



SOUTH AUSTRALIA

DIRECTOR OF
PUBLIC PROSECUTIONS

Annual Report

2002-2003

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FROM THE DIRECTOR

It has now been eleven years since the Office of the Director of Public Prosecutions was established through the *Director of Public Prosecutions Act 1991* and came into existence on 6 July 1992. It is timely to review the reasons for the establishment of an independent statutory prosecuting authority, the achievements of the Office and the outstanding issues facing the Office.

Independence

The rationale for an independent statutory prosecuting authority is obvious. The prosecution function in the criminal justice system needs to be free from any actual or perceived political influence. This freedom ensures that the Office adopts and implements the same set of values and standards when evaluating charges and conducting prosecutions. Consistency is crucial when one recognises that a prosecutor has obligations to varying degrees to the following:

- ~ the Court (judge and jury)
- ~ the community
- ~ the accused
- ~ victims
- ~ witnesses
- ~ defence counsel.

These competing obligations can sometimes be lost when too much emphasis is directed to one stakeholder at the expense of the other stakeholders. Those experienced, in making these finely balanced decisions, represent the best hope for a fair and equitable criminal justice system.

Achievements

The three key achievements, other than the core work of the Office in prosecuting criminal matters, in the past decade to my mind have been the establishment of the Committal Unit, the creation of the Witness Assistance Service and the publication of a comprehensive Prosecution Policy and Guidelines. These three events have reflected the commitment of the Office to provide the people of South Australia with an independent and effective criminal prosecution service.

The Committal Process

In my first annual report I foreshadowed the need for my Office to become involved at the earliest possible time after the defendant is charged. The Committal Unit was established in my second year as Director and funded out of the Office budget. The Committal Unit comprised two legal officers and one clerical officer. It was housed in the police prosecution building and operated in the Adelaide Magistrates Court. The Government provided independent funding in the second year of the Unit's inception and that funding has been incorporated with the ODPP budget since that time. The Committal Unit is now accommodated in the ODPP; has 10 FTE staff, and services all metropolitan courts.

The Unit has been very successful in ensuring that appropriate charges are laid in the initial stage; that those matters which should be settled in the Magistrates Court are resolved at that point and in identifying those matters which can be settled prior to trial in the superior courts. Given that the greatest cost for the criminal justice system is the continuation of matters that should not proceed at all or should be resolved as pleas of guilty at an early stage, it is obvious that this initiative has achieved the objective of providing an efficient and effective criminal prosecution service to the South Australian public.

Witness Assistance Service

Similarly the development of the Witness Assistance Service has been instrumental in the effective delivery of justice to victims of crime. The service provides invaluable and essential assistance to victims and witnesses. The first WAS Officer was appointed in the 1995-96 financial year and Ms Merlino performed magnificently by herself in that position for two years

before the demand for services increased to such a degree that further staff were progressively added to the section over the next several years. At the present time there are five witness assistance officers and a further two officers will be employed in the next financial year.

The service is now an integral part of the Office and many victims and witnesses have acknowledged the professionalism and dedication of the WAS Officers.

The Prosecution Policy and Guidelines

In my first report I emphasised the need to ensure that as far as possible all Australians were prosecuted on the same criteria as far as sufficiency of evidence and prosecutorial discretion are concerned. A crucial step in advancing this goal was the formation of the Conference of Australian Directors of Public Prosecutions. This forum has enabled all Directors to canvass issues around prosecutorial discretion and a high degree of consistency of approach has evolved. In July 1999 my Office released a booklet containing the revised prosecution policy and guidelines for the ODPP in South Australia. Apart from providing essential guidance for all prosecutors, the publication was designed to inform all members of the public of the basis on which all prosecutions are conducted in this State. Such understanding is beneficial when difficult or controversial decisions are made by this Office.

Issues facing the Office

I noticed on a review of my past ten forewords recurring issues of concern for the Office. These issues are the difficulties associated with unrepresented accused; reforms around the criminal justice system; summary prosecutions and resources for the Office.

Unrepresented Accused

In my 1996-97 report I stated that the problem of ensuring representation and a fair trial for those accused of serious crime is the greatest challenge confronting the criminal justice system at the present time. Since the High Court decision in *Dietrich* this issue has been at the forefront of discussion between the Conference of Australian Directors of Public Prosecutions and the National Legal Aid Directors.

In 1999 these bodies collaborated to produce a document entitled a *Best Practice Model for the Determination of Indictable Offences* which was aimed specifically at maximising the efficiency of the trial process while preserving the fundamental rights of accused persons. While the proposals do involve some curtailment of an unqualified right to silence for an accused they do not impinge on the fundamental right of a suspect to remain silent under questioning by police or other investigating authorities at a time when ignorant of the full extent of the allegations and not represented by a lawyer. Essential to the proposals is a full, proper and timely disclosure of the prosecution's case. I was, and remain, committed to doing everything to ensure this Office makes such disclosure. The *Criminal Law (Legal Representation) Act 2001* has gone some way to addressing the problem of an unfunded, unrepresented accused but there are still difficulties with complex matters where the funding cap is exhausted. The Government cannot always step in when legal aid funding is exhausted. Until the Commonwealth Government supplies adequate resources to legal aid bodies this issue will remain one of the main problems facing the criminal justice system.

Criminal Trial Reform

In 1996 I raised the need for reform of criminal trial procedures. I stated that the Office has been involved for some time with various committees looking at improving the trial process particularly pre-trial procedures, with the object, inter alia of achieving simple, shorter, less expensive trials without compromising the rights of accused persons. The achievement of such an objective is clearly in the interests of all parties - the courts, victims, witnesses, juries and the community as well as the accused whose representation in such matters could be assured. Such a result can only be achieved by the co-operation of the legal representatives of the community and the accused, ie prosecution and defence counsel, particularly in the area of disclosure and defining issues at trial.

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 propose to examine, and where appropriate, implement those recommendations in conjunction with the courts and the Law Society.

