



SOUTH

AUSTRALIA

DIRECTOR OF  
PUBLIC PROSECUTIONS

Annual Report

1999-2000

# ∞ CONTENTS ∞

1	λ	<b>FROM THE DIRECTOR .....</b>	<b>1</b>
2	λ	<b>STRATEGIC OVERVIEW .....</b>	<b>3</b>
		Mission Statement.....	3
		Vision .....	3
		Values.....	3
		Goals for 1999-2000.....	3
		Organisational Performance Monitoring.....	4
		Management Structure .....	5
3	λ	<b>SERVICE DELIVERY .....</b>	<b>6</b>
		Adjudication Services.....	6
		Legal Advice.....	6
		Committal Services.....	9
		Solicitor Services.....	10
		Counsel Services.....	13
		Appeals .....	18
		Witness Assistance Service.....	20
		Support Services .....	23
		Training and Development .....	23
		Conferences .....	24
4	λ	<b>INTER-AGENCY RELATIONSHIPS.....</b>	<b>25</b>
		Government and Attorney-General.....	25
		Justice Department.....	25
		SA Police .....	26
		Courts Administration Authority.....	26
		National Crime Authority.....	26
		Sexual Assault Section - SAPOL.....	26
		Victims of Crime Branch - SAPOL.....	27
		Yarrow Place.....	27
		Victim Support Service .....	27
5	λ	<b>STATUTORY REPORTING.....</b>	<b>28</b>
		Consultants.....	28
		Directions to Commissioner and from Attorney-General.....	28
		Executive Employment and Human Resource Reporting.....	28
		Financial Reporting.....	28
		Freedom of Information.....	28
		Occupational Health, Safety & Welfare .....	28
		Overseas Travel .....	28
		Year 2000 Compliance .....	29
6	λ	<b>GLOSSARY OF TERMS USED IN STATISTICAL TABLES AND CHARTS .....</b>	<b>30</b>
7	λ	<b>APPENDICES</b>	
		<b>A: Organisational Chart.....</b>	<b>32</b>
		<b>B: Declaration of Victim's Rights.....</b>	<b>33</b>
		<b>C: Statement of Prosecution Policy and Guidelines.....</b>	<b>34</b>

## FROM THE DIRECTOR

This was the first year of my second term as Director. Unfortunately I was absent for some four months due to health problems. I would like to thank my Associate Director Wendy Abraham QC for taking on the responsibility of the Office and doing so quite magnificently.

I am pleased to report that the Office performed extremely well in the year under review. Feedback from courts, police and witnesses generally has been very positive as to the quality of the service we delivered. I would particularly like to recognize the efforts of the Witness Assistance Service, Filomena Merlino, Tiina Mannik, Rebecca Dale and Anna Whittam, with special thanks to Tiina who filled in as manager while Filomena was on maternity leave. Congratulations to Anna, the Child Witness Assistance Officer, who was instrumental in the production of a video to assist in the preparation of child witnesses going to court.

Turning to current issues facing the Office, the most prominent remain those of legal aid and police prosecutions. The impact of the cuts on legal aid funding is now being felt as predicted. The Legal Services Commission is doing an excellent job within those constraints, but in particular the requirement to cap funding for individual matters has produced situations where possible Dietrich stays can only be averted by government funding of defence on an ad hoc basis. This is an undesirable situation which raises the obvious question of how does one monitor the expenditure of public money in an accountable manner in these cases. I believe there is great merit in the proposed criminal representation legislation but before that comes to pass the Snowtown case will severely test the resources of both prosecution and defence.

The issue of police prosecution services remains under review although the prospect of this Office taking over summary prosecutions in the foreseeable future appears to be remote for the reasons mentioned in previous reports, namely economic and geographic considerations. Of more immediate concern are the changes proposed to police prosecution services under the Focus 21 reform program. My understanding is that the police prosecution position is to be made a general one responsible to the Local Service Area Commander. My concerns are that such a change fails to recognize the excellence and expertise that police prosecutors have provided to South Australia for many years. It also has a tendency to bring the roles of the investigator and prosecutor much closer together, making it potentially very difficult for the prosecutor to exercise an independent function required of the position by virtue of my direction to the Commissioner in 1992 that police prosecutors prosecute in accordance with my published prosecution policy. I acknowledge the Commissioner has recognised these concerns and has issued a number of policy directives intended to address them. Nevertheless, the importance of the police prosecutions section to this office and the criminal justice system in general, necessarily means its operation under the restructure will be closely monitored.

I would like to thank my Executive Group, Wendy Abraham QC, Managing Solicitor Pauline Barnett, Managing Prosecutor Trish Kelly and General Manager Tim Goodes for their help and support through the year. Unfortunately Tim is leaving the Office to take up his appointment as Sheriff. We wish him well and thank him for his skills and untiring effort in keeping the Office running as well as it has.

Finally my thanks go to all the staff, legal, clerical and secretarial, for their contribution to an Office of which I am and they should be justifiably proud. In particular I thank my Executive Assistant Marlene Lehmann who retired this year for her sterling efforts over many years and her replacement Jackie Wake.

Again I acknowledge the unfailing support of the Attorney-General, the Honourable K Trevor Griffin, MLC. There has been no suggestion of political interference with the discharge of my duties since the inception of the Office.



## STRATEGIC OVERVIEW

### *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 1999-2000*

Through 1999-2000, 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 further develop management systems that facilitate efficient and effective operations of the functions of the Office.

**Organisational Performance Monitoring (including Budget)**

The Office returned a small surplus for the 1999-2000 year. The budgeted expenditure was \$6.1m.

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 2.1 *Legal Services* as part of the Justice Portfolio budget papers. The performance information for the current period is:

<b>OUTPUT:</b>	<b>2.1 LEGAL SERVICES</b>			
<b>Description:</b>	This output includes legal advice, disputation, prosecutorial, commercial and property legal services.			
<b>Performance Indicators:</b>	<i>Descriptions</i>	<i>Expected activity 1999-2000</i>	<i>Actual for 1999-2000</i>	<i>Expected activity level for 2000-2001</i>
<b>Quantity</b>	No. of matters finalised by the Committal Unit	1,100	1,146	1,000
	No. of defendant files finalised by the Office of the Director of Public Prosecutions	700	816	700
	No. of clients seen by the Witness Assistance Service	350	450	350
				<b>Target for 1999-2000</b>
<b>Quality</b>	Percentage of matters committed through the Committal Unit in which the DPP enters a nolle prosequi after committal	<10%	7%	<10%
	Percentage of committed matters which are finalised by a guilty verdict or guilty plea	>66%	76%	>70%
	Percentage of referring agencies who rate the standard of service by the Witness Assistance Service as high	85%	81%	85%
<b>Timeliness</b>	Percentage of trials where the ODPP meets the court timetable requirements for the trial list	95%	92%	95%
<b>Cost</b>	Total Cost	\$6.1m	\$5.8m	\$6.2m

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 2000-01 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 DPP 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 Structure***

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.

