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DIRECTOR'S OVERVIEW

When I took up my post on 26 April 2005 I was aware that it was a crucial period in the life and viability of South Australia's highly effective and professional prosecution service. It was this recognition that led to my addressing the South Australian Press Club in the terms I did on 6 May 2005. Given the importance of the Office of the Director of Public Prosecutions in the proper administration of criminal justice in this State, it is worth repeating some of the sentiments I expressed at the Press Club luncheon.

The charter of the Office of the Director of Public Prosecutions is to provide an effective, fair and independent prosecution service. The rationale for the Office was to ensure that the Office of the Director of Public Prosecutions was independent and seen to be independent from political or ministerial influence or intervention and that the exercise of prosecutorial discretions were vested in an independent, professional office. That independence is not absolute as established by the case of Nemer, however the Attorney-General has stated that a direction would only occur in exceptional circumstances. In adopting this model South Australia made a conscious and deliberate choice to include in its legal system an independent DPP for the very good reasons I've just mentioned.

Our Office is made up of some key functional areas. They are our solicitors, prosecutors, witness assistance officers and administrative support staff. They work in an environment which is stressful not only because of the amount of work that comes to us but also because the very nature of the work itself, in which we see on a daily basis statements, photographs, files that involve people who have been the victims of sometimes horrendous and always disturbing crimes.

We see the carnage that we, as a society, wreak upon each other in the black and white of the statements of witnesses, in the colour of the photographs of the injuries of the victims and in the faces of the families that we deal with every day. That's the nature of the working environment that my staff come to every day, day after day. It's the legal equivalent of the Accident and Emergency units at our hospitals. Despite those stresses every person in our team strives to deliver to the people of South Australia, an effective criminal prosecution service that is timely, efficient and just.

In doing this we endeavour to apply the highest ethical and professional standards in instituting or terminating proceedings, without fear or favour, in order to provide public confidence in the administration of justice within South Australia. We work hard to be recognised by our community for our independence, professionalism and standards of excellence.

I knew little about the personnel in my Office when I was appointed. I made my own inquiries. I was told by everyone that I spoke to that they were as impressive a group of people as worked in any DPP's office in our nation. They were right. The people of South Australia can rest assured that they are a class act. Staff love their work and share a deep sense of obligation and commitment to their role in the criminal justice system.

An important part of our job is to always do our best to deal with victims of crime with sensitivity and to respect their special needs. This is something to which we attach the greatest priority, keeping victims informed throughout a process that they probably have never before encountered.

A common misconception is that the function of the DPP is to win at all costs. It is our job to present the evidence and the facts so as to help achieve a just outcome according to the law. It is not well known that a prosecutor who goes in too hard can be criticised for doing so and, in some cases, the conduct of the prosecutor in seeking a conviction too vigorously, can be the subject of a successful ground of appeal. So in doing our job, the DPP has to be mindful of the clear duties we owe to the court, the community, the accused, the victims, witnesses and defence counsel.

At the Press Club luncheon I expressed the view that the viability of the DPP and its pivotal position in our criminal justice system was at risk and under siege largely because it stood between politicians, media and a headline. I was deeply concerned at the impact on the Office of uninformed criticism by those in a position to know better and who have a responsibility to protect institutions. These attacks had to stop before they caused irreparable damage. As I said:

'All of our leaders in the community have a responsibility to consider the issues carefully and to comment judiciously.'

'Every self-interested political action and every ignorant comment cuts good people down. If this legal witch-hunt continues, all of us need to understand that eventually we will end up without an effective prosecution service.'

Since the time of the Press Club lunch, relations with Government have at times been strained. This strain has occurred as a consequence of this Office attempting to establish appropriate boundaries with Government and government agencies in relation to its area of responsibility. Under the Director of Public Prosecutions Act 1991, section 12, the Director has a clear duty to report on any matter affecting the proper carrying out of the functions of the Office. It is in that context that I mention the following matters with the sole intention of defining the context in which this Office has had to work and relate to government.

- On 25 May 2005 I received a telephone call at my office from the Honourable Treasurer. The details of the conversation have already been published and no purpose is served in repeating them here. It is sufficient to say that I took that telephone call as an unjustifiable attempt to interfere with the independent operation of this Office. I reported the details of that conversation to the Honourable Attorney-General as the responsible minister.
- On 9 June 2005 I sought a meeting with the Honourable Attorney-General to discuss with him the contents of a telephone conversation between a prosecutor in my Office and an advisor to the Honourable Premier. It was my view that the remarks made to the prosecutor by the Premier's advisor were not only highly inappropriate, but they also created the perception of an attempt to interfere with the conduct of the prosecution of Mr Randall Ashbourne. For his own reasons the Honourable Attorney-General declined to meet with me. I therefore detailed my complaint about this matter in a memorandum to him dated 9 June 2005. Other politicians became involved in this issue and again, the resulting publicity obviates the need to go into further detail here. However, it needs to be emphasised that conduct of this nature makes any government vulnerable to a myriad of allegations, including, improper political interference, and the fact that government has not addressed this perception in this case is a matter of continuing regret.
- Since taking up my appointment in April, I have had a number of meetings with the Solicitor-General. We have exchanged views on a number of issues, including and in particular, the proper role of the Solicitor-General in the Office of the Director of Public Prosecutions. It has become apparent that we have widely divergent views on the interface between our respective offices. Which ever view is correct, it is clear to me that another possible source of unwelcomed involvement in the proper functioning of my Office, may be the role played by the Solicitor-General.
- As a further example of the manner in which another government office has dealt with the ODPP, I report that on 12 July 2005 the Auditor-General's office served the ODPP with a subpoena to produce all records of any dealings had with a public relations firm, a request that involved an enormous amount of work for several ODPP staff. In the light of the concession by the Auditor-General's office that the ODPP had fully co-operated with the initial request to

supply information to the Auditor-General, the issuing of the subpoena was unnecessary and provocative. I am concerned that the Auditor-General has expressed serious concerns publicly about this Office's dealing with the public relations firm before raising any aspect of that concern with me.

- I note also the Auditor-General's expressed intention to conduct an inquiry into the decision to prosecute Randall Ashbourne. He said to a Parliamentary Select Committee that he had serious concerns about the decision making process in my office. The Auditor-General advises the Parliament on matters relating to financial management and comments on the efficiency and economy with which public sector resources are utilised. He has no role or expertise in determining whether a matter should be prosecuted in the courts. That is my statutory function.
- This impression of deliberate antagonism and provocation is only heightened by a consideration of the conduct of the Honourable Leader of the Government in the Legislative Council who, as Chairman of the Select Committee on the Atkinson/Ashbourne/Clark affair, publicly conceded to providing background to journalists prior to my testifying for the second time before that Committee. The same Minister went on public radio to state that the ODPP had leaked the memorandum of 9 June 2005 to the Honourable Attorney-General referred to above.
- This attitude persisted in the comments of the Honourable Attorney-General both to Parliament and on public talk back radio concerning my request to government, through him, for a consideration of the position of the Director in government hierarchy.

Given this level of government involvement with the ODPP in four months of my holding office, I do have some concerns for the future. However, on a positive note, the Honourable Premier, together with the Honourable Attorney-General, accepted my invitation to visit the ODPP and speak with staff on 31 May 2005. The meeting produced a frank exchange of views from both sides and led to a better understanding of the issues and pressures dealt with by the Office on a daily basis. This understanding was demonstrated by the Honourable Premier announcing almost immediately a very welcome increase in funding to the Office.

The Honourable Premier has stated several times publicly that he respects the independence of the Office. I look forward to this attitude pervading the whole of government and this Office being permitted to continue to deliver to the people of South Australia what it has undoubtedly delivered hitherto, an effective, fair and independent criminal prosecution service.

I take this opportunity to acknowledge the contribution to the criminal justice system made by my predecessor, the first South Australian Director of Public Prosecutions, Paul Rofe QC. Paul was a renowned and fearless prosecutor who willingly engaged the public in difficult and complex policy issues. He earned his reputation as a fine trial lawyer and a man of compassion and integrity in his 30 years in public service.

I would also like to acknowledge the exceptional effort of Wendy Abraham QC who was responsible for leading the Office during a 12 month period of uncertainty while the process of appointing a new Director was occurring. In that time she was also responsible for conducting the Bodies in the Barrels prosecution. It was an enormous workload and one that has not received the recognition it deserved. I wish her well in her new position as Senior Counsel to the Commonwealth Director of Public Prosecutions.

ACHIEVEMENTS 2004-05

In the year under review the Office delivered its vision of providing the people of South Australia with an independent and effective criminal prosecution service that was timely, efficient and just. The exceptional work of each of the dedicated teams within the Office culminated in the following outcomes.

Significant work of the Office includes the following outcomes:

Pleas

R v George William Williams - George Williams was arrested in January 2005 as a result of DNA evidence which had linked him to a rape committed in October 2001.

On the evening of 26 October 2001, the victim was out celebrating her birthday with her boyfriend and a group of friends. On their way home, the victim and her boyfriend visited a friend. Whilst at these premises, the victim became tired and decided that she would go home. Whilst walking home she was punched across the right side of her face, dragged down the side of a derelict house and was sexually assaulted twice by the accused.

In June 2005 Mr Williams pleaded guilty to two counts of rape and was committed for sentence. The matter is listed for sentencing submissions on 4 October 2005.

R v Beigzadeh - In June 2005, Hooten Beigzadeh entered guilty pleas to Murder, two counts of Endangering Life, and Threatening a Person with a Firearm. The series of offences occurred over two separate nights in February 2004 whilst the accused was still 17 years old.

The first incident occurred when the victim and his friends were on their way to a local hotel. They took a wrong turn and travelled into a local street. Mr Beigzadeh observed them drive into his street and got into his vehicle with a friend and drove towards the victim's car, signalling them to stop. The victim and his friends stopped their vehicle and two of the occupants alighted that vehicle. Mr Beigzadeh alighted and approached the other vehicle and asked them why they were in *his* street. Mr Beigzadeh was told that they were looking for their wheelie bin. Mr Beigzadeh then pulled out a gun and fired it. The bullet ricocheted off the ground and grazed the victim's leg.

Three nights later the witnesses congregated at a house in the northern suburbs and discussed the incident that had occurred. They decided to go and look for the car and its occupants. They went to the park opposite the house where the car was parked and watched the house. As the witnesses were leaving, Mr Beigzadeh was driven into the street in a car with two others. An altercation followed and the accused was assaulted. The accused then went to his house and returned with a loaded gun. A series of incidents followed resulting in Mr Beigzadeh shooting and killing one of the victims and injuring two others.

Mr Beigzadeh then ran away from the scene and called police communications on his mobile telephone telling them that he had shot someone.

The sentencing judge imposed a mandatory life sentence. In setting the non-parole period of 16 years and six months the sentencing judge gave consideration to the accused's age, and various previous convictions for the use of weapons.

R v Stockdale-Hall - Stephen John Stockdale-Hall was charged with a large number of sexual offences against nine former students of Blackfriars Priory College between 1977 and 1985.

Mr Stockdale-Hall had been a teacher at Blackfriars and maintained an involvement with the school after his employment ceased by arranging extra-curricular camping trips through which he came to meet the victims. Mr Stockdale-Hall was arrested on 21 January 2004 and charged with 19 offences against seven victims.

The Office, after considering the evidence provided by the investigating police and conducting proofings with those complainants who are resident in South Australia the Office laid a fresh Information in the Magistrates Court charging Mr Stockdale-Hall with 25 offences against nine victims.

The committal proceedings commenced in April 2004. Given the size and complexity of this prosecution owing to the number of victims, the age of the allegations and evidentiary issues across the charges, a solicitor and senior prosecutor were allocated at an early stage with a view to preparing the matter for trial. Mr Stockdale-Hall's legal representatives initiated charge negotiations some months into the committal proceedings, ultimately resulting in Mr Stockdale-Hall pleading guilty in the Magistrates Court to 10 offences against nine victims in satisfaction of all of the charges before the court.

The matter is listed for sentencing submissions on 29 August 2005.

Trials

R v Haydon (Bodies in the Barrels). The trial of the last of the men accused with the Bodies in the Barrels murders commenced on 4 May 2004. Mark Haydon was charged with two counts of Murder and six counts of Assisting Offenders. The legal argument lasted for approximately three months following which a jury was empanelled on 2 August 2004.

On the 19 December 2004 after a total of 88 sitting days, the jury returned a verdict of guilty in relation to five counts of Assisting Offenders. The jury was unable to reach a verdict in relation to two counts of Murder and one count of Assisting Offenders. For this trial the new technological court was again utilised and was of great assistance in dealing with the large number of exhibits.