Summary Prosecutions

South Australia has been fortunate to have enjoyed an efficient prosecution service which was at the same time extremely economical in terms of resources and cost to the community. This has been due in large part to the use of trained police prosecutors in the Magistrates Court handling summary prosecutions. During my time in Office I have constantly reviewed the option of the ODPP taking over summary prosecutions from the police for two reasons. The first is the desirability of separating the investigating and prosecuting functions of the State as separation enhances the perception and the actuality of independence in prosecution. Secondly because it ensures a consistency of approach to prosecution.

The main obstacles to achieving this objective have been resources and the geography of South Australia. These obstacles to date have been insurmountable. Given the critical lack of resources available to me to handle the core work of my Office I do not see summary prosecutions being part of the ODPP in the near future.

Office Resources

The persistent problem facing the ODPP in South Australia has been the level of resources. This Office has consistently run on a resource level far less than its interstate counterparts. That the Office has managed to achieve comparative results in terms of interstate benchmarks such as conviction rates is a credit to the work ethic of the very dedicated group of people employed by the Office. While various governments have increased funding on a regular basis to the Office, this funding has never been sufficient to properly establish the Office on a sound financial footing. The result is that after ten years of insufficient funding the Office is stretched to its limit with staff working long hours and a six day week as a matter of course. Given the subject nature of the work they are involved in, the highly public nature of its performance and the increases in work that various government policies have involved, this level of pressure cannot continue being absorbed by staff.

Unless the Office is given a significant injection of funds in the short term I am of the view that the ODPP will not be able to properly perform its essential functions in the criminal justice system.

Conclusion

As always I am indebted to my Associate Director, Wendy Abraham QC for her unstinting efforts in the past year. I also thank my personal assistant Jackie Wake for her efforts which are often unheralded. My particular thanks go to all members of staff for their dedication and professionalism in a particularly difficult year.

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 favor in order to provide public confidence in the administration of justice within South Australia;
- ~ is recognized for its independence, professionalism and standards of excellence;
- ~ endeavors to deal with victims of crime with sensitivity and respects their special needs; and
- ~ strives for excellence, efficiency and effective communication in its work with police, the courts and other entities within the criminal justice system.

Values

The values which shape the work of the Office are:

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

Key Outcomes for 2002-03

During 2002-03, 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:

- a) Enhancing public confidence by timely and just resolution of criminal cases;
- b) Recognising the special needs of victims and witnesses of crime; and
- c) 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:

- a) Meeting external challenges and reforms in the criminal justice system;
- b) Ensuring adequate resources are available to meet policy changes; and

- c) 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 2002-03 year was greater than the appropriated budget by \$300 000 due to the continuing increase in workload.

The increase in activity is evident from the chart below, where the expected activity levels for the 2002-03 financial year, grouped under “Quantity”, exceeded expectations by 8%, 10% and 45% respectively. This has placed considerable strain on the Office and its employees.

In recognition of the increased workload additional funding was allocated for 2002-03, but only 50% of the amount sought. The remainder has been allocated in 2003-04.

The Office will again find it very difficult to manage within budget in 2003-04 because activity is expected to continue to grow. Over-expenditure of up to \$300 000 is likely, despite management efforts to manage the budget diligently.

| | | | | |
|--------------------------------|--|----------------------------------|---------------------------|--|
| OUTPUT: | 5.3 PROSECUTION SERVICES | | | |
| | 5.5 PENALTY AND CONFISCATION MANAGEMENT | | | |
| Description: | ODPP contributes to these outputs through providing advice to Police, assistance for victims and witnesses, solicitor and counsel services on all matters ultimately heard in the District and Supreme Courts and all matters finalised in the Magistrates Court, as well as administration of confiscation orders issued by the Courts. | | | |
| Performance Indicators: | <i>Descriptions</i> | <i>Expected activity 2002-03</i> | <i>Actual for 2002-03</i> | <i>Expected activity level for 2003-04</i> |
| Quantity | No. of matters finalised by the Committal Unit | 1400 | 1511 | 1520 |
| | No. of defendant files finalised by the Office of the Director of Public Prosecutions | 950 | 1046 | 1050 |
| | No. of clients seen by the Witness Assistance Service | 450 | 642 | 650 |
| Quality | Percentage of matters committed through the Committal Unit in which the DPP enters a nolle prosequi after committal | <10% | 9% | <10% |
| | Percentage of committed matters which are finalised by a guilty verdict or guilty plea | >70% | 76% | >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 | \$7.5m | \$7.8m | \$8.1m |

Activity levels

During the previous financial year there had been a significant increase in the number of cases handled by the Office, due mainly to the amendments to the Criminal Law Consolidation Act (Serious Criminal Trespass) and the increase in drug related matters. This level of activity continued in 2002-03 and is reflected in the figures shown above.

The expected activity levels for the 2003-04 financial year, grouped under "Quantity" in the chart above, are those which the Office anticipates. The Office has actually been funded for less than the estimated quantity, approximately 1450, 1000 and 600 respectively, which continues to place inappropriate pressure on staff.

Strategic and Business Planning

During 2002-03 the Office continued developing and reviewing comprehensive business plans for each section of the Office. Each business plan documents strategies to meet the Office objectives outlined in the 2001-04 Strategic Plan, the timeframes in which this would be achieved and the officer responsible.

It is intended to review the ODPP Strategic Plan during 2003-04. Again each section will be required to develop a business plan to document its intended contribution to the strategic plan.

Leadership and Management Training

During the year thirteen experienced solicitors and prosecutors, who are currently not within the management structure, undertook a management training course that was designed specifically for the Office.

The purpose of this training was to provide leadership development for the two levels below current senior management within the Office. The objectives were:

- ~ To develop a pool of potential leaders from which management positions can be filled in the future.
- ~ To provide this current group of staff with the skills and frameworks which will enable them to contribute more effectively to existing management discussions and planning.
- ~ To support and encourage them to more effectively manage existing relationships where they are expected to lead, coach or supervise staff.
- ~ To assist staff to make informed decisions about a career in management.