**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
- Manager, Witness Assistance Service
- 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, co-ordination 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.

## SERVICE DELIVERY

### *Adjudication Services*

The ODPP has a formal arrangement with the SAPOL Criminal Justice Sections serviced by the ODPP Committal Unit, to adjudicate the charges to be laid in Court after police have arrested a person upon a charge of a major indictable offence. In such cases, arresting police formulate draft charges and forward a brief to the local Criminal Justice Section (Adelaide, Sturt, South Coast, Port Adelaide, Holden Hill or Elizabeth), where a police prosecutor checks the brief to ensure there is some evidence to warrant the consideration of major indictable charges. The file is then delivered or a copy of it faxed to the Committal Unit, where an ODPP prosecutor considers the appropriateness of the draft charge or charges. The charges will be re-drafted if appropriate. The Criminal Justice Section is then advised what charges, if any, should be laid in Court.

This process is undertaken before the defendant's first appearance in the Magistrates Court, which will occur, if bail has been refused, on the morning after arrest. Thus, the decision as to the appropriate charges must be made on the basis of the limited information about the evidence which is available at that stage. It may be reviewed at a later stage, once all the evidence is forthcoming.

There has been an increase from 607 in the previous year to 757 adjudications undertaken by the Committal Unit in the past year. At this early stage of the prosecution process, approximately one quarter of these cases have been diverted from the Superior Courts by the laying of minor indictable or summary charges, which can be finalised in the Magistrates Courts.

The Adjudication Service is most conveniently provided to SAPOL's Adelaide and Sturt Criminal Justice Sections, which are situated in the same Wright Street premises as the ODPP Committal Unit. A Committal Unit prosecutor attends those sections early each day to adjudicate overnight arrests. This arrangement will not change when the Committal Unit moves from Wright Street to the ODPP head office in Pirie Street in about March 2001.

Adjudication of overnight arrests being handled in the suburban Criminal Justice Sections is more difficult for SAPOL and ODPP personnel, involving the dismantling and faxing of sometimes bulky files. As a result, delays are sometimes experienced in bringing arrested persons before the suburban Magistrates Courts. In the coming year the Committal Unit will continue to work with SAPOL to ensure that briefs are delivered as early as practicable by arresting police to the Criminal Justice Sections and promptly forwarded for adjudication, enabling early appearance of arrested defendants in Court. This will enhance the Adjudication Service as an early filter for cases which may be properly diverted from the Superior Courts.

Some adjudication services are provided to Criminal Justice Sections not serviced by the Committal Unit in relation to country matters and those are dealt with by the Solicitor Section.

## **Legal Advice**

During each year, the Office receives a large number of requests from SAPOL for legal advice, predominantly as to the appropriate charges, if any, to be laid in cases investigated by police. Advice will only be provided after an examination of the complete police brief, containing all statements and an account of any interview with the alleged offender. If an examination of the brief reveals that further investigation is required, the brief will ordinarily be returned to police for that to occur before advice is provided.

A solicitor then evaluates the available evidence to determine, in accordance with ODPP Prosecution Policy, whether and which charges should be laid. Advice is then provided in writing.

SAPOL Prosecution Policy Number 7 prescribes the nature of matters which should be referred for advice:

*Proceedings which are of unusual importance, significance or sensitivity or involve a witness the subject of the Witness Protection Act or involve serious crime or complex issues of law or fact are to be referred to the DPP, through the Officer in Charge, Prosecution Services Branch, for information, assistance and/or advice. All such matters are to be accompanied by a covering report outlining the reasons for referral to the DPP.*

This Policy further provides a general discretion about such referrals but requires certain categories of cases to be referred. These include in particular:

- 1 *Cases involving a potential conflict of interest for SAPOL to prosecute, such as offences allegedly committed by close friends or relatives of a SAPOL employee and also where offences have allegedly been committed by persons with a high public profile, such as Members of Parliament;*
- 2 *Major and/or complex drug offences;*
- 3 *Any case where a Court has invited/suggested such a referral;*
- 4 *Sexual offences where a Court conducting a committal has ordered that a complainant be called to give evidence during a committal. (Referrals of this nature will only come from SAPOL Prosecution Units in the country, as the DPP conducts such proceedings in the suburban courts in any event);*
- 5 *Sexual offences involving child victims where:*
  - a) *it is uncertain whether criminal charges should be laid;*
  - b) *admissibility of evidence is in question;*
  - c) *pressure to prosecute is being applied by parents, guardians, other interested parties, or government departments, and it is believed by SAPOL prosecutors that there is insufficient evidence to proceed;*
  - d) *SAPOL prosecutors believe that there is little or no reasonable prospect of securing a conviction despite the statements showing a prima facie case;*
  - e) *leave has been granted during a committal hearing to call the child to give evidence. (Again, this will only be required in country areas as in the suburban courts the DPP Committal Unit would be conducting the committal in any event.)*
- 6 *Any case in which significant difficulties are experienced during committal hearing, including abuse of process allegations. (Again, this is relevant only to committals in country courts.)*
- 7 *Any case involving a witness for the prosecution who is subject to the Witness Protection Act 1996.*

- 8 *Any other matter deemed proper for referral by the Officer in Charge of the SAPOL Prosecution Services Branch including, in particular where there is an actual or possible conflict of interest, or where an inappropriate approach has been made, or unwelcome pressure applied, to compromise a SAPOL adjudicator, prosecutor, other police officer, or a lawful process.*

In practice, many other cases are also referred by SAPOL to the ODPP for advice. Where an alleged offender has not been arrested but instead has been reported on a charge of a major indictable offence in an area serviced by the Committal Unit, such files are routinely referred and advised upon. In the case of persons arrested and charged with major indictable offences, the file goes through the adjudication process dealt with in this Report under "Adjudication Services".

This ensures at the outset that appropriate charges are laid and that cases are identified which can be appropriately dealt with by less serious charges in the Magistrates Court or which ought not to proceed at all.

