit. The Committal Unit has been housed in the police premises since its inception in 1994 and this proximity to police prosecutors has created a bond and understanding between the two organisations which could not

otherwise have been achieved. A commitment has been made to SAPOL to implement systems to ensure that the relationship and ease of communication between the Committal Unit and the management and staff of police prosecutions is maintained. The relocation of the Committal Unit is expected to take place early in the year 2000.

Solicitor Section

The Solicitor Section continues to play a vital role in the prosecution process. The section assumes conduct of files from the date of committal to the superior court, through to delivery of the brief to the allocated prosecutor. Preparation of a typical file involves the following:

- ~ Review of charges and preparation of superior court information
- ~ Drafting of advice on evidence
- ~ Identifying deficiencies in the brief and requesting appropriate follow-up from police
- ~ Attending at arraignment
- ~ Attending Directions Hearings and complying with orders made
- ~ Responding to defence requests including pleas, nolle prosequis, disclosure
- ~ Ensuring compliance with the Declaration of Victim's Rights (*Appendix B*)
- ~ Delivery of properly prepared brief to prosecutor

As well as files from the Committal Unit, there is a significant amount of work from the two circuit regions and other country areas which comes direct to the Pirie Street Office. In the absence of screening and review by the Committal Unit, these matters tend to require more detailed initial assessment. Murder files also come directly to the section. Solicitors are allocated as soon as charges are laid, and attend case conferences, bail hearings and other Magistrate Court listings.

Emphasis is upon the early identification of matters that can be appropriately resolved without trial. For matters that are to proceed to trial, attempts are made to narrow the issues and minimise the court time expended upon pre-trial applications. It is hoped that the recent changes to the Directions Hearing's procedures will assist in this endeavour.

In addition to the preparation of trial files, a range of other functions come within the responsibility of the Solicitor Section. These include:

- ~ Finalisation of matters committed for sentence
- ~ Bail reviews
- ~ Crime (confiscation of profits) proceedings
- ~ Mental competence assessments and reviews
- ~ Estreatment proceedings
- ~ Applications to fix non-parole periods
- ~ Leaves to appeal and Magistrates appeals
- ~ Opinions
- ~ Training modules to police and other agencies

Some noteworthy developments in the functioning of the Solicitor Section during the year have been:

Significant achievements of the Solicitor Section during the year have included:

- ~ Maintaining the high standard of briefs to prosecutors.

- ~ Working with the statistics clerk to revamp the categories of data that are recorded has resulted in better statistics available to management, and more meaningful categories of data for publication, or comparison with other agencies.
- ~ Liaising with victims, witnesses, police and all relevant parties upon all phases of the prosecution process. The Section recognises that consultation and communication is a vital aspect of a just and efficient prosecution service.
- ~ Continuing the process of enabling solicitors to gain advocacy experience. As well as guilty pleas, facts disputes, junioring, and legal arguments, several solicitors have conducted their own trials.
- ~ Building upon the close working relationship within the Solicitor Section. From time to time individual solicitors find themselves with onerous workloads due to very complex files, junioring commitments, or larger than usual rosters. On these occasions other team members are called upon to assist. All solicitors have responded admirably in this regard.
- ~ Considering and addressing improvements to the office system, raised at regular solicitor meetings, or by prosecutors. A number of procedural improvements have been implemented, and senior members of the Section are working towards production of a comprehensive solicitor's handbook to supplement the DPP Guidelines.
- ~ Continuing to provide training seminars to police upon a range of topics, and addressing specific areas of concern by police, in relation to confiscations and fraud. Also, solicitors have contributed to a range of committees, including the Police Liaison Committee, the Interagency Child Abuse Assessment Panel and the Electronic Transactions Bill Working Group.
- ~ Providing training and materials to solicitors in relevant areas, additional to the broad continuing and legal education program conducted by the office.
- ~ Consolidating expertise in the area of mental incompetence applications, and assisting with appeal work including Magistrates Appeals and Court of Criminal Appeal.
- ~ Liaising with the Committal Unit when reviewing decisions, providing personnel to the Unit, and attending to Opinion files when the Committal Unit is overloaded.

Prosecution Section

There are currently 18 prosecutors in the Office of the Director of Public Prosecutions and they, together with Crown Counsel and the Executive fulfil the primary counsel role of the Office. In the main the prosecutors have the carriage of the trials heard in the District and Supreme Courts together with other matters listed in that jurisdiction (eg bail reviews and leave to appeal). Prosecutors also appear in all the appellate jurisdictions. In addition, in recent years in line with the Director's policy, prosecutors are, from time to time allocated to perform some of the more difficult or complex summary trials in the Adelaide and various suburban Magistrates Courts. This is an arrangement that has taken place with the co-operation and support of the South Australian Police Department.

There have been several trials of note during the year:

R v Gillard and Preston

This trial began in May 1998 and was completed in October 1998. The accused were charged with an execution style murder. Both accused were convicted on two counts of murder and one count of attempted murder. Preston represented himself for the majority of the trial. Both accused have appealed to Court of Criminal Appeal. The appeal is pending.

Questions of Law Reserved (No 3 of 1998) 101 ACrimR 395

The accused was charged with possessing cannabis for sale. The cannabis had been found in a suitcase in the luggage compartment of an interstate bus. The trial Judge found that the actions of the sniffer dog amounted to a search and notwithstanding the consent of the bus driver was purported to exclude the evidence of the cannabis on the basis that the search was not lawful given the absence of a search warrant. The Full Court rejected this approach finding in effect that the actions of the sniffer dog did not amount to a search. An appeal by the accused to the High Court was rejected.

R v W-B

This trial involved a defence of mental competence pursuant to section 269 of the Criminal Law Consolidation Act. Trials of mental competence are becoming more common, in this instance the Crown did not accept the psychiatric reports purporting to state that the accused was not mentally competent at the time of the commission of the offence. In this case, although the young man suffered a mental illness the jury did not accept that at the time of the killing and raping an elderly neighbour he was mentally incompetent. The accused was subsequently convicted of manslaughter.

R v Anderson (Trial by judge alone)

The accused was charged with the murder of a young child, and was ultimately convicted of manslaughter. Much of the evidence in the trial was expert evidence relating to the injuries and cause of death of the child.

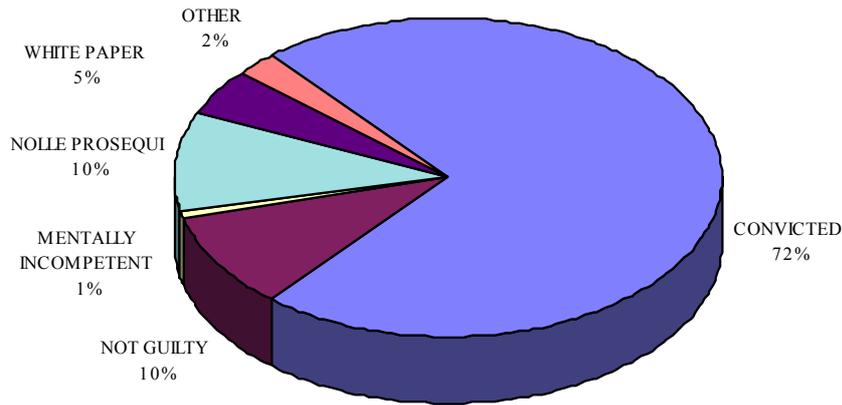
SUPERIOR COURT PROSECUTIONS

Outcome

Guilty	606
Not Guilty	80
Mentally Incompetent	7
Nolle Prosequi	85
White Paper	40
Other	20
Total	838

NOLLE PROSEQUI

Committal Unit	58 (68.23% of total Nolles)
Non-committal Unit -	27 (31.77% of total Nolles)

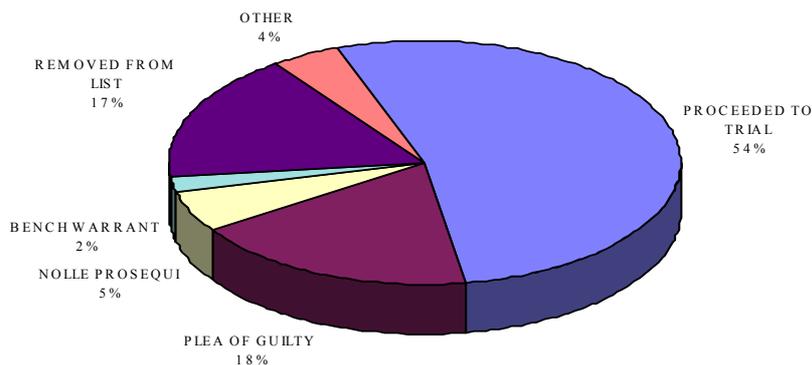


(THE ABOVE CHART INCLUDES BOTH ADELAIDE & CIRCUIT MATTERS)

ADELAIDE MATTERS LISTED FOR TRIAL

Outcome

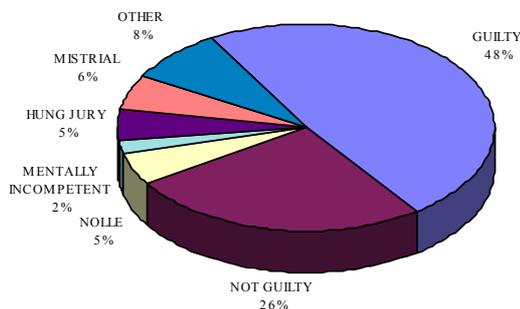
Proceeded to Trial	251*
Plea of Guilty	86
Nolle Prosequi	26
Bench Warrant	9
Removed from List	81
Other	21
Total	474



Outcome of Adelaide Matters that were listed and proceeded to Trial

Outcome

Guilty	121
Not Guilty	65
Nolle Prosequi	13
Mentally Incompetent	5
Hung Jury	12
Mistrial	14
Other	21
Total	251*



CIRCUIT MATTERS LISTED FOR TRIAL

Outcome

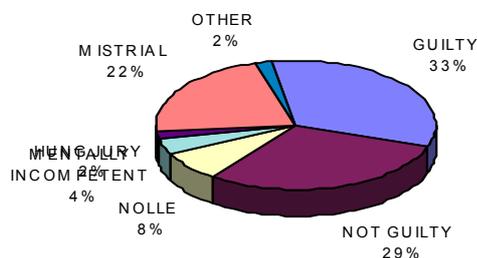
Proceeded to Trial	51*
Plea of Guilty	40
Nolle Prosequi	7
Bench Warrant	1
Removed from List	16
Other	14
Total	129



Outcome of Circuit Matters that were listed and proceeded to Trial

Outcome

Guilty	17
Not Guilty	15
Nolle Prosequi	4
Mentally Incompetent	2
Hung Jury	1
Mistrial	11
Other	1
Total	51*



Appeals

The Office appears in appeals in all appellate jurisdictions.

High Court of Australia

There were 16 applications for special leave to appeal heard by the High Court during the last year. Those applications were heard when the High Court was in Adelaide in August, 1998 and further applications were heard by video link to Canberra in December 1998 and June 1999. Only three applicants were granted leave to appeal to the High Court (Inge, Winfield and Lipohar). All other matters were refused. The appeals granted leave were heard before the Full Court of the High Court in August 1999. The decision of that court was reserved.

<i>Leave to Appeal</i>	<i>Number</i>
Applications pending at 1/7/1998*	18
Applications filed during 1998/99 year	9
Leave to Appeal refused	13
Leave to Appeal abandoned	2
Leave to Appeal granted	3
Applications pending at 30/6/1999	11

*There was also the matter of Penney in which leave was granted and the appeal was heard during the previous year, however the decision of the Court was not delivered until August 1998. The appeal was dismissed.