On 16 September 2005 Mark Haydon entered pleas of guilty to two counts of Assisting Offenders in satisfaction of the charges contained in the Information. He also withdrew his appeal against conviction on that day. He will be sentenced on 18 October 2005.

These pleas have brought to an end the prosecution cases in the Bodies in the Barrel murders. Tributes should be paid to a dedicated team of lawyers, social workers and administrative staff who worked tirelessly on the case for a six year period. Not only was this the largest murder trial in Australia's history, the distressing nature of the murders, involving as they did the torture of the victims, made the task of preparing and prosecuting the trials one of the most difficult ever likely to be encountered by prosecutors in their careers.

R v Lem - Saruong Lem was a 37-year-old man of Cambodian origin who was prosecuted for the murder of his wife. The murder was particularly brutal and involved infliction of over 100 blows to the deceased with a hammer. The prosecution alleged that the murder arose out of a domestic dispute concerning amongst other things, the deceased's adoption of western values. In this context evidence was led from a number of sources including an anthropologist about the cultural values of the Cambodian community and in particular their application to western society. The major issue was the question of whether the victim's behaviour amounted to provocation such as to reduce what was otherwise murder to manslaughter.

At the trial by judge alone, the accused was convicted of murder, a mandatory life sentence was imposed with a non-parole period of 20 years. Mr Lem has appealed against this conviction to the Court of Criminal Appeal.

R v Gassy - Jean Eric Gassy was charged with the murder of Dr Margaret Tobin, the Director of Mental Health for the State of South Australia. Dr Tobin was shot four times as she exited a lift at her office in the CitiCentre Building in Adelaide. Dr Gassy had known the victim through his previous employment as a psychiatrist. During the 1990's the victim had contacted the New South Wales Medical Board with concerns about Dr Gassy's mental health and this contact started a series of events, which led to Dr Gassy being de-registered as a medical practitioner.

Dr Gassy elected to represent himself during the trial. The trial began on 5 May 2004 with legal argument, which continued until 6 July 2004. The jury was empanelled to hear the case on 8 July 2004 and returned a verdict of 23 July 2004.

The Crown case was that Dr Gassy had maintained a grudge against Dr Tobin and other persons who had been involved in his de-registration. It was alleged that as a result of this grudge Dr Gassy had travelled to South Australia from his home in New South Wales with the sole intent of killing the victim. The case against Dr Gassy relied on the jury evaluating a large quantity of circumstantial evidence all of which pointed to Dr Gassy as the killer.

Dr Gassy was sentenced to life imprisonment with a non-parole of 34 years. He has appealed his conviction. The Court of Criminal Appeal has heard the appeal against conviction and their decision has been reserved.

R v Thomas - Paul Thomas was charged with three counts of Abduction of a Child, six counts of Causing a Child to Expose His Body for Prurient Purposes and one count of Committing an Act of Gross Indecency. The charges arose from a series of events where Mr Thomas enticed three boys aged between eight and nine into his vehicle from a park near their home. From the park Mr Thomas took the three boys to Maslins Beach where he encouraged them to swim unclad. He kept the children overnight and returned with them to Maslins Beach the following day. Police located the boys at Maslins Beach.

Mr Thomas pleaded guilty to three counts of Abduction and was convicted after trial of six counts of Causing a Child to Expose His Body for Prurient Purposes. He was acquitted of committing an Act of Gross Indecency. Mr Thomas was sentenced to imprisonment for three years with a non-parole period of two years and six months.

R v Tingey - Malcolm Tingey was employed as a school bus driver by a northern suburbs college. The victim was a student who caught his bus and established a friendship with him. They telephoned and sent SMS messages to each other for a period of two years. The telephone conversations were of a sexual nature. Mr Tingey was charged with four counts of having Unlawful Sexual Intercourse. Three of the occasions were alleged to have occurred on the bus and the final occasion at Mr Tingey's home. The jury returned the verdict of not guilty in respect to the matters that were alleged to have occurred on the bus and found him guilty of the last count, which took place at his home.

Mr Tingey was then prosecuted for an earlier offence upon another victim, a 13-year-old girl in an all girls soccer team of which Mr Tingey was the coach. He gave evidence that he had fallen in love with the victim and kissed and fondled her but denied further contact. Mr Tingey was charged with three counts of Unlawful Sexual Intercourse. The jury found him guilty of one count of Unlawful Sexual Intercourse. Both trials involved a gross breach of trust given his position as a bus driver and

as a soccer coach. Mr Tingey was sentenced to imprisonment for four years with a non-parole period of two years.

R v Ashbourne - Randall Ashbourne was charged with one count of Abuse of Public Office. It was alleged that he had offered a former politician (Ralph Clarke) a board position to facilitate Ralph Clarke dropping a legal action of defamation that he was engaged in with the Attorney-General Michael Atkinson. Mr Ashbourne was found not guilty by the jury of the charge. This matter is now the subject of a Parliamentary inquiry.

Court of Criminal Appeal

R v Collie - Garry John Collie was charged with shooting a couple in the head whilst they sat in the lounge room of their home. The case against him was circumstantial in nature. The Court of Criminal Appeal was asked to consider a number of legal and procedural points including the use of evidence of statements made by Mr Collie and the deceased and the use that could be made of conduct and statements of Mr Collie after the offence had been committed.

The court (by majority) dismissed the appeal by Mr Collie against his conviction.

R v England - Mark Anthony England was convicted in the District Court of two counts of Indecent Assault and four counts of Rape. The District Court judge remanded him to the Supreme Court for an investigation as to whether Mr England was incapable of controlling his sexual instincts. In the Supreme Court the judge found that he was incapable of controlling his sexual instincts and ordered that Mr England be detained until further order. There were two areas under dispute:

- 1) That the judge erred in considering that it was the sum of the reports that was sufficiently persuasive to enable the findings to be made.
- 2) That the imposition of the order of detention in addition to the sentence of imprisonment was inconsistent with the judge's role as a judicial officer.

The Court of Criminal Appeal found that the judge had not erred and that the imposition of the detention order was an appropriate order consistent with the powers, processes and procedures of the legislation and the courts.

R v K - K was convicted of sexual offences committed upon his stepdaughter. The events took place between 1998 and 2001. The Crown case included evidence of uncharged acts. The Court of Criminal Appeal dismissed the appeal. The court held that it was essential for a trial judge to direct the jury how evidence of uncharged acts could and couldn't be used. It was not correct for the trial judge to direct the jury that they must be satisfied of the uncharged acts beyond reasonable doubt.

K applied for leave from the High Court to appeal this decision. The High Court refused to grant leave to appeal on 17 June 2005.

High Court

Kamleh v R - Jamil Kamleh was convicted of the murder of two people in North Adelaide in 2000. His co-accused, Natale Zappia was tried separately from him and convicted of two counts of manslaughter.

Mr Kamleh appealed to the High Court on the basis that the Court of Criminal Appeal had erred in holding that certain evidence, primarily statements made by Mr Zappia, were admissible to prove the guilt of Mr Kamleh.

The Court concluded that there was no miscarriage of justice and dismissed the appeal.

Grosser v R - Tony Grosser was found guilty of Attempted Murder of a police officer and five counts of endangering the lives of other police officers. The offences occurred at Nuriootpa in May 1994.

He was sentenced to a term of imprisonment of 22 years with a non-parole period of 18 years.

He sought leave to appeal against both his conviction and sentence in the High Court in August 2004.

The Court found that his appeals had no reasonable prospect of success and that there was no miscarriage of justice.

The Court was of the view that the sentence was very high, but that there was insufficient prospects of success to warrant a grant of special leave.

DuBois v R - Francis DuBois pleaded guilty to 31 counts of False Pretences and requested that a further 21 offences be taken into account. The offending occurred over five years and involved numerous victims. The amount taken was in the order of \$2 million. He was sentenced to 12 years imprisonment with a non-parole period of eight years. The Court of Criminal Appeal dismissed his appeal against the severity of his sentence.

Mr DuBois sought leave to appeal from the High Court on the basis that the Court of Criminal Appeal had adopted an incorrect approach to sentence and fallen into error.

The High Court refused to grant leave to appeal, as it had not been shown that the Court of Criminal Appeal had been in error.

ORGANISATIONAL PROFILE

Mission

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

Vision

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

- applies the highest ethical and professional standards instituting, and where necessary terminating proceedings, without fear or favour in order to provide public confidence in the administration of justice within South Australia;
- is 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.

Corporate Values

The values which provide a framework for the functions within 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 staff are our most important resource; and
- sensitivity to and understanding of the needs of victims and witnesses.

Functions of the Director

The functions of the Director are specified in the *Director of Public Prosecutions Act 1991*. They are to:

- lay charges of indictable or summary offences against the law of the State;
- prosecute indictable or summary offences against the law of the State;
- 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;
- take proceedings for or in relation to the confiscation of profits of crime;
- institute civil proceedings for contempt of court;
- enter a *nolle prosequi* or otherwise terminate a prosecution in appropriate cases;
- grant immunity from prosecution in appropriate cases;
- exercise appellate rights arising from proceedings of the kind referred to above;
- carry out any other function assigned to the Director by any other Act or by regulation under this Act;
- do anything incidental to the foregoing.

Stakeholders

The key stakeholders for the Office are the South Australian Parliament, the judiciary, victims, witnesses, SA Police, the Courts Administration Authority, Department for Correctional Services, accused persons and others in the criminal justice system. The Office continues its support to the key stakeholders and the criminal justice system by representation on various committees, steering groups and working parties. A list of representatives on external committees and steering groups is reported in Appendix B (p 42).

Strategic Focus

As reported in last year's report, the Office had reviewed its strategic plan and proposed that during 2004-05 following an organisational review, to revisit its key performance indicators to ensure the ongoing relevance of these measures to the effectiveness and efficiency of performance in the Office. The review of the key performance indicators was not undertaken, as the organisational review did not proceed and there were changes in Director and General Manager.

The key result areas identified in 2004 and still current are:

- Ensure an independent and effective criminal prosecution service.
- Work co-operatively with Government and other key stakeholders to improve the criminal justice system.
- Ensure the most efficient use of the resources (human, physical, financial and technological) provided for the prosecution of criminal matters.

Legislative Framework

The following legislation was relevant to the legislative, professional, administrative and industrial requirements and obligations for the operation of the Office during the year.

These Acts may be accessed via the South Australian Government's SA Central web site (www.sacentral.sa.gov.au/government/parliament).

Bail Act 1985

Controlled Substances Act 1984

Criminal Assets Confiscation 1996

Criminal Law (Forensic Procedures) Act 1998

Criminal Law (Sentencing) Act 1988

Criminal Law (Undercover Operations) Act 1995

Criminal Law Consolidation Act 1935

Director of Public Prosecutions Act 1991

District Court Act 1991

Equal Opportunity Act 1984

Evidence Act 1929

Firearms Act 1977

Freedom of Information Act 1991

Legal Practitioners Act 1981

Listening and Surveillance Devices Act 1972

Magistrates Court Act 1991

Occupational Health, Safety and Welfare Act 1986

Public Finance and Audit Act 1987

Public Sector Management Act 1995
State Records Act 1997
Summary Offences Act 1953
Summary Procedures Act 1921
Supreme Court Act 1935
Telecommunications (Interception) Act 1975 (Commonwealth Act)
Victims of Crime Act 2001

Organisational Structure

The Director has responsibility for the overall management of the Office. The Director is assisted in this by the Associate Director. During most of 2004-05 the Associate Director was Acting Director and the position of Associate was not filled. The Office structure represents the functional areas of solicitors, prosecutors, witness assistance officers and administrative support staff.

The Solicitor Section provides all solicitor services on the files conducted by the Office. These services include legal advice, committals, arraignments, all matters in the pre-trial stage and after sentencing submissions. The Office has three teams of solicitors who report directly through the senior solicitors to the Managing Solicitor.

The Prosecution Section provides counsel services to the Office in trials, appeals and complex legal arguments. The prosecutors appear in the Magistrates Court and the District and Supreme Courts for trial and the Full Court of the Supreme Court and High Court for appeals. Magistrates Appeals are also conducted before single judges of the Supreme Court. The Office has two teams of prosecutors who report directly through the senior prosecutors to the Managing Prosecutor.

The Witness Assistance Service provides services to victims and witnesses. The Witness Assistance Officers report through the Manager Witness Assistance to the General Manager.