In a case which is likely to depend on the assessment by a jury of the credibility of a witness, the ODPP lawyer preparing the advice will meet with the witness to assess his or her ability to give evidence and considering all available evidence there is a reasonable prospect of conviction. This is particularly important in sexual cases where it is usually critical to the outcome that the jury unreservedly accepts the truthfulness and accuracy of the complainant's account. An early meeting with the complainant allows the true prospects of success of the case to be properly assessed by an experienced prosecutor. It is also an opportunity for victims in sexual cases to be introduced to the prosecuting authority, to be informed about the legal process and to meet with an ODPP Witness Assistance Officer, who can help the witness deal with the prosecution process. The Witness Assistance Officer can also assist the complainant to understand if the decision is made not to proceed. In some cases, information provided to victims in sexual cases during such meetings assists them to decide that they do not wish to endure the prosecution process. Whilst in recent years there have been developments in the Criminal Justice System which improve the position of victims of sexual offences, it remains an unfortunate fact that such cases have a lower rate of conviction, both Australia wide and in South Australia, than cases of non-sexual offences. The provision of advice to police, prior to the charging of alleged offenders with sexual offences, assists victims of these offences to know at an early stage whether a case will proceed and to understand the reasons for these decisions.

The Office also provides legal advice in relation to major fraud cases through the Fraud Unit of the Solicitor Section. Advice is given at an early stage in some matters to assist SAPOL in determining how the matter will proceed, what further investigations are necessary to ensure that the matter is adequately prepared and the appropriate charges are laid. A close liaison is then maintained throughout the conduct of the matter and reviewed as necessary.

The Solicitors Section also provides advice in the form of training and continuing updates to SAPOL. The SAPOL training officers have a good working relationship with ODPP and formal and informal advice is regularly given on recent changes to the law and procedures. In 1999-2000 The *Forensic Procedures Act* significantly changed the way SAPOL was required to obtain material that would later be subjected to forensic testing. This included blood tests, and buccal swabs in addition to some samples of bodily material from suspects. The ODPP participated in extensive training programs for investigating officers and their superiors who are required on occasions to grant orders pursuant to the Act.

There is also an arrangement with the Major Crash Investigation Section of SAPOL that motor collision cases in which death or serious injury have been caused will be referred for advice, prior to the laying of charges, except in cases where it is clear that a charge of causing death by dangerous driving or causing grievous bodily harm by dangerous driving should be laid.

During the year the Office provided advice as to the appropriate charges, if any, to be laid in 579 cases, a significant decrease from the previous year. In 128 cases, advice was given to lay major

indictable charges. In the balance of 451 it was determined that appropriate charges could be laid in the Magistrates Court or that no charges at all should be laid.

**Committal Services**

The ODPP conducts 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.

The majority of these committals are conducted by the Committal Unit, except cases of murder and some complex drug cases, which are conducted by the Solicitor Section. Major fraud case committals are conducted by a Fraud Unit within the Solicitor Section. 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 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.

During committal proceedings, the ODPP continues to consider the appropriateness of the charges laid, upon review of the declarations and other evidence supplied, then identifies and negotiates at this stage to resolve appropriate cases by way of pleas of guilty to appropriate lesser charges which can be finalised in the Magistrates Court. Early intervention by the Committal Unit also identifies matters which, although not finalised by guilty pleas, may 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.

A principal performance indicator of the Committal Unit requires the percentage of cases committed for trial, which are then discontinued by the entry of nolle prosequi, to be under ten percent. This standard has been exceeded during the year, the rate being 7.35%.

Of continuing concern, however, is the number of committals which take significantly longer than the Court imposed standard of ten weeks because of failures by SAPOL investigators in some cases to deliver all statements of witnesses in sufficient time to be filed in the Magistrates Court by the required date (six weeks after a defendant's first appearance in that Court). This is, in part, a resource issue for SAPOL but the ODPP is working with the SAPOL Executive, investigators and their supervisors to ensure all concerned understand the necessity to meet the deadlines imposed by the Court. It is hoped that an improvement in the timeliness of statement delivery will accelerate the committal process in the year ahead.

During the year the Committal Unit dealt with the committals of 1147 defendants, an increase of 58 over the previous year. Of these matters, 523 were committed for trial and 113 were committed for sentence to the superior courts. The balance of 511 did not proceed to the superior courts due to the intervention of the Committal Unit. The Solicitor and Fraud Sections conducted a further 66 committals, an overall total for the year of 1213.

**Summary of committal outcomes 1999-2000**

**Solicitor Services**

The Solicitor Section has the responsibility for all files that are committed for trial in the superior courts. The Committal Unit prior to committal assesses the matters in the metropolitan area. There are

Convicted Sentenced	113	9.88%
Committed Trial & Committed Trial and Sentenced	523	45.72%
Resolved Summary	245	21.42%
Tendered No Evidence (TNE)	171	14.95%
TNE - Drug Assessment Aid Panel	25	2.19%
Election Withdrawn	3	0.26%
Other	64	5.59%

also a significant number of matters that come from country areas where SAPOL has had the conduct of the earlier court appearances. In order to accommodate the court matters the Solicitor Section has two solicitors assigned to these matters. In the absence of the screening and review of the Committal Unit these files require a more intensive initial assessment that on occasions results in matters being referred back to the Magistrates Court and appropriate charges being disposed of in that jurisdiction. Murder and some complex drug files come to the Section prior to committal. In addition to these general areas the Section has specialised units dealing with fraud, confiscations of profit and policy.

Upon assuming conduct of the files it is the responsibility of the Solicitor Section to:

- ≈ Assess all files;
- ≈ Lay charges that adequately reflect the nature and extent of the criminal behaviour;
- ≈ Engage in negotiations with the defence that may resolve the matter without the need to go to trial;
- ≈ Drafting an advice on evidence;
- ≈ Ensuring that all matters that are necessary for the proper conduct of the file have been attended to by the investigating officer and if required giving directions to the police to follow up items of evidence;
- ≈ Attending in the District and Supreme Courts on arraignments, bail applications and directions hearings;
- ≈ Complying with the Declaration of Victim's Rights (Appendix B) and ensuring that appropriate witnesses are referred to the Witness Assistance Service;
- ≈ Deliver properly prepared briefs to the prosecutor.

A significant number of trials are resolved without the need to go to trial and it is critical that these matters be identified as early as possible. A number of matters are resolved by the Committal Unit and committed for sentence to the superior courts. These matters then become the responsibility of the Solicitor Section. In addition to these matters there are many matters that will resolve by way of plea upon an accused being given appropriate advice by his/her lawyer. There are also some prosecutions that are assessed as not being in the public interest or having no reasonable prospect of conviction. A *nolle prosequi* is then entered in these matters as it would be inappropriate to continue the prosecution (Appendix C).

The carriage of the files through the courts requires that the solicitor attend on all interlocutory matters such as bail hearings, arguments on the law prior to trial, filing of prosecution applications for trial such as vulnerable witness applications and setting of matters for trial. A significant number of matters are the subject of applications by the defence pursuant to s269 of the Criminal Law Consolidation Act for a finding that they were mentally incompetent at the time of the offence or are unfit to stand trial. The calling of medical evidence and a finding of fact by a judge or jury resolves most of these matters. The Solicitor Section attends on a number of these matters without the need for them to be briefed to the Prosecutor Section.

