



SOUTH AUSTRALIA

DIRECTOR OF
PUBLIC PROSECUTIONS

Annual Report

2001-2002

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FROM THE DIRECTOR

The Office has continued to perform well in the year under review, responding to the demands of courts, police, victims and the community. This has not been an easy year, however, with the Office under considerable pressure as a result of lengthy trials and increased workflow. That we have managed as well as we have in the face of these difficulties is due once again to the professionalism and dedication of staff. Many of the young practitioners who have been employed in this Office for less than three years have responded extremely well to the challenge of representing this Office in the highly competent manner the courts and the community have come to expect. I thank them for the effort they have put in over the past twelve months.

The Attorney General's Department has continued its support in the areas of corporate services, human resources and policy development and I take this opportunity to thank Kate Lennon, the Chief Executive and all her staff. The former Attorney General, the Honourable K Trevor Griffin retired at the last election and I wish him well for his future endeavours. The new Attorney General, the Honourable Michael Atkinson MP has continued with the practice of fortnightly meetings on matters of mutual interest. My relationship with him is cordial and productive and I thank him for his interest in, and support of, this Office. Again I report that there has been no political interference with the discharge of my statutory duties.

In conjunction with the former Attorney General, the Honourable K Trevor Griffin MLC, the Office hosted an international conference titled "DNA - Prosecuting Under the Microscope" at the Stamford Grand Hotel, Adelaide from Sunday September 9th to Tuesday September 11th, 2001. The Conference provided an excellent opportunity for delegates from Australia, New Zealand, England, Ireland, Canada, Namibia, Swaziland, Fiji, Bermuda and Singapore to learn about DNA technology, explore its future development and contribute to the international debate on the impact of DNA on the Criminal Justice System. I take this opportunity to thank my General Manager, Rosemary Markotic, for her highly efficient organisation of that conference and staff, especially Wendy Abraham QC, Geraldine Davison, Liesl Chapman and Sandi McDonald, for content and presentation.

One of the challenges facing the Criminal Justice System is to successfully incorporate new technologies to streamline our practices and procedures. To this end, as Chair of the Integrated Justice Program (IJP) Steering Committee, and a member of the IJP Prosecutions Steering Committee in the past twelve months, I, and my office, have sought ways to improve and integrate business processes and systems across police, prosecutions, courts and corrections. Since additional funds were not allocated within the Budget Bilateral Process for the full IJP implementation, the Office of the Director of Public Prosecutions has determined to proceed to manage the development and implementation of the first integrated project using existing funding sources, demonstrating our commitment to improved integration across justice systems. Integration will enhance our ability to ensure standardisation of statistics across jurisdictions within this State, and contribute in a more meaningful fashion to national benchmarking statistics. For these reasons I also participate on the National Criminal Court Statistics Unit of the Australian Bureau of Statistics.

The reform of the Criminal Justice System is of ongoing concern to all who practise in the jurisdiction. In July 2000 the Standing Committee of Attorneys General Deliberative Forum on Criminal Trial Reform handed a report to all Attorneys General which included a number of recommendations for the reform of the criminal trial process. This report arose out of what was known as the Martin Report. I intend in the next 12 months to take steps to examine, and where appropriate, implement those recommendations. Where possible I will do this in conjunction with the Courts, and the Law Society.

Finally, I wish to express my sincere gratitude to everyone I have worked with through this difficult 12 month period. In particular I thank my management team as well as all the legal and clerical staff of the Office of the Director of Public Prosecutions. As always, I wish to acknowledge the invaluable support of my Executive Assistant, Jackie Wake and Associate Director, Wendy Abraham QC and General Manager, Rosemary Markotic.

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 that 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.

Key Outcomes for 2001-2002

During 2001-2002, the Office reviewed its strategic plan for the coming two years. As a result of this process the Office declared the following as its key outcomes, and set objectives to achieve those outcomes:

1. Ensuring an independent and effective criminal prosecution service.

This will be achieved by:

- (i) Enhancing public confidence by timely and just resolution of criminal cases;
- (ii) Recognising the special needs of victims and witnesses of crime; and
- (iii) Improving quality control in the presentation of evidence to courts.

2. Working co-operatively with others in finding new and constructive ways of improving the Criminal Justice System.

This will be achieved by:

- (i) Meeting external challenges and reforms in the Criminal Justice System;

- (ii) Ensuring adequate resources are available to meet policy changes; and
- (iii) Developing and implementing training programs to meet identified needs within the Office and across the Criminal Justice System.

Organisational Performance Monitoring (including Budget)

The Office expenditure for the 2001-2002 year was greater than the appropriated budget. The Office overspent by a total of \$100,000 this financial year due to the continuing increase in workload. This is evident from the performance information below:

OUTPUT:	2.1 LEGAL SERVICES			
Description:	This output includes legal advice, disputation, prosecutorial, commercial and property legal services.			
Performance Indicators:	<i>Descriptions</i>	<i>Expected activity 2001-2002</i>	<i>Actual for 2001-2002</i>	<i>Expected activity level for 2002-2003</i>
Quantity	No. Of matters finalised by the Committal Unit	1,300	1,586	1400
	No. Of defendant files finalised by the Office of the Director of Public Prosecutions	850	1061	950
	No. Of clients seen by the Witness Assistance Service	450	555	450
Quality	Percentage of matters committed through the Committal Unit in which the DPP enters a nolle prosequi after committal	<10%	7.5%	<10%
	Percentage of committed matters which are finalised by a guilty verdict or guilty plea	>70%	74%	>70%
	Percentage of referring agencies who rate the standard of service by the Witness Assistance Service as high	85%	85%	85%
Timeliness	Percentage of trials where the ODPP meets the court timetable requirements for the trial list	95%	93%	95%
Cost	Total Cost	\$7m	\$7m	\$7.5m