The course was very successful. It is intended to use the course participants in the forthcoming strategic and business planning process and in a range of management projects.

Integrated Justice Program (IJP)

The Integrated Justice Program (IJP) has been established across the Justice Portfolio to examine business processes and develop initiatives for reform in the criminal justice system. Its aims are to build a modern, efficient process to help police, prosecutors, courts, prisons and probation officers:

- ~ deal more effectively with offenders,
- ~ provide a professional service to the general public, and
- ~ enhance support for victims and witnesses.

IJP is managed by a steering committee comprised of executives and senior managers of SAPOL, Courts, Correctional Services, Attorney-General's Department, Department of Treasury and Finance and Department of Human Services, and chaired by the Director of Public Prosecutions.

As a first step toward achieving the aims of the project the Office has embarked on the Prosecutions Phase 1 (Case Tracking) system development. A key outcome of the Case Tracking project will be improved efficiency within the Office, which will have a positive impact on the ODPP's role in the overall criminal justice system. The Case Tracking project is managed by a steering committee comprised of representatives of ODPP, SAPOL, Justice Technology Services and the Attorney-General's Department.

By June 2003 the architecture and business processes had been designed and development almost completed. A critical feature of the development work to this stage has been that it has been developed with the needs of the wider criminal justice system in mind, rather than simply to meet the needs of the Office.

The Case Tracking system is expected to be in place by December 2003. The Office will then continue working with other agencies on further development and implementation of phase 2 of the Prosecutions system. This will allow ODPP, SAPOL and the Courts to cooperate in sharing data across systems.

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 (2)
- Senior Prosecutors (2)
- 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.

During the year the Management Committee continued to enhance their skills base by completing the remaining management training modules reported on in last year's report.

Office Structure

The Office structure is outlined in the organisational chart (*Appendix A*). The Office consists of two legal sections (solicitor and prosecution), witness assistance service and administrative support. The Executive members with management responsibility for sections within the Office structure are:

Reporting to the Managing Solicitor

There are two senior solicitors who each manage one team of solicitors. These teams cover the specific functional areas of committal, general solicitor work (including circuit), drug court, fraud and confiscations.

Reporting to the Managing Prosecutor

There are two senior prosecutors who each manage a team of prosecutors. These teams undertake counsel work for matters in the District and Supreme Court (including circuit matters). In addition they provide assistance in appellate work.

Reporting to the General Manager

There are three non-legal teams within the Office. The Manager, Witness Assistance Service manages the witness assistance officers and the Administration Manager manages the administrative team. The manager of the Integrated Justice Program also reports to the General Manager.

SERVICE DELIVERY

SOLICITOR SECTION

The Solicitor Section provides all solicitor services on the files conducted by the Office. This includes legal advice, committals, arraignments and all matters in the pre-trial stages. The section also provides counsel services on trials and in the appellate jurisdictions when their busy practices allow them to do so.

Adjudication Services

Adjudication services are provided by the Committal Unit Section of the Office. 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 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 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 1315 adjudications finalised. This year there were 1521 adjudications finalised. 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 Office 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.

In addition to the metropolitan adjudications, a number of matters are received from country areas including those where the courts conduct a circuit court (District and Supreme). 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

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 and Guidelines, 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 Office 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 solicitor preparing the advice will meet with the witness to assess his or her ability to give evidence. This is particularly important in sex 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 sex 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 sex 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 sex 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-sex offences. The provision of advice to police, prior to the charging of alleged offenders with sex 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 most vehicular collision cases, in which death or serious injury have been caused, will be referred for advice, prior to the laying of charges.

During the year the Office provided advice as to the appropriate charges, if any, to be laid in 499 cases. This represents a slight decrease in the number from last year. Of the 499 cases, 136 were determined to be major indictable offences. It was determined in the balance of 363 cases that the appropriate charges could be laid in the Magistrates Court or that no charges at all should be laid.

Committal Services

The Office 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.

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 Office 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.

As reported last year committals are continuing to take significantly longer than the Court imposed standard of 10 weeks. Some of the delay is still attributable to a failure by SAPOL investigators to deliver all statements of witnesses in sufficient time to be filed and served in the Magistrates Court. It is noted, however, that the defence and prosecution, with the support of the court, at times delay the

committal process to ensure that more pre-trial issues are resolved in the committal proceedings prior to the matter being arraigned in the superior court. This is often a more cost effective process and will continue to be monitored to ensure that the results are consistent with a timely and effective resolution of criminal prosecutions.

During the year the Committal Unit dealt with the committals of 1511 defendants, a slight decrease on the previous year. Of these matters, 663 were committed for trial and 113 were committed for sentence to the superior courts. The balance of 709 did not proceed to the superior courts due to the intervention of the Committal Unit. The Fraud and Solicitor Sections conducted a further 79 committals. This constitutes a total of 1590 committals conducted by the ODPP in the year 2002-03.

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 the absence of the screening and review of the Committal Unit these files require a more intensive initial assessment that on occasion results in matters being referred back to the Magistrates Court and appropriate charges being disposed of in that jurisdiction.

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 *Victims of Crime Act 2001* and ensure that appropriate witnesses are referred to the Witness Assistance Service;
- ≈ deliver properly prepared briefs to the prosecutor.

A significant number of matters 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 (the accused pleads guilty) 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 solicitor. There are also some prosecutions that are assessed as not being in the public interest or having no reasonable prospect of conviction. A *nolle prosequi* is then entered in these matters as it would be inappropriate to continue the prosecution (*Appendix B*).

The carriage of the files through the courts requires that the solicitor attend on all interlocutory hearings such as bail applications, 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 1935* 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 Prosecution Section.

The Solicitor Section has worked under significant strain this year as a result of changes to legislation, increased complexities in the presentation of prosecutions to the court, turnover of personnel and a

rise in the number of files handled by the Office. The Section has responded extremely well to these challenges and has carried out its work in a dedicated and professional manner.