Court of Criminal Appeal

Over the last year the Office of the Director of Public Prosecutions has been involved in a number of significant appeals and questions of law.

The type of issues considered by the Court of Appeal and the Full Court have included:

Police v Fountaine (PCA) - a consideration of section 47i of the Road Traffic Act (blood samples taken from persons who have been involved in motor vehicle accidents)

R v Clune & Gergis (armed robbery, attempted murder) - issues involving the sufficiency of the evidence; the calling of rebuttal evidence; directions to the jury in relation to an accused's failure to give evidence

R v T (indecent assault) - the appropriate directions to the jury about evidence where a course of conduct of offending of a sexual nature is led

R v Cozzi (manslaughter) - what is required to establish joint enterprise between offenders when one offender has a weapon

R v Hatchard (rape) - sufficiency of the evidence where the offender was purporting to perform a form of manipulation for therapeutic purposes

R v Martin (murder) - prosecutor's submissions in addressing the jury

R v Elgueta (armed robbery); *R v Smith* (rape, robbery with violence) - joinder of counts, cross-admissibility of evidence of other incidents

R v Holden (arson) - the nature of the appellant's interest in the property he destroyed by fire

R v Mouhalis (drugs); *R v Rowe* (drugs) - admissibility of the evidence (eg telephone intercept and surveillance)

R v Robins (rape); *R v Simpson* (rape) - admissibility of evidence of a recent complaint by a victim of a sexual offence and the directions to the jury in relation thereto

R v Mantzoudis (false pretences); *R v Zoneff* (false pretences) - appeal where the trial was conducted by an accused who was unrepresented by counsel

R v Jones (wounding with intent to do grievous bodily harm) - accused absconded during the course of the trial, and the trial proceeded in his absence

In relation to appeals relating to the admissibility of evidence and the judge's directions to the jury in criminal trials, the Office of the Director of Public Prosecutions ensures that the Court of Appeal deals with each matter by reference to established rules of evidence and criminal procedure.

In relation to sentencing appeals, the Office of the Director of Public Prosecutions provides submissions on the appropriate approach that should be adopted in sentencing procedures and occasionally institutes appeal proceedings where it appears that a court has made a substantial and manifest error in the sentencing of an offender.

The Office of the Director of Public Prosecutions is also responsible for stating particular questions of law to the Court of Appeal which may arise at any stage of the trial process and which are of general relevance and significance to the practice of criminal law in this State.

	Appeals initiated by defendant	Appeals initiated by DPP
Applications outstanding at 1/7/1998	39	2
Applications filed during 1998/99	108	2
Leave to appeal refused	21	-
Leave to appeal abandoned	13	1
Leave to appeal granted	76	-
Applications pending as at 30/6/1999	35	1
Where leave was granted:		
Appeals upheld	28	1
Appeals dismissed	47	1
Appeals abandoned	3	-

*In some instances Applications were lodged and Leave to Appeal granted, however a decision was not handed down within the current year.

Magistrates Appeals

This year the Office has continued to conduct Magistrates Appeals instituted by defendants in relation to minor indictable offences such as break enter and larceny, assault occasioning actual bodily harm and indecent assault offences. In the main these were appeals instituted against the imposition of sentences although there have been a number that related to convictions following trial. The Office has maintained its policy in providing advice and opinions to Police Prosecution Services regarding the institution of prosecution appeals. Consistent with established principles relating to prosecution appeals, there have been few although of special importance relating to drink driving and prostitution offences such as *Police v Boileau* and *Police v Schelmerdine*.

	Appeals initiated by defendant	Appeals initiated by police
Appeal upheld	30	4
Appeal dismissed	12	
Appeal abandoned	5	
Appeal pending	4	
<i>Total</i>	<i>51</i>	<i>4</i>

Witness Assistance Service

In its fourth year of operation, the Witness Assistance Service has experienced a time of significant change and development. The appointment of a second full time social worker in August 1998 has enabled the service to expand, particularly in the areas of service delivery and research. The service has also continued its commitment to community education and collaboration with other agencies, through involvement in public speaking, training, information provision and representation on a range of committees and projects. The Witness Assistance Service acknowledges the expertise and assistance of outside referral agencies and the teamwork and professional support from management, legal staff and clerical personnel in their contributions towards the effective operations of the Service.

Mission

To ensure that all victims of crime and their immediate family members have access to information and support services, and are aware of their rights and responsibilities when dealing with the criminal justice system.

Objectives

The following objectives provide a framework in order to achieve the mission of the Witness Assistance Service:

- ~ ensure victims of crime and immediate family members are aware of their rights and entitlements, and also their responsibilities;
- ~ provide victims and witnesses with information about the prosecution process and ensure they are kept informed about the matter;
- ~ design and contribute to information packages for victims and their families;
- ~ inform victims about vulnerable witness provisions;
- ~ assist witnesses prepare for court by providing court tours and information about giving evidence;
- ~ provide information and assistance on Victim Impact Statements;
- ~ ensure victims and witnesses who contact the Office to seek information about a matter are dealt with promptly in accordance with the declaration of victim rights;
- ~ assess victim needs in dealing with the prosecution process and provide referrals to appropriate organisations for ongoing counselling;
- ~ work with solicitors and prosecutors as part of a team, in a manner that ensures best outcomes for the victim/witness;
- ~ identify ways of improving services to victims and witnesses - participate in and initiate research and conduct customer surveys;
- ~ help to establish systems of communication that enhance service delivery from the Office;
- ~ network with interested stakeholders dealing with victims and witnesses;
- ~ establish and maintain statistical information;
- ~ liaise nationally with other Witness Assistance Services to ensure consistency across Australia;
- ~ advocate for resources to improve delivery of services to victims and witnesses in South Australia; and

~ participate in internal and external committee work as required.

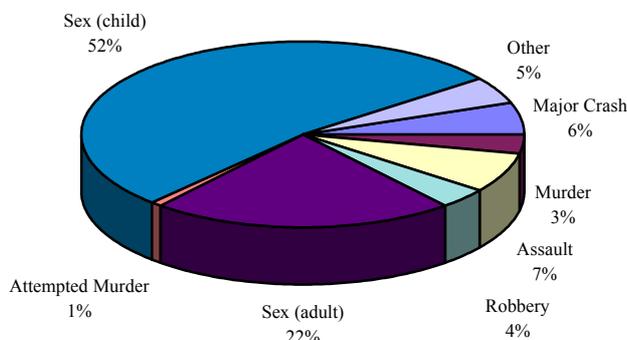
Service Delivery

Referrals to the Witness Assistance Service have increased significantly during the past financial year as has been the case each year since the inception of the Service. In its first year of operation, the Service received 173 referrals. In the last financial year (1997-98) 215 referrals were received. During the 1998-99 period, 334 new referrals were received by the Service. This represents a 94% increase in referrals to the Witness Assistance Service since its first year of operation in 1995-96, and a 56% increase in referrals from the 1997-98 period. Statistics on referrals to the Witness Assistance Service during 1998-99 appear below.

New Referrals (by category of Witness)1998/99

	Number	%
Arson	1	.3
Assault	23	6.9
Attempted Murder	3	.9
Breaks	1	.3
Major Crash	19	5.6
Murder	11	3.2
Robbery	12	3.9
Sex (adult)	74	23.9
Sex (child)	176	50.8
Stalking	1	.3
Other/Miscellaneous	13	3.9
Total	334	100

Witness Assistance Service Referrals



In August 1998, a Child Witness Assistance Officer was appointed to the Witness Assistance Service with funding for ten months from the Interagency Child Abuse Assessment Panel. This position focussed on meeting the needs of children and their families who were referred to the service during 1998-99.

With additional resources, the Witness Assistance Service has been able to provide increased assistance to victims and witnesses involved in circuit matters. However, a further expansion of resources will be necessary for the Service to adequately meet the needs of all potential circuit referrals.

Research

The Witness Assistance Service has continued its commitment to research activities during 1998-99.

As part of the funding provision from the Interagency Child Abuse Assessment Panel, the Child Witness Assistance Officer completed a research project entitled, "*Vulnerable Witness Provisions - An Analysis of the Use of Vulnerable Witness Provisions for Children in Supreme and District Court Trials during January - December 1998*". This project involved providing questionnaires to children and family members, interviewing prosecutors and defence counsel and analysing data in relation to vulnerable witness provisions, particularly the use of closed circuit television. The project will be repeated for the calendar year of 1999 in order to monitor and evaluate outcomes in relation to this issue.

Information Provision

During the past financial year the Witness Assistance Service has been involved in the development of several new information resources in addition to the updating of previous publications.

The publication *What Choice Do I Have?* developed jointly with Yarrow Place, for people who have experienced a rape or sexual assault, was updated and re-released. This publication continues to be used as an important source of information for victims and service providers.

The booklet for children, *An Important Job - Going to Court* was launched in April 1999 and provides an up to date resource for children who will be giving evidence and their families. The launch of the publication sparked widespread interest from the media and from local and interstate services.

In collaboration with the Homicide Victims Support Group, the Witness Assistance Service developed an information booklet for people who have lost a family member through homicide. This booklet, entitled, "*Unlocking the Homicide Maze*" will be launched in September 1999.

In June 1999, the Witness Assistance Service developed Witness Assistance Service cards which enable relevant Office contact information to be provided to victims and witnesses who are referred to the Service.

Future Directions

As a result of a Witness Assistance Service planning day held during 1999, the following major goals were prioritised for the Service:

- ~ To secure permanent funding for the position of Child Witness Assistance Officer (initially a ten month contract funded by the Interagency Child Abuse Assessment Panel).
- ~ To secure funding for an additional PSO2 social worker position.
- ~ To increase referrals from circuit matters.
- ~ To implement an evaluation of the Witness Assistance Service.

Confiscation of Profits

The Office maintains within the Solicitor Section a dedicated Confiscations of Profits Unit. A senior solicitor has the conduct of all proceedings taken pursuant to the Criminal Assets Confiscation Act, 1996. Since this Act commenced on 7 July 1997 the majority of proceedings related to confiscation of profits are dealt with in the Magistrates Court.

Restraining orders were granted against 34 defendants this year. This represents a 61.9% increase on restraining orders granted in the last financial year.

Forfeiture orders were granted against 40 defendants this year. This represents an increase in the number of forfeiture orders of 81.8% from the previous year. The total value of the property ordered to be forfeited exceeded \$262,600. In addition, \$4130 was returned to the victim of a particular offence.

Revenue deposited into the Confiscation Account of the Criminal Injuries Compensation Fund (CICF) this year totalled \$345,215. This represents a decrease of 3.91% on the previous year. It is apparent that despite the increased number of successful forfeiture applications, the value of the individual items of property forfeited was less in this financial year.

	1997-98	1998-99
Restraining Orders Granted	21	34
Forfeiture Orders Granted	22	40
Revenue deposited into CICF	\$359,261	\$345,215

Fraud Section

The commitment of the Office to fraud prosecutions has been continued with the maintenance of a dedicated Fraud Section comprising two solicitors. The Fraud Section has continued its close relationship with the Serious Fraud Investigation Branch which investigates serious and complex fraud matters. Early liaison between police and the Fraud Section has assisted in enabling early advice and decision making in relation to major investigations and prosecutions. This approach has ensured the effective allocation of resources and, in some cases, has resulted in the prompt resolution of matters.