In the past year there have been a number of changes in personnel within the Section. Most of the general solicitors are relatively junior and it is necessary that they are all given the opportunity to attend in court on a regular basis. Many have appeared as counsel in short trials that can be accommodated within the rigours of their practice and benefited from the first hand experience of the courtroom. They have also had the benefit of being junior counsel in a number of trial and appeal matters.

#### *Fraud Section*

The commitment of the Office to fraud prosecutions has been continued with the maintenance of a dedicated Fraud Section comprising two senior solicitors. The Fraud Section has continued its close relationship with the Serious Fraud Investigation Branch which investigates 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. In the past year a number of long fraud trials have been run by a senior prosecutor in conjunctions with the solicitors in the Fraud Section.

#### *Confiscation of Profits Section*

Within the Solicitor Section there is also a dedicated Confiscation of Profits Unit. A senior solicitor has conduct of all proceedings taken pursuant to the Criminal Assets Confiscation Act, 1996. This Act commenced in 1997 and the majority of the confiscation of profits proceedings are dealt with in the Magistrates Court.

*Restraining orders* were granted against 35 defendants this financial year. This compares closely with the number granted in the previous financial year (up 2.9%). Of these applications 91% were made against defendants charged with serious drug offences. Defendants charged with serious drug offences become liable to restraining orders which activate automatic forfeiture six months after conviction of the offence unless the defendant comes within the specific exceptions under the Criminal Assets Confiscations Act, 1996. One interstate restraining order was registered in the Supreme Court of South Australia this financial year.

*Forfeiture orders* were granted against 41 defendants this year. This represents an increase of 2.5% on the previous year. It is notable that of these, only 10 orders (25%) arose from automatic forfeiture. The majority of the forfeiture orders (56%) were made orally in conjunction with criminal proceedings.

The estimated total value of property forfeited was in excess of \$520,200. As a consequence two forfeiture orders made assisted in the restitution of property to victims of crime amounting to \$24,180.

Revenue deposited into the Criminal Injuries Compensation Fund this year was \$520,246.97 which represents an increase of 56% on that deposited in the last financial year. Applications for access to restrained funds for legal expenses were made in relation to eight defendants. One application was refused and seven applications were granted. There was one matter which was the subject of an appeal. This matter was settled part way through the appeal process.

#### *Policy and Legal Training Unit*

An important feature of the Solicitor Section is the newly developed Policy and Training Unit. This is currently comprised of two senior solicitors who share the position, both working on a part-time basis.

The Unit has undertaken the following *policy* functions within the Solicitor Section:

- ≈ providing advice to the Director in relation to the impact of proposed new legislation and/or amendments to existing legislation;
- ≈ providing advice to the Director in relation to initiating changes to existing legislation and/or policies;
- ≈ liaising with the Policy and Legislation Section of the Attorney-General's Department in order to achieve the most workable solution to sometimes quite difficult problems associated with legislative change;
- ≈ ensuring that all professional staff are informed on a regular basis of any legislative or policy changes that impact on the Office;
- ≈ providing advice to SA Police in relation to developing policies and procedures that adequately reflect their obligations and those of the ODPP;
- ≈ providing advice to SA Police in relation to training manuals used by the Police Academy;

≈ providing advice to a number of agencies on the criminal law trial process as it relates to their publications.

The Unit has undertaken the following *training* functions:

- ≈ developing and organising, in consultation with all professional staff and management, the continuing legal education program for the Office;
- ≈ disseminating information to professional staff in relation to recent CCA and High Court cases;
- ≈ developing and writing Crime Training Seminars on a range of topics for delivery to SA Police at the various Local Service Areas on a regular basis.

The Solicitor Section will continue over the next year to build the experience of its staff by providing different opportunities to benefit from the greater experience of the Office. They are encouraged to attend seminars and workshops organised by outside groups and to continue to research their own areas of law. Junior members of our Office are also encouraged to work closely with the senior members and for the Solicitor Section to work more closely with the Prosecutor Section and with the Witness Assistance Service.

### ***Counsel Services***

For the second part of this financial year the Prosecution Section has been performing with reduced staff numbers as a consequence of a number of events, the most significant of which is the creation of the new Drug Court and the commencement of the Snowtown prosecution. Experienced prosecutors have been made available on a full-time basis to both these areas as a result the number of experienced prosecutors available during the year has been the lowest for some time. One of the direct results is that the Office has relied heavily on the independent bar in the last six months, briefing much more widely than in former years. Notwithstanding the challenges of the past few months the Prosecution Section has continued to perform at a very high standard.

The matter of *Gillard and Preston* continued to occupy a great deal of prosecutor time and court time over the current year. The appeal commenced in December 1999 and as at the date of this report, the matter is still pending before the Court of Criminal Appeal. The appeal involved questions of fresh evidence and in addition to that various other substantive grounds. The appeal raises the importance of disclosure of all intercepted telephone calls pursuant to a warrant under the Telecommunications Act. The decision of the Court of Criminal Appeal, which relates to intercepted telephone calls, has important ramifications for prosecution authorities in this State on disclosure issues. The ramifications also extend to the cost implications as the costs associated with any prosecution now based any significant extent on telephone intercepts or listening devices will be commensurate with the degree of disclosure now required.

In the murder trial of *R v Morris*, the issue arose as to whether the accused at the relevant time had a mental impairment as a result of suffering from premenstrual syndrome. In this case a 37 year old woman was charged with the murder of her elderly mother. After many months delay and the obtaining of a number of psychiatric reports, relevant to the woman's mental condition, the accused eventually pleaded guilty to murder. The trial judge found that exceptional circumstances surrounded the killing deed. She received a relatively lenient non-parole period of 14 years.

In another murder trial raising the issue of the accused's mental state, the accused, *Wiskich* eventually pleaded guilty to murder and the case went as far as the High Court on a special leave application by the accused, on this issue of the relevance of mental impairment of one kind or another in the sentencing process.

Another case of interest this year was the case of *R v Mason*. In that case the Full Court considered the public interest immunity from disclosure, of the identity of police informers and re-affirmed the

rationale of that rule. Namely to give effect to the public interest in ensuring that a person is not deterred from giving information to the police for the detection and prevention of crime.

With the services of experienced Senior Prosecutor, Mr Peter Brebner, available to it during the year, the Fraud Section was able to complete a number of lengthy and complex fraud matters successfully. The lengthiest of these was the matter of *Zoneff* which was prosecuted in February this year. Another fraud matter which reached the Full Court after an eventual plea of guilty was the matter of *R v Cavanagh*. In this case, the accused man pleaded guilty to 144 counts of fraudulent conversion totalling some \$240,000. The money was defrauded from two elderly women and when the matter finally reached the Full Court the Court of Criminal Appeal took the opportunity to review and set higher tariffs for fraud cases involving significant breaches of trust as in the present. Since then a number of decisions have been handed down applying the new tariffs set in this case.