Activity levels

The expected activity level for 2002-03 financial year as identified above is approximate. For the 2001-02 financial year the Office estimated that the quantity performance indicators would total 1300, 850 and 450 respectively. As is clear from the above data, there has been a significant increase in workload to the Office with the actual quantity performance indicators showing increases of 22%, 25% and 23% respectively. This in the main is due to the amendments to the Criminal Law Consolidation Act (Serious Criminal Trespass) and the increase in drug related matters. This increase in workload is expected to continue. The expected activity levels for the 2002-03 financial as listed above are those for which the Office has arguably been funded to undertake.

Business planning

In June 2001 the Office commenced the development of comprehensive business plans for each section of the office. A wide ranging consultation process was undertaken with the prosecution, administration, witness assistance, solicitor, and Information Technology sections of the office. Staff were involved in defining the strategies that would address the long-term objectives of the ODPP as detailed in the ODPP Strategic Plan. Each business plan outlines clear strategies to meet the Office objectives, the timeframes in which these would be achieved and the officers responsible. Each business plan will be evaluated in the next financial year.

Highlights

DNA - Prosecuting Under the Microscope International Conference, September 2001.

In conjunction with the former Attorney General, The Hon. K Trevor Griffin, MLC the Office hosted the international conference titled *DNA- Prosecuting Under the Microscope* at the Stamford Grand Hotel, Adelaide, South Australia from Sunday September 9th to Tuesday September 11th, 2001.

The conference covered a variety of topics relating to DNA evidence and its presentation in the courts. One message was clear throughout. DNA technology is here to stay, and those who work with it in a forensic arena need to not only understand this technology, but also how to ensure that it is presented in a manner that makes it understandable to others. The Conference provided an excellent opportunity to learn about DNA technology, explore its future development, and contribute to the international debate on the impact of DNA on the criminal justice system. The conference was well attended with over 160 delegates. A number of delegates were from New Zealand, England, Ireland, Canada, Namibia, Swaziland, Fiji, Bermuda and Singapore.

The conference engaged world leaders in this area of forensic science as key speakers. This included Dr Ron Fourney, DNA Data Bank of Canada and Dr John Buckleton Principal scientist, Forensic Science Service UK. A number of the other presenters at the conference included David Gidley and Dr Roland Van Oorschot, Victorian Forensic Science Service, Dr Kris Barlow- Stewart, Director NSW Genetics Education program, the Hon. Justice Mullighan, South Australian Supreme Court, and Wendy Abraham QC, Associate Director of Public Prosecutions.

National DPP Executives Conference

In November 2001, the Office hosted the National DPP Executives Conference. Executives from both the Commonwealth and State jurisdictions attended the two-day meeting. A number of issues were discussed including the various approaches to organisational reviews, activity costing, victim impact statements, performance outputs, information management and technology and file allocation processes.

Management Structure

The decision-making processes for the strategic and major operational issues continue to be dealt with in the overall Office Management Framework. This framework consists of two major Committees, the Executive Committee and the Management Committee.

EXECUTIVE

The Executive Committee is comprised of:

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

The Executive is chaired by the General Manager, 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 also determines 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 is required to forward proposals to Executive for final approval.

This year, the Management Committee of the Office was involved in a Management training program. The Management Committee comprises four MLS-1 positions (legal), two MLS-2 positions (legal), one Administrative Officer position (ASO-5), one Professional Services Officer position (PSO-3) and the Director, Associate Director and General Manager positions. Of the nine members of the Management Committee of the ODPP, three are recent recruits into the management stream. Given that the Management Committee are responsible for operational issues including co-ordination of business planning and performance management of staff the Office felt that it was important to enhance the skill base of management team. The training program developed contained six modules; each module consisted of a 3.5-hour workshop conducted on a Saturday morning. The modules covered topics such as: Leading and Managing change, The roles and responsibilities of senior managers within the Public Sector, Understanding and implementing performance management principles/systems in the workplace, Best practice in human resource management and managing conflict.

SERVICE DELIVERY

Adjudication Services

Adjudication services are provided by the Committal Unit Section of the ODPP. The Committal Unit has continued the formal arrangement with SAPOL Criminal Justice Sections serviced by the Committal Unit in the metropolitan area, to adjudicate charges to be laid in court after police have arrested a person on 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, Elizabeth) where a police prosecutor checks the brief to ensure there is some evidence to provide the consideration of major indictable charges. The file is then delivered or faxed to the Committal Solicitor who considers the appropriateness of the draft charges. If necessary, the charges will be redrafted. 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 information which is available at that stage. It may be reviewed at a later stage once all the evidence has been received.