In addition, the Fraud Section has maintained its involvement in matters involving the prosecution of criminal offences by legal practitioners, and other areas of fraud related offending including allegations of perjury and abuse of public office.

Administrative/Support Staff

The legal staff in the Office continue to be supported by an effective team of administrative staff. The extension of the philosophy of training staff to be multi-skilled allowed several staff during the year to be successful in securing temporary contracts at a higher classification (to cover extended leave periods including maternity leave) within the Office.

There are currently 18 staff. There has been a need during the year to engage temporary staff from an agency to cover some periods.

There are several positions within the Office which in the near future will be reviewed with regard to the classification and duties and these positions will then be called on permanent basis. However it is

envisaged that all positions and the requirements of the Office with regard to secretarial, law clerk and paralegal functions will be reviewed before the end of the year.

Budget

The Office met budget in the 1998-99 year. The budgeted expenditure was \$5.432m. Of this amount, approximately \$200,000 was transferred to the Agency-Wide Account to fund a refit of the Office to enable the integration of the Committal Unit back to Pirie Street and the expansion to the 8th floor.

The introduction of output budgeting has resulted in a requirement to report performance information as part of the budget process. The Office of the Director of Public Prosecutions contributes to output 1.5 - *Prosecutions Services* as part of the Justice Portfolio budget papers. The performance information for the current period is:

OUTPUT:	1.5 PROSECUTION SERVICES			
Description:	The management and conduct of prosecutions and associated services.			
Performance Indicators:	<i>Descriptions :</i>	<i>Expected activity 1998-99</i>	<i>Actual for 1998-99</i>	<i>Expected activity level for 1999-2000</i>
Quantity :	No. of matters finalised by the Committal Unit	1,050	1,089	1,100
	No. of defendant files finalised by the Office of the Director of Public Prosecutions	700	832	700
	No. of clients seen by the Witness Assistance Service	310	334	350
				Target for 1999-2000
Quality	Percentage of matters committed through the Committal Unit in which the Crown enters a nolle prosequi after committal	7%	8.6%	<10%
	Percentage of committed matters which are finalised by a guilty verdict or guilty plea	71%	72%	>66%
	Percentage of referring agencies who rate the standard of service by the Witness Assistance Service as high		n/a	85%
Timeliness	Percentage of trials where the ODPP meets the court timetable requirements for the trial list	95%	94.8%	95%
Cost	Total Cost	\$5.432m	\$5.432m	\$6.13m

For 1999-2000 this has increased to \$6.13m. The increase is due to the second instalment of an increase in base funding negotiated with Treasury and the Government in order to further implement the recommendations of the Costello Review (as well as routine CPI and wages parity increases).

In addition, \$429,000 has been allocated for revisions and enhancements to the information technology systems of the Office. The planned implementation of reform in this area is a key objective of the 1999-2000 year. Assistance will be provided by Justice Information Systems (JIS) Services in order to achieve reform which integrates smoothly with the Office's responsibilities to the broader justice system.

Staff training and development

Staff Performance Management

The development of a performance management system for legal staff was completed during 1998-99. Training was provided to managers and staff to enable an effective and comprehensive system of feedback and appraisal to be implemented. By the end of 1999, it is envisaged that all staff, both legal and other professionals as well as support staff, will have development plans with personal objectives in place.

The performance management system adopted by the clerical and administrative staff has been used to identify and then develop training and development opportunities. Through these opportunities, staff have been able to better understand other roles within the Office and act in other positions from time to time. This has resulted in a multi-skilled and experienced team which continues to work well together, providing an excellent service to the rest of the Office.

Continuing Legal Education (CLE) Program

In early 1998 we welcomed a number of new prosecutors and solicitors to the Office most of whom have had less than five years experience in the law. In view of that fact the continuing legal education programme for this year focused on the fundamentals of the criminal trial including the various steps in a criminal trial. We were fortunate to be able to utilise the combined experience and skill of many senior practitioners some from the independent bar and some of whom are now members of the South Australian Judiciary.

The CLE Committee, which was formed as a result of one of the many recommendations from the Costello Report, considers the views of prosecutors and solicitors before determining the composition and identity of the speakers. It has been decided for 1999/2000 to focus more on substantive issues of law using some of the senior practitioners in our own office and in the wider Attorney-Generals Department. The first of these speakers will be the Solicitor-General, Mr Bradley Selway, QC who will be speaking on the preparation and presentation of appeals before single judges and the Full Court.

The Program this year included:

- Steve Millstead, QC - topic of disclosures, the use of subpoenas, prosecutions
- Chris Kourakis, QC - subpoenas
- Stephen Walsh, QC - expert evidence
- Senior Constable Graham England and Steve McEwen - accident investigation
- Kym Williams (Forensic Scientist) - DNA evidence
- Panel of Prosecutors and Filomena Merlino - proofing of complainants (use of vulnerable witness provisions)
- Wendy Abraham, QC - hostile witnesses
- Jane Lloyd - Aboriginal witnesses
- Kath Vannon - witnesses with intellectual disabilities
- His Honour Judge Sulan - advice for prosecutors
- Dr Kenneth O'Brien (Director Forensic Psychiatry) and Dr Jack White (Psychologist) - aspects of forensic psychiatry and psychology
- Chris Pearman, Silvana Tridico and Paul Kirkbride - various forensic science topics

We have also been fortunate to have available to us through the generosity of the Commissioner for Equal Opportunity a venue in their offices, which is suitable to accommodate a large number of people for these sessions.

Administrative/Support Staff

The commitment to training and development of staff has continued within the Office. Six clerical staff participated in the Worksmart program for ASO-1 to ASO-4 level staff run by the Attorney-General's Department. In addition a training day tailored to the needs of administrative staff within the ODPP was run for all staff.

Graduate Certificate in Legal Practice (GCLP) Students and Summer Law Clerks

The Office has been pleased to provide professional placements to a number of GCLP and law students. On most occasions the Office has taken two students at a time for periods of two weeks in the case of law students and six weeks for GCLP students. They have been introduced to a variety of work through the solicitor's section and then encouraged to observe a trial from empanelment of the jury through to verdict and sentence. An emphasis is placed on providing a range of practical experience as opposed to research tasks. The students have been able to provide valuable assistance to both solicitors and prosecutors in both the Pirie Street Office and also the Committal Unit.

Conferences

As well as the monthly Continuing Legal Education for all legal staff, some staff attended (and in many instances presented papers) at the following conferences and training courses:

- ~ International Association of Prosecutors Conference - *Secret Crimes (sexual abuse)*
- ~ Australian Institute of Judicial Administration - *Reform of Court Rules and Procedures*
- ~ National Crown Prosecutors Conference
- ~ 3rd National Outlook Symposium on Crime in Australia, Australian Institute of Criminology
- ~ SA State Legal Convention
- ~ SA Criminal Law Conference
- ~ Judicial Education Conference
- ~ Caught in Reconciliation Conference
- ~ Intellectual Property Seminar
- ~ Crime and Justice in Diverse Communities, Flinders University
- ~ Australian Conference on Drugs Strategy

Staff from the Witness Assistance Service participated in the following training and development programs:

- ~ National Witness Assistance Service Conference
- ~ Domestic Violence Conference, National Crime prevention Forum
- ~ Children and Crime: Victims of Offenders, Australian Institute of Criminology
- ~ SA Domestic Violence Prevention Seminar

Management training continued to be provided, including participation in the following:

- ~ Strategic Management, University of Adelaide
- ~ Supervising staff training
- ~ Institute of Public Administration of Australia National Conference
- ~ National Conference of ODPP Executives

Approximately \$36,000 was expended on training and development in 1998-99. This represents 0.85% of the salaries and wages cost of the Office. It is envisaged that training and development will

be equivalent to at least 1% of the budget in 1999-2000.

5 INTERAGENCY RELATIONSHIPS

Government and the Attorney-General

The relationship between an Attorney-General as first law officer and a Director of Public Prosecutions varies from jurisdiction to jurisdiction.

In South Australia the Director is entirely independent of direction or control by the Crown, or any Minister or officer of the Crown other than the Attorney-General.

The Attorney-General may, after consultation with the Director, give directions and furnish guidelines to the Director in relation to the carrying out of his functions. Any such directions or guidelines must be published as soon as practicable in the Government Gazette, and tabled before each House of Parliament. The requirement to report to Parliament ensures that there is a political accountability for any prosecution action which an Attorney-General might take.

In practice, the Attorney-General leaves the exercise of power to the independent discretion of the Director. This accords with the convention established for relationships between the two law officers. This role also conforms to the intent of the Director of Public Prosecutions Act, 1991. The Director is able to raise any concerns he has directly with Parliament pursuant to Section 12 of the Act.

While the Act provides for a formal method of consultation between the Attorney-General and the Director, there has been no need to resort to the formal mechanisms of the Act. The relationship between the Attorney-General and the Director was harmonious and productive during the course of the year.

Justice Department

The Office of the Director of Public Prosecutions is formally a part of the Justice Department. For administrative purposes, the Director reports to the Chief Executive of the Justice Department. In day-to-day practical terms, this is more of a liaison rather than a strict reporting relationship. The Office budget has been isolated from that of the Department generally, even though it is still formally included within the Department's expenditure, and the Department remains responsible for preparing accounts for audit purposes. Financial Reporting as required by the *Public Sector Management Act* and the *Public Finance and Audit Act* is contained in the Justice Department Annual Report.

As an associated office of the Justice Department the Office draws on a range of corporate services provided by the Department. The services provided during the past year have included:

- ~ executive support
- ~ financial services
- ~ human resources, including staff training
- ~ information technology
- ~ library and record services

The Office has only a small internal administrative component and therefore relies heavily on the advice and support from the Department's Corporate Services Division.

The Office takes this opportunity to acknowledge the Department's role, and in particular its Chief Executive Ms Kate Lennon, and to extend our thanks for the support both she and her staff have provided.

South Australian Police Department

The relationship between this Office and the South Australian Police Department continues to work well with a strong emphasis on consultation between both parties to ensure consistent and accurate information is provided to the public.

This relationship has been strengthened by the formation of the Police Liaison Committee in accordance with recommendation 64 of the Costello Report. This Committee meets every three months with the representation on the Committee from both offices being at the most senior level.

This forum gave rise to a seminar conducted at Fort Largs Academy in February 1999. On that occasion both the Director and Associate Director spoke to the police and answered questions on many topical issues, viz disclosure and the then Forensic Procedures Bill. It has since been agreed that such a Forum should occur at least on a yearly basis.

Further, close liaison between members of the Committal Unit and Police Prosecution Branch continues. This has enabled the police to concentrate on the investigation of criminal activity and the advice provided by the Committal Unit ensures that following the investigation the correct charges are laid and that matters which have no reasonable prospect of conviction do not proceed.

This Office has the responsibility for the prosecution of police officers charged with criminal offences and continues to liaise with the Internal Investigation Branch providing advice and an independent prosecution service.

Courts Administration Authority

The Office and the Courts Administration Authority continue to work closely in the day-to-day running of the criminal courts. There is daily contact with respect to setting matters down for trials, sentencing, remands, pre-trial conferences and bail reviews. We thank the Court staff for their continued co-operation.

National Crime Authority

The Office continues to maintain a good working relationship with the National Crime Authority.

Sexual Assault Section - SA Police

The Sexual Assault Section has continued to provide valuable assistance and expertise to the work of the Committal Unit and the Witness Assistance Service during the past financial year. The commitment of the staff of the Sexual Assault Service to providing quality services to victims of sexual assault and to maintaining a positive working relationship with the Office is highly regarded by this Office.