The Administrative Support Team provides all administrative services to the Office including secretarial, law clerk, paralegal, reception and rounds. The administrative staff report through the Administrative Manager to the General Manager.

Management Structure

There are two internal committees established to augment the strategic and operational management of the Office.

The *Executive Committee* consists of the Director, Associate Director, Managing Solicitor, Managing Prosecutor and the General Manager. The Executive meets fortnightly and has overall responsibility for the establishment, implementation and evaluation of the strategic direction of the Office. It has final responsibility for policy and will also determine the appropriate response to the important legal issues affecting the Office generally.

The *Management Committee* consists of the Managing Solicitor, Managing Prosecutor, General Manager, Senior Solicitors, Senior Prosecutors, Manager Witness Assistance, Administrative Manager and the Project Manager, IJP Prosecutions, Staff Development and Policy Officer.

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 are required to forward proposals to Executive for final approval.

Executive Profiles

The profiles of the Executive staff of the Office are:

Stephen Pallaras QC DIRECTOR OF PUBLIC PROSECUTIONS

Graduated from Monash University, Victoria, in 1974, and was admitted as a barrister and solicitor of the Supreme Court of Victoria and the High Court of Australia in 1975, as a barrister and solicitor of the Supreme Court of Western Australia in 1979 and as a barrister and solicitor of the Supreme Court of Hong Kong in 1992. Appointed a Queen's Counsel in 2000. Has successfully prosecuted a number of high profile cases in Western Australia and Hong Kong including cases of international fraud, international drug trafficking, corruption, criminal defamation and murder.

Stephen Pallaras QC was appointed in April 2005 as the second Director of Public Prosecutions in South Australia under the Director of Public Prosecutions Act, 1991.

Pauline Barnett LLM MANAGING SOLICITOR

Admitted as a legal practitioner in 1986. A member of the Crown Solicitor's Office from 1985 to 1994 in the Advising Section. For 18 months she was seconded to the Attorney-General's Office as Principal Private Secretary to the Hon C J Sumner MLC from November 1988 until April 1990. In 1994 she joined the Office as an MLS-1 Solicitor and in 1997 she was appointed as Managing Solicitor.

Acts as solicitor and counsel in the conduct of prosecutions and appeals on behalf of the Director. Manages the Solicitor Section of the Office, which includes Adjudications, Opinions, Committals, General Solicitor Section, Fraud Unit, Criminal Assets Confiscations and Drug Court.

Geraldine Davison LLB, GDLP MANAGING PROSECUTOR

Graduated from University of Adelaide in 1984 and worked in private practice until 1989. Joined the Crown Prosecutor's Office in 1989 and prosecuted in the District and Supreme Courts until 1996 when commenced managing the Committal Unit. From 1999 to 2003 managed a group of solicitors and concentrated on appellate counsel work. Became Managing Prosecutor in 2003. Extensive trial and appellate experience in the District and Supreme Court.

Prosecutes major trials in the District and Supreme Courts. Conducts appellate work in the Court of Criminal Appeal and High Court. Responsible for management of the Prosecutor Section and allocation of trial work including briefing to the private profession.

General Manager

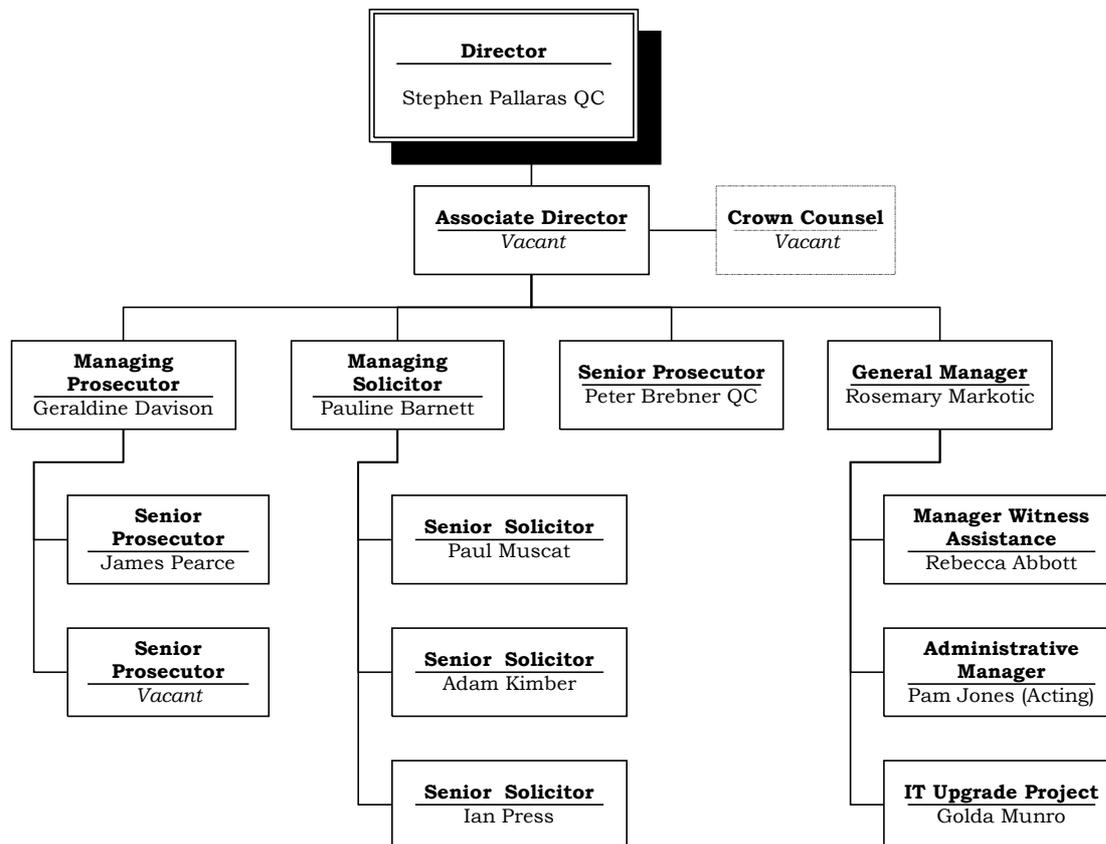
During the 2004-05 year the following people filled the position of General Manager:

Ted Clark
Paul Noon
Julian Hayward
Rosemary Markotic

Provides high-level management services including strategic and business planning, risk management, financial management, and the provision of comprehensive corporate services to the Office. Also responsible for the executive level oversight of the Witness Assistance Service. Plays a key role in policy development and training and development within the Office.

Organisational Chart

as at 30 June 2005



Corporate Governance

Although the Director of Public Prosecutions has statutory independence, the Office is a business unit within the Attorney-General's Department of the Justice Portfolio. For administrative purposes, the Director reports to the Chief Executive of the Justice Portfolio. In practical terms this is more of a liaison rather a strict reporting relationship.

The Office's budget is 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.

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

- payroll functions;
- human resource consulting, advice and assistance (also occupational health, safety and welfare and equal employment opportunities);

- information technology support;
- financial services;
- library services.

The Office has a small internal administrative component and therefore relies heavily on the advice and support from the Justice Portfolio Services Division. The Office would like to take this opportunity to acknowledge the Department's role and in particular the Chief Executive, Mr Mark Johns, and extend our thanks for the ongoing support that he and his staff have provided.

Directions from the Attorney -General

Pursuant to Section 9 of the *Director of Public Prosecutions Act 1991* there was no direction or guideline given by the Attorney-General to the Director of Public Prosecutions during the financial year.

Directions to the Commissioner of Police

Pursuant to section 11 of the *Director of Public Prosecutions Act 1991* there was one direction issued to the Commissioner of Police by the Director of Public Prosecutions. This was reported on in last year's report given the importance of the direction at that time.

The terms of the direction were as follows:

"To the Commissioner of Police:

I direct you that when members of the South Australian Police prosecute they are required to do so in accordance with DPP Prosecution Policy and Guidelines. This policy is set out in the document entitled 'Statement of Prosecution Policy and Guidelines' reprint September 2003 (copy attached)."

A similar direction was issued in 1992 by the then Director of Public Prosecutions, Paul Rofe QC. However, given the recent public discussion relating to prosecutions conducted in courts of summary jurisdiction, it was necessary to re-issue the direction.

The basis upon which decisions are made to prosecute criminal offences and the manner in which those prosecutions are conducted, must be consistent throughout South Australia, regardless of which jurisdiction the offence is to be tried, and regardless of whether the prosecution is conducted by an officer of the Director of Public Prosecutions or a police prosecutor.

Performance Indicators

As a result of a successful submission to the Government to accommodate the increased demands on the Office additional recurrent funding of \$1m was received for the 2004-05 year. These funds were directed to the recruitment of legal staff, a dedicated policy and training officer, a witness assistance officer and support staff.

In addition to this recurrent funding the Office was advised in late May 2005 of its partially successful bid for additional funds to address the increased workload as a result of the changes in legislation associated with child sex and child pornography matters. Notification of the once off funding of \$461,000 for the 2004-05 year was received at the end of May. For the 2005-06 year the Office will receive funding of \$700,000 as part of this bid.

The Office returned a small deficit (approximately \$11,000) for the 2004-05 financial year. During the year the operations of the Office were substantially supported by the additional once off funding for child sex and child pornography matters. Without the \$461,000 the Office would have returned a substantial deficit.

During the year the Office was partially successful in securing additional funding from the bilateral process. Submissions were made for the following:

Bid	Amount Requested	Amount to be Received in 2005-06
Criminal Assets Confiscations	\$182,000	Not successful
Integrated Justice Program - Case Tracking	\$101,000	Not successful*
Criminal Assets Confiscations (joint bid with SAPOL)	\$414,000	\$207,000
Child Sex and Child Pornography	\$922,000	\$700,000

The Office is grateful to the Premier for additional funding (\$500,000 + \$300,000) provided to support the work and pressures of the Office. *In addition the Chief Executive - Justice Portfolio has advised that the bid for IJP - Case Tracking of \$100,000 will be funded from within the Attorney-General's Department.

Activity Levels

The number of matters handled by the Office in any year is, to a large degree, outside of the control of the Office. The number of files *received* is dependant on the number of accused charged with offences that are referred to the Office by SAPOL. The number of files *finalised by way of a trial* in the District and Supreme Courts, are dictated by the resources of the Courts Administration Authority.

The Office's current key performance indicators reflect only the quantity of defendant files finalised by this Office at the committal stage and in the District and Supreme Courts. These indicators do not reflect the actual level of activity within the Office as they do not reflect the entirety of the work conducted by the Office (eg opinions, adjudications). Nor do these quantitative measures adequately demonstrate the diversity and complexity of individual files. This is best evidenced using the Bodies in the Barrels prosecution, where there were four accused and this has been counted as four matters within the performance indicators. However the first trial involved extensive preparation over four years and required a dedicated team of six full time staff. In contrast there are also files where there is only one accused, few witnesses and these trials may continue for only two or three days. The detail and nature of the diversity of the work undertaken by this Office is outlined in the reports from the Managing Solicitor and the Managing Prosecutor.

Year in Review

The overall number of matters finalised by the Committal Unit were slightly lower than anticipated and the total number of defendant files finalised by the Office were slightly higher than anticipated.

During the year the significant impact on the Office of the unavailability of either judges or courtrooms for trials has decreased from its high level of 107 last year to 53. The ongoing impact of a backlog of matters awaiting trial will be evident for some time. The late notification that a trial has been removed from the list (often only received by the Office the day before the trial is scheduled to commence) continues to put a significant pressure on the resources of the Office.

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.			
<i>Performance Indicators:</i>	<i>Descriptions</i>	<i>Expected activity level for 2004-05</i>	<i>Actual for 2004-05</i>	<i>Expected activity for 2005-06</i>
Quantity	Number of matters finalised by the Committal Unit	1400	1363	1400
	Number of defendant files finalised by the ODPP	950	983	950
	Number of clients seen by the Witness Assistance Service	700	902	900
Quality	Percentage of matters committed through the Committal Unit in which the DPP enters a nolle prosequi after committal	<10%	9.56%	<10%
	Percentage of committed matters which are finalised by a guilty verdict or guilty plea	>70%	73.65%	>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%	92.09%	95%
Cost	Total Cost	\$10.1m	\$10.6m	\$12.3m

There has been a further increase in the number of new clients seen by the Witness Assistance Service during the year. The significant increase in the number of new clients over the last four years reflects the increased level of demand. The resources provided by the Victims of Crime Co-ordinator to provide additional support to child witnesses, and the ongoing focus of the Office on victims and witnesses of crime are reflected in this increase. It is expected that this high level of activity will continue.