There has been a significant increase in the number of adjudications undertaken by the Committal Unit in the past year. In the previous year there were 1209 adjudications. This year there were 1315 adjudications. At this early stage of the prosecution process approximately 20% of these charges have been diverted from the superior courts by the laying of minor indictable or summary charges which can be finalised in the Magistrates Court. The significant increase in the number of adjudications is due to a number of factors, but the most significant factor is the introduction of the offence of Aggravated Serious Criminal Trespass. This has had the effect of requiring the ODPP to adjudicate on all matters in which there has been a home invasion or a house breaking with aggravating circumstances or a break-in into a non-residential building with aggravating circumstances.

With the move of the Committal Unit back to the main office, it has been necessary to receive adjudications by fax. Most of the material is faxed to the ODPP early in the morning so that a person can appear in court at the earliest time available for the court to set the hearing.

In addition to the metropolitan adjudications, a number of matters are received from country areas including those to which the ODPP and courts conduct a circuit District and Supreme Court. A number of matters are adjudicated by the circuit solicitor and it is determined whether these matters can be dealt with summarily and finalised in the Magistrates Court.

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 the 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 and documentation 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.

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 534 cases. This represents a slight decrease in the number from last year. Of the 534 cases, 153 were determined to be major indictable offences. In the balance of 381 it was determined that the 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 the 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 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.

Last year it was noted that this Office was concerned with the number of committals which take significantly longer than the Court imposed standard of 10 weeks because of a failure by SAPOL

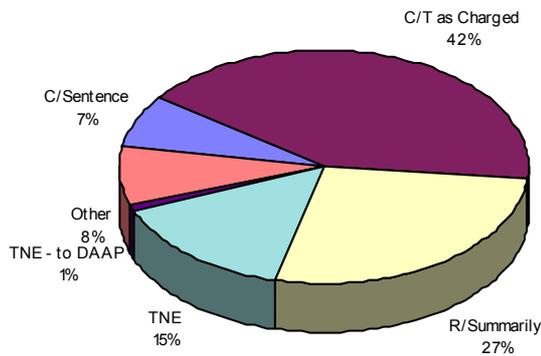
investigators, in some cases, to deliver all statements of witnesses in sufficient time to be filed and served in the Magistrates Court. In the past financial year SAPOL has reported on its brief management project and some training initiatives have been set in place. It will take a period of years before the effects of this training will be seen. In the interim the ODPP will continue to monitor proceedings in the various committal courts.

During the year the Committal Unit dealt with the committals of 1586 defendants, an increase of 266 on the previous year. Of these matters, 659 were committed for trial and 116 were committed for sentence to the superior courts. The balance of 811 did not proceed to the superior courts due to the intervention of the Committal Unit. The Fraud and Solicitor Sections conducted a further 120 committals. That constitutes a total of 1706 committals conducted by the ODPP in the year 2001-2002.

Summary of Committal Unit Outcomes 2001-2002

Committed for sentence	116	7%
Committed for trial as Charged	659	42%
Resolved Summarily	434	27%
Tendered No Evidence (TNE)	234	15%
TNE - to Drug Assessment Aid Panel	16	1%
Other	127	8%
TOTAL	1586	100%

COMMITTAL UNIT OUTCOMES 2001 - 2002



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 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 defence that may resolve the matter without the need to go to trial;
- ≈ draft an advice on evidence;
- ≈ ensure 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;
- ≈ attend in the District and Supreme Courts on arraignments, bail applications and directions hearings;
- ≈ comply 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 (*See 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.

Upon the return of the Committal Unit from Wright Street in May 2001, the Solicitor Section was restructured into two teams, both headed by a Senior Solicitor. The Committal Unit solicitors provide the file load to the solicitors in each of the sections and the solicitors then have conduct of the file from that point on. The ODPP has still retained the committal services, but it is now structured so that there is better supervision and training for all solicitors with the section. The new structure worked well in the first year after the initial settling in period and solicitors have appreciated the centralisation of supervision and training and the ability to quickly access staff.

Fraud Unit

The demand for advice and assistance with large and complex fraud investigations and prosecutions has remained, if not increased, and the DPP has maintained a dedicated fraud unit within the office with respect to these matters. The work of the unit encompasses all large and complex fraud matters investigated by the Serious Fraud Investigation Branch, Anti-Corruption Branch and Local Service Areas and extends from multi-million dollar "white collar" crime to matters involving perjury, anti-corruption investigations of government agencies and allegations against legal practitioners. The last year has seen a substantial increase in the amount of credit card frauds and computer-related crime.

Early liaison between the Serious Fraud Investigation Branch and Anti-Corruption Branch has continued, resulting in substantial resource saving to the South Australian Police Department, this office and the Courts Administration Authority by ensuring early assessment as to whether a prosecution should be commenced and early resolution of matters wherever possible, thus ensuring the efficient distribution of investigative and prosecutorial resources.

In addition, the special arrangements for liaison between the Legal Practitioners Conduct Board and this Office continue with procedures formalised for notification by the Board to the Director of Public Prosecutions of matters which may involve criminal conduct.

In the last year, many serious cases of criminal fraudulent conduct involving, individually, hundreds of thousands of dollars, have been handled by the fraud unit. The sentencing standards for large scale systematic breach of trust frauds as established by the Court of Criminal Appeal in *R v Davies* and *R v Cavanagh* have been maintained.