Victims of Crime Branch - SA Police

During 1998-99, the Victims of Crime Branch has continued to provide support and information to victims of crime and their family members. The Witness Assistance Service and other ODPP

representatives have participated in several training programs for SA Police Victim Contact Officers. The maintenance of a close working relationship between the ODPP and Victim Contact Officers has enhanced the provision of services to victims of crime. The work of the Branch is greatly appreciated by the Office.

Yarrow Place - Rape and Sexual Assault Service

Yarrow Place staff have continued to work in close association with the Witness Assistance Service during the past financial year. The organisation has further developed its range of services to victims of rape and sexual assault and provides a valuable referral resource for clients of the Witness Assistance Service. Legal and social work staff from the Office have participated in training programs developed for Yarrow Place staff during 1998-99 and joint consultation between the two organisations in regard to service delivery and broader issues has occurred on a regular basis. The Office appreciates the expertise and professionalism consistently provided by Yarrow Place staff to victims of rape and sexual assault.

Victim Support Services

Victim Support Services has maintained its commitment to the provision of support services to victims of crime and their family members during 1998-00. The Witness Assistance Service has provided training for Victim Support Service Court Companion Training Seminars and has continued to work closely with the service to ensure that victims of crime have access to appropriate counselling services and support. The professional services provided by this organisation and the dedication of VSS staff are valued by the Office.

/// 6 **STATUTORY REPORTING**

/// **Consultants**

The report on the use of Consultants by the Office will be contained within Attorney-General's Department Annual Report.

/// **Directions**

Pursuant to Section 11 of the Director of Public Prosecutions Act 1991, there were no directions or guidelines given to the Commissioner of Police. Further, no directions or guidelines were given by the Attorney-General to the Director of Public Prosecutions pursuant to Section 9 of the same Act.

/// **Employment and Human Resource Matters**

All relevant matters are contained within the Annual Report of the Attorney-General's Department.

/// **Financial Statements**

All relevant matters are contained within the Annual Report of the Attorney-General's Department.

/// **Freedom of Information**

The Office is an "exempt agency" for the purposes of the Freedom of Information Act 1991.

/// **Occupational Health, Safety and Welfare**

There has been a continued preventative approach to occupational health and safety this year with hazard identification audits carried out in accordance with departmental requirements.

Security in the reception area has recently been reviewed, with procedures already in place to ensure that a more secure working environment is provided. Another area to be recently investigated was the use of the computer mouse by law clerks, in particular. There had been an increase in the number of injuries which had been attributed to the repetitious use of the mouse. This was addressed by changing the requirement within the CRIMES database to use the mouse to using keystrokes.

The Department has continued to maintain the highest possible level of health and safety in accordance with WorkCover standards, in all areas of prevention, claims and rehabilitation.

/// **Overseas Travel**

Two senior staff attended overseas conferences during the year.

- ~ Third Annual Conference of the International Association of Prosecutors
- ~ Seventh Biennial Conference of the Criminal Lawyers Association of the NT

// Year 2000 Compliance

Reported on page 10 of this Report.

/// **GLOSSARY OF TERMS USED IN STATISTICAL TABLES AND CHARTS**

COMMITTAL UNIT
tables and charts

OTHER

Includes no case to answer, Head Office assuming further conduct of committal, mentally incompetent, dismissed etc.

TENDER NO EVIDENCE (TNE)

Where no evidence is tendered on **all** charges, otherwise counted in accordance with charges that proceed.

RESOLVED SUMMARILY

Includes matters where Major Indictable charge reduced to Minor Indictable or Summary charge only, and finalised in the Magistrates Court (by plea or trial), by the Committal Unit or Police.

**SUPERIOR COURT
PROSECUTION
OUTCOMES - tables
and charts**

CONVICTED

Convicted of any offence, ie committed for sentence, plea of guilty as charged or a lesser charge, or found guilty as charged or of a lesser charge.

NOTE: *Convictions recorded on Magistrate Court matters called up, not included*

NOT GUILTY

Proceeded to trial and acquitted of **all** charges.

MENTALLY INCOMPETENT

Where accused is found *Not Guilty* on grounds of mental incompetence (CLCA Part 8A) and declared liable to supervision.

NOLLE PROSEQUI

ALL charges against accused not proceeded with.

- NOTE:**
- 1 *Nolles entered purely because substitute Information filed, not counted as a Nolle*
 - 2 *“Technical Nolle Prosequi” where incorrectly committed matters are returned to Magistrates Court, or lesser charge, or alternative remedy is pursued in the Magistrates Court, not counted as a Nolle, but counted separately under “Other”*
 - 3 *“White Paper” filed pursuant to CLCA s276 not counted as a Nolle, but shown separately*
 - 4 *Where multiple charges laid, then one or more (but not all) are discontinued (Nolled), not counted as a Nolle but recorded under the outcome of the charge(s) which proceed*
 - 5 *Where matter Nolled immediately after Appellate court orders retrial, not counted as a Nolle*

WHITE PAPER

Where the Director declines to prosecute **any** charge and files prior to arraignment, a notice pursuant to CLCA s276.

NOTE: *Where an accused is separately committed for trial and sentence, and the Director declines to prosecute any of the charges committed for trial, but*

proceeds with the charge(s) committed for sentence, not counted as a White Paper

OTHER

Includes Stay of Proceedings, Resolved in Magistrates Court, and Incorrectly committed.

**MATTERS LISTED
FOR TRIAL - tables
and charts**

PROCEEDED TO TRIAL

All matters that have been listed for trial and the proceedings have commenced, including legal argument, jury empanelment, or commencement of trial by Judge alone.

NOTE: *Matters listed for legal argument only, not included*

TRIAL OUTCOME - OTHER

Includes stay of proceedings, adjournment during trial, bench warrant during trial, and matters which are not finalised at the time of report.

**GENERAL
COUNTING UNIT**

MATTER

An accused charged with an offence or series of offences upon the same Information.

- NOTE:**
- 1 *Where a single Information contains charges against several accused, each accused counted*
 - 2 *Where an accused is charged upon separate unrelated Informations, each Information counted (subject to note 3)*
 - 3 *Where an accused charged or committed on separate Informations, that are subsequently joined upon a single Information, counted as one only (subject to note 4)*
 - 4 *Where an accused charged or committed on one Information and subsequently charged on separate Informations, or separate trials ordered, each trial is counted separately*
 - 5 *Where trial proceeds to conviction, but retrial ordered on appeal -*
 - (a) *from time that Director elects to proceed with retrial, counted as new matter*
 - (b) *if a Nolle Prosequi is entered immediately, not counted as a new matter*

(NB: where Appeal is instituted, original Prosecution is not altered, irrespective of Appeal outcome)
 - 6 *A single matter will sometimes include multiple trials/proceedings. For example, where a trial results in mistrial, hung jury or is otherwise inconclusive and relisted. These are counted as one matter in accordance with the ultimate outcome. But, each trial is included in trial outcomes. Hence total trial and other outcomes may exceed total matters finalised.*

/// ≡ **APPENDICES**

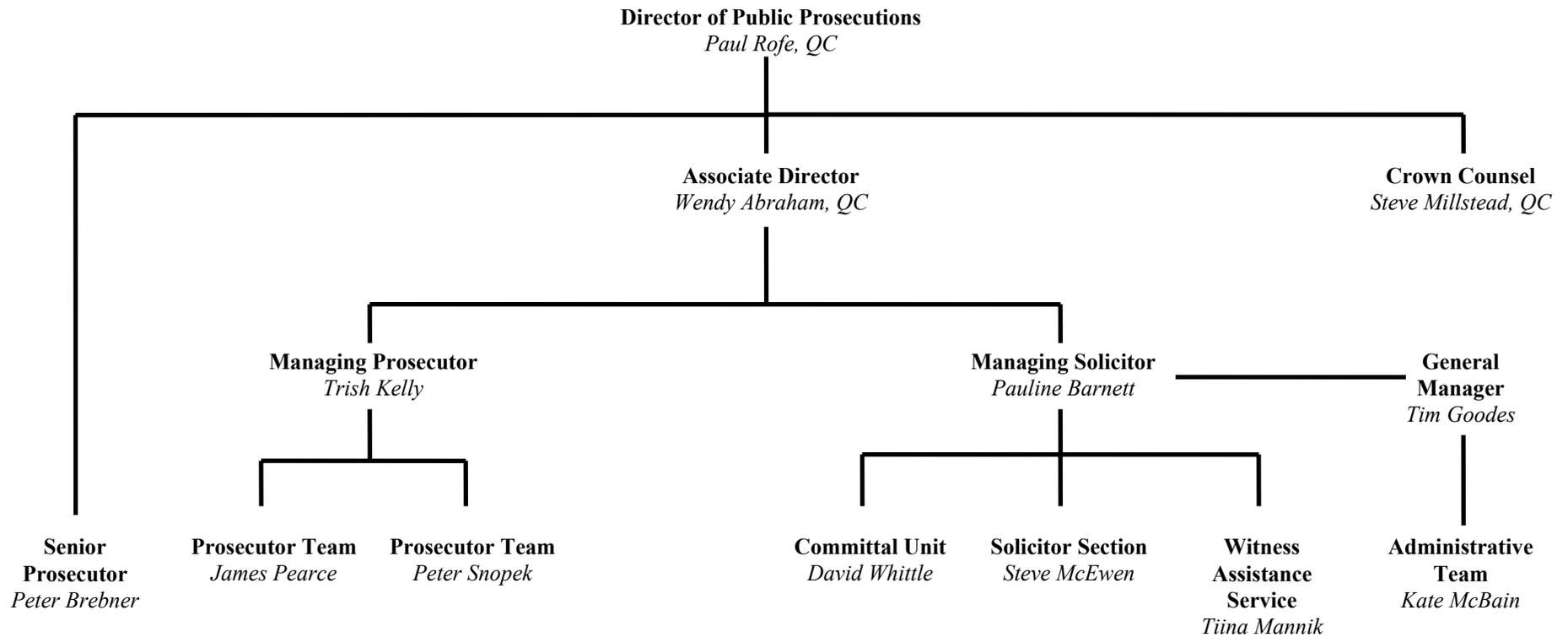
/// **Appendix A** Organisational Chart

/// **Appendix B** Declaration of Victim's Rights

/// **Appendix C** Statement of Prosecution Policy and Guidelines

ORGANISATIONAL CHART

as at 30 June 1999



APPENDIX B:

DECLARATION OF VICTIM'S RIGHTS

In all dealings with victims of crime the Office of the Director of Public Prosecutions, is required to give effect to the Declaration of Victim's Rights set out below in so far as they are applicable to the functions of the Office.