Future Developments and Challenges

Organisational Review

Following the substantial increase in recurrent funding received in 2003-04 the Office considered it imperative that a portion of this funding be used to maximise the potential benefit of these funds. For this reason during 2004-05 an organisational review was to be undertaken of the structure, practices, procedures and business systems in the Office. This review was to have provided the opportunity for the Office to strategically revisit its foundation and structure, to ensure that it continued to meet its obligations and responsibilities in the most efficient and effective manner. This review did not occur during the year, as a request to the Chief Executive to carry over funds from 2003-04 for this purpose was not approved.

The process for the tender for this consultancy commenced in June 2005 and it is envisaged that the organisational review will be completed by December 2005. Subsequent to the review an assessment will be undertaken of the recommendations and the Executive will prioritise these before an implementation plan is developed. The implementation phase is expected to take approximately nine months.

BUSINESS OPERATIONS

The Office provides statistical information on the number of completed matters during the year. The data below on quantity of files completed does not reflect the substantial variation in complexity of files nor the resource implications on the Office of any particular matter.

Statistical Information

The following tables should be read in conjunction with the Glossary (Appendix F p.51)

District and Supreme Court Prosecutions (Adelaide & Circuit)

	2004-05		2003-04	2002-03	2001-02
Convicted	725	73.60%	701	791	810
Nolle Prosequi*	132	13.40%	99	118	101
Not Guilty	55	5.58%	62	56	48
White Paper	30	3.05%	46	65	114
Other	43	4.37%	33	16	15
TOTAL FINALISED MATTERS	985	100.00%	941	1046	1088

*Of Total Nolle Prosequi**

Committal Unit Involved*	94	71.21%	9.56%	72	94	80
No Committal Unit Involvement*	38	28.79%	3.87%	27	24	21

General Counting Rules

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.

Trend Data for Matters Listed for Trial in Adelaide

Outcomes of matters that were listed for trial

	2004-05		2003-04	2002-03	2001-02
<i>Proceeded to Trial</i>	240	38.65%	238	230	204
Plea of Guilty	118	19.00%	112	155	144
Nolle Prosequi	54	8.70%	49	51	54
Bench Warrant	12	1.93%	10	9	7
Removed from List	181	29.15%	249	184	161
Other	16	2.58%	27	27	25
Total Finalised	621	100.00%	685	656	595

Outcomes of matters that were listed and *proceeded to trial*

	2004-05		2003-04	2002-03	2001-02
<i>Guilty</i>	134	55.83%	154	119	119
<i>Not Guilty</i>	38	15.83%	43	43	35
<i>Nolle Prosequi</i>	6	2.50%	6	7	4
<i>Not Guilty (mentally incompetent)</i>	4	1.67%	3	3	3
<i>Hung Jury</i>	12	5.00%	6	7	9
<i>Mistrial</i>	12	5.00%	11	15	8
<i>Other</i>	34	14.17%	15	36	26
Total	240	100.00%	238	230	204

Trend Data for Matters Listed for Trial for Circuit

Outcomes of Circuit matters that were listed for trial

	2004-05		2003-04	2002-03	2001-02
<i>Proceeded to Trial</i>	38	38.00%	38	29	35
Plea of Guilty	18	18.00%	23	23	33
Nolle Prosequi	16	16.00%	5	8	4
Bench Warrant	2	2.00%	2	0	1
Removed from List	11	11.00%	6	8	18
Other	15	15.00%	5	3	5
Total Finalised	100	100.00%	79	71	96

Outcomes of Circuit Matters that were listed and *proceeded to trial*

	2004-05		2003-04	2002-03	2001-02
<i>Guilty</i>	18	47.37%	16	17	19
<i>Not Guilty</i>	13	34.21%	19	11	11
<i>Nolle Prosequi</i>	1	2.63%	1	1	0
<i>Not Guilty - mentally incompetent</i>	1	2.63%	0	0	0
<i>Hung Jury</i>	2	5.26%	0	0	1
<i>Mistrial</i>	3	7.89%	2	0	2
<i>Other</i>	0	0.00%	0	0	2
Total	38	100.00%	38	29	35

Trend Data For Outcomes Of The Committal Unit

	2004-05		2003-04	2002-03	2001-02
Adjudications Finalised	1431		1364	1521	1315
Charge Major	1288	90.01%	1165	1174	1027
Charge Minor	102	7.13%	151	255	228
Charge Summary	23	1.61%	30	62	40
Do not lay charges	4	0.28%	8	27	17
Other	14	0.98%	10	3	3
Total	1431	100.00%	1364	1521	1315

	2004-05		2003-04	2002-03	2001-02
Opinions Finalised	322		329	334	372
Charge Major	141	43.79%	108	104	134
Charge Minor	31	9.63%	35	37	48
Charge Summary	23	7.14%	23	39	45
Do not lay charges	73	22.67%	73	84	77
Other	54	16.77%	90	70	68
Total	322	100.00%	329	334	372

Summary of Committal Unit Outcomes

	2004-05		2003-04	2002-03	2001-02
Committed for Sentence	96	7.04%	115	113	116
Committed for trial as charged	631	46.29%	617	663	659
Resolved Summarily	349	25.61%	331	380	434
Tender No Evidence (TNE)	237	17.39%	215	207	234
TNE - to Drug Assessment Aid Panel	6	0.44%	13	16	16
Other	44	3.23%	56	132	127
Total	1363	100.00%	1347	1511	1586

Trend Data For New Referrals To The Witness Assistance Service

Offence Type	2004-05		2003-04	2002-03	2001-02
Abduction	3	0.33%	3	1	0
Arson	3	0.33%	0	0	0
Assault	16	1.78%	22	20	21
Assist Offender	0	0.00%	1	0	0
Attempted Murder	35	3.88%	20	21	11
Criminal Trespass (Burglary)	168	18.76%	111	104	76
Dissuade Witness	0	0.00%	4	3	0
Drug Related Offences	1	0.11%	7	0	0
Endanger Life	17	1.89%	11	5	14
Fraud	1	0.11%	2	2	0
Grievous Bodily Harm	12	1.33%	14	10	13
Larceny	1	0.11%	4	3	6
Major Crash	47	5.22%	48	50	51
Murder/Manslaughter	39	4.22%	33	42	43
Other/Miscellaneous	1	0.11%	5	1	2
Robbery	110	12.10%	97	50	45
Sex	132	14.54%	99	134	89
Sex (Child)	157	17.54%	133	197	169
Sex (Criminal Trespass)	15	1.66%	20	8	15
Sex (pre 1982 offences)	90	9.99%	32	0	0
Theft	3	0.33%	0	0	0
Threaten Life/Threaten Harm	51	5.66%	34	32	28
Total	902	100.00%	700	683	583

Report from the Managing Solicitor

The Solicitor Section provides all solicitor services on the files conducted by the Office. These services include giving legal advice to police on their practices and procedures, legal advice as to the sufficiency of evidence for trials, committals, bail reviews, arraignments, all matters in the pre-trial stage and after sentencing submissions. In addition the section performs a substantial amount of counsel work for the Office including Magistrate Appeals, Leave to Appeal applications in the Supreme Court, disputed facts hearings prior to sentence, junioring in trials, appearing as counsel in trials and judicial review proceedings. The Section is also responsible for preparing responses to the Attorney-General in relation to queries from members of the public, victims and convicted persons as well as responding to Parliamentary questions. Finally the section has a significant role to play in training of external stakeholders. Staff regularly provide training courses for SAPOL both Detective Training Courses and more informal gatherings at Local Service Areas in relation to specific problems. In addition they lecture at Yarrow Place Rape and Sexual Assault Service and at TAFE. The section is also responsible for work experience for law graduates during their Practical Legal Training (PLT).

The challenges facing the Office have continued to impact on the way in which prosecution services are currently being delivered. Public interest in the functioning of the Office has continued unabated. The ODPP website (reference www.dpp.sa.gov.au) has proved instructive for the community and the current level of debate has ensured that more is known about Office practices. A Royal Commission was established in June 2005 into the prosecution of Eugene McGee. That Commission examined the practices of this Office and made certain recommendations. The Commission is discussed in greater detail at the end of this report.

The injection of funds by the Government has enabled the Office to put in place recruitment initiatives in an attempt to find experienced lawyers to assist in reducing the unacceptably high file loads being carried by ODPP solicitors. While the Office has been fortunate to attract some experienced staff it has been necessary to continue to offer employment to those less experienced to obtain adequate numbers.

With the commencement of a number of new staff there has been a heavy demand on managers within the Office. The third management position in the solicitors' section which was created in the 2003-04 financial year has proven to be very successful in ensuring that inexperienced staff are given the assistance necessary to handle complex files and enabling all solicitors to obtain an appropriate life/work balance.

The section continues to support the use of trial locum and leave locum positions. Such positions however can only be staffed by experienced solicitors. The use of experienced solicitors for locum positions has had to be balanced against the need to ensure that experienced solicitors are handling the most complex solicitor practices in the Office. It is anticipated that locums will remain an important feature of the section.

I would like to take this opportunity to thank the three MLS1 solicitors (Paul Muscat, Adam Kimber and Ian Press) for the excellent management of their teams of solicitors and their outstanding legal skills in this difficult year.

The Solicitor Section is confident it can build on all the hard work of the last twelve months and is optimistic about the challenges ahead. A summary of the individual areas within the Solicitor Section follows.

Adjudication Services

The Committal Unit of the Office provides adjudication services. The Committal Unit has continued the formal arrangement with SAPOL Criminal Justice Sections 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 referred to the Committal Unit who consider 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. Charges may be reviewed at a later stage once all the evidence has been received.

During the year there were 1,431 adjudications finalised. At this formative stage of the prosecution process 102 of these matters were diverted from the superior courts by the laying of minor indictable or summary charges, which were then finalised in the Magistrates Court.

Legal Advice/Opinions

During the year the Office provided advice as to the appropriate charges, if any, to be laid in 322 cases. This represents a marginal decrease in the number from last year. Of the 322 cases, 141 were determined to be major indictable offences. It was determined that in the balance of cases (181) that the appropriate charges could be laid in the Magistrates Court or that no charges at all should be laid.

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 is 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. 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 to SAPOL in writing.

SAPOL's Prosecution Policy Number 7 prescribes the nature of matters, which should be referred to the Office 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 for advice including where an alleged offender has not been arrested but instead has been reported on a charge of a major indictable offence. In the case of persons arrested and charged with major indictable offences, the file goes through the adjudication process outlined above 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 cases where it 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 victim's account. An early meeting with the complainant allows the prospects of conviction of a case to be properly assessed by an experienced prosecutor. This 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 victim to understand the reasons 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 take part in 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 should 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 an arrangement with the Major Crash Investigation Section of SAPOL that most vehicular collision cases, in which death or serious injury occur, will be referred to this Office for advice, prior to the laying of charges. The process ensures that these sensitive matters are adequately examined by experienced staff within the Office to determine the appropriateness of the draft charges. The early referral to the Office allows the victim's family to be referred to the Witness Assistance Service. This arrangement was the subject of comment in the Kapunda Road Royal Commission report and is addressed at the end of this report.

Impact of Legislative Changes

As a result of the abolition of the time limit for the prosecution of certain sexual offences, a significant number of files involving historical sexual offences have been referred for advice. These files involve complex issues in that they often involve multiple victims and consideration needs to be given to legal issues such as joinder of charges and abuse of process arguments. Careful consideration of the law as it existed at the time the alleged offences were committed is required when determining whether there is a reasonable prospect of conviction, and if so, the appropriate charges to be laid.

The Office has been placed under some pressure by the increased incidence of the use of arrest rather than report for alleged offenders. Once an offender has been arrested court timelines begin to operate which require a considerable amount of work to be accomplished in a short period of time. Given the complexities of these files, the difficulties of proofing the number of victims involved etc, it is considered highly desirable for the prosecution to proceed after most of the preliminary steps are completed. This process is better assisted when a report is made rather than an arrest. The Office's concerns in this matter have been communicated to SAPOL.

After raising these difficulties with SAPOL pressures in the Office have abated somewhat. Both SAPOL and the ODPP are managing their respective workloads in this area satisfactorily, although the impact of prosecutions arising out of the Mullighan Inquiry is yet to be felt by the two organisations.

Committal Section

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. The Fraud Unit within the Solicitor Section conducts major fraud case committals.

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 the material 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. 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 dealt with in the Magistrates Courts.