Fraud Unit

The demand for advice and assistance with large and complex fraud investigations and prosecutions has increased by 38% this year, and the ODPP 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 SAPOL's 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 savings to SAPOL, 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

In December 2002 the single judge ruling on the appeal of *Trogenza v DPP* was delivered. In this ruling, it was held that:

- ~ the court should be cautious before it grants a restraining order under section 15(5) because such orders deprive a defendant of substantive rights;
- ~ an order under section 15(5) should only be made if there are real risks that the property be dissipated;
- ~ personal undertakings and restraining orders under the *Magistrate's Court Act* are appropriate alternatives to restraining orders under the *Criminal Assets Confiscation Act, 1996*;
- ~ the ex parte application for a restraining order was inappropriate in the circumstances.

The effects of this ruling have displayed themselves in the type of orders being granted and varied by the Magistrates Court.

During this financial year orders restraining property against 50 defendants were granted. However, of these only 44 were granted pursuant to the Criminal Assets Confiscation Act. This represents a decrease of 39% in the number of restraining orders granted under the Criminal Assets Confiscation Act from last financial year. Of these 44 Criminal Assets Confiscation Act restraining orders six were consequently converted into Magistrate Court Act orders or undertakings at a later date. The remaining six restraining orders granted this year were issued pursuant to the Magistrates Court Act 1991 or as undertakings. An additional 17 restraining orders made under the Criminal Assets Confiscation Act from earlier financial years were converted to Magistrates Court Act or undertakings as a result of the ruling in *R v Trogenza*. This brings the total number of defendants with restraining orders not made under the Criminal Assets Confiscation Act to 29 and represents 28% of the total number of 102 restrained defendants in this Office. It is expected that these non confiscation based

restraining orders will have a significant impact on forfeiture orders and income into the Criminal Injuries Compensation Fund in future. Orders of this type do not provide any restrictions on defendants accessing restrained property for the purpose of legal or other expenses and do not provide for automatic forfeiture.

Forfeiture orders were granted against 46 defendants this financial year. This represents a decrease of 16% on the previous year. Forfeiture orders granted against 41 of the defendants (89%) related to persons convicted of drug offences. Of the forfeiture orders made, 15 (32%) related to automatic forfeiture and 30 orders granted (67%) related to oral forfeitures made before the Court in which the defendant was tried for the criminal offences.

There was a decrease in revenue deposited into the Criminal Injuries Compensation Fund this year. The total revenue deposited into the Fund amounted to \$666 786. This represents a minor decrease of 1.75% on the last financial year. This small decrease reflects in part, the decision in *Trogenza* and reduced staffing in the Police Confiscation Section due to secondments.

One matter was this year heard on appeal - *DPP v Alexander*. This appeal canvassed whether Magistrate Court Act restraining orders should be used to restrain property subject of a serious drug offence because such orders do not provide the same protection as those under the Criminal Assets Confiscation Act; whether Magistrate Court Act restraining orders are in the circumstances available in any event; whether these orders are consistent with the legislative intention of the Criminal Assets Confiscation Act and whether an anticipated outcome of automatic forfeiture is a valid reason for refusing to issue a restraining order under the Criminal Assets Confiscation Act. The decision of the Full Court is yet to be delivered.

Policy Unit

In the last financial year the Office could not maintain a dedicated policy position (even at a half time level) because of the pressure on the Office to process prosecutions in a timely manner. It remains the firm view of the Executive of this Office that a full time policy position is critical. This is essential to allow us to provide timely advice to government and to the enable us to have an effective role in development of the criminal justice system.

The Office has established a Policy Committee which has on it representatives from all levels within the Office. This Committee has attempted to address all of the legislative changes made by government however our effectiveness in this area is less than optimum because of the lack of a full time position.

PROSECUTION SECTION

This section provides the counsel work to the Office. This includes, opinions, trial and appellate work.

Counsel Services

During the last financial year the Prosecution Section has continued to feel the effect of R v Bunting and Wagner with two prosecutors being solely dedicated to this trial.

Some of the more significant cases prosecuted in the last 12 months are as follows:

R v Loader - The accused was charged with a double murder. The murders came about as a result of the illicit trade in cannabis and this was very much a focal point during the trial. The accused was found guilty of both murders.

R v Porter - The accused was charged with the murder of his 63 year old step-father in Mount Gambier. The murder was presented against a backdrop of threats by the accused towards his step-father. Tragically the dispute seemed to have centred on the sale of a \$1500 utility van. The accused was found guilty. This conviction was appealed in the Criminal Court of Appeal and the appeal was dismissed.

R v Boney and Boney - Three accused were charged with the murder. One accused pleaded guilty and the other two accused went to trial. This murder was committed in the context of a home invasion. The accused had entered a house looking for drugs and money and had killed the occupant. They were found not guilty of murder, but guilty of manslaughter.

R v Kamleh; R v Zappia - Kamleh and Zappia were originally jointly charged with two counts of murder that occurred in a North Adelaide hotel room. Prior to the trial, application was made for separate trials. That application was granted on the basis that there was a large amount of evidence that was admissible against Zappia that was not admissible against Kamleh and which also had the potential to be very prejudicial to Kamleh.

The trial of Zappia commenced first. A jury acquitted him of the murders, but convicted him of two counts of manslaughter on the basis he had not fired the fatal shots, but that he had been part of a joint enterprise with Kamleh to threaten the victims with a loaded firearm. Zappia appealed these convictions. The Criminal Court of Appeal allowed the appeal in relation to one count of manslaughter, but not the other.

Kamleh elected for trial by judge alone. The trial judge found that he fired the fatal shots and convicted him of two counts of murder. Kamleh appealed those convictions. The Criminal Court of Appeal dismissed that appeal.

R v Grosser - This was a re-trial for one count of attempted murder and five counts of endangering life arising out of a siege in which a police officer was shot. Grosser had already been found guilty by one jury, however his conviction was quashed by the Criminal Court of Appeal on the basis of some of the directions given by the trial judge in his summing up. At the end of the second trial Grosser was again found guilty.