The victim of crime shall have the right to:

- 1 be dealt with at all times in a sympathetic, constructive and reassuring manner and with due regard to the victim's personal situation, rights and dignity;
- 2 be informed about the progress of investigations being conducted by police (except where such disclosure might jeopardise the investigations);
- 3 be advised of the charges laid against the accused and of any modifications to the charges in question;
- 4 have a comprehensive statement taken at the time of the initial investigation which shall include information regarding the harm done and losses incurred in consequence of the commission of the offence. The information in this statement shall be updated before the accused is sentenced;
- 5 be advised of justifications for accepting a plea of guilty to a lesser charge or for accepting a guilty plea in return for recommended leniency in sentencing;
- 6 be advised of justification for entering a nolle prosequi (ie to withdraw charges) when the decision is taken not to proceed with charges. (Decisions which might prove discomfoting to victims should be explained with sensitivity and tact);
- 7 have property held by the Crown for purposes of investigation or evidence returned as promptly as possible. Inconveniences to victims should be minimised wherever possible;
- 8 be informed about the trial process and of the rights and responsibilities of witnesses;
- 9 be protected from unnecessary contact with the accused and defence witnesses during the course of the trial;
- 10 not have his or her residential address disclosed unless deemed material to the defence or prosecution;
- 11 not be required to appear at preliminary hearings or committal proceedings unless deemed material to the defence or prosecution;
- 12 have his or her need or perceived need for physical protection put before a bail authority which is determining an application for bail by the accused person, by the prosecutor;
- 13 be advised of the outcome of all bail applications and be informed of any conditions of bail which are designed to protect the victim from the accused;
- 14 have the full effects of the crime upon him or her made known to the sentencing court either by the prosecutor or by information contained in a pre-sentence report; including any financial, social, psychological and physical harm done to or suffered by the victim. Any other information that may aid the court in sentencing including the restitution and compensation needs of the victim should also be put before the court by the prosecutor;
- 15 be advised of the outcome of criminal proceedings and be fully apprised of the sentence, when imposed, and its implications;
- 16 be advised of the outcome of parole proceedings;
- 17 be notified of an offender's impending release from custody.

PROSECUTION POLICY

INTRODUCTION

The Office of the Director of Public Prosecutions was established in 1992 to provide an effective, fair and independent criminal prosecution service for the people of South Australia. Since that time all major criminal prosecutions have been conducted by the Office in Adelaide and in the country areas of Port Augusta and Mount Gambier.

The Office is committed to the highest ethical and professional standards and strives to achieve the most effective and appropriate criminal prosecutions. It is integral to the process that all members of the Office adopt and implement the same set of values and standards when evaluating charges and conducting prosecutions.

The Prosecution Policy was first issued upon the establishment of the Office in 1992 and since that time has been under review. I have provided further guidance to my staff in the form of guidelines for their important decision making processes and to maintain the highest ethical standards.

The policy and guidelines are available to all interested members of the public, legal profession and the police.

P J L ROFE QC
Director of Public Prosecutions

INTRODUCTION

This Policy and the annexed guidelines are those governing the decision to prosecute criminal offences in South Australia. They form part of the uniform prosecution policy adopted by the Directors of Public Prosecutions of all States and the Commonwealth of Australia in 1990.

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

The Office is divided into a number of smaller units that conduct the functions of solicitors and prosecutors with a close working relationship. In this document the legal staff within the Office and members of the private profession briefed to appear on behalf on the Director are referred to as prosecutors.

The Office of the Director of Public Prosecutions' first contact with most criminal matters is through the Committal Unit where the major indictable offences in the State are referred by the Police either prior to or just after charging. The Office then assumes conduct of these matters until their final resolution. The Office also conducts Summary Trials in complex or sensitive matters and appeals from the Magistrates Court on indictable offences. This document provides a framework for those conducting prosecutions on behalf of the State.

In addition to the legal staff the Office has a Witness Assistance Service (WAS) that provides assistance to witnesses involved in major indictable proceedings and referral to other agencies if necessary.

All staff within the Office work on the instructions of the Director who has been appointed pursuant to the Director of Public Prosecutions Act 1991 (the Act).

THE DIRECTOR OF PUBLIC PROSECUTIONS

The obligations of the Director of Public Prosecutions are no different from those imposed on every prosecutor or prosecuting authority in the common law system.

The primary obligation on a prosecutor is one of fairness. Fairness must dictate eventually the discharge of all of a prosecutor's functions. But the question must be asked as to whom these obligations are owed. Obviously a prosecutor must be fair to an accused but that cannot be the sole consideration. There are other parties with

legitimate interests who are also entitled to expect a prosecutor to act in a particular way. Sometimes these interests will conflict with those of the accused.

A prosecutor has obligations to varying degrees to the following:

- ♦ the court (judge and jury)
- ♦ the community
- ♦ the accused
- ♦ victims
- ♦ witnesses
- ♦ defence counsel

A prosecutor must play his or her part in securing a fair trial for persons accused of criminal offences. A fair trial is one that results in justice being done, ie conviction of the guilty as well as acquittal of the innocent. A fair trial may be described also as one where all relevant credible evidence is presented, tested and adjudicated upon according to law. The obligations of the prosecution to the various parties flow from those concepts.

THE ROLE OF THE PROSECUTOR

In order to understand the obligations of a prosecutor in any given situation or at any particular stage of the trial process, it is necessary to define the role of the prosecutor. The exercise has been attempted on numerous occasions by various commentators. The role is usually expressed in terms such as “a minister of justice” or “an officer of the court”. It may be more easily understood in terms of what it is not. It is not about winning or losing where convictions are wins and acquittals are losses. A conviction obtained on insufficient or doubtful evidence should be regarded as a loss just as much as a failure to obtain a conviction on a strong credible prosecution case. Again it is a matter of striking a balance.

Some quotations from commentators may assist in defining the role of the prosecutor :

“It cannot be over emphasised that the purpose [cf expectation] of a criminal prosecution is not to obtain a conviction: it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented; it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing: his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.” (per Rand J in Boucher v R (1954) 110 CCC 263 at 270).

“Finally there is or has been a tendency for Counsel for the prosecution not to prosecute firmly enough. The last half century has seen a welcome transition in the role of a prosecuting counsel from a persecuting advocate into a minister of justice, but in some places the pendulum has swung so far and the ministry has moved so close to the opposition that the prosecution’s case is not adequately presented and Counsel, frightened of being accused of excessive fervour tend to do little except talk of reasonable doubt and leave the final speech on the facts to the Judge. The result of the deficiency is that the duty of seeing that the prosecution’s case is effectively put to the jury is sometimes transferred to the Judge and thus the balance of the trial is upset.” (Lord Devlin, Trial by Jury pp.122-123)

But in the end it may come back to the words of Christmas Humphreys QC:

“It is the duty of prosecuting counsel to prosecute, and he need not rise to his feet and apologise for so doing. It is not unfair to prosecute” (1955 Crim LR 739 at 741)

and again -

“Always the principle holds that Crown counsel is concerned with justice first, justice second and conviction a very bad third” (Ibid p.746)

The Office of the Director of Public Prosecutions in South Australia is committed to those ideals.

THE DECISION TO PROSECUTE

A prosecution should not proceed if there is no reasonable prospect of a conviction being secured. This basic criterion is the cornerstone of the uniform prosecution policy adopted in Australia.

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, tends to undermine the confidence of the community in the criminal justice system.

It has never been the rule in this country that suspected criminal offences must automatically be the subject of prosecution. A significant consideration is whether the prosecution is in the public interest. The resources available for prosecution action are finite and should not be wasted pursuing inappropriate cases, a corollary of which is that the available resources are employed to pursue those cases worthy of prosecution.

The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law has been committed by the accused. There is a continuing obligation to assess the evidence as the matter proceeds.

The decision whether there is a reasonable prospect of conviction requires an evaluation of how strong the case is likely to be when presented in court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact, and the admissibility of any alleged confession or other evidence. The prosecutor should also have regard to any lines of defence which are plainly open to, or have been indicated by, the accused and any other factors which in the view of the prosecutor could affect the likelihood or otherwise of a conviction. This assessment may be a difficult one to make, and of course there can never be an assurance that a prosecution will succeed. Indeed it is inevitable that some will fail. However, application of this test dispassionately, after due deliberation by a person experienced in weighing the available evidence, is the best way of seeking to avoid the risk of prosecuting an innocent person and pursuing a futile prosecution resulting in the unnecessary expenditure of public funds.

When evaluating the evidence regard should be had to the following matters:

- (a) Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute?
- (b) If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?
- (c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?
- (d) Has a witness a motive for telling less than the whole truth?
- (e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?
- (f) What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination?
- (g) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the accused?
- (h) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?
- (i) Is there anything which causes suspicion that a false story may have been concocted?
- (j) Are all the necessary witnesses available and competent to give evidence, including any who may be out

of the jurisdiction? Is any witness likely to obtain an exemption from giving evidence pursuant to Section 21 of the Evidence Act, 1929?

- (k) Where child witnesses are involved, are there statutory difficulties in the reception and evaluation of their evidence?

This list is not exhaustive, and of course the matters to be considered will depend upon the circumstances of each individual case.

Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.

The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While some public interest factors may militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution, for example the seriousness of the offence and the need for deterrence. In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.

Factors which may arise for consideration in determining whether the public interest requires a prosecution include:

- (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a “technical” nature only;
- (b) any mitigating or aggravating circumstances;
- (c) the youth, age, intelligence, physical health, mental health, or special infirmity of the accused, a witness or victim;
- (d) the accused’s antecedents and background;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the accused in connection with the offence;
- (g) the effect on public order and morale;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- (j) the availability and efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence, both personal and general;
- (l) whether the consequences of any resulting prosecution or conviction would be unduly harsh and oppressive;
- (m) whether the alleged offence is of considerable public concern;
- (n) any entitlement of the State or other person or body to criminal compensation, reparation or forfeiture;
- (o) the attitude of the victim of the alleged offence to a prosecution;
- (p) the likely length and expense of a trial;

- (q) whether the accused is willing to co-operate in the investigation or prosecution of others, or the extent to which the accused has done so;
- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (s) whether the alleged offence is triable only on indictment; and
- (t) the necessity to maintain public confidence in such institutions as the Parliament and the Courts.

The weight to be given to these and other factors will depend on the particular circumstances of each case.

As a matter of practical reality the proper decision in most cases will be to proceed with a prosecution if there is sufficient evidence available to justify a prosecution. Although there may be mitigating factors present in a particular case, often the proper decision will be to proceed with a prosecution and for those factors to be put to the sentencing court in mitigation. Nevertheless, where the alleged offence is not so serious as plainly to require prosecution the prosecutor should always apply his or her mind to whether the public interest requires a prosecution to be pursued.

A decision whether or not to prosecute must clearly not be influenced by:

- (a) the race, religion, sex, national origin or political associations, activities or beliefs of the accused or any other person involved;
- (b) personal feelings concerning the accused or the victim;
- (c) possible political advantage or disadvantage to the Government or any political group or party; or
- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution decision.

Special considerations apply to the prosecution of young offenders. Prosecution of a young offender should always be regarded as a severe step, and generally speaking a much stronger case can be made for methods of disposal which fall short of prosecution unless the seriousness of the alleged offence or the circumstances of the young offender concerned dictate otherwise. In this regard, ordinarily the public interest will not require the prosecution of a young offender who is a first offender in circumstances where the alleged offence is not serious.

In deciding whether or not the public interest warrants the prosecution of a young offender regard should be had to such of the factors that apply to adults as appear to be relevant, but particularly to:

- (a) the seriousness of the alleged offence;
- (b) the age, apparent maturity and mental capacity of the young offender;
- (c) the available alternatives to prosecution, such as a caution, and their efficacy;
- (d) the sentencing options available to the relevant Youth Court if the matter were to be prosecuted;
- (e) The young offender's family circumstances, particularly whether the parents or guardians of the young offender appear able and prepared to exercise effective discipline and control over the young offender;
- (f) The young offender's antecedents, including the circumstances of any previous caution the young offender may have been given, and whether they are such as to indicate that a less formal disposal of the present matter would be inappropriate; and
- (g) whether a prosecution would be likely to be harmful to the young offender or be inappropriate, having regard to such matters as the personality of the young offender and his or her family circumstances.