There are still concerns about the time taken for SAPOL to deliver all statements of witnesses in sufficient time to be filed and served in the Magistrates Court in compliance with the court-imposed timeframes. The Office has met with SAPOL to attempt to address ongoing problems with Declaration Officers and this aspect will be monitored in the coming year.

During the year the Committal Unit dealt with the committals of 1363 defendants, an increase on the previous year. Of these matters, 631 were committed for trial as charged and 96 were committed for sentence to the superior courts. The balance of 636 did not proceed to the superior courts due to the intervention of the Committal Unit (resolved summarily, Tender No Evidence, or referred to Drug Assessment Aid Panel). In addition to the committals handled directly by the Committal Unit, the Fraud Unit and General Solicitor Section of the Office conducted a further 35 committals (major fraud, murders and complicated matters).

During the year the Office conducted a total of 1398 committals.

General Solicitor Section

The General Solicitor Section has responsibility for all files once they are committed for trial to the superior courts. Whilst the Committal Unit assesses the matters prior to committal 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 functions provided by the Committal Unit these files require a more intensive initial assessment. On occasion this results in matters being referred back to the Magistrates Court and appropriate charges being resolved 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;
- 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;
- engage in negotiations with defence that may resolve the matter without the need to go to trial;
- 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 General Solicitor Section. In addition 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 (see Glossary Appendix F p.51 and also Appendix G - p.55).

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 s269A 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 General Solicitor Section attends on a number of these matters without the need for them to be briefed to the Prosecution Section.

Criminal Assets Confiscation Section

The *Criminal Assets Confiscation Act 1996*, provides for forfeiture of tainted property upon the conviction of a person for a prescribed offence under the Act, including a serious drug offence. Tainted property may be the subject of a restraining order, which, in the case of some serious drug offences, converts into an automatic forfeiture order after conviction, or, the tainted property is forfeited at the discretion of the Court. This Act also provides for forfeiture of tainted property by way of an oral application before the Court in which the person is convicted of the relevant offence. It is not necessary for the property to be the subject of a restraining order for an oral forfeiture application to be made but the property must be tainted according to the provisions of this Act. Funds received from the sale of forfeited property are deposited into the Victims of Crime Fund under section 19 of this Act.

A dedicated Confiscations Section was created within the Office in 1999. The Office works closely with the Police Confiscation Section in SAPOL to undertake the procedures necessary to restrain and confiscate tainted property, including proceeds of crime, in South Australia.

During this financial year the staffing level of the section was increased by the equivalent of one full time solicitor to assist in the increase in workload of the section and in preparation of the new Act, which will provide for civil based confiscation proceedings. It is anticipated that the new Act will be proclaimed in late 2005.

During the year revenue deposited into the Victims of Crime Fund amounted to \$1,009,485. Although this represents a decrease in collected revenue of 33% compared to the previous financial year, it is nevertheless considered a significant result given the limitations imposed on automatic forfeiture as a result of the decision of *DPP v Alexander* handed down in 2003.

	2004-05	2003-04
Revenue	\$1,009,485.00	\$1 502 615
Restraining Orders	12 defendants	25 defendants
Undertakings	19 defendants	17 defendants
Converted Undertakings	Nil	3 defendants
Forfeiture Orders	61 defendants	68 defendants

Applications for restraining orders under section 15 of the Act were issued against only 12 defendants this financial year. This represents a decrease on the previous financial year. There were a further 19 undertakings to the court, entered into by defendants.

During the year forfeiture orders were granted against 61 defendants. This represents a decrease of 10.3% on the previous financial year. The majority (93.5%) of these forfeiture orders related to

serious drug offences. There were 13 automatic forfeiture orders made and 30 oral forfeiture orders. A further 18 orders were made by application. Included in these 18 orders were matters relating to serious drug offences, which in the absence of the decision of *DPP v Alexander* would have occurred automatically.

Assistance under section 37 of the *Criminal Assets Confiscation Act* was sought by one interstate agency this year. Unfortunately the incompatibility of the South Australian confiscation act with the requesting State's confiscation act meant that assistance could not be provided on the occasion in question. At this time South Australia's legislation remains conviction based and is accordingly inconsistent with interstate civil legislation.

The new *Criminal Assets Act 2005* was assented to on 9 June 2005 and it is anticipated that the new Act will come into operation in late 2005. The new Act is similar to the Commonwealth legislation and legislation already enacted in other states. It contains several significant features including:

- 'freezing orders', which are a short term restraint that may be put upon financial assets by police before a restraining order is sought;
- the granting of restraining orders even if it cannot be demonstrated that there is a risk that the property will be disposed of or otherwise dealt with;
- civil based forfeiture, that is forfeiture without proof beyond reasonable doubt that a crime has been committed;
- instrument substitution declarations, which permit a court to substitute equivalent property owned by the perpetrator for the property used as an instrument of the crime but not owned by that perpetrator;
- pecuniary penalty orders, where the DPP may seek forfeiture of a sum of money that represents, or is equivalent to, the value of the property that was used as an instrument or was the proceeds of crime;
- more detailed and extensive investigative and information gathering powers.

Fraud Unit

The Office acknowledges the need for specialist skills in this area and has for some years maintained a dedicated Fraud Unit. The Fraud Unit within the Office consists of 2.5 FTE legal practitioners and a law clerk.

The Fraud Unit primarily prosecutes matters investigated by SAPOL's Commercial and Electronic Crime Branch (CECB). A close working relationship is maintained with CECB, with the Office providing advice as early as possible during the investigation stage. This practice assists in providing a focus, where possible, to investigations, which are often both legally and factually complex.

In addition the Fraud Unit prosecutes matters referred by the Anti-Corruption Branch of SAPOL. The past twelve months has seen some increase in this area of the Unit's activities. The Unit also prosecutes significant fraud matters investigated by Local Service Areas of SAPOL.

The pattern of fraudulent offending has changed over recent years. There has been a rise in referrals of what is often referred to as 'identity fraud'. The victims are typically banks and credit providers. The Office has been advised by police that the trend towards identity fraud is likely to increase. Similarly, CECB has advised that the Office can expect an increase in referrals in the area of electronic crime involving fraudulent internet schemes and internet banking.

Staff Development and Policy

In the last financial year the Office established a dedicated policy/training position. This position has enabled the Office to provide timely advice to Government and has enabled the Office to make a

more effective contribution to the development of the criminal justice system. In addition, the position has been the primary focus for the ongoing training and development of staff. The senior lawyer appointed to the position has commenced the review of the ODPP Policy and Guidelines; established a highly focussed continuing legal education program; undertaken training external to the agency; established liaison contact groups with external agencies and provided advice to government on legislative change. A professional development committee has been established within the Office, and ongoing updates are provided of cases significant to the work of the Office. The list of training and professional development sessions attended by staff is provided in Appendix C, Appendix D is a table of external training and public information sessions conducted by staff at the Office. A significant amount of training and information relates to sex related crime, children as victims and vulnerable witnesses.

Kapunda Road Royal Commission

On 30 November 2003 Eugene Norman McGee was the driver of a vehicle, which was involved in a collision on the Kapunda to Gawler Road with a cyclist, Mr Ian Humphrey. Mr McGee failed to stop or render any assistance to Mr Humphrey who was killed as a result of the collision. Mr McGee was charged with Causing Death by Driving in a Manner Dangerous to the Public and acquitted, but convicted of the alternative offence of Driving Without Due Care. He had previously pleaded guilty to the charge of Failing to Stop and Render Assistance. He was sentenced by the District Court on 28 April 2005.

On 5 May 2005 a Royal Commission was established to inquire into the conduct of the police investigation and the prosecution of Mr McGee. The issues relevant to this Office out of the terms of the inquiry were the calling of psychiatric evidence at the trial and sentencing of Mr McGee. A subsidiary issue, which emerged during the course of the Commission, was the practice of Major Crash referring matters to this Office for advice prior to charging persons.

In relation to the calling of psychiatric evidence at trial, the Commissioner found that the Office did take such steps as they reasonably could in the circumstances to obtain alternative expert psychiatric evidence and that there was no other course reasonably open to the prosecution to rebut the expert psychiatric evidence in the absence of alternative expert evidence. The Commissioner recommended that the law be changed to ensure that there was adequate pre-trial disclosure of expert evidence by defence so that the prosecution was not taken by surprise in a trial. Such disclosure provides for a more effective trial process.

In relation to the calling of psychiatric evidence on sentence, the Commissioner found that this Office should have taken further steps to have alternative psychiatric evidence available. He was of the view that this evidence was very important on sentence and that the evidence should have been sought to support this Office's primary submissions on sentence. The Office has noted the Commissioner's findings in this regard.

As noted in previous annual reports, there is an arrangement between the Major Crash Investigation Section of SAPOL and the Office that most vehicular collision cases, in which death or serious injury occur, will be referred to this Office for advice prior to the laying of charges. The rationale is to ensure that these sensitive cases are adequately examined by experienced lawyers before charges, which are difficult to prove in court, are laid. It also enables the Witness Assistance Service at the earliest opportunity to contact the victim's family to provide support during the process. The Commissioner questioned whether this arrangement was responsible for a culture of reporting rather than arresting suspects after a collision at Major Crash. The arrangement specifically states that the police always retain the power to arrest in appropriate circumstances. Given that the driver is usually at the scene or in hospital, there is less need for an arrest in these situations. On balance, this Office is of the view that the current arrangement best serves the interest of justice by ensuring that the

correct charge is laid in the first instance. However, the Office will liaise with Major Crash to ensure that there is no misunderstanding about the ability to arrest in appropriate circumstances.

Report from the Managing Prosecutor

The Prosecution Section conducts prosecutions for a range of offences including drug offences, offences of sexual assault, other offences of violence, armed robberies, cause death by dangerous driving, fraud, offences of a public nature and murder. Some of the trials that are prosecuted are relatively straightforward and many are complex in both law and fact. There have been several trials over the last year that have occupied many months including the murder trials of *R v Ugolini & Ors* and *R v Gassy*.

As reported in the Annual Report last year the complexity of the trials conducted in the Prosecution Section has continued to increase. The difficulties experienced by prosecutors who are confronted without notice by the defence calling expert witnesses was brought into stark relief this year in the conduct of the *McGee* case. Whilst this case has received much publicity, it is not uncommon for prosecutors to be placed in this same position. As reported in last year's Annual Report it is for this very reason that the prosecutors need to have a complete understanding and training in all these areas to assist them to deal appropriately with evidence that is provided at very late notice and when there may be little opportunity to obtain adjournments or to seek expert advice in relation to these matters.

The Prosecution Section welcomes the initiatives of the Duggan Report into proposed reforms for criminal trial procedures, including the compulsory disclosure of the reports of expert witnesses proposed to be called as part of the accused's defence. These initiatives will enable evidence to be presented in a fairer and more reasonable manner.

During the year in review, 621 accused had matters listed for trial in the Adelaide District and Supreme Courts. Of these, 240 proceeded to trial. The remainder pleaded guilty or the charges were withdrawn. The Prosecution Section also provides services to the Port Augusta and Mount Gambier Circuit Courts of the District and Supreme Courts. There were 100 matters listed for trial in these courts. Of those 38 proceeded to trial. This equates to 1425 trial days including legal argument (1350 days in 2003/2004) during the year. It is clear that with the average length of trials being just over six days the Prosecution Section is unable to provide prosecutors for the 722 accused listed for trial in this financial year. To supplement the prosecutors within the Office, some trials are briefed to the private legal profession. A number of members of the independent bar are available to accept these briefs. The Office briefs out at a payment scale equivalent to the Legal Services Commission payment scale. The financial impact on the Office during the year of the cost of briefing out trials to the private profession was \$317,516.50.

The Office continues to closely monitor and manage the allocation of trials. The nature of criminal trial work is that there are many matters in which offenders do not plead until they are on the doorstep or where discussions between the parties results in an appropriate resolution. To accommodate this and to maximize the efficiency of the use of court resources, the courts list more trials than they have available judges or courtrooms. Unfortunately, this leads to occasions when a trial cannot start because of over-listing. In these circumstances the Office and the accused are only notified at about 2.30 pm on the working day before the trial was due to commence. The trial is then relisted when the parties and the courts are available. This is often not for many months.

By the time the parties are notified that the trial cannot start, the preparation work has been done. If the matters have been briefed to the bar a fee on brief will be paid. A prosecutor with the Office could have used their time more productively on other matters, as it is not always possible to provide the same prosecutor for the trial when it is relisted.