Although the verdict was entered in June 2002 Grosser again sought leave to appeal against his conviction and sentence. Leave to appeal against the conviction was refused. Leave to appeal against his sentence of 22 years imprisonment with a non parole period of 18 years was granted. This appeal is yet to be heard.

R v Newman - The accused was charged with one count of causing death by dangerous driving and one count of causing bodily harm by dangerous driving. He elected for trial by judge alone. These charges arose out of an occasion when the accused, under the effect of heroin, fell asleep and caused his vehicle to mount the footpath at the front of the Queen Elizabeth Hospital. In doing so the accused killed a woman who was going to visit her husband and injured a nurse who had just finished work. The accused was found guilty of both counts. Leave to appeal these convictions was refused.

R v Perdikoyiannis - The accused was charged with wounding with intent to do grievous bodily harm, false imprisonment and armed robbery. All of these offences arose out of one incident in which a car dealer was lured into a van where he was subsequently held hostage by a number of men wearing balaclavas and carrying guns. During the time that he was in the van the victim was subjected to violence which included pistol whipping and electric shocks. The accused was identified as the driver of the vehicle and he was found guilty of the offences. This matter is subject to appeal.

R v Kostaras - This was a re-trial for four counts of unlawful sexual intercourse. At the time of the offences the accused was a teacher at a suburban high school. The victim was a student at the

same school. At the conclusion of the first trial the accused was found guilty. However, that conviction was subsequently quashed by the Criminal Court of Appeal. At the end of the second trial the accused was again found guilty. This matter is subject to appeal.

Bodies in the Barrels

The accused were arrested in May 1999. In June 2001 one of the accused pleaded guilty to four counts of murder. The trial for the remaining accused Bunting, Wagner and Haydon commenced in March 2002 with legal argument. The learned trial judge decided that Haydon should be tried separately. In September 2002 Wagner pleaded guilty to three counts of murder. The case of R v Bunting and Wagner commenced before a jury in October 2002. Bunting was charged with 12 counts of murder and Wagner with eight counts murder.

As a result of a change in the legislation a panel of 15 jurors was empanelled at the outset. This allowed for there to be three reserve jurors. The evidence concluded in July 2003 (after 94 sitting days in 2002-03). Over 230 witnesses were called for the Crown, there were approximately 1500 exhibits and approximately 11 000 pages of transcript. During the course of the trial three jurors have been excused. After addresses by all counsel and the judge's summing up the jury is expected to return a verdict in September 2003.

Prosecution of this matter has involved two counsel, three solicitors, two law clerks and a half time Witness Assistance Officer. This trial has had a significant impact on the resources of this Office. Whilst this Office has been able to backfill some of the positions of these people during the course of the trial, it has been impossible to replace the experience of all those involved.

Appeals

The Office appears in all appellate jurisdictions.

HIGH COURT

In the last financial year the Office of the Director of Public Prosecutions was involved in 15 applications for special leave to appeal. Each of the applications were lodged by the defence. Leave was granted in relation to Gillard, and 'M' and 'A' who were jointly charged with murder. The first appeal was heard in the same financial year and the second appeal was heard in August 2003. A decision has not yet been delivered on these.

| <i>Leave to Appeal</i> | <i>Number</i> |
|--|------------------|
| Applications pending at 1/7/02 | 11 |
| Applications filed during 2002/03 year | 8 |
| <i>TOTAL</i> | <i>19</i> |
| Leave to Appeal refused | 12 |
| Leave to Appeal granted | 3 |
| Applications pending at 30/6/03 | 4 |
| <i>TOTAL</i> | <i>19</i> |

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. Amongst these there were three prosecution appeals against sentence.

R v Caplikas - The accused pleaded guilty to multiple charges of assault with intent to rob, attempted rape and indecent assault. He was initially sentenced to 15 years and 8 months imprisonment with a non-parole period of seven years and eight months.

On appeal the sentence was increased to 20 years imprisonment with a non-parole period of 10 years. Caplikas has since been refused special leave to appeal to the High Court.

R v Priestley - The accused pleaded guilty to causing death by dangerous driving. The accused's truck had struck the victim whilst he was riding his bicycle. The offence was aggravated by the fact that after the collision the body of the victim was dragged by the accused's truck for about six kilometres and was then left by the accused who failed to render any assistance. The accused was initially sentenced to four years imprisonment with a non-parole period of two years.

On appeal the sentence was increased to six years and three months imprisonment with a non-parole period of four years.

R v Ngo and Le - The accused were convicted of a number of counts of being in possession of heroin for sale and taking part in the sale of heroin. They were sentenced to ten years imprisonment with a non-parole period of five years. The Director of Public Prosecutions sought leave to appeal this sentence on the basis that the sentence was manifestly inadequate particularly in circumstances where the trial judge had sentenced the accused on the basis that they had been involved in a large scale drug operation.

Leave to appeal was refused.

Other significant appeals included:

R v Leach (sentence) - The court considered the effect of the accused's mental illness in the sentencing process. Consideration was also given to the role of victim impact statements.

R v Liddy (sentence) - The court considered factors relevant to sentence including: the appropriate sentencing standard when the offences were committed many years before, the prospects of the offender dying in prison, the significance of good character and the loss of reputation and employment brought about by a term of imprisonment.

R v Hansen (conviction) - Under consideration in this appeal was the nature, purpose and timing of a defence opening address.

R v Proom (sentence) - The Court considered the effect of the accused suffering a drug addiction.

R v A (sentence) - The court discussed the role of the submissions of the prosecution in the sentencing process.

R v Karger (conviction) - Amongst other things, the court considered the accuracy, reliability and acceptance of DNA evidence which included argument as to the use of statistics associated with this evidence. A further ground of appeal was the application of s74(D)-(E) of the *Summary Offences Act 1953* for the recording of interviews conducted by the police. This appeal was dismissed.