Criminal Assets Confiscation

The Confiscation Section has once again been very busy during this financial year. With this in mind, an additional law clerk was employed in May 2002 to assist with the work of the section.

Restraining orders were granted against 76 defendants this year. This represents a marginal decrease of 4% in the number of orders granted compared to last financial year. Of these, 72 (95%) related to defendants charged with a serious drug offence. Restraining orders granted in relation to defendants charged with a serious drug offence automatically convert into a forfeiture order 6 months after conviction (or appeal), unless the defendant can show that the property comes within the specific exceptions outlined in the Criminal Assets Confiscation Act 1996.

Forfeiture orders were granted against 55 defendants. This represents an increase of 7% on the previous year. Forfeitures made against 50 defendants (91%) related to persons convicted of drug offences. Forfeitures against 4 defendants resulted in the confiscation of residential properties or land. Furthermore, forfeitures against 9 defendants were resolved by way of monetary orders in lieu of confiscation of the tainted real estate.

Of the forfeiture orders made, 33 (60%) related to automatic forfeiture. A total of 17 orders granted (38%) related to oral forfeitures made before the Court in which the defendant was tried for the criminal offences.

Assistance through the Act was made to 1 victim this year, which resulted in restitution of \$957.00 being returned.

Revenue deposited into the Criminal Injuries Compensation Fund decreased this year. The total revenue deposited into the Fund amounted to \$678,673.56. This represents a decrease of 10% on the last financial year.

A total of 3 applications for legal expenses were granted up to the 29th December 2001.

On the 30th December 2001 amendments to the Criminal Assets Confiscation Act 1996 came into force. The amendments included the following changes:-

- defendants are no longer able to access restrained funds for legal expenses directly;
- if a defendant has no other means of paying for legal expenses and counsel is provided by the Legal Services Commission of SA, the Commission may recover monies spent on that defendant from restrained funds;
- a broadening of the provision of “tainted property” to include property which has been converted from one form to another;
- Judges have power to take forfeiture into account when sentencing where the forfeiture is not profit arising from the criminal offending.

One matter was heard on appeal in this financial year, Trogenza v DPP. This is an important appeal which is likely to have significant ramifications in the operation of the Act. A ruling is yet to be handed down in this matter. The appeal canvassed the discretionary power of a judicial officer in granting restraining orders, in particular when made *ex parte*; the appropriate use of restraining orders

resulting in automatic forfeiture and whether discretionary restraining orders under the Magistrate's Court Act are appropriate in certain circumstances; the factors appropriate to the exercise of discretion by a judicial officer when considering restraining order applications.

Policy and Legal Training Unit

During the course of the last financial year the Policy Position had to be restricted to a 0.5 FTE position because of the increased workload of the Office. As a consequence, the ability of the Office to provide timely policy advice was affected and for a period of time the Policy Committee was discontinued. To the extent possible, the policy solicitor with the assistance of the Policy Committee continues to provide the following service:

- ≈ 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.

Counsel Services

The Prosecution Section during the last financial year has continued to feel the effect of the Bodies in the Barrels case and R v Grosser. With two senior counsel largely dedicated to these prosecutions, the Office has had to work very hard to provide experienced Counsel for all its major trials.

Apart from the two cases mentioned above, the most significant cases for the past financial year have been as follows:

R v O'Donnell

The accused was charged with murder arising out of a brawl in a car park. His defence was self defence. He and other witnesses claimed that the victim was the aggressor but the jury found that the accused was the aggressor and that he had stabbed the victim in the back three times. The verdict was manslaughter on the basis of an unlawful and dangerous act as the accused was found to be so intoxicated as to be unable to form the intent to kill or cause grievous bodily harm.

R v Hunt, Burgoyne and Weetra

A home invasion where an elderly man was killed during an armed robbery. Two of the accused pleaded guilty (Burgoyne and Weetra) while the third went to trial. The jury convicted Hunt of murder on the basis that he provided the gun used in the robbery and the transport to go to Elizabeth. Pursuant to section 12A, this involvement amounted to murder.

R v Measures

The accused was charged with a series of rapes committed on a number of victims. The defence argued that the trials should be heard separately in relation to each victim. They succeeded in this argument. Ultimately a guilty verdict was returned on each charge.

R v England

In contrast to R v. Measures mentioned above, the trial judge declined to sever the counts relating to each victim. Therefore one trial was conducted in relation to each victim. The accused was convicted on each count. The accused appealed against his conviction to the Court of Criminal Appeal. This has been dismissed.

R v Du Bois

This matter involved allegations of a large scale fraud perpetrated against a number of victims. The accused pleaded guilty.

R v C and H

The accused were a defacto couple who committed a series of sexual assaults on multiple victims, both family and non family members. During the course of the assaults the victims were drugged and the assault recorded on video tape. The accused pleaded guilty.

R v Amos

This case involved a young man who broke into a home occupied by an elderly lady and her granddaughter at night. The accused strangled the elderly lady and then raped the granddaughter. DNA samples taken from the victim were instrumental in convicting the accused man of murder and rape.