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

Pursuant to Section 17 of the Young Offenders Act, 1993, all young offenders charged with homicide, or an offence consisting of an attempt to commit or assault with intent to commit homicide, are to be dealt with by an adult court. In other cases an application by the DPP or police prosecutor can be made to have a young offender dealt with as an adult if it is considered that it is warranted by the gravity of the offence or because the offence was part of a pattern of repeated offending.

Guideline No 1 - Choice of Charges

In many cases the evidence will disclose a number of possible offences. Care must therefore be taken to choose a charge or charges which adequately reflect the nature and extent of the criminal conduct disclosed by the evidence and which will provide the Court with an appropriate basis for sentence.

In the ordinary course the charge or charges laid or proceeded with will be the most serious disclosed by the evidence. Nevertheless, when account is taken of such matters as the strength of the available evidence, the probable lines of defence to a particular charge and other considerations including the appropriate sentence, it may be appropriate to lay or proceed with a charge which is not the most serious revealed by the evidence.

Under no circumstances should charges be laid with the intention of providing scope for subsequent charge-bargaining.

The High Court in R v Hoar [1981] 148 CLR 32 at 38 has highlighted the need for restraint in laying conspiracy charges:

“Generally speaking, it is undesirable that conspiracy should be charged when a substantive offence has been committed and there is a sufficient and effective charge that this offence has been committed.”

Whenever possible substantive charges should be laid. However, there are occasions when a conspiracy charge is the only one which is adequate and appropriate on the available evidence. Where it is proposed to lay or proceed with conspiracy charges against a number of accused jointly, those responsible for making the necessary decision must guard against the risk of the joint trial being unduly complex or lengthy.

It will never be appropriate to overcharge on an information to gain a benefit in relation to charge-bargaining or for some other perceived benefit to the prosecution. In cases where there have been numerous offences committed, the prosecutor should strive to charge counts, that sufficiently reflect the gravity of the incidents or the course of conduct.

Guideline No 2 - Charge-Bargaining

Charge-bargaining involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

These guidelines have earlier referred to the care that must be taken in choosing the charge or charges to be laid. Nevertheless, circumstances can change and new facts can come to light. Agreements as to charge or charges and plea must be consistent with the requirements of justice.

A proposal should not be entertained by the prosecution unless:

- (a) the charges to be proceeded with bear a reasonable relationship to the nature of the criminal conduct of the accused;
- (b) those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and
- (c) there is evidence to support the charges.

Any decision whether or not to agree to a proposal advanced by the defence, or to put a counter-proposal to the defence, must take into account all the circumstances of the case and other relevant considerations including:

- (a) whether the accused is willing to co-operate in the investigation or prosecution of others, or the extent to which the accused has done so;
- (b) whether the sentence that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the accused is already serving a term of imprisonment) would be appropriate for the criminal conduct involved;
- (c) the desirability of prompt and certain resolution of the case;
- (d) the accused's antecedents;
- (e) the strength of the prosecution case;
- (f) the likelihood of adverse consequences to witnesses;
- (g) in cases where there has been a financial loss to the State or any person, whether the accused has made restitution or arrangements for restitution;
- (h) the need to avoid delay in the resolution of other pending cases;
- (i) the time and expense involved in a trial and any appeal proceedings;
- (j) the views of the investigating police officers; and
- (k) the views of the victim or others significantly affected.

In no circumstances should the prosecution entertain a charge-bargaining proposal if the accused maintains his or her innocence with respect to a charge or charges to which the accused has offered to plead guilty.

Guideline 3 - Giving Advice to Investigators

All requests for advice by police investigators should be made in writing to the Office of the Director of Public Prosecutions. This includes advice in relation to:

- (a) the availability of criminal charges, involving -
 - (i) the sufficiency of evidence;
 - (ii) the admissibility of evidence;
 - (iii) the most appropriate charge in the circumstances
- (b) the present state of the law with respect to a certain subject matter (where this requires detailed evaluation);
- (c) whether a matter should be disposed of summarily rather than on information;
- (d) the availability of an ex officio information; and appeal to the Supreme Court on sentence; a case stated or judicial review.

In the ordinary course these requests are to be answered in writing within a month. It should be the exception that the request is not made in writing.

There is no distinction to be drawn between "formal" and "informal" advice and "provisional" advice should not be given.

Should the person seeking advice be unable, due to the urgency of the matter, to seek advice by way of a written request, this should not preclude advice being provided. In such instances the written advice should recite the

particular request made of this Office and the information provided upon which the advice is given.

In the ordinary course a letter confirming the oral advice should be dispatched within twenty four hours.

Where the request for advice relates to whether or not there is a basis for charging, any advice must only be provided after an examination of the complete police brief. Ordinarily such advice will only be given after the alleged offender has been provided with an opportunity to answer or comment upon the substance of the allegations (by interview or otherwise).

Advice will not be given on any individual exercise of police powers or on operational matters generally.

Requests for advice relating to matters of law which require a detailed evaluation or involve police or other investigative powers are to be referred to the Senior Solicitor or the manager of the Committal Unit.

The following requests for advice must be referred to the Director unless such matters have been specifically delegated to other officers:

- (a) whether or not a prosecution should proceed following a proposed extradition;
- (b) whether or not an immunity (indemnity or undertaking) should be granted;
- (c) whether or not an appeal should be lodged (including an application for judicial review);
- (d) whether or not a police officer should be prosecuted;
- (e) whether or not an ex officio information should be filed;
- (f) where the Director's or the Attorney-General's sanction or approval is required for the commencement of proceedings;
- (g) matters of particular sensitivity, including allegations of corruption or serious misconduct by any public official.

Where the charge is one of murder, manslaughter, assisted suicide or dangerous driving causing death, the prosecutor's advice is to be referred to the relevant manager for final consideration before it is communicated to the investigating officer.

Guideline No 4 - Ex Officio Information

To present an information in the absence of prior committal proceedings must be regarded as constituting a significant departure from accepted practice. Given that a purpose of committal proceedings is to filter out those cases where there is an insufficient basis for the accused being placed on trial, to indict in the absence of committal proceedings will deny the accused the opportunity of securing a discharge before the Magistrate.

A decision to indict in the absence of prior committal proceedings will only be justified if any disadvantage to the accused that may thereby ensue will nevertheless not be such as to deny the accused a fair trial. Further, such a decision will only be justified if there are strong and powerful grounds for so doing. An ex-officio information should not be presented in the absence of committal proceedings unless the evidentiary and public interest considerations outlined in the prosecution policy are satisfied.

Where an ex-officio information is presented in the absence of committal proceedings the accused will be provided with all relevant witness statements and full details of the case that the prosecution will present at the trial and any other material in accordance with disclosure principles.

On the other hand, a decision to indict notwithstanding the accused was discharged at the committal proceedings will not constitute as great a departure from accepted practice. The result of committal proceedings has never been regarded as binding on those who have the authority to indict. An error may have resulted in the Magistrate discharging the accused, and in such a case the filing of an ex-officio information may be the only

feasible way that the error can be corrected. Nevertheless, a decision to indict following a discharge at the committal proceedings should never be taken lightly. An ex-officio information should not be presented in such cases unless it can be confidently asserted that the Magistrate erred in declining to commit, or fresh evidence has since become available and it can be confidently asserted that, if the evidence had been available at the time of the committal proceedings, the Magistrate would have committed the accused for trial. In the event that fresh evidence is received, consideration will be given to reinstating the committal proceedings.

Guideline No 5 - Declining to Proceed after Committal

After the accused has been committed for trial the question may arise whether the trial on that information should proceed. Pursuant to Section 7(1)(e) of the Act, the Director has power to enter a nolle prosequi or otherwise terminate a prosecution in appropriate cases.

Notwithstanding that a committal order has been obtained, events may have occurred after the committal that make it no longer appropriate for the prosecution to proceed. Alternatively, the strength of the prosecution case may be re-assessed having regard to the course of the committal proceedings. Where a question arises as to the exercise of the power under Section 7(1)(e), it is to be determined on the basis of the criteria governing the decision to prosecute set out earlier. In the normal course, any person or agency significantly affected will be consulted before any decision is made.

A defence application may be based on the fact that the offence charged is a relatively minor one and does not warrant the time and expense involved in a trial on information. Such an application is most unlikely to receive favourable consideration if the alleged offence is one that could have been determined summarily but the accused refused to consent to the matter being dealt with in that way.

Where a decision has been made not to proceed with a trial where an information has been laid, that decision will not be reversed unless:

- (a) significant fresh evidence has been produced that was not previously available for consideration;
- (b) the decision was obtained by fraud; or
- (c) the decision was based on a mistake of fact or law;

and in all the circumstances it is in the interests of justice that the decision be reversed.

Where a trial has ended with the disagreement of the jury, consideration should always be given to whether the circumstances require a re-trial, and whether a second jury is likely to be in a better position to reach a verdict. The seriousness of the alleged offence and the cost to the community and the accused should be taken into account. If it is decided to proceed with a re-trial and the second jury also disagrees, it will only be in rare and exceptional circumstances that the accused will be required to stand trial a third time.

Guideline No 6 - Immunity from Prosecution

The Director is empowered by Section 7(1)(f) of the Act to grant immunity from prosecution in appropriate cases. This power will normally be exercised in order to secure an accomplice's testimony for the prosecution.

A decision whether to call an accomplice to give evidence for the prosecution frequently presents conflicting considerations calling for the exercise of careful judgment in the light of all the available evidence. Inevitably, however, there will be instances where there is a weakness in the prosecution evidence that makes it desirable, or even imperative, for the prosecution to call an accomplice.

In conjunction with the question whether to call an accomplice the question may arise whether that accomplice should also be prosecuted. In this regard, unless the accomplice has been dealt with in respect of his or her own participation in the criminal activity the subject of the charge against the accused, he or she will be in a position to claim the privilege against self-incrimination in respect of the very matter the prosecution wishes to adduce in evidence. Where, however, an accomplice has been given an immunity under Section 7(1)(f) that immunity

will override what would otherwise be an allowable claim of privilege.

In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in alleged offences in order to secure their evidence in the prosecution of others (for example, by granting them immunity from prosecution). However, it has long been recognised that in some cases this course may be appropriate in the interests of justice. Nevertheless, an immunity under Section 7(1)(f) will only be given as a last resort. In this regard, as a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate. However, this course may not be practicable in some cases; for example, time may not permit charges against the accomplice to proceed to conviction before the trial of the principal offender, or there may be insufficient admissible evidence to support charges against the accomplice alone.

Apart from being a course of last resort, an immunity under Section 7(1)(f) of the Act will only be given provided the following conditions are met:

- (a) the evidence that the accomplice can give is considered necessary to secure the conviction of the accused, and that evidence is not available from other sources; and
- (b) the accomplice can reasonably be regarded as significantly less culpable than the accused.

The central issue in deciding whether to give an accomplice an immunity is whether in the overall interests of justice the prosecution of the accomplice should be foregone in order to secure that person's testimony in the prosecution of another. In determining where the balance lies, the following factors will be taken into account:

- (a) the significance to a successful prosecution of the evidence which it is hoped to obtain;
- (b) the degree of involvement of the accomplice in the criminal activity in question compared with that of the accused;
- (c) whether any inducement has been offered to the person concerned;
- (d) the character, credit and previous criminal record of any accomplice concerned;
- (e) whether the accomplice concerned made, or is prepared to make, full disclosure of all facts and matters within his or her knowledge.