Over the past year this Office has been working with the courts and in particular the Registry of the District Court to try to ensure that there are a minimum number of trials that are removed from the

list due to a lack of court resources. Members of the ODPP also met with the Chief Judge of the District Court in relation to the listing of trials on circuit in particular in the Port Augusta Courts, to ensure a smooth running list and a maximum disposal of trials in this jurisdiction.

The year under review has seen several senior prosecuting staff leave the office. Senior Prosecutor Peter Snopek was appointed as a Magistrate in December 2004. Peter worked with this Office for many years and contributed in a significant way to the work of the Prosecution Section in addition to being a good friend to many in this office. Peter's skills and experience will be missed.

Liesl Chapman also left the section to pursue a career at the bar. We thank her for her contribution.

During the past financial year two prosecutors, Martin Anders and Heath Barclay, have left our Office to work with the Australian Government in the Solomon Islands, to assist in rebuilding the justice system in that country. The Office is very proud that two of our members have and will be able to contribute in such a significant way to this country.

The vacancies within the Prosecution Section have been filled by less experienced prosecutors who require supervision to enable them to fulfil their duties. The role of doing this has fallen to several senior members of the Prosecution Section. The nature of prosecuting requires that new prosecutors must develop skills quickly to enable them to prosecute skilfully and fearlessly while maintaining at all times a proper sense of balance and fairness. These qualities must be taught, monitored and encouraged. The nature of the work is stressful and it is important that an appropriate balance of work and outside commitments including family is achieved and fostered in our organization.

The Prosecution Section of the Office has had, on average, 15 prosecutors throughout the current financial year. These 15 prosecutors range in experience of in excess of 25 years to less than five years experience as legal practitioners. In the past financial year the Office has tried to consolidate the senior members of the Office within the Prosecution Section. It is important that the junior prosecutors are given sufficient guidance and supervision to enable them to undertake the particularly onerous work of prosecuting trials on a daily basis in the District and Supreme Courts.

Future Developments and Challenges

The Prosecution Section is very positive about the forthcoming review of the Office and the opportunities that it may provide to enable the ODPP to restructure and provide rewarding and satisfying careers in the criminal law.

The Office provides counsel services at the highest levels in this State. It is important that those appearing in our courts are the most experienced and proficient practitioners. They must not only have a well developed sense of prosecutorial duties, but also be well versed in criminal law and be good advocates. These skills take many years to develop. The Office must be committed to ensuring that a career path that recognises these attributes and the rigours of the work be implemented and maintained. It has long been the case that the natural progression in this section has been to the private bar. To stem the flow it will be necessary to provide the recognition that these positions warrant.

During the coming year we will be implementing a new system of bringing together the senior prosecutors within the section and ensuring that all contribute in the running of the Office. A mentoring system that provides and supports better levels of communication between staff members in the solicitor and prosecutor sections will be implemented.

There are also a number of significant criminal trials and appeals that will be undertaken by the section. The coming year will continue to bring with it the challenges that this work gives by its very nature.

The Office takes the opportunity to thank James Pearce as a senior prosecutor and the other senior prosecutors within the team who have provided mentoring and legal skills to their team members.

Prosecuting with the current level of public and political interest is at times, very difficult. Prosecutors do it to the best of their ability. They rely to a significant extent upon a properly conducted police investigation. The working relationship between SAPOL and the Office is a very important feature of how well the system operates to ensure that justice is done. The prosecutors extend their thanks to the very many investigating officers who provide us with well prepared briefs and the appropriate level of support during a trial.

Court of Criminal Appeal

Section 352 of the *Criminal Law Consolidation Act* provides jurisdiction for appeals against conviction and sentence in the Supreme Court and the District Court. A convicted person may appeal against the conviction and/or against the sentence.

Crown Appeals

The prosecution only has a right to appeal against sentence. The principles that apply to a consideration of Crown appeals are different from those that apply to appeals filed by a convicted person. In considering prosecution appeals against sentence it is acknowledged 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. In *R v Osenkowski* (1982) 30 SASR 212, the Court held:

“...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.”

Case Stated on a Question of Law

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 is 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.

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. The same considerations apply to appeals against sentence brought by the prosecution for a sentence imposed by a magistrate or a judge.

APPLICATIONS FOR LEAVE TO APPEAL FILED PRIOR TO 1/7/04

	Appeals by Defendant	Appeals by ODPP
<i>Applications for leave to appeal heard in 2004-05</i>		
Leave to Appeal granted previously	28	6
Leave to Appeal granted in 2004-05	15	
Leave to Appeal refused and subsequently Form 7 lodged for further consideration	10	
Leave to Appeal refused	4	
Other (civil appeal, judicial review)	3	
Leave to Appeal abandoned	2	
TOTAL	62	6
<i>Of those applications where Leave to Appeal was granted (including seven where Leave refused and Form 7 granted)</i>		
Appeal against conviction upheld	8	
Appeal against sentence upheld	9	5
Appeal against conviction dismissed	21	
Appeal against sentence dismissed	9	1
Other dismissed (judicial review)	2	
Other allowed (civil)	1	
CCA decision pending	2	
CCA abandoned	1	
TOTAL	53	

APPLICATIONS FOR LEAVE TO APPEAL FILED DURING 2004-05

	Appeals by Defendant	Appeals by ODPP
Leave to Appeal application by ODPP		8
Leave to Appeal granted in 2004-05	73	
Leave to Appeal refused and subsequently Form 7 lodged for further consideration	9	
leave to Appeal refused	22	
Other (civil appeal, judicial review)	0	3
Leave to Appeal abandoned	21	
Application for Leave to appeal pending as at 30/6/05	7	
TOTAL	132	11
<i>Of those applications where Leave to Appeal was granted (including one where Leave refused and Form 7 granted)</i>		
Appeal against conviction upheld	2	
Appeal against sentence upheld	4	3
Appeal against conviction dismissed	12	
Appeal against sentence dismissed	14	1
Other dismissed (judicial review)		1
CCA decision pending	40	4
CCA abandoned	2	2
TOTAL	74	235

HIGH COURT

		2004-05
Special Leave to Appeal applications pending as at 1/7/04		8
Special Leave to Appeal applications filed 2004/05		8
Full Court matters Pending as at 1/7/04		0
TOTAL		16
Special Leave to Appeal refused		8
Special Leave to Appeal granted		1
Special Leave to Appeal abandoned		2
Special Leave to Appeal pending as at 1/7/04		5
TOTAL		16

Report from the General Manager

With the significant injection of recurrent funding it was disappointing that the proposed organisational review has been delayed. The challenge therefore remained to ensure the most effective and appropriate use of these additional resources, without the opportunity to consider the most strategic application of those resources. The Office therefore during the year continued to maintain the status quo within the context of the historical application of resources.

During the year there have been four incumbents in the position of General Manager, which has produced a level of discontinuity for the operations of the Office. The absence of a Director for most of the year also had a major impact. In 2005-06 the position of General Manager will be filled on an ongoing basis at the Executive level.

The Acting Director in consultation with the Executive determined that a priority for the 2004-05 year would be the development of an internet website. The Office's website (www.dpp.sa.gov.au) was launched in February 2005. The availability of this site provides stakeholders and members of the community with an opportunity to access relevant information about the Office and the criminal justice system. Now that this site has been launched, administrative staff will undergo training to allow updating of the site to be performed by ODPP staff.

The staff of the Witness Assistance Service and the Administrative Section have sustained their dedication and professionalism throughout the year under review to complement the legal staff in ensuring that the Office provides a timely and efficient prosecution service.

The Office is again indebted to Ms Judie Cox and her staff (Attorney-General's Department) for an effective library and research support service.

Witness Assistance Service

The Witness Assistance Service was established in 1995 when a sole Witness Assistance Officer was employed to provide information and support services to victims of crime and prosecution witnesses. Since that time the number of Witness Assistance Officers has increased and now consists of 10 FTE experienced social work practitioners due to an extra allocation of funding for 2005-2006.

Role and functions of the witness assistance service

The diverse range of services provided by Witness Assistance Officers to victims of crime and vulnerable witnesses includes:

- Providing information about the legal process, updates on progress of a matter, support services available, victims' rights and responsibilities
- Liaison with solicitors and prosecutors
- Court preparation and familiarisation tours
- Assessment and planning for special needs and support in preparation for the court process
- Attendance and support during meetings with solicitors and prosecutors
- Co-ordination and provision of court support for victims/witnesses
- Assistance with the preparation and presentation of victim impact statements for the sentencing court
- Crisis counselling, intervention and debriefing in relation to the legal process
- Interagency liaison
- Community education and training and contribution to policy about victims issues

The majority of referrals to the Witness Assistance Service are made by ODPP legal staff. Referrals may also come from victims and witnesses themselves or external agencies such as SA Police and victims' services including Victim Support Service and Yarrow Place Rape and Sexual Assault Service.

Due to the lengthy process of some matters through the criminal justice system there is the potential for files to remain active with the Witness Assistance Officer for many months and in some cases several years. Many of the files referred to the Witness Assistance Service represent a number of victims and witnesses and where the victim is deceased, multiple family members.

Year in review

During the year there were 902 new referrals to the service, of which 734 were adults and 168 were children. The particular needs of each victim and/or witness are recognised and the resources allocated reflect the uniqueness of each matter in the legal process. The increase in referrals to the witness assistance service can be partly attributed to the number of historical sexual abuse matters being dealt with by the ODPP.

Witness Assistance Service has continued to provide support and information to family members of victims involved in what is termed the "Bodies in the Barrel" trial.

Child Witness Assistance Officers

Of the Witness Assistance Service team, 3.5 FTE positions are funded by the Victims of Crime Coordinator (Attorney-General's Department) to provide services directly to child victims and witnesses and their parents or caregivers.

Due to their close working relationships with young victims and witnesses, Child Witness Assistance Officers are in a prime position to observe and report on their needs and identify areas for improvement in the criminal justice system. The Child Witness Assistance Officers have been involved in the development and preparation of the new closed circuit television facilities for vulnerable witnesses.

Community Education and Training

The Witness Assistance Service has provided education and training to a number of organisations over the past year including presentations to:

- Client, staff and volunteer groups of Victim Support Service
- TAFE Interagency Child Abuse training
- Respond SA
- SA Police Prosecution section
- SA Police - Victims of Crime Course
- Yarrow Place Rape and Sexual Assault Service
- Teachers Registration Board
- Road Trauma Support Group
- Flinders University Law students

The Witness Assistance Service continues to work collaboratively with workers from Victim Support Service and Yarrow Place Rape and Sexual Assault Service to present full day seminars (at no cost) about the criminal justice system targeted at people in the community who work with victims of crime. These seminars conducted in country (Port Pirie - September 2004) and metropolitan regions (Adelaide - May 2005, Christies Beach - July 2004 and February 2005) continue to be successful in

raising awareness about issues relating to victimisation, the legal processes and support services available.

The Witness Assistance Service has initiated training sessions with legal practitioners and administration/support staff as part of their induction to increase awareness about issues for victims of crime and working with witness assistance officers. The team regularly consult with legal practitioners on an informal basis. Orientation sessions with law students on placement have been valuable in raising awareness and understanding about the issues facing witnesses giving evidence for the prosecution.

Improved systems - IJP Prosecutions Case Tracking

A new IT system for the Office, IJP Prosecutions Case Tracking, was piloted in 2004-05 with a group of law clerks using the system. IJP Prosecutions Case Tracking builds links with systems within SA Police, and the Court Outcomes systems available to the Justice Information System (JIS). It enables the recording of information about prosecution cases handled by the Office, eliminating duplicate data recording and standardising the recording of offences across agencies.

The pilot users provided valuable feedback on the use of the system, and helped uncover a number of areas which required improvement. A number of enhancements to the system were commissioned, based on this feedback. A full training and implementation schedule will see the software rolled out to all of the Office by early 2006.

Specifications were carried out for the next phase of work, which will seek to improve monitoring and workflow practices in the Office. The development of these functions has been deferred until after the organisational review of the Office and the consolidation of the first phase of Case Tracking. It is expected that the work on this will commence early in 2006.

IJP Prosecutions Case Tracking has provided some challenges for the Office to face in terms of moving from a basic computer system to one which integrates and participates with other agencies. The arrangements with the other criminal justice agencies and the charges levied for support of the system have been the subject of discussion throughout the year. The Office will continue to work in 2005-06 with Attorney-General's Department, Justice Technology Services and the other criminal justice agencies to resolve the ongoing support issues, and to provide a clearer direction for the future.

Administrative Section

The Administrative Section has continued to provide an effective support function to the Office during the year. The 32 administrative staff provide a range of services which include secretarial, law clerk, reception, rounds and an executive assistant function.