Supreme and District Court circuits have been running on an almost continuous basis in the current year, with by far the greater workload coming out of the Port Augusta Court.

There has been a concerted effort made by both the Prosecution and Solicitor Section working together this year to ensure that new prosecutors/solicitors commencing with the ODPP have the opportunity to do a great deal more court work than in the past. This has had a beneficial impact on the Prosecution Section, not the least because solicitors have been available to do some of the shorter and less complex trials, thereby freeing up more experienced prosecutors to take on the more complex matters.

The operation of the new Part 8A of the Criminal Law Consolidation Act (the mental impairment provisions) has continued to cause some difficulties in the efficient prosecution of matters where this defence has been raised. Unfortunately all too often the issue of mental impairment surfaces very late in the proceedings, sometimes during the trial itself with the result that in the last year at least three major trials were aborted and new trial dates had to be set because this issue had not been satisfactorily addressed prior to the commencement of the trial. Certain recommendations have been made to the court and to the Attorney-General in terms of suggested disclosure of expert reports prior to trial, which would go a long way to alleviating some of the delays experienced when this issue surfaces for the first time during the defence case. Notwithstanding some of the delays which have occurred, there have been a number of significant decisions in the last year which have helped to clarify some of the provisions of the legislation.

During the year senior prosecutors have made themselves available to a significant extent to the Law Society Advocacy Group for weekend training seminars of young advocates, to the PLT Training Group and to both universities. Crown Counsel, Steven Millsted QC and Stephen McEwen continue to be our representatives on the Criminal Law Committee.

### **SUPERIOR COURT PROSECUTIONS (Adelaide & Circuit) 1999/2000**

***Outcome***

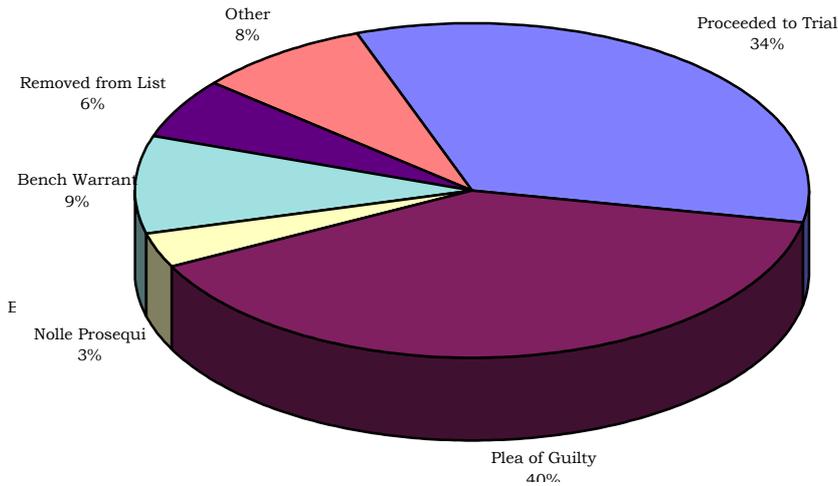
Convicted	622	76.13%
Nolle Prosequi	73	8.94%
Not Guilty	64	7.83%
White Paper	38	4.65%
Other	20	2.45%
<b>TOTAL FINALISED</b>	<b>817</b>	<b>100.00%</b>

***Nolle Prosequi***

<i>Committal Unit</i>	59	80.82% (of total)
<i>Non Committal Unit</i>	14	19.18% (of total)

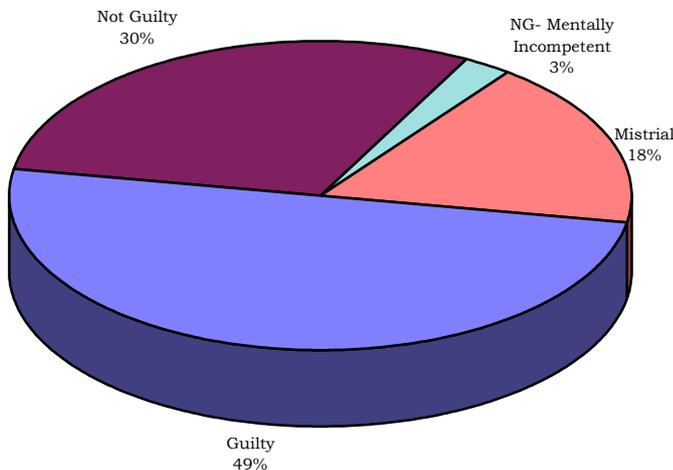
**ADELAIDE MATTERS LISTED FOR TRIAL  
CIRCUIT MATTERS LISTED FOR TRIAL**

<b>Outcome</b>			
Proceeded to Trial	228	45.88%	
Plea of Guilty	840	17.73%	3.61%
Nolle Prosequi	207	4.23%	1.50%
Bench Warrant	104	2.01%	3.36%
Removed from List	131	26.16%	2.24%
Other	217	4.23%	5.88%
<b>TOTAL FINALISED</b>	<b>497</b>	<b>100.00%</b>	<b>40%</b>
<b>TOTAL FINALISED</b>	<b>119</b>	<b>100%</b>	



**Outcome of Adelaide matters that were listed for trial and proceeded to trial**

<b>Outcome</b>			
Guilty	120	52.63%	100.00%
Not Guilty	47	20.63%	100.00%
Nolle Prosequi	90	3.95%	0.00%
NG- Mentally Incompetent	91	3.95%	2.50%
Hungry Jury	100	4.39%	0.00%
Mistrial	167	7.02%	17.50%
Other	140	7.10%	100.00%
<b>TOTAL</b>	<b>228</b>	<b>100.00%</b>	



## Appeals

The Office appears in all appellate jurisdictions.

### HIGH COURT

There were 17 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 1999 and by video link to Canberra in March and May 2000.

<i>Leave to Appeal</i>	<i>Number</i>
Applications pending at 1/7/99	12
Applications filed during 1999/00 year	5
Leave to Appeal refused	7
Leave to Appeal abandoned	1
Leave to Appeal granted	4
Applications pending at 30/6/00	5
<b>Total</b>	<b>17</b>

During this year only one applicant was granted leave to appeal to the High Court (*Zoneff*) although there were applications carried over from the previous year. All other matters were refused. The appeal granted leave was heard before the Full Court of the High Court in February 2000. That argument involved the appropriateness of the trial judge's directions to the jury in that trial on the topic of purported lies by the applicant. In addition, the Full Court of the High Court whilst in Adelaide in August 1999 heard two appeals (three applicants) which had been granted leave during the previous year (*Inge, Wingfield and Lipohar*). Those cases involved issues of imposing a of non-parole period for murder and jurisdictional issues concerning fraudulent misconduct.