R v Tripodi (conviction); *R v Hastings* (conviction) - These two appeals also dealt with s74(D)-(E) of the *Summary Offences Act*. In both matters the appeals were dismissed even though it had been found that there had been a failure to strictly comply with the legislative regime.

R v Andrews (conviction) - The appellant was convicted of murder in December 1994. The lengthy delay preceding the appeal was largely attributable to the appellant having no legal representation. The appeal related to a number of the features of the evidence led by the prosecution. The appeal was dismissed.

There were also two petitions for mercy that followed a High Court judgement:

R v Jarrett (sentence); *R v Murphy* (sentence) - Jarrett was convicted of murder in the June 1994 and Murphy was convicted of murder in April 1996. Both were sentenced to life imprisonment and non parole periods were imposed. Each of the accused petitioned the Governor for a reduction in their non parole period on the basis of a recent High Court judgment of *R v Inge*. They argued that when they had initially been sentenced the Court had applied a particular approach in dealing with the relevance of their youth at the time of the commission of the murders. In *R v Inge* that approach met with the disapproval of the High Court.

Both matters were referred to the Court of Criminal Appeal for consideration. The Court of Criminal Appeal reduced the non parole periods in each case. The non parole period for Jarrett was reduced from 28 years and 6 months to 24 years. The non parole period of Murphy was reduced from 25 years to 23 years.

| | Appeals initiated by Defendant | Appeals Initiated by DPP |
|--|--------------------------------|--------------------------|
| Applications heard in 02/03 but filed prior to 1/7/02 | 52 | 3 |
| Leave already granted | 22 | |
| Leave refused and Form 7 lodged | 8 | |
| Leave granted | 12 | |
| Leave refused | 7 | |
| Applications abandoned | 1 | |
| Other (Petition of Mercy) | 2 | |
| TOTAL | 52 | 3 |
| Of those where leave was granted (inc 5 form 7 & Petition of Mercy) | 41 | 3 |
| Appeals upheld | 14 | 1 |
| Appeals dismissed | 27 | 2 |
| Appeals abandoned | 0 | 0 |
| TOTAL | 41 | 3 |
| Applications filed during 2002-2003 | 113 | 2 |
| Leave granted | 57 | 0 |
| Leave refused but Form 7 lodged | 19 | 0 |
| Leave refused | 13 | 0 |
| Leave abandoned | 15 | 0 |
| Leave not yet determined | 1 | 0 |
| Pending as at 30/6/03 | 8 | 0 |
| TOTAL | 113 | 2 |
| Where leave was granted (inc 4 Form 7) | 61 | 2 |
| Appeals upheld | 18 | 1 |
| Appeals dismissed | 26 | 0 |
| Appeals abandoned | 3 | 0 |
| CCA hearing or decision still pending as at 30/6/03 | 14 | 1 |
| TOTAL | 61 | 2 |

*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 serious criminal trespass, 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 | 21 | 3 |
| Appeal dismissed | 19 | |
| Appeal abandoned | 7 | |
| Appeal pending | | |
| <i>Total</i> | <i>47</i> | <i>3</i> |

WITNESS ASSISTANCE SERVICE

The Witness Assistance Service continues to advocate and assist in ensuring the rights of vulnerable witnesses, victims and their immediate family members are recognised within the criminal justice system. In addition the Witness Assistance Service maintains its focus on delivering a high standard of services to the community.

There has been a steady increase in the referrals to the Witness Assistance Service in the last 12 months. The Witness Assistance Service Referral Policy was endorsed by Executive during the last 12 months. Under the policy all victim/witness matters are referred to the service at the earliest stage in the adjudication or committal process.

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 for achieving 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 to prepare for court by providing court tours and information about giving evidence;
- ≈ provide information and assistance with the preparation of 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.

Review

An independent review funded by the Attorney-General's Justice Strategy Unit was conducted in November 2002 of the Witness Assistance Service with a special focus on service delivery to child witnesses. The outcome of the review highlighted the confidence of external agencies in the professional delivery of services to victims of crime from the Witness Assistance Service. The high regard in which the Witness Assistance Service was held within the ODPP operational teams was also mentioned. Approximately 20 recommendations concluded the report, and work has commenced on several of these.

A significant outcome of the review was the additional funding of 2.5 FTE Witness Assistance Officer positions working specifically with children (1.0 FTE in 2002-03 and 1.5 FTE in 2003-04). We gratefully acknowledge the support and assistance of the Victims of Crime Co-ordinator and senior members of the Justice Strategy Unit for their commitment to securing this additional and welcomed funding.

Bodies In the Barrel

With the first trial almost completed the Witness Assistance Officer, Rebecca Dale continues to work tirelessly in delivering services to the families involved in this matter.

Conference

At a recent Child Sexual Abuse Conference: Justice Response or Alternative Resolution held in Adelaide, May 2003, the Witness Assistance Service presented a paper on "Child Witnesses in the Criminal Justice System - The Issue of Vulnerability". The paper which was prepared and presented by Anna Whittam and Heidi Ehrat was well received by conference attendees.

Paul Rofe QC and Filomena Merlino also combined ideas on a paper titled "Focussing on the Child", which the Director presented to conference attendees.

The Witness Assistance Service featured highly in discussions surrounding the delivery of services to children in the criminal justice system.

Training

The Witness Assistance Service in collaboration with Yarrow Place, Victim Support Service and Women's Health Statewide, will continue in the next 12 months to consider all training opportunities in rural and remote areas.

Over the last 12 months four rural training seminars on the criminal justice system were conducted jointly with Yarrow Place. A further criminal justice seminar was also held during Law Week. These seminars focussed on service providers in the community having access to information and processes within the criminal justice system.

SAPOL continue to invite the Witness Assistance Service to attend their various training courses. The Witness Assistance Service welcomes these opportunities and ensures attendance upon each occasion.

The Witness Assistance Service also participated or presented to the following groups:

- ~ TAFE Child Abuse Investigation Course;
- ~ Flinders University Law Students; and
- ~ Side Street Counselling Service.