There has been a considerable strain on the secretarial staff due to the Office's inability to attract an adequate pool of legal secretaries. This lack of resources has resulted in the need for temporary agency staff to assist in meeting the deadlines imposed on the administrative services within the Office.

The administrative staff have met the challenge of maintaining focus and direction in providing a quality service to the professional staff who are now spread across four floors of the building. Training of key users in the new IT system has also impacted on the ability of the section to meet the needs of the Office.

In addition the Administrative Manager provides a service to the Office on human resource and financial matters. Considerable resources have been diverted during the year to the induction of new staff in the Office and the coordination of the moves to new office accommodation within the building.

The Future

Office accommodation remains an ongoing issue and whilst additional space within the Pirie Street building was secured in August 2004, the Office again had to seek further space to accommodate staff that will commence in the 2005-06 year. The effectiveness of managing staff when they are located on four levels (three part floors and one whole floor) will be tested during this time. The ongoing issue of appropriate long-term accommodation remains a major concern and will be addressed during the year.

The process of advertising and selecting a new General Manager will be undertaken and it is envisaged that the successful candidate will commence in the Office prior to the completion of the organisational review. This position will be critical to the Office through the implementation phase of the review.

CORPORATE OVERVIEW

Financial Budget

The Office had been advised of the \$1m increase in recurrent funding for the 2004-05 financial year at the end of the 2003-04 year. In addition in May 2005 one off funding of \$461,000 was received as part of the bid for child sex and child pornography matters. The total funding allocation for the Office for 2004-05 was \$10.6m.

During the year the Office made submissions to Government for additional funding and these were partially successful. These submissions covered increases in demand on the Office's resources for child sex and child pornography matters, confiscations of assets and additional costs to support the new technology system to track prosecution cases. In addition a combined bid was developed and submitted by SAPOL, the Courts Administration Authority and the Office for resources to provide additional support to the proposed Criminal Assets Confiscation Bill 2004, in combating organised crime groups, including outlaw motorcycle gangs, by attacking the financial base of their criminal enterprises.

The Office has received notification that some of its bids for 2005-06 financial year have been partially successful. The Office will receive \$207,000 for criminal assets confiscations matters, as part of the joint bid, and \$700,000 for child sex and child pornography matters. In addition the Office is grateful to the Premier for additional recurrent funding of \$800,000 which will be used to support the general work of the Office and to reduce the high workloads of staff.

The Office has been funded for two separate projects during the year. The ODPP IT Infrastructure Project (IJP Prosecutions Case Tracking) to improve the prosecution case management system in the Office, and the Bodies in the Barrels trial. Although the Office has been separately funded by Government for direct costs associated with the Bodies in the Barrels prosecution, the indirect costs associated with this trial have continued to be met from within the Office's recurrent funding.

Staffing Levels

The significant increase in funding in 2003-04 allowed the Office to increase its staffing numbers. This additional funding ensured that the Office was able to continue the employment of the experienced legal staff, who had been on contract backfilling those staff diverted to work on the Bodies in the Barrels trials. In addition the successful bilateral bids for funding will allow the proposed increase in staffing numbers as indicated below. All new positions created with this funding have been made 12 month temporary contracts pending the outcome of the organisational review. The review could potentially propose a different use of resources within the Office.

During the year the Office remained unable to fill the position of Crown Counsel and for part of the year the position of Associate Director was vacant.

	<i>Actual</i> 2004-05	<i>Projected</i> 2005-06
Executive	5.0	5.0
Legal (including Managers)	53.52	62.53
Witness Assistance Officers	8.8	9.1
Administrative staff	31.84	33.04
Total	99.16	109.67

Includes staff who are working on separately funded projects within the Office including the Child Witness Assistance Service Officers.

The Future

The evidence of the additional funding provided to the Office over the last few years will become apparent. In addition, the organisational review will provide the Office with the opportunity to undertake an organisational assessment, to explore the major components of the organisation and to respond to the challenge of establishing a valuable foundation for strategic management. The Office has for some time, because of continual workloads and unrelenting pressure, become a reactive organisation. The review will promote innovation in the area of change management and recognition of the factors that influence the operation of the Office. Within the regulatory framework of the criminal justice system, the business level strategies of the Office will recognise the interrelationship among the component agencies.

The recommendations of the review team will be considered by Executive and prioritised for implementation over the proposed nine month implementation phase. The delay in commencing the organisational review will now mean that any recommendations that are likely to impact on the financial resources of the office will be delayed, as there will be no opportunity to seek additional funds through the normal processes for the 2006-07 year.

The considerable period of uncertainty, and associated pressures that staff have been placed under since May 2004, due to a lack of continuity of senior staff, will be addressed once the outcome of the review has been received.

APPENDIX A

Publications/Information

The Office provides the community with publications about its services and acts as a channel for information to victims and witnesses of the services provided by support agencies.

During the year the Office launched its internet site, this site is continually updated and provides the public with (amongst other things) links to publications and information about the criminal justice system.

The following publications are available from this Office at no cost.

- ODPP Annual Reports
- ODPP Prosecution Policy and Guidelines
- Information for Victims of Crime
- Homicide Maze (*SA Government Publication produced by the ODPP in conjunction with the Homicide Victims Support Group*)
- An Important Job - Going to Court (suitable for child victims/witnesses)
- What Choice Do I Have - Information for people who have experienced a rape or sexual assault (*ODPP and Yarrow Place Rape and Sexual Assault Service*)

The following pamphlets are available from this Office at no cost.

- Witness Assistance Service

The following internet links provide further information in support of the work of the Office.

<i>Office of the Director of Public Prosecutions</i>	www.dpp.sa.gov.au
<i>Victims of Crime</i>	www.voc.sa.gov.au
<i>SA Police</i>	www.sapolice.sa.gov.au
<i>Yarrow Place</i>	www.yarrowplace.sa.gov.au
<i>Courts Administration Authority</i>	www.courts.sa.gov.au
<i>Department for Correctional Services</i>	www.corrections.sa.gov.au

Papers published by staff

Parliamentary Privilege and Police Powers in South Australia, (2005) 16 Public LR 99

Martin Hinton

APPENDIX B

ODPP Representatives on Committees/Steering Groups

Internal

Name	Representative
IJP Prosecutions Management Committee	Golda Munro, General Manager
IJP Prosecutions Steering Group	Golda Munro, General Manager, Wendy Abraham QC
Executive	Stephen Pallaras QC, Pauline Barnett, Geraldine Davison, General Manager
Management Committee	Pauline Barnett, Geraldine Davison, General Manager, Jim Pearce, Peter Snopek, Paul Muscat, Ian Press, Adam Kimber, Rebecca Abbott, Pam Jones, Golda Munro, Sue Raymond
Policy Committee	Pauline Barnett, Sophie Downey, Adele Andrews, Martin Hinton, Caroline Mealor, Anna Whittam, Geraldine Davison, Wendy Abraham QC, Briony Kennewell, Rebecca Abbott <i>(including from the Crown - Matthew Goode and Helen Wighton)</i>
Professional Development Committee	Sue Raymond, Amanda Pienaar, Emily Telfer, Michelle Sutcliffe, Kos Lesses, Emma Shaw, Caroline Steel, Carmen Matteo, Pam Jones

External

Name	ODPP Representative
Australian Association of Crown Prosecutors	Martin Anders
Australian and New Zealand Psychiatrists, Psychologists and Lawyers	Geraldine Davison
CCTV Facilities for Vulnerable Witnesses Working Party	Rebecca Abbott
Conference of Australian Directors of Public Prosecutions	Stephen Pallaras QC
Criminal Courts Committee	Stephen Pallaras QC, Wendy Abraham QC
Criminal Justice Leadership Group	Stephen Pallaras QC, Wendy Abraham QC
Criminal Justice Portfolio Policy Meeting	Rebecca Abbott
Data Quality Committee	Golda Munro
Disability Action Plan Reference Group	Pam Jones
Drug Court Steering Committee	Pauline Barnett
Duggan Working Party into Criminal Law Reform	Wendy Abraham QC
Forensic Science Advisory Committee	Stephen Pallaras QC, Wendy Abraham QC
International Association of Prosecutors: Executive Committee	Wendy Abraham QC
Justice Child Protection Reform Working Group	Rebecca Abbott
Justice Data Warehouse Steering Committee	Golda Munro
Justice Information System: Business Operations Committee	Golda Munro
Justice Information System: Business Operations Committee - Finance	Golda Munro
Justice Information System: Technical Reference Group	Golda Munro
Justice Information System Java Environment Review Group	Kirsty Pyper
Law Society of South Australia: Criminal Law Committee	Geraldine Davison, Paul Muscat
Law Society of South Australia (Professional Standards), Legal Professional Conduct Board and DPP Liaison Group	Tim Heffernan

Law Society of South Australia: Advocacy Committee	Wendy Abraham QC, Geraldine Davison
Mental Impairment Review Committee	Pauline Barnett
Police Liaison Committee	Geraldine Davison, Pauline Barnett, General Manager
Review of the Controlled Substances Act	Adam Kimber

Professional Associations/Organisational Memberships

Name/title

Australian Association of Prosecutors
Australian Institute of Judicial Administration
International Society for the Reform of the Criminal Law
International Association of Prosecutors
Law Society of South Australia
The Australian and New Zealand Association of Psychiatry,
Psychology and the Law (ANZAPPL)

APPENDIX C

Training and Professional Development

Seminars/Training Sessions/Conferences Attended by DPP Staff

Name/Title	DPP Representative
Advanced IT Skills Management - TAFE	Sue Payne
Australian Association of Crown Prosecutors Conference, Darwin	Jim Pearce, Sandi McDonald, Lucy Boord, Phil Crowe
Australian New Zealand Psychiatrists, Psychologists and Lawyers Seminar	Adam Kimber, Geraldine Davison, Emily Telfer, Sophie Downey, Adele Andrews, Jay McGrath
Australian Society of Traumatic Stress Studies Conference	Tony Carella
Case Note Recording	Nina Travers, Sharon Ryan
Child Witnesses - Best Practice for Courts	Geraldine Davison, Heidi Ehrat
Conference of Australian Directors, Perth	Geraldine Davison
Criminal Injuries Compensation Seminar	Various staff members
Criminal Law Conference	Various members of staff
Customer Service Skills	Pam Jones, Mary Hunt
Drugs Court Conference, Darwin	Rasha Briggs, Laura Willows
Early Childhood Development Seminar	Nina Travers, Sharon Ryan
Hi-Tech Crime Conference	Gary Phillips
Illicit Drugs and Crime	Geraldine Davison
Leading and Managing People	Rebecca Abbott
Leading Teams in Government	Pamela Jones
Leave Policy Information Session	Caroline Steel, Pam Jones
Legal Information Research	Various staff members
Lexis Nexis On-Line Training	Various staff members
Managing Your Time to Get the Life You Want	Sue Raymond, Lorraine Bull
National Chemical Diversion Congress	Teresa Anderson
Office Ergonomics	Various staff members
Project Management	Kirsty Pyper
Remuneration Level Assessment Training	Pamela Jones
Research Analysis and Presenting Written Information	Pamela Jones
Speaking with Confidence	Belinda Ness
Specialist Sentencing Courts Conference	Rasha Briggs
Staff Selections Techniques (3 separate sessions)	-Caroline Steel -Janet Markotic, Mary Hunt -Rebecca Abbott, Belinda Ness
Thompson On-Line Training	Various staff members
Victim Offender Mediation	Rebecca Abbott, Nina Travers, Caroline Steel
Working with Challenging People	Caroline Steel
You, Your Team, Ethics and Legislation	Pam Jones, Mary Hunt

Staff of the Office attended professional development sessions run by the Law Society of South Australia, in particular, sessions on DNA and Legal Professional Privilege.

Staff also attended a seminar run by the Australian Institute of Judicial Administration entitled "Bail or Remand in Custody".

APPENDIX D

External Training and Public Information Sessions Conducted by Staff of the Office.