### 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.

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

*R v Bennett* (possess heroin for sale or supply) - the test to be applied in deciding whether to admit evidence prejudicial to the accused.

*R v Tee* (unlawful sexual intercourse) - a conviction for unlawful sexual intercourse and an acquittal for indecent assault are not inconsistent verdicts.

*R v Hill* (murder) - the test for the bias of a jury member is whether a fair-minded, informed member of the public would entertain a reasonable apprehension of a lack of impartiality.

*R v Climas* (Question of Law Reserved) - amendments to the *Evidence Act* make persons of any age capable of giving evidence providing they understand the obligation to be truthful.

*R v Haydon* (AOABH) - when evidence of prior consistent statements can be used to rebut an allegation of recent invention.

*Application for Reservation of Questions of Law (No. 2 of 1999)* - whether the Full Court has the power to order Supreme Court judges to reserve questions, and whether in the exercise of its discretion it should do so.

*R v Grosser* (attempted murder) - the admissibility of lies as evidence of guilt; judicial directions on evidence of bad character.

*R v Lobban* (possess cannabis for sale) - discretionary exclusion of evidence will only apply where evidence has been *obtained* by illegal or improper means.

*R v Bedi* (murder) - self-defence is only an operative defence as long as the threat provoking the defensive conduct continues.

*R v Jenner & Masters* (wounding with intent) - where there are a number of offenders, it is enough for the secondary offender to foresee the possibility of an offence occurring outside the scope of the original common purpose.

*Question of Law Reserved on Acquittal (No. 5 of 1999)* (cannabis offences) - search warrants need not specify the particular offence for which they are issued.

In the appeals which involve issues of admissibility of evidence and/or the trial judge's directions to the jury, the role of the Office of the Director of Public Prosecutions is to assist the Court of Appeal to ensure that each matter is dealt with by reference to establish principles, rules of evidence and criminal procedure.

In sentencing appeals, the Office of the Public Prosecutions provides submissions to the court on the appropriate approach that should be adopted. In addition, the Director has a right to appeal against a sentence imposed if it is manifestly inadequate or reveals an error of principle. According to the High Court such appeals should only be instituted in rare and exceptional cases. Two examples of such appeals are:

*R v Wiskich* (murder) - DPP appeal against non-parole period imposed - the relevance of an offender's mental condition to the issue of general deterrence.

*R v Lumsden* (armed robbery) - DPP appeal - appropriateness of suspension of any sentence for armed robbery.

	Appeals initiated by defendant	Appeals initiated by DPP
<b>Applications heard in 99/00 but filed prior to 1/7/99</b>	<b>33</b>	
Leave already granted	22	
Leave not been granted but Form 7 granted	1	
Leave granted	10	
Leave refused	-	
Application abandoned	-	
<b>Of those where leave was granted</b>	<b>33</b>	
Appeals upheld	20	
Appeals dismissed	13	
Appeals abandoned	-	
CCA Decision still pending	-	
<b>Application filed during 1999/2000</b>	<b>95</b>	<b>4</b>
Leave to appeal granted*	47	4
Leave refused but Form 7 granted*	2	
Leave to Appeal refused	27	
Leave to Appeal abandoned	7	
Leave not yet determined	1	
Applications pending as at 30/6/00	11	
	<b>Total</b>	
	<b>95</b>	
<b>Where leave was granted*</b>		
Appeals upheld	17	2
Appeal refused	30	1
Appeals abandoned	1	
CCA Decision still pending	1	1
	<b>Total</b>	<b>4</b>
	<b>49</b>	

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 in the trial process and which are of general relevance and significance to the practice of criminal law in this State.

## MAGISTRATES APPEALS

	Appeals initiated by defendant	Appeals initiated by police
Appeal upheld	27	
Appeal dismissed	8	
Appeal abandoned	2	
Appeal pending	1	
<i>Total</i>	38	<i>Nil</i>

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.

***Witness Assistance Service***

The Witness Assistance Service commenced service delivery to vulnerable witnesses, victims of crime and their immediate family members in October 1995. The Witness Assistance Service continues to provide a commitment to ensuring a quality professional service to vulnerable witnesses, victims of crime and their immediate family members. The service has also continued its commitment to community education, research and collaboration with other agencies through public speaking, training, information provision and representation on a range of committees and projects.

The Witness Assistance Service has continued to receive the professional support of the management team and a cooperative working relationship with legal and administrative staff within the ODPP, contributing to overall effective and efficient service delivery. The professional skills and services of external agencies continues to strengthen to develop positive outcomes for clients, organisations and the community.

**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 and their immediate family members are aware of their rights and entitlements, and also their responsibilities;
- ≈ provide victims, their families and witnesses with information about the prosecution processes and ensure they are kept informed about the matter;
- ≈ design and contribute to information packages for victims and their families;
- ≈ inform victims and witnesses 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 Declarations of Victim's Rights;

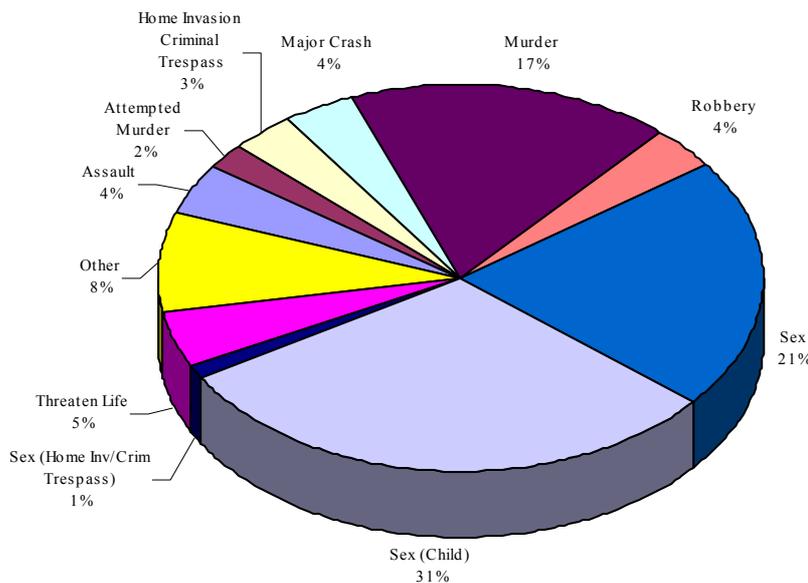
- ≈ assess victims needs in dealing with the prosecution process and provide referrals to appropriate organisations for ongoing counselling;
- ≈ work with solicitors and prosecutors as part of a team, in a manner that ensures best outcomes for the victim/witness;
- ≈ identify ways of improving services 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;
- ≈ attend conferences and when possible conduct conferences with professionals in order to maximise professional development; and
- ≈ participate in internal and external committee work as required.