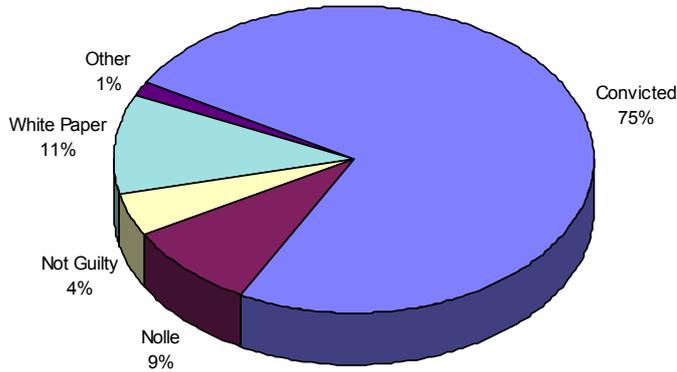
SUPERIOR COURT PROSECUTIONS (Adelaide & Circuit) 2001 / 2002

OUTCOME

Convicted	810	74.45%
Nolle	101	9.28%
Not Guilty	48	4.41%
White Paper	114	10.48%
Other	15	1.38%
TOTAL FINALISED	1088	100.00%

Nolle Prosequi

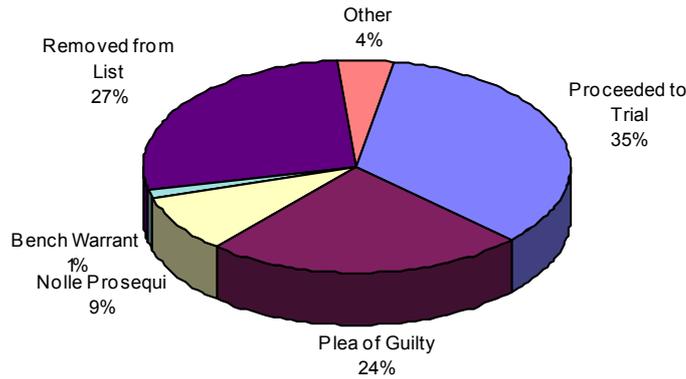
Committal Unit	80	79.21% (of total Nolles)	7.35% of total Finalised
Non Committal Unit	21	20.79% (of total Nolles)	1.93% of total Finalised



ADELAIDE MATTERS LISTED FOR TRIAL

Outcome

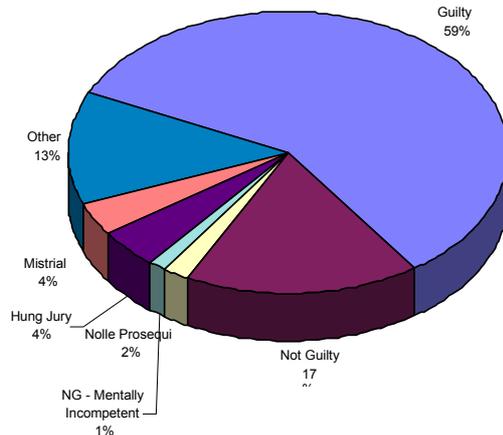
Proceeded to Trial	204	34.29%
Plea of Guilty	144	24.20%
Nolle Prosequi	54	9.08%
Bench Warrant	7	1.18%
Removed from List	161	27.06%
Other	25	4.20%
595	100.00%	



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

Outcome

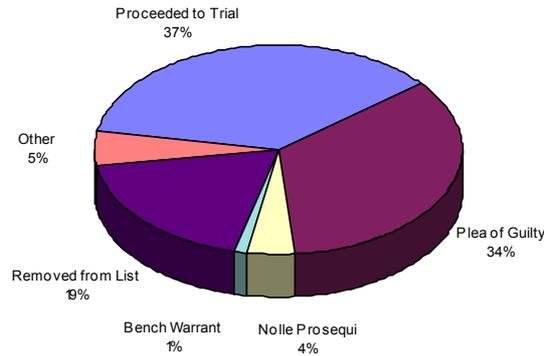
Guilty	119	58.33%
Not Guilty	35	17.16%
Nolle Prosequi	4	1.96%
Not Guilty - Mentally Incompetent	3	1.47%
Hung Jury	9	4.41%
Mistrial	8	3.92%
Other	26	12.75%
204	100.00%	



CIRCUIT MATTERS LISTED FOR TRIAL

Outcome

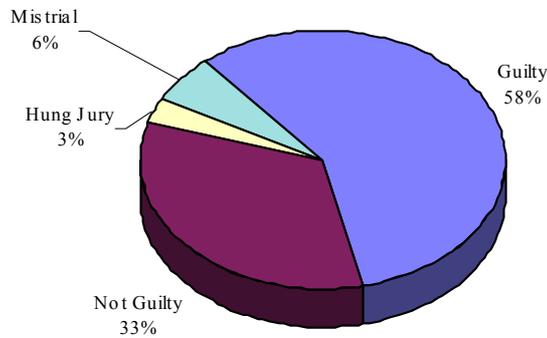
Proceeded to Trial	35	36.46%
Plea of Guilty	33	34.38%
Nolle Prosequi	4	4.17%
Bench Warrant	1	1.04%
Removed from List	18	18.75%
Other	5	5.21%
	96	100%



Outcome of Circuit matters that were listed for trial, and proceeded to Trial

Outcome

Guilty	19	54.29%
Not Guilty	11	31.43%
Nolle Prosequi	0	0.00%
NG- Mentally Incompetent	0	0.00%
Hung Jury	1	2.86%
Mistrial	2	5.71%
Other	2	5.71%
	35	100.00%



Appeals

The Office appears in all appellate jurisdictions.