The next 12 months

There are various new and exciting projects planned for the next 12 months. Additional funding to the Witness Assistance Service will ensure an opportunity for staff to manage projects and portfolios which will continue to improve service delivery to the community. Examples include:

- ~ integration of the assessment tool for Witness Assistance Service practice with children;
- ~ development of internal Witness Assistance Service policies/and recording of tasks;
- ~ development of a feedback form for ODPP - and obtain consumer feedback;
- ~ a booklet for victims and families involved in mental impairment applications and matters;
- ~ a booklet for victims and families involved in road trauma.

ADMINISTRATIVE SERVICES

The 29 administrative staff have continued to provide a highly effective support service to the Office. The administrative staff provide a range of services to the Office including law clerk, executive assistant, secretarial, reception and rounds functions. Management have provided opportunities for administrative staff to develop their skills and knowledge by providing a framework whereby staff have the opportunity to learn and act in other administrative positions.

There have been ongoing additional pressures placed on the administrative team this year as a result of the Bodies in the Barrel prosecution and several other lengthy and complex trials. For periods of time during the course of the financial year there has been a continued requirement to have temporary agency staff assist in meeting the deadlines imposed on the administrative services within the Office.

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 number of training courses and seminars throughout the course of the year.

Continuing Legal Education (CLE) Program

The Office conducts an internal CLE program for staff. The program for 2002-03 included both a formal program that was to be attended by all legal staff, and an informal program that was attended on a voluntary basis. The program was very successful.

The program has included expert speakers on a variety of topics relevant to the operational needs of the Office:

- ~ Dr Ken O'Brien, Director Forensic Mental Health Service, James Nash House (*drug therapy in mental health*)
- ~ Chief Justice Doyle, Chief Justice of the Supreme Court (*appeals*)

Part of this program will be carried over to 2003-04. A similar program is being developed for the remainder of 2003-04.

In addition informal lunch time CLE sessions have been held on a regular basis. The topics are relevant to the different skill levels within the Office and have included:

- ~ forensic procedures applications;
- ~ disclosure/duty of calling witnesses;
- ~ recent judgements.

Conferences

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

- ~ Constitutional and Parliamentary Reform for South Australia (Adelaide)
- ~ Eighth International Criminal Law Congress (Melbourne)
- ~ International Association of Prosecutors Conference (London)
- ~ Commonwealth Association of Directors (Sydney)
- ~ Law Society Criminal Law Conference (Victor Harbor)
- ~ Heads of Prosecuting Agencies Conference (Darwin)
- ~ National Child Sexual Assault Reform Committee (Sydney)
- ~ Australian Institute of Criminology Conference (Adelaide)

INTER-AGENCY RELATIONSHIPS

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.

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.

The Office continues to be actively involved in presenting seminars and talks to police. The topics have included:

- ~ records of interview;
- ~ investigative styles;
- ~ new statutory provisions;
- ~ recent judgements from the Court of Criminal Appeal.

We have also been involved in training seminars given by the police in particular in relation to clandestine laboratories and other drug matters.

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 four years, meets every three months with representation on the Committee from both offices being at the most senior level.

The Office has continued to provide legal opinions to the police on individual cases to ensure that there is a reasonable prospect of conviction on charges that are laid in the courts and to provide assistance to the police in the investigation of individual cases.

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 staff including regional co-ordinators and has continued to work closely with the Victim Support 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 2002-03 is incorporated 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.

Disability Action Plan Reporting

All relevant matters in relation to Disability Action Plan Reporting are incorporated within the Annual Report of the Attorney-General's Department.

Energy Efficiency Action Plan Reporting

All relevant matters in relation to Energy Efficiency Action Plan Reporting are incorporated within the Annual Report of the Attorney-General's Department.

Executive Employment and Human Resource Reporting

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

Financial Reporting

All relevant matters in relation to financial performance are incorporated 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*.

Listening and Surveillance Devices Act

The Office has considered and approved seven warrants issued under the *Listening and Surveillance Devices Act 1972*.

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. During the year all frontline staff attended a training session on the management of aggression in the work place.

All relevant matters in relation to Occupational Health, Safety and Welfare Reporting are incorporated within the Annual Report of the Attorney-General's Department.

The Office would like to thank its OH&S representative for the last 12 months, Ms Monica Goodgame who has displayed a high level of dedication to this role.

Overseas Travel

The Director and Crown Counsel attended the International Association of Prosecutors Conference in London during the September 2002. The cost to the agency of this travel, accommodation and conferences fees was \$18 315.

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 this 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.

DISTRICT AND SUPREME COURT PROSECUTIONS (ADELAIDE & CIRCUIT) 2002-03

| | | |
|--------------------------------|-------------|-------------|
| Convicted | 791 | 75.6% |
| Nolle Prosequi | 118 | 11.3% * |
| Not Guilty | 56 | 5.4% |
| White Paper | 65 | 6.2% |
| Other | 16 | 1.5% |
| TOTAL FINALISED MATTERS | 1046 | 100% |

Of Total Nolle Prosequi

| | | | |
|-------------------------------|----|-------|---------------|
| Committal Unit Involved | 94 | 79.7% | 9.0% * |
| No Committal Unit Involvement | 24 | 20.3% | 2.3% * |

Finalised Matters

| | |
|---|-------------|
| Adelaide matters listed for trial | 656 |
| Circuit matters listed for trial | 71 |
| Matters resolved without going to trial | 319 |
| Total | 1046 |

| | |
|----------------------------------|-------------|
| Adjudications finalised | 1521 |
| Advice/Opinions finalised | 499 |

Outcomes of Adelaide Matters Listed for Trial

| | | |
|------------------------|------------|-------------|
| Proceeded to Trial | 230 | 35.1% |
| Plea of Guilty | 155 | 23.6% |
| Nolle Prosequi | 51 | 7.8% |
| Bench Warrant | 9 | 1.4% |
| Removed from List | 184 | 28.0% |
| Other | 27 | 4.1% |
| Total Finalised | 656 | 100% |