**SERVICE DELIVERY**

As expected referrals to the Witness Assistance Service has gradually increased each operational year. This is reflected in the increasing number of matters the Witness Assistance Service have been involved in, the injection of further staff resources adding to the Witness Assistance Service ability to respond to the increasing demand both from within the DPP and externally via police or other agencies working with victims of crime.

<b>Year</b>	<b>No of Matters</b>	<b>Staff FTE</b>
October 1995-June 1996	173	1
1996 - 1997	215	1
1997 - 1998	237	1
1998 - 1999	334	2
<b>1999 - 2000</b>	<b>449</b>	<b>3</b>

**Witness Assistance Service - New Referrals by Offence Type**



Service adds to cases.

which will be on children's development of

5:

- ≈ In consultation with the Homicide Victim Support group and other key services to homicide, the development and launching of the booklet *“Unlocking the Homicide Maze”*, launched in September 1999.
- ≈ In collaboration with the Justice Strategy Unit, the development of a video for children explaining the court processes, launched in June 2000 called *“Going to Court - it’s an Important Job”*
- ≈ The development of Witness Assistance Service pamphlets, posters and business cards.

#### CONFERENCES

The Witness Assistance Service attended several conferences over the period, including co-presenting a paper in May 2000 at the Victims of Crime Conference in Adelaide.

In March 2001, the Witness Assistance Service will host the fourth National Witness Assistance Service in Adelaide.

#### CIRCUIT

In maintaining its commitment to delivery of services in the country regions, Witness Assistance Service responded to victims and their families in the country on eleven trips over the last twelve months. Country areas visited were Mount Gambier, Port Augusta, Port Pirie, Murray Bridge, Ceduna and Whyalla.

#### FUTURE DIRECTIONS

The following goals were successfully achieved over the past twelve months:

- ≈ the permanent appointment of the Child Witness Assistance Officer;
- ≈ the permanent appointment of a second Witness Assistance Officer position;
- ≈ increased referrals from the Circuit practice; and
- ≈ evaluation from external agencies on Witness Assistance Service.

The objectives for the next twelve months include:

- ≈ the recording of data pertaining to the amount of time allocated to client case work, research and committee work conducted by each Witness Assistance Service officer;
- ≈ the development of further policy relating to Witness Assistance Service and ODPP practices for non-English speaking background and Aboriginal persons;
- ≈ the exploration of a Witness Assistance Service position for circuit;
- ≈ the delivery of services to the families of the Snowtown murders;
- ≈ client evaluation of the Witness Assistance Service service; and
- ≈ the completion of the Child Witness Assistance Officer research paper.

### ***Support Services***

There are currently 21 support staff (including the Administration Manager) who provide services to the Office. A review of the support services staffing and classifications was undertaken during the year. From this review several new Law Clerk positions were created, one permanent and one temporary contract position as well the formalisation of an additional part time secretarial position.

The support staff personnel have continued to meet the challenges of the Office to provide an effective support service. There has however been a requirement for part of the year to have temporary agency staff.

### ***Training and Development***

### *Staff Performance Management*

The Office has continued its performance management system for staff during the year. This system continues to assist management in identifying training and development requirements for staff.

### *Continuing Legal Education (CLE) Program*

A number of new professional staff, consisting mainly of solicitors, have joined the Office in the last year, most of whom have less than five years experience in the law. As the Office is now made up of prosecutors and solicitors of varying experience, the continuing legal education program has tried to focus on a broad range of topics to cater for the needs of all staff.

The Policy and Legal Training Officers co-ordinate the CLE Committee, which is made up of professional staff, and is responsible for deciding on the topics for the year and the speakers. The Office have been fortunate this year to be able to utilise the combined experience and skill of a number of different speakers, including senior practitioners from within the Office, the wider Attorney-General's Department and members of the South Australian judiciary.

The program this year has included:

*Professor Bull - (English psychologist)*

*Julie Selth - Practical steps in the passing of legislation*

*Brad Selway, QC (Solicitor-General) - Preparation and conduct of appeals before a single judge and the Full Court.*

*Steve Millstead, QC - Mental competence*

*Paul Rofe, QC - The role of the DPP*

*Wendy Abraham, QC and Pauline Barnett - Recent CCA and High Court decisions*

*Judge Sulan - Preparing for trial*

*Patricia Kelly and Sandi McDonald - Conduct of trial of sexual offences*

We have been fortunate to have available to us through the generosity of the Commissioner for Equal Opportunity their boardroom, which has allowed us to accommodate large numbers of people for these sessions. We have also invited prosecutors and solicitors from the office of the Commonwealth DPP to attend relevant sessions.

### *Leadership SA Scholarships*

Several staff were successful in gaining scholarships or part scholarships for the Government's Leadership SA Program. This initiative was funded by the Office of the Commissioner of Public Employment.

### *Conferences*

Staff attended (and in some instances presented papers) at the following conferences and forums:

- ≈ International Association of Prosecutors Conference
- ≈ National Forum of Director of Public Prosecutions Executive
- ≈ IPAA National Conference
- ≈ 7th International Criminal Law Congress
- ≈ ANZAPPL - Psychiatry and the Law
- ≈ Australian Institute of Criminology Conference
- ≈ Criminal Trial Reform Conference

- ≈ Australian Institute of Judicial Administrators
- ≈ IPAA State Conference
- ≈ Criminal Law Country Conference
- ≈ Public Sectors Lawyers Group
- ≈ Victims Support Service Conference - Working together to improve services
- ≈ Head of Prosecuting Agencies Conference
- ≈ Conference of Australian Directors
- ≈ Australian Insurance Lawyers Association

## INTER-AGENCY 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.

### *SA Police*

The relationship between this Office and the South Australian Police (SAPOL) continues to work well with an even stronger emphasis on consultation between both parties to ensure consistent and accurate information is given to the public.

In 1999 the Police Liaison Committee was established in accordance with *Recommendation 64* of the Costello Report. The Committee meets every three months and consists of senior representatives from the ODPP and SAPOL. Its function is to establish a regular forum where a range of issues, including those involving potentially long-term systemic change, that affects both the ODPP and SAPOL can be discussed and any changes deemed necessary can be implemented and monitored. The Committee has continued to meet in accordance with its objectives.

The Committee has resulted in a seminar being conducted at Fort Largs Academy in February 2000, where the Director, the Associate Director and a number of senior prosecutors of the ODPP spoke to police on issues such as disclosure, the Criminal Law (Forensic Procedures) Act, and the new pilot Drug Court. It is anticipated that this seminar will be conducted on an annual basis.