HIGH COURT

The High Court sat in Adelaide in September 2001. In addition, a number of matters were heard with video link to Canberra. Each of the matters was an application by defence. Leave to appeal was refused in all matters.

<i>Leave to Appeal</i>	<i>Number</i>
Applications pending at 1/7/01	6
Applications filed during 2000/01 year	12
TOTAL	18
Leave to Appeal refused	6
Leave to Appeal abandoned	1
Leave to Appeal granted	0
Applications pending at 30/6/01	11
TOTAL	18

COURT OF CRIMINAL APPEAL

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

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

R v AJW (sentencing for child sex abuse) - Crown appeal against leniency of sentence. Sentence increased from 12 years imprisonment to 18 years imprisonment.

R v Maurangi (conviction appeal) - issues of joinder; responsibility of trial judge to give appropriate directions to jury as to proper use of evidence of a co-accused; discretion of trial judge to allow cross examination on the appellant's own criminal record.

R v Byster; R v Day; R v Blayney & Blayney (conviction appeal) - all these cases involved compliance with sections 74C to 74G of the *Summary Offences Act*.

R v Lobban (sentence appeal) - whether unfair of sentencing judge to reject appellant's undisputed submission as to personal circumstances - respective roles of judge and counsel in sentencing proceedings - existing practice concerning judges' acceptance of submissions concerning criminal conduct and those concerning personal matters in mitigation - no inflexible rule - each case to be determined according to circumstances.

R v Zoneff (conviction appeal) - directions on out-of-court lies; discussion of the question whether totality of the evidence was relevant to prove an intention to defraud on particular counts; admissibility of evidence that accused had previously convicted of similar charges and had been in prison.

R v Clothier (conviction appeal) - whether provocation and defence of property should have been left to the jury; whether directions as to self defence were adequate.

R v Liddy (conviction appeal) - joinder of charges; separate trials; similar fact evidence; cross admissibility of evidence on each charge; adequacy of directions to jury; consciousness of guilt; adequacy of Particulars.

R v McMillan (sentence appeal) - interaction of sections 35 and 39 of the *Controlled Substances Act* with prosecutions of possess for sale pursuant to section 32(17)(c) of that Act.

R v Place (sentence appeal) - guideline judgments; consideration of R v Wong; sentencing standards, synthesis/two stage approach to sentencing.

R v King and Barnes (conviction appeal) - legal professional privilege; admission of statements of co-accused persons given to former solicitor by appellant to be passed on to DPP; whether statements prepared for the purpose of fabricating evidence; fraudulent or illegal purpose; waiver of privilege; direction as to lies.

R v Armstrong (sentence appeal) - Crown appeal against sentence. Sentence disproportionate to the seriousness of the offence - abduction/rape; sentence increased from 5 years with a non parole period of 18 months to a sentence of 9 years with a non parole period of 5 years.

	Appeals Initiated by Defendant	Appeals Initiated by DPP
Applications heard in 01/02 but filed prior to 1/7/01	40	2
Leave already granted	20	1
Leave not been granted but Form 7 had been lodged	4	0
Leave granted	10	0
Leave refused	1	0
Application abandoned	5	1
Judgement Reserved	0	0
TOTAL	40	2
Of those where leave was granted (incl 2 form 7)	32	1
Appeals upheld	3	1
Appeals dismissed	25	0
Appeals abandoned	3	0
CCA Decision still pending	1	0
TOTAL	32	1
Applications filed during 2001-2002	134	11
Leave to Appeal granted	79	11
Leave refused but Form 7 granted	3	0
Leave to Appeal refused	15	0
Leave to Appeal abandoned	12	0
Leave not yet determined	0	0
Applications pending as at 30/6/02	25	0
TOTAL	134	11
Where leave was granted	82	11
Appeals upheld	36	6
Appeal Refused	27	2
Appeals abandoned	2	0
CCA Hearing or Decision still pending as at 30/6/02	16	3
Other (referred to DCSA by consent)	1	0
TOTAL	82	11

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

MAGISTRATES' APPEALS

This year the Office has continued to conduct Magistrates Appeals instituted by defendants in relation to minor indictable offences such as break enter and larceny, assault occasioning actual bodily harm and indecent assault offences. In the main these were appeals instituted against the imposition of sentences although there have been a number that related to convictions

following trial. The Office has maintained its policy in providing advice and opinions to Police Prosecution Services regarding the institution of prosecution appeals.