When an accomplice receives any concession from the prosecution in order to secure his or her evidence, whether as to choice of charge or the granting of immunity from prosecution, the terms of the agreement or understanding between the prosecution and the accomplice should be disclosed to the court.

Guideline No 7 - Unrepresented Accused

The prosecutor must not advise an unrepresented accused on legal issues or the general conduct of the defence. In the event that there is evidence that the prosecutor intends leading that is arguably inadmissible this should be raised with the Trial Judge prior to the evidence being called.

All materials and witness statements must be provided in the usual manner and the accused should acknowledge receipt in writing.

Telephone communications should be kept to a minimum and recorded in writing immediately. All oral communications should be witnessed by a third party and noted in all cases. The notes should be kept on the file or with the brief.

In the event of a trial, the witnesses should be advised that the accused is unrepresented and advised of the procedures that will be adopted in the court.

Guideline No 8 - The Court Process

A prosecutor must not appear in a contested matter or an ex-parte action before a judicial officer where there may be an appearance of partiality.

A prosecutor must fairly assist the court to arrive at the truth, seek impartially to have the whole of the relevant and admissible evidence placed intelligibly before the court, and assist the court with submissions of law that enable the law to be properly applied to the facts.

A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.

A prosecutor must not argue any proposition of fact or law that is not reasonably open on the evidence and does not accurately represent the law. If there is contrary authority to the propositions being put to the court by the prosecutor, the court must be informed of them.

A prosecutor must call, as part of the prosecution case, all apparently credible witnesses whose evidence is relevant and admissible for the presentation of the complete factual case whether it supports the prosecution case or not unless:

- (a) the defence consents to the witness not being called;
- (b) the matter has been established by the calling of other evidence and there is no prejudice to the accused in not calling the witness;
- (c) the witness is, in the opinion of the prosecutor, plainly unreliable or untrustworthy;
- (d) the witness is unavailable due to serious illness, death or any other good reason.

In the event that the prosecutor declines to call a witness the defence must be informed as soon as reasonably practicable and where possible arrangements should be made to have the witness at court if the defence so request.

The prosecutor's right to challenge a juror should only be exercised if there is reasonable cause for doing so. It should never be exercised so as to attempt to select a jury that is not representative of the community as to age, sex, ethnic origin, religious belief, marital status, economic, cultural or social background.

Cross-examination of an accused as to credit or motive must be fairly conducted. Material put to an accused must be considered on reasonable grounds to be accurate and its use justified in the circumstances of the trial.

When addressing the jury or the court a prosecutor must not use inflammatory language and must at all times put an accurate and fair interpretation of the facts and the law. The prosecutor is expected to present the case fearlessly, vigorously and skilfully.

When appearing on sentence the prosecutor has an active role to play but must not seek to persuade the court to impose an improper sentence nor should a sentence of a particular magnitude be advocated. It is the duty of the prosecutor to adequately and fairly present the prosecution case on sentence and assist the court to avoid falling into appealable error.

To do this the prosecutor should where appropriate:

- (a) comply with Sections 7 and 7A of the Criminal Law (Sentencing) Act with respect to injury, loss or damage suffered by the victim;
- (b) tender the relevant antecedents of the accused;
- (c) correct any error of fact or law;

- (d) refer the court to any relevant authority or legislation that may assist in determining the appropriate sentence;
- (e) make submissions on the appropriate sentencing options that are available including non-custodial options;
- (f) acknowledge any co-operation of the accused with the law enforcement agencies when this has occurred and proved to be of value. This must be done in a manner that does not endanger the safety of the accused or prejudice the operations of those agencies.

Guideline No 9 - Disclosure

Disclosure to the defence, of material that is within the possession of the prosecuting authority is one aspect of the duty to ensure that the Crown case is presented with fairness to the accused. In South Australia the extent of the duty to disclose is determined by both statutory and common law principles.

Section 104 of the Summary Procedure Act 1921 requires the prosecution to file in the Magistrates Court in major indictable matters:

- (a) statements of witnesses for the prosecution on which the prosecutor relies as tending to establish the guilt of the accused;
- (b) copies of any documents on which the prosecutor relies as tending to establish the guilt of the accused;
- (c) a document describing any other evidentiary material on which the prosecutor relies as tending to establish the guilt of the accused together with a statement of the significance that the material is alleged to have;
- (d) any other material relevant to the charge that is available to the prosecution.

This section entails early disclosure and filing of all relevant admissible material irrespective of whether it assists the Crown case.

The common law requires wider disclosure than Section 104. The limits of this duty are not precisely delineated, but depend upon the circumstances of each case. Moreover, the duty to disclose is an ongoing one, and turns upon the matters that are realistically in issue at any time. It is acknowledged that material is often obtained or brought to the attention of the DPP, after the preliminary hearing. Prompt consideration will be given to the need to disclose such material. Furthermore, the DPP is committed to ensuring that the police deliver to the DPP a full brief, including sufficient information to enable this disclosure guideline to be properly implemented.

In the ordinary course on request disclosure will be made of the following in a prosecution for an indictable offence in the Supreme or District Court:

- (a) particulars of the accused's prior convictions;
- (b) copies of all written statements, and an opportunity to examine electronically recorded interviews of all witnesses to be called, together with a copy of any prior inconsistent statements of those witnesses;
- (c) copies of any written or electronically recorded statement obtained from the accused by a person in authority;
- (d) copies of any photographs, plans, documents or other representations which will be tendered by the prosecution at trial.
- (e) an opportunity to examine exhibits which will be tendered;
- (f) copies of statements of any expert witnesses to be called and the prosecution will facilitate an

- opportunity for a defence expert from the same or a similar discipline to speak with that expert, pre-trial;
- (g) copies of any warrant or any statutory authority used in the gathering of evidence to be adduced at trial;
- (h) an opportunity to inspect bank records, books of account or other records or documents relevant to the prosecution case which may not be introduced into evidence but be relied upon.

In any case where the prosecutor declines to call a witness, the defence should receive details of any material or statements which are or may be exculpatory. The defence should also receive details of the whereabouts of that witness and if requested, the prosecution should make that witness available for the defence to call.

However, the DPP recognises that a number of factors may be relevant to the extent of disclosure required in a particular prosecution. The prosecutor also has a number of obligations in relation to the material that comes into his or her possession. These obligations include a need to consider whether documents are within the power of the prosecution to disclose and whether there are any immunities or privilege that should be claimed by the prosecution or individuals.

In addition to the above the prosecutor should also consider the following factors in respect of any material for which disclosure is contemplated or requested:

- (a) whether the material is relevant;
- (b) whether the material may divulge the identity of an informer;
- (c) whether the material is subject to legal professional privilege;
- (d) whether the material could prejudice the investigation, or facilitate the commission, of other offences;
- (e) whether the material was supplied to the police, or other authority, upon an expectation that the material would remain confidential;
- (f) whether the material could divulge confidential police methods or the internal workings of the police, or other authorities;
- (g) whether the material relates to National or State security;
- (h) whether disclosure of the material could tend to endanger, prejudice, or embarrass any person;
- (i) whether there is any apparent, or demonstrated, legitimate forensic purpose for the defence to have access to the material.

The extent to which any of these factors will affect the decision whether or not to disclose particular material will vary. Application of these factors will always be subject to the over-riding duty to ensure that the Crown case is presented with fairness.

Guideline No 10 - Media Contact

No public comment is to be made without the Director's, or his designated representative's, approval in relation to matters that are the subject of criminal proceedings or that have been referred to the Office for an opinion in relation to potential criminal proceedings. All media contact should be referred to the Director's office.

Guideline No 11 - Vulnerable Witnesses

When dealing with witnesses under 16 years of age, a person who suffers from an intellectual disability, a victim of an alleged sexual offence or a person who is at some special disadvantage, consideration must be given to the provisions of Section 13 of the Evidence Act 1929. In cases where the section might apply, a witness should be advised of the options that are available under the Evidence Act including a screen, closed

circuit television, a court companion and a closed court. If the section is applicable to a witness the application should be made after consulting with the witness where possible prior to the commencement of the trial.

The prosecutor with the conduct of the file should make the application notwithstanding any forensic advantage that is perceived in not making the appropriate arrangements.

Consideration must be given in the early stages of contact with the victim to involvement by the Witness Assistance Service (WAS). If a witness wishes to have a court companion and is unable to obtain the services of a suitable person, the Witness Assistance Service will either make arrangements in consultation with the prosecutor or refer the witness to Victim Support Services.

Guideline No 12 - Victims of Crime

In all dealings with victims of crime due regard must be had by all members of the Office to the *Declaration of Victim's Rights* (Annexure A). This is a direction given by the Attorney-General pursuant to the Director of Public Prosecutions Act.

Consideration must be given in the early stages of contact with the victim, and/or their families, to involvement in the case by the Witness Assistance Service (WAS). In all appropriate cases they should be advised of the service provided by the WAS and where necessary referred to it. Contact will then be made by a Witness Assistance Officer (WAO) directly with the victim.

Information as to the proceedings and the victim's role must be given at an early stage and there is a continuing obligation to keep the victim informed. Where possible, information about the proceedings and the legal implications should be given by the prosecutor. An effort must be made to minimise the number of staff members with responsibility for contacting the victim and handling the file.

Parents of child victims must be given adequate information about the legal system and the impact upon children in order to make informed decisions. The views of parents or caregivers must always be given appropriate consideration by the prosecutor and where possible their views should be accorded significant weight. However, the public interest must at all times be the paramount consideration.

Prosecutors should ensure that an adequate victim impact statement has been prepared and that it contains relevant material to assist the Court in the sentencing process. They must also ensure that victims are aware of their right to present the statement orally if they wish. Victims should be advised of the procedure for giving the statement orally and appropriate arrangements made for them to do so.

Victims must be informed of the outcome of finalised court proceedings in a timely fashion.

Guideline No 13 - Victim Impact Statement

Victim impact statements (VIS) should be prepared prior to trial by the person who is eligible to submit it to the court. The statements may be in the written form or presented verbally to the court. Victims should be advised of their right to give a verbal presentation to the court. VIS should usually be prepared prior to the first arraignment. In the event of complex matters or cases in which the victims require further time they must be completed expeditiously so as not to delay the sentencing process.

A victim may prepare a statement to be read to the court. All victims must be advised of the following if they wish to prepare and submit this statement:

- (a) The statement must be prepared in writing and provided to the DPP. The statement will then be provided to the Sentencing Judge who will then appoint a time for it to be read to the court. It may be read by the victim or by a person nominated by the court;
- (b) the court will not be closed to the public (unless an order of the Court is made);
- (c) the prosecutor can apply for a closed court and/or a suppression order in appropriate cases;
- (d) the statement will not be disclosed to the defence prior to conviction unless it contains inconsistencies

that go to a material matter. In the event of such inconsistencies the usual practice of disclosure should be adopted;

- (e) the victim may amend the statement at any time prior to it being read to the court;
- (f) the victim may withdraw the statement at any time in accordance with the Rules of Court.

A copy of the VIS will only be provided to defence counsel or to an unrepresented accused with an undertaking that the document is not reproduced in any way without the consent of the DPP. The document must be returned to the DPP upon request.

Guideline No 14 - Prosecution Appeals

The prosecution has a right to appeal in certain circumstances. This right will always be exercised with restraint and only where there is a reasonable prospect of success.