The Committee has also given rise to the development and implementation by the Policy and Legal Training Officers with the Office of a series of Crime Training Seminars which it is intended to deliver on a regular basis to the different Local Service Areas, principally for the benefit of patrols.

Close liaison has continued between members of the Committal Unit and Police Prosecutions Branch. 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 Courts Administration Authority continue to work closely in the day-to-day running of the criminal courts. There is daily communication with respect to setting matters down for trial, sentencing, remands, pre-trial conferences and bail reviews. The Office thanks the Court Administration Authority staff for the 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 - SAPOL***

During 1999-2000 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 this 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 1999-2000 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 Service***

Victim Support Service has maintained its commitment to the provision of support services to victims of crime and their family members during 1999-2000. 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 the Victim Support Service staff are valued by the Office.

## STATUTORY REPORTING

### ⌘ *Consultants*

The reporting on the use of consultants by the Office during 1999/2000 is contained within the Annual Report of the Attorney-General's Department.

### ⌘ *Directions to Commissioner of Police and from Attorney-General*

Pursuant to Section 9 of the *Director of Public Prosecutions Act 1991* there were no directions or guidelines given by the Attorney-General to the Director of Public Prosecutions.

Pursuant to Section 11 of the *Director of Public Prosecutions Act 1991* there were no directions or guidelines given to the Commissioner of Police by the Director of Public Prosecutions.

### ⌘ *Executive Employment and Human Resource Reporting*

All relevant matters in relation to Executive Employment and Human Resource Reporting are contained within the Annual Report of the Attorney-General's Department.

### ⌘ *Financial Reporting*

All relevant matters in relation to financial performance 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 continues to be a preventative approach to occupational health, safety and welfare within the Office and regular hazard identification audits are carried out by both the OH&S representative and management. Awareness sessions on *manual handling* and *safety and security at the reception area* have been attended by relevant staff.

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

A deputy OH&S representative was trained and appointed during the year.

### ⌘ *Overseas Travel*

Two senior staff attended overseas conferences during the year.

≈ International Association of Prosecutors 4th Annual Conference - Beijing

≈ Head of Prosecuting Agencies Conference - Fiji

8 *Year 2000 Compliance*

The Office in conjunction with the Office of Y2K developed extensive contingency plans for the Year 2000 problems which may have arisen due to software and hardware non-compliance. The Office was however unaffected by the millennium bug.

## GLOSSARY OF TERMS

### 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 proceeded.

#### **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 competence (CLCA Part 8A) and declared liable to supervision.

#### **Nolle Prosequi**

**All** charges against the accused not proceeded with.

- Note:*
- 1 *Nolle entered purely because of 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 (Nolle), 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 charges(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**

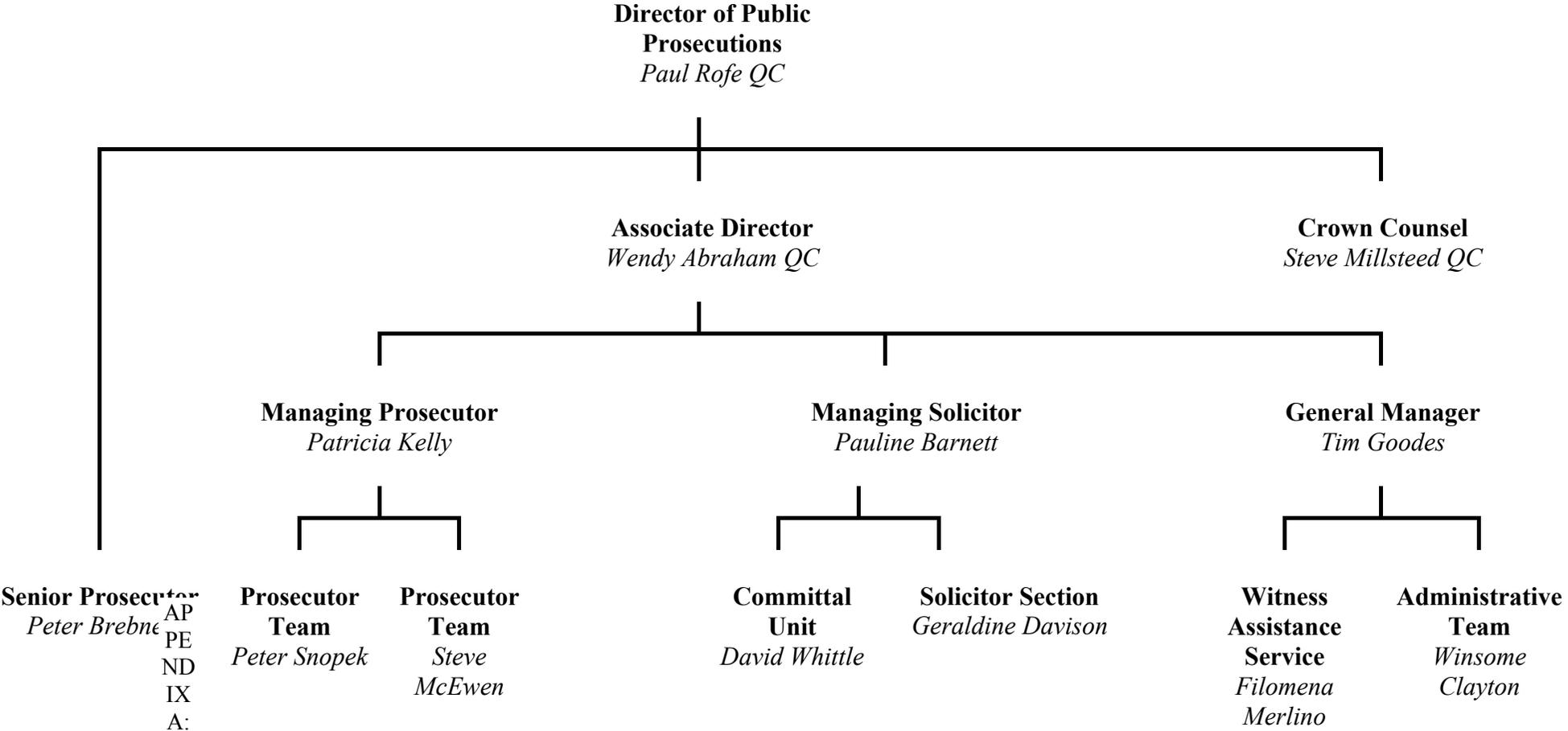
#### ***Matter***

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 a 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 a 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.*

# ORGANISATIONAL CHART

as at 30 June 2000



**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 of 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 skillfully.

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 skillfully.

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.**

**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.