	Appeals initiated by defendant	Appeals initiated by police
Appeal upheld	17	2
Appeal dismissed	12	
Appeal abandoned	4	
Appeal pending		
<i>Total</i>	33	2

Witness Assistance Service

In its seventh operational year, 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

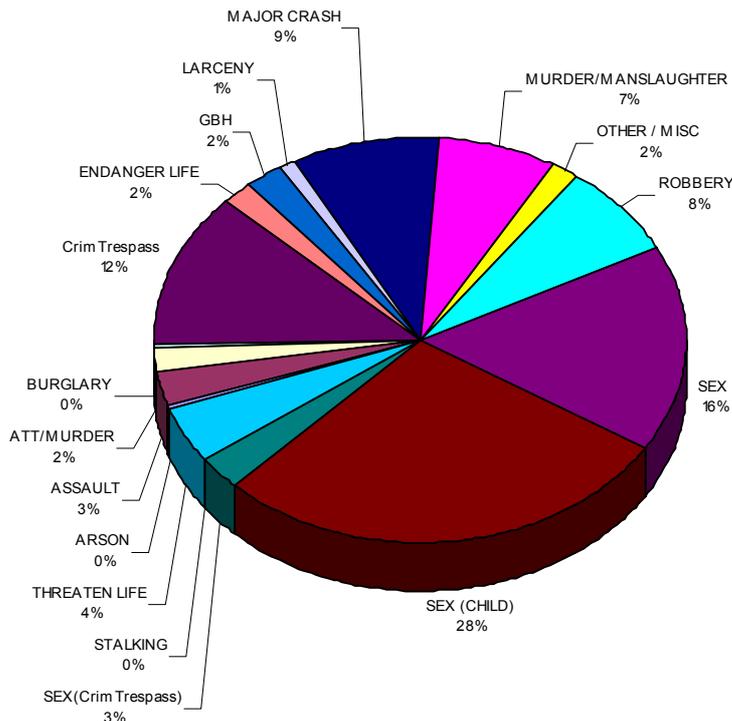
The following objectives provide a framework in order to achieve the mission of the Witness Assistance Service:

- ≈ 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 Declaration 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.

Witness Assistance Service - New Referrals by Offence Type

Offence Type	Number	%
ARSON	1	0.18%
ASSAULT	16	2.87%
ATT/MURDER	11	1.97%
BURGLARY	1	0.18%
Crim Trespass	68	12.21%
ENDANGER LIFE	12	2.15%
GBH	12	2.15%
LARCENY	6	1.08%
MAJOR CRASH	50	8.98%
MURDER/MANSLAUGHTER	40	7.18%
OTHER / MISC	9	1.62%
ROBBERY	42	7.54%
SEX	91	16.34%
SEX (CHILD)	158	28.37%
SEX(Crim Trespass)	15	2.69%
STALKING	1	0.18%
THREATEN LIFE	24	4.31%
TOTAL	557	100.00%



SERVICE DELIVERY

The service profile and demands for the Witness Assistance Service within the ODPP have steadily increased over the last financial year. The Witness Assistance Service policy has been finalised and endorsed by ODPP Executive over the last 12 months. This policy clearly stipulates that all child victims of sexual assault, being dealt with by the ODPP, will be referred to the Witness Assistance Service.

The introduction of oral Victim Impact Statements has increased Witness Assistance Service work in the area of assisting in the preparation of these statements for victims of crime and their family members.

BODIES IN THE BARREL

The Witness Assistance Service also has a team member that is committed to working closely with the legal team in the prosecution of this complex matter. Ms Rebecca Dale works closely with family members of the victims in this case.

CIRCUIT/ COUNTRY SERVICES

In maintaining its commitment to delivery of services in the country regions, Witness Assistance Service continues to attend country areas to assist victims of crime and their families. Country areas include Mount Gambier, Port Augusta, Port Pirie, Murray Bridge, Ceduna and Whyalla.

A Toll free number was established in order to facilitate access of legal and Witness Assistance Officers to persons residing in remote areas.

Training of service providers in rural and country areas in general victimology and criminal justice processes, was also conducted in the last 12 months. In conjunction with Yarrow Place our commitment to conduct training for service providers will continue over the next twelve months.

Support Services

The 23 support staff have continued to provide a highly effective administrative and support service to the Office. The support staff provide a range of services to the Office including law clerks, an executive assistant, secretaries, receptionists and rounds clerks. Management have provided opportunities for support staff to develop their skills and knowledge by providing a framework whereby staff have the opportunity to learn and act in other administrative positions. For periods of time however over the course of the financial year there has continued to be a requirement to have temporary agency staff.

There have been ongoing additional pressures placed on the support team this year as a result of the necessity to have 2 support officers as part of the Bodies in the Barrel prosecution team.

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. As a result of this performance management process staff attended a total of 14 training courses and a number of seminars throughout the course of the year.

The Management and Executive Committees of the Office also attended a management training program which commenced in November 2001.

Continuing Legal Education (CLE) Program

Due to a change in responsibility for policy advice, there were few CLE's arranged for the past financial year. The Office remains committed however to providing CLE's as an opportunity for prosecutors and solicitors to broaden their knowledge. As part of this commitment a CLE Committee has been re-convened to arrange a series of CLE's for the coming year.

The Program this year has included Mr Chris Pearman of the Forensic Science Centre who presented a seminar on DNA. In addition to this, senior prosecutors from within the Office led a discussion on the impact of recent Court of Criminal Appeal decisions. A tour of the Forensic Science Centre, which included a seminar presented by forensic scientists, was also arranged.

Conferences

In September 2001 the Office hosted a conference entitled "DNA Evidence - Prosecuting Under the Microscope" This conference was attended by several senior practitioners within the office, as well as practitioners from all over Australia and overseas.