Appeals against sentence

In The Queen v Osenkowski (1982) 30 SASR 212 King CJ made the following observations concerning the role of prosecution appeals against sentence:

“It is important that prosecution appeals should not be allowed to circumscribe unduly the sentencing discretion of judges. There must always be a place for the exercise of mercy where a judge’s sympathies are reasonably excited by the circumstances of the case. There must always be a place for the leniency which has traditionally been extended even to offenders with bad records when the judge forms the view, almost intuitively in the case of experienced judges, that leniency at that particular stage of the offender’s life might lead to reform. The proper role for prosecution appeals in my view, is to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic views of individual judges as to particular crimes or types of crime to be corrected, and occasionally to correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience.”

This passage is reflective of the care with which the Director of Public Prosecutions must approach the question whether to institute an appeal against sentence.

The prosecution’s right to appeal against sentence should be exercised sparingly, and it is the policy of the Director of Public Prosecutions not to institute such an appeal unless it can be asserted with some confidence that the appeal will be successful.

In considering a prosecution appeal against sentence it is to be borne in mind that the sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the prisoner, and the effect on the victim. Consequently, for any given offence there exists a range of legitimate penalty options. An appellate Court will not interfere with the exercise of a Judge’s or Magistrate’s sentencing discretion unless an error in the exercise of that discretion can be demonstrated. In practical terms the Court must be satisfied that the sentence imposed falls clearly outside the appropriate penalty range and may consequently be characterised as manifestly inadequate. Mere disagreement with the sentence passed is insufficient. The High Court decisions are clear that there must be a matter of principle to be established by the appeal in relation to the matter of the sentence Everett and Phillips v R [1994] 181 CLR 295.

Magistrates Appeals

The Office conducts appeals from the Magistrates Court to the Supreme Court on indictable offences. The prosecution has a right to appeal against acquittal where there has been an error of law or fact by the Magistrate. These appeals are only instituted on rare occasions and in accordance with the authorities. The same considerations apply to appeals against sentence brought by the prosecution for a sentence imposed by a Magistrate or a Judge. This was confirmed by the Full Court in Police v Cadd (1997) 69 SASR 150.

Case Stated

There is no right of appeal against a verdict of acquittal in the District or Supreme Court. However the prosecution can apply to the court during the trial or sentencing process, or after an acquittal, for the court to

refer a question of law for consideration to the Full Court. This power should be exercised sparingly. The Director of Public Prosecutions should not seek to have a question of law referred to the Full Court unless it can be asserted with some confidence that the Court will answer the question in the manner sought by the prosecution. The question of law must be of sufficient importance to require the attention of the Full Court.

CONCLUSION

This statement does not attempt to cover all questions that can arise in the prosecution process and the role of the prosecutor in their determination. It is sufficient to state that throughout a prosecution the prosecutor must conduct himself or herself in a manner which will maintain, promote and defend the interests of justice, for in the final analysis the prosecutor is not a servant of government or individuals. He or she is a servant of justice. At the same time it is important not to lose sight of the fact that prosecutors discharge their responsibilities in an adversarial context. Accordingly, while the case must at all times be presented to the court fairly and justly, the community is entitled to expect that it will also be presented fearlessly, vigorously and skilfully.

This statement will be kept under review, and any changes will be made public.

ANNEXURE A

DECLARATION OF VICTIM'S RIGHTS - See Appendix A of this Report.

ANNEXURE B

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

SUMMARY OF PROVISIONS

1. Short title
2. Commencement
3. Interpretation
4. Director of Public Prosecutions
5. Acting Director
6. Office of the Director
- 6A. Delegation
7. Powers of Director
8. Consultation
9. Independence of Director
10. Investigation and report
11. Directions and guidelines by Director
12. Annual reports
13. Saving provision
14. Regulations

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

An Act to establish the Office of Director of Public Prosecutions; to make consequential amendments to certain Acts; and for related purposes.

The Parliament of South Australia enacts as follows:

Short title

1. This Act may be cited as the *Director of Public Prosecutions Act 1991*.

Commencement

2. This Act will come into operation on a day to be fixed by proclamation.

Interpretation

3. In this Act—

"**Director**" means the Director of Public Prosecutions and includes a person acting in the position of Director of Public Prosecutions;

"**Office**" means the Office of the Director of Public Prosecutions.

Director of Public Prosecutions

4. (1) There will be a Director of Public Prosecutions.
 - (2) The Director will be appointed by the Governor.
 - (3) A person is not eligible for appointment as the Director unless he or she is a legal practitioner of at least seven years standing.
 - (4) The Director will be appointed—
 - (a) for a term of office of seven years; and
 - (b) on terms and conditions determined by the Governor.
 - (5) At the expiration of a term of office, the Director will be eligible for re-appointment.
 - (6) The Director must inform the Attorney-General in writing of—
 - (a) any direct or indirect pecuniary interest that the Director has or acquires in any business, or in any body corporate carrying on a business, in Australia or elsewhere; and
 - (b) any other direct or indirect interest that the Director has or acquires that conflicts, or may conflict, with the Director's duties.
 - (7) The Director must not—
 - (a) engage in legal practice outside the duties of his or her office; or
 - (b) engage, without the consent of the Attorney-General, in any other remunerated employment.
 - (8) The Governor may terminate the Director's appointment if the Director—
 - (a) is guilty of misbehaviour; or
 - (b) becomes physically or mentally incapable of carrying out official duties satisfactorily; or

- (c) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (d) is absent, without leave of the Attorney-General, for 14 consecutive days, or for 28 days in any period of 12 months; or
 - (e) contravenes or fails to comply with subsection (6) or (7).
- (9) Except as provided in subsection (8), the Director's appointment cannot be terminated.

Acting Director

5. (1) If the Director is temporarily absent, or the Director's position is temporarily vacant, the Attorney-General may assign a suitable person to act in the Director's position during the temporary absence or vacancy.
- (2) A person is not eligible to act in the Director's position unless he or she is a legal practitioner of at least seven years standing.
- (3) The terms on which a person is assigned to act in the Director's position will be as determined by the Attorney-General.

Office of the Director

6. (1) The Office of the Director of Public Prosecutions is established.
- (2) The Office consists of—
- (a) the Director of Public Prosecutions; and
 - (b) any persons assigned under the *Government Management and Employment Act 1986* to work in the Office.
- (3) The Director has the administration and control of the Office.

* * * * *

Delegation

- 6A. The Director may, by instrument in writing, delegate to any suitable person any of the director's powers or functions under this Act but such a delegation—
- (a) is revocable at will; and
 - (b) does not prevent the Director from acting personally in the matter.

Powers of Director

7. (1) The Director has the following powers:
- (a) to lay charges of indictable or summary offences against the law of the State;
 - (b) to prosecute indictable or summary offences against the law of the State;
 - (c) to claim and enforce, either on behalf of the Crown or other persons, civil remedies that arise out of, or are related to, prosecutions commenced by the Director;
 - (d) to take proceedings for or in relation to the confiscation of profits of crime;
 - (da) to institute civil proceedings for contempt of court;
 - (e) to enter a *nolle prosequi* or otherwise terminate a prosecution in appropriate cases;

- (f) to grant immunity from prosecution in appropriate cases;
 - (g) to exercise appellate rights arising from proceedings of the kind referred to above;
 - (h) to carry out any other function assigned to the Director by regulation;
 - (i) to do anything incidental to the foregoing.
- (2) The Attorney-General may, by notice in the *Gazette*, transfer to the Director any powers or functions of the kind referred to above, or any power to consent to a prosecution, vested in the Attorney-General by an Act passed before the commencement of this Act.
 - (3) A person who has power to consent to a prosecution, or to allow an extension of the period for commencing a prosecution, for an offence of a particular kind under the law of the State may, by notice in the *Gazette*, delegate that power to the Director.
 - (4) A delegation under subsection (3)-
 - (a) is revocable by subsequent notice in the *Gazette*; and
 - (b) does not prevent the person from acting personally in a matter,but, once a decision on a particular matter has been made by the Director in pursuance of a delegation, the delegator is bound by that decision.
 - (5) A document apparently signed by the Director and stating that the Director consents to a particular prosecution or that the Director allows a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.
 - (6) Where an information or complaint charging an offence is apparently signed by the Director or a person acting on the Director's authorisation, the information or complaint will, in the absence of proof to the contrary, be taken to have been duly signed by or on behalf of the Director.
 - (7) In any legal proceedings, the Director may appear personally or may be represented by a member of the staff of the office who is a legal practitioner or by counsel or solicitor (including the Crown Solicitor or the Solicitor-General).
 - (8) Details of any notices published under this section must be included in the Director's annual report.

Consultation

- 8. (1) The Director must, if requested to do so by the Attorney-General, consult with the Attorney-General with respect to the exercise of the Director's powers or functions.
- (2) The Attorney-General must, if requested to do so by the Director, consult with the Director with respect to the exercise of the Director's powers or functions.

Independence of Director

- 9. (1) Subject to this section, the Director is entirely independent of direction or control by the Crown or any Minister or officer of the Crown.
- (2) The Attorney-General may, after consultation with the Director, give directions and furnish guidelines to the Director in relation to the carrying out of his or her functions.
- (3) Directions or guidelines under this section-

- (a) must, as soon as practicable after they have been given, be published in the Gazette; and
 - (b) must, within six sitting days after they have been given, be laid before each House of Parliament.
- (4) Subsection (3) need not be complied with in relation to directions or guidelines under this section relating to individual matters if, in the opinion of the Attorney-General, disclosure may be prejudicial to an investigation or prosecution, but, in that case, the directions or guidelines must be published in the Gazette, and laid before each House of Parliament, as soon as practicable after the matter is determined or otherwise completed.
- (5) If the Attorney-General is satisfied that disclosure under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Attorney-General may withhold material from disclosure so far as necessary to avoid that consequence.

Investigation and report

10. The Commissioner of Police must, so far as it is practicable to do so, comply with any request from the Director to investigate, or report on the investigation of, any matter.

Directions and guidelines by Director

- 11.(1) The Director may give directions or furnish guidelines to the Commissioner of Police or other persons investigating, or prosecuting, offences on behalf of the Crown.
- (2) Any such directions or guidelines must be published in the Director's annual report.
- (3) If the Director is satisfied that publication of material under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Director may withhold the material from publication so far as necessary to avoid that consequence.

Annual reports

- 12.(1) The Director must, before 30 September in each year, prepare and provide the Attorney-General with a report on the operations of the Office during the year that ended on the preceding 30 June.
- (2) The Attorney-General must have a copy of the report laid before each House of Parliament within six sitting days after the date of its receipt.
- (3) The Director may at any time report to Parliament on any matter affecting the proper carrying out of the functions of the Office.
- (4) The report must be given to the Speaker of the House of Assembly and the President of the Legislative Council and they must lay copies of the report before their respective Houses as soon as practicable after its receipt.

Saving provision

13. This Act does not derogate from the right of the Attorney-General to appear personally in any proceedings on behalf of the Crown.

Regulations

14. The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

SCHEDULE 1
Transitional Provisions

Retrospectivity

1. (1) This Act applies in relation to proceedings commenced before the commencement of this Act.
- (2) This Act applies in relation to offences committed before the commencement of this Act.

Director to take over from Attorney-General

2. Where, before the commencement of this Act, the Attorney-General had exercised, in relation to particular proceedings, a power or function of a kind vested in the Director under this Act, the Director may assume and continue to exercise that power or function as if it had been exercised by the Director from the inception of the proceedings.