Outcomes of Adelaide matters that were listed, and proceeded to trial

| | | |
|-----------------------------------|------------|-------------|
| Guilty | 119 | 51.7% |
| Not Guilty | 43 | 18.7% |
| Nolle Prosequi | 7 | 3.0% |
| Not Guilty (mentally incompetent) | 3 | 1.3% |
| Hung Jury | 7 | 3.0% |
| Mistrial | 15 | 6.5% |
| Other | 36 | 16% |
| Total | 230 | 100% |

Outcomes of Circuit Matters Listed for Trial

| | | |
|------------------------|-----------|-------------|
| Proceeded to Trial | 29 | 40.8% |
| Plea of Guilty | 23 | 32.4% |
| Nolle Prosequi | 8 | 11.3% |
| Bench Warrant | 0 | 0.0% |
| Removed from List | 8 | 11.3% |
| Other | 3 | 4.2% |
| Total Finalised | 71 | 100% |

Outcomes of Circuit matters that were listed, and proceeded to trial

| | | |
|-----------------------------------|-----------|-------------|
| Guilty | 17 | 58.6% |
| Not Guilty | 11 | 37.9% |
| Nolle Prosequi | 1 | 3.4% |
| Not Guilty - mentally incompetent | 0 | 0.0% |
| Hung Jury | 0 | 0.0% |
| Mistrial | 0 | 0.0% |
| Other | 0 | 0% |
| Total | 29 | 100% |

Summary of Committal Unit Outcomes 2002-03

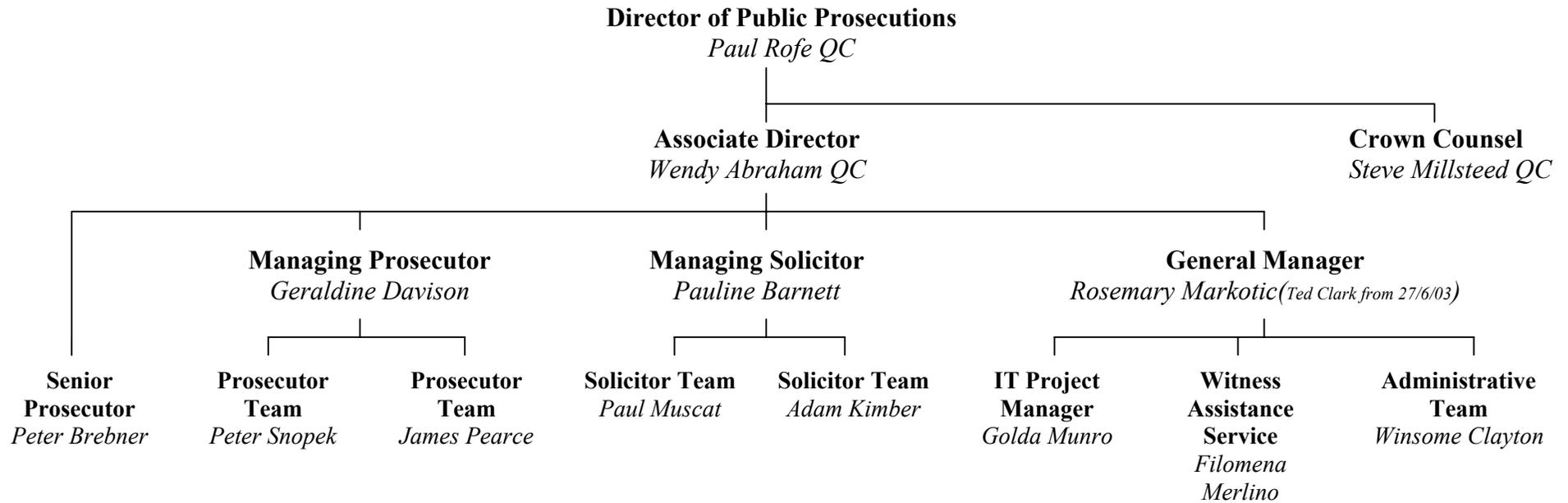
| | | |
|--------------------------------|-------------|-------------|
| Committed for sentence | 113 | 7.48% |
| Committed for trial as charged | 663 | 43.88% |
| Resolved summarily | 380 | 25.15% |
| Tendered No Evidence (TNE) | 207 | 13.70% |
| TNE - to DAAP | 16 | 1.06% |
| Other | 132 | 8.74% |
| Total | 1511 | 100% |

Witness Assistance Service - New Referrals by Offence Type

| Offence Type | No | % |
|-------------------------|------------|-------------|
| Assault | 17 | 2.65% |
| Attempted Murder | 22 | 3.43% |
| Breaks | 1 | 0.16% |
| Criminal Trespass | 98 | 15.26% |
| Dissuade Witness | 3 | 0.47% |
| Endanger Life | 5 | 0.78% |
| Fraud | 2 | 0.31% |
| Grievous Bodily Harm | 10 | 1.56% |
| Larceny | 3 | 0.47% |
| Major Crash | 44 | 6.85% |
| Murder | 44 | 6.85% |
| Other/Miscellaneous | 7 | 1.09% |
| Robbery | 49 | 7.63% |
| Sex | 123 | 19.16% |
| Sex (Child) | 176 | 27.41% |
| Sex (Criminal Trespass) | 8 | 1.25% |
| Threaten Life | 30 | 4.67% |
| | 642 | 100% |

ORGANISATIONAL CHART

as at June, 2003



APPENDIX B:

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.

(Note: The Declaration of Victim's Rights has been superceded by the Victims of Crime Act

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

SUMMARY OF PROVISIONS

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DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

An Act to establish the Office of Director of Public Prosecutions; 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 any other Act or by regulation under this Act;
- (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, including the number of applications for warrants under the *Listening and Surveillance Devices Act 1972* considered, and the number approved, by the Director.
- (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.