In addition, staff attended (and in some instances presented papers) at the following conferences and forums:

- ❖ Australian Association of Crown Prosecutors Conference
- ❖ National Forum of Director of Public Prosecutions Executive
- ❖ National Criminal Courts Statistics Unit Meeting
- ❖ National Child Sexual Assault Reform Committee
- ❖ Australian Directors of Public Prosecution
- ❖ International Association of Prosecutors
- ❖ Heads of Prosecuting Agencies Conference
- ❖ Indo Pacific Congress on Legal Medicine and Forensic Sciences (INPALMS)

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 Attorney-General's Department. For administrative purposes, the Director reports to the Chief Executive of the Justice Portfolio. 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 1995* and the *Public Finance and Audit Act 1987* is contained in the Attorney-General's Department Annual Report.

As an associated office of the Attorney-General's 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 Justice Portfolio 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.

Integrated Justice Program (IJP)

The Office of Director of Public Prosecutions and the Director have participated throughout the year towards the development and progress of the Integrated Justice Program (formerly known as IJIS - Integrated Justice Information System). The Director of Public Prosecutions chairs the IJP Steering Committee, and along with the Commissioner of Police, is the key sponsor for the IJP Prosecutions Project.

The Integrated Justice Program seeks to critically examine business processes and develop initiatives for reform in the criminal justice system of South Australia. The aim of the program is to build the future criminal justice system as a modern, efficient process to help police, prosecutors, courts, prisons and probation deal more effectively with offenders, provide a professional service to the general public and enhance support for victims and witnesses.

The Office contributed to the development of the IJP Prosecutions Strategic Business Case, which illustrated the vision for re-engineering and integrating the prosecutions business processes within SAPOL, ODPP, CSO and CAA and for delivering new systems to support these processes. As a first step towards achieving this vision, ODPP will commence in 2002/2003 the IJP Prosecutions Phase1 (Case Tracking) system development.

SA Police

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

This relationship has been strengthened by the formation of the Police Liaison Committee in accordance with recommendation 64 of the Costello Report. This Committee which has been in existence for approximately 3 years, meets every three months with the representation on the Committee from both offices being at the most senior level.

This year there was another seminar at Fort Largs Academy in May 2002. On that occasion both the Director and the Associate Director spoke to the police and answered questions on many topical issues, including forensic procedures, disclosure, records of interview and file preparation.

Further, close liaison between members of the Committal Unit and Police Prosecution Branch continues. This has enabled the police to concentrate on the investigation of criminal activity and the advice provided by the Committal Unit ensures that following the investigation the correct charges are laid and that matters which have no reasonable prospect of conviction do not proceed. The Office has a close association with the Brief Management Project that was run by SAPOL. Members of the Office assisted the project officers to collate the information and co-operated with them to ensure the smooth running of the project. The Office hopes that the outcomes of the project will have benefits for the Office, SAPOL and the criminal justice system.

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

Courts Administration Authority

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

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.

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 last financial year has seen the Witness Assistance Service and Yarrow Place provide joint training on the criminal justice system, to service providers both in rural and metropolitan areas. The Office appreciates the expertise and professionalism consistently provided by Yarrow Place staff to victims of rape and sexual assault.

Victim Support Service

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 2001-02 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 & 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.

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

The Office would like to thank its 3 OH&S Reps for the last 12 months. Ms Mandy Neller who was the OH&S Rep for the last three years until August 2001, Ms Anita Hale who was the Rep from August until April 2002, and Ms Monica Goodgame who is the current Rep. All 3 have displayed a high level of dedication to the role.

Overseas Travel

There was no overseas travel undertaken by the Director or staff during the year.

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 30th June, 2002

Director of Public Prosecutions
Paul Rofo QC

Associate Director
Wendy Abraham QC

Crown Counsel
Steve Millsteed QC

Managing Prosecutor
Patricia Kelly

Senior Prosecutor
Peter Brebner

Prosecutor Team
Peter Snopek

Prosecutor Team
James Pearce

Managing Solicitor
Pauline Barnett

Solicitor Team
Paul Muscat

Solicitor Team
Geraldine Davison

General Manager
Rosemary Markotic

IT Project Manager
Golda Munro

Witness Assistance Service
Filomena Merlino

Administrative Team
Winsome Clayton

DECLARATION OF VICTIM'S RIGHTS

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

The victim of crime shall have the right to:

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

PROSECUTION POLICY

INTRODUCTION

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

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

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

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

P J L Rofe QC

DIRECTOR OF PUBLIC PROSECUTIONS

INTRODUCTION

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

THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

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

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

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

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

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

The primary obligation on a prosecutor is one of fairness. Fairness must dictate eventually the discharge of all of a prosecutor's functions. But the question must be asked as to whom these obligations are owed. Obviously

a prosecutor must be fair to an accused but that cannot be the sole consideration. There are other parties with legitimate interests who are also entitled to expect a prosecutor to act in a particular way. Sometimes these interests will conflict with those of the accused.

A prosecutor has obligations to varying degrees to the following:

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

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

THE ROLE OF THE PROSECUTOR

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

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

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

“Finally there is or has been a tendency for Counsel for the prosecution not to prosecute firmly enough. The last half century has seen a welcome transition in the role of a prosecuting counsel from a persecuting advocate into a minister of justice, but in some places the pendulum has swung so far and the ministry has moved so close to the opposition that the prosecution’s case is not adequately presented and Counsel, frightened of being accused of excessive fervor 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 B of this Report.

ANNEXURE C

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.