Session	ODPP Representative
Adelaide University final year medical students - mock cross examination experience	Emily Telfer
Adelaide University Litigation Practice	Dominic Petraccaro
Criminal Justice Seminar - full day seminar covering a range of topics. Adelaide Port Pirie Christies Beach 2004 Christies Beach 2005	{ Sharon Ryan, Nina Travers, Rebecca Abbott, Kos Lesses Belinda Ness, Rebecca Abbott Rebecca Abbott, Caroline Mealor Belinda Ness, Lucy Keller
Flinders University Law Students <i>Topic:</i> Witness Assistance Service, vulnerable witness provisions, victim impact statements	Anna Whittam
Graduate Diploma in Legal Practice - Opening and closing addresses	Sandi McDonald
Graduate Diploma in Legal Practice - Criminal Practice	Liesl Chapman, Michelle Sutcliffe, Lisa Dunlop, Lisa Duong, Karen Ingleton, Lucy Boord
Graduate Diploma in Legal Practice - Placement Supervision	Martin Hinton
Law Society Seminar <i>Topic:</i> The Crown as model litigant	Geraldine Davison
Playford Community Health Centre Women's Support Group <i>Topic -</i> Reporting to police and the criminal justice system	Caroline Steel, Nina Travers
Respond SA - Issues for adult survivors of child sexual abuse in the criminal justice system	Henrietta Wighton, Rebecca Abbott
Road Trauma Support Group - Witness Assistance Service, Vulnerable Witness Provisions, Victim Impact Statements.	Rebecca Abbott
SAPOL - Port Adelaide Local Service Area - preparation of declarations-- 5 sessions	Jay McGrath, Mandy Neller
SAPOL - Detective training course - panel discussions - 2 sessions	Andrew Williams
SAPOL - Operation Counteract <i>Topic:</i> Witness Assistance Service, vulnerable witness provisions, victim impact statements	Belinda Ness
SAPOL - Paedophile Task Force	Henrietta Wighton, Briony Kennewell
SAPOL - Police informants	Geraldine Davison
SAPOL - Port Adelaide Local Service Area - 10 sessions	Stephanie Geyer
SAPOL - Prosecution services - two sessions	Rebecca Abbott, Sharon Ryan
SAPOL - Victims of Crime Course <i>Topic:</i> Witness Assistance Service, Vulnerable Witness Provisions, Victim Impact Statements	Tony Carella
SAPOL Academy - Sex crimes	Briony Kennewell
SAPOL Prosecution Services - Proofing witnesses	Libby Griffith

Session	ODPP Representative
<p>TAFE Interagency training - child abuse <i>Topics</i> Child Abuse including historical child abuse matters - 4 different sessions. Prosecuting child abuse matters and Witness Assistance Service and children in the criminal justice system. September 2004 November 2004 March 2005 June 2005</p>	<p>Briony Kennewell</p> <p>Anna Whittam Belinda Ness Belinda Ness, Sharon Ryan, Emily Telfer Sharon Ryan and Andrew Williams</p>
<p>Teachers Registration Board <i>Topic:</i> <u>Children in the criminal justice system</u></p>	<p>Nina Travers</p>
<p>Women's Health Statewide <i>Topic:</i> Case Notes</p>	<p>Sandi McDonald</p>
<p>Yarrow Place - After Hours Staff Group <i>Topic:</i> What happens once notification of abuse is made to child abuse report line or police</p>	<p>Rebecca Abbott, Michelle Sutcliffe</p>

APPENDIX E

Compliance Reporting

The following matters are required to be reported on under the Premier and Cabinet Circular PC013

Aboriginal reconciliation statement

All relevant matters in relation to the Aboriginal Reconciliation Statement are incorporated within the Annual Report of the Attorney-General's Department.

Consultants

The reporting on the use of consultants by the Office during 2004-05 is incorporated within the Annual Report of the Attorney-General's Department.

Contractual arrangement

The reporting on the extent of contractual arrangements in the Office during 2004-05 is incorporated within the Annual Report of the Attorney-General's Department.

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.

Equal Employment Opportunity

All relevant matters in relation to Equal Employment Opportunity Reporting are incorporated within the Annual Report of the Attorney-General's Department.

Executive Employment Reporting

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

Financial Reporting

All relevant matters in relation to financial performance and account payment performance are incorporated within the Annual Report of the Attorney-General's Department.

Fraud

All relevant matters in relation to Fraud Reporting under the Public Sector Management Regulations 18 (i), 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*.

Human Resource Reporting

All relevant matters in relation to employee numbers, gender and status, leave management, workforce diversity, indigenous employees, cultural and linguistic diversity and disability are incorporated within the Annual Report of the Attorney-General’s Department.

Listening and Surveillance Devices Act

Pursuant to section 12 (1) of the *Director of Public Prosecutions Act* the Office reports that it has considered and approved 25 warrants issued under the *Listening and Surveillance Devices Act 1972*.

Occupational Health, Safety & Injury Management

The Office continues to be pro-active in its 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. This year staff were again offered free influenza immunisations as a preventative measure.

After consultation with staff and the Attorney-General’s Department Occupational Health Safety and Welfare Consultant, nine new policies relating to a safe working environment and remote and isolated work were adopted.

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 staff attended courses in fire safety training, first aid, office ergonomics, manual handling in the Office and stress management techniques. Staff identified as high keyboard and mouse users are presently testing a new computer program which ensures that the user takes regular breaks. It is hoped that this program will assist in preventing repetitive strain injuries.

During the year in review the Office has been proactive in providing equipment to staff members to aid in the prevention of injuries and promote safety in the workplace.

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 representatives for the last 12 months, Mr Brenton Egarr and Ms Christine Bretones who have displayed a high level of commitment to this role.

Overseas Travel

Wendy Abraham QC travelled to Ljubljana, Slovenia for an Executive Meeting of the International Association of Prosecutors. Ms Abraham travelled at her own expense.

Regional Impact Assessment Statements

All relevant matters in relation to Regional Impact Assessment Statements are incorporated within the Annual Report of the Attorney-General’s Department.

Training and development

All relevant matters in relation to Training and Development Reporting are incorporated within the Annual Report of the Attorney-General's Department. Various details of the types of training and development undertaken in the Office and conference attendance is reported in at pp.44-47

Triple Bottom Line Reporting

All relevant matters in relation to Triple Bottom Line Reporting are incorporated within the Annual Report of the Attorney-General's Department.

Voluntary Flexible Working Arrangements

Voluntary flexible working arrangements are provided for staff under the provisions of the *Public Sector Management Act (s6)* and the Attorney-General's Policy HRM 11. During the 2004-05 year there were 15 staff working part time and four staff who availed themselves of the flexible arrangement to purchase leave.

In addition flexitime arrangements were in place for 45 administrative and Witness Assistance staff.

All relevant matters in relation to voluntary flexible working arrangements are incorporated fully within the Annual Report of the Attorney-General's Department.

APPENDIX F

Glossary

<i>Accused</i>	The accused is a person who is alleged to have committed an offence.
<i>Acquit</i>	To find an accused person not guilty at a trial.
<i>Adjourn</i>	To delay a court hearing, until later that day or a specified day or indefinitely.
<i>Antecedent Report</i>	A report that lists a person's previous criminal convictions.
<i>Appeal</i>	<p>Appeals are made to and determined by a court higher than the court which made the decision appealed against. Appeals can be against sentence and/or conviction. If, on appeal, a lower court is found to have made an error, the appeal is upheld and the decision of the lower court is quashed or overturned.</p> <p>In the case of an appeal against sentence, a different sentence will be substituted. In the case of an appeal against conviction, a new trial can be ordered or a verdict of acquittal entered.</p> <p>If no error is found or, in some cases, if no substantial miscarriage of justice is perceived, the appeal is dismissed and the decision of the lower court is said to have been affirmed.</p>
<i>Appellant</i>	When an accused is convicted and/or pleads guilty, and appeals, he/she is throughout the appeal process referred to as the appellant.
<i>Arrest</i>	To apprehend or take into custody a person suspected of having committed a crime.
<i>Bail</i>	Once a person has been arrested and charged with an offence, that person must remain in gaol unless that person has legal authority to remain out of gaol. When a person receives such authority that person is said to have been granted bail. Bail may be on the accused's own undertaking to appear or with sureties and subject to conditions.
<i>Burden of Proof</i>	This refers to the level of proof required. In most criminal cases the prosecution bears the burden of proof <i>beyond reasonable doubt</i> .
<i>CLCA</i>	Criminal Law Consolidation Act 1935
<i>Committal Proceedings</i>	After a person is charged with a criminal offence they appear before a magistrate who determines if there is sufficient evidence upon which to order that an accused person stand trial before a judge and jury.
<i>Committed for Sentence</i>	If at the committal proceedings the accused admits to having committed the offence as charged, the magistrate will order the accused person to appear before a District or Supreme Court to be sentenced according to law.
<i>Convicted</i> <i>SEE TABLES AND STATISTICS</i>	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

Defendant	In the Magistrates Court the accused may be referred to as the defendant.
Exhibit	A document or physical item tendered as evidence in a court hearing or referred to in an affidavit.
Forfeiture Orders	Orders granted under either section 8, 9 or 15(5) of the <i>Criminal Assets Confiscations Act 1995</i> which confiscate property of a person convicted of a criminal offence: <i>Forfeiture Orders can be made:</i> a) <i>formally where application is made by the ODPP in relation to property used in an offence,</i> b) <i>orally before the court in which an offender is convicted,</i> c) <i>automatically where drug offences are involved and a section 15(5) restraining order automatically converts to a forfeiture order six months after that person is convicted of the drug offence.</i>
Form 7	If an accused is refused Leave to Appeal by a single Judge, an accused can file a Form 7 asking the Court of Criminal Appeal to consider the application to grant Leave to Appeal.
Indictable Offence	An offence with which an accused has been charged for which the accused has an initial right to be tried by a judge and jury.
Information	The document which sets out the offence or offences that an accused is alleged to have committed and in relation to which the accused must stand trial and be sentenced if found guilty.
Major Indictable Offence	Those indictable offences where the maximum term of imprisonment exceeds five years. All major indictable offences are heard and determined in the District and Supreme Courts.
Mentally Incompetent SEE TABLES AND STATISTICS	Where accused is found <i>not guilty</i> on grounds of mental competence (CLCA Part 8A) and declared liable to supervision.
Nolle Prosequi SEE TABLES AND STATISTICS	All charges on the Information have been discontinued and it is formally recorded that the accused is not to be prosecuted further and the criminal proceedings against an accused are to cease. In statistical data - All charges against the accused not proceeded with. <i>Note:</i> 1 <i>Nolle entered purely because of substitute Information filed, not counted as a Nolle</i> 2 <i>“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”</i> 3 <i>“White Paper” filed pursuant to CLCA s276 not counted as a Nolle, but shown separately</i> 4 <i>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</i> 5 <i>Where matter Nollod immediately after appellate court orders retrial, not counted as a Nolle</i>
Non Parole Period	When a judge imposes a sentence of imprisonment, a non-parole period will also be imposed. This is the minimum period the prisoner will serve before he/she is eligible for release. If this period is greater than five years, the release of the prisoner is dependant upon the Parole Board.

<i>Not Guilty</i> SEE TABLES AND STATISTICS	Proceeded to trial and acquitted of all charges.
<i>Plea</i>	A plea is the formal response of an accused at trial or arraignment to an Information. At the accused's trial the Information is read out to the accused (the accused is arraigned) and the accused then formally responds by saying he or she is <i>guilty</i> or <i>not guilty</i> .
<i>Precedent</i>	A judicial decision on a point of law which is binding on all courts lower in the hierarchy.
<i>Proceeded to trial</i> SEE TABLES AND STATISTICS	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. <i>Note: Matters listed for legal argument only, not included</i>
<i>Resolved Summarily</i> SEE TABLES AND STATISTICS	Includes matters where <i>major indictable</i> charge reduced to <i>minor indictable</i> or <i>summary</i> charge only, and finalised in the Magistrates Court (by plea or trial), by the Committal Unit or police.
<i>Restraining Orders</i>	Restraining orders made by a court under section 15 <i>Criminal Assets Confiscation Act 1995</i> prevent person(s) disposing of or otherwise dealing with specified property until criminal offences and confiscations proceedings are resolved.
<i>Sentence</i>	The penalty imposed on the accused if he/she is found guilty of an offence. For murder there is a mandatory head sentence of life imprisonment. The judge will usually set a non parole period.
<i>Summary Offence</i>	A minor offence heard and decided in a Magistrates Court and not sent for trial before a judge and jury.
<i>Superior Court - Other</i> SEE TABLES AND STATISTICS	Includes stay of proceedings, resolved in Magistrates Court, and incorrectly committed.
<i>Tender No Evidence (TNE)</i>	Where no evidence is tendered on all charges in the Magistrates Court, otherwise counted in accordance with charges that proceeded.
<i>Trial Outcome - Other</i> SEE TABLES AND STATISTICS	Includes stay of proceedings, adjournment during trial, bench warrant during trial (issued when an accused fails to attend court), and matters which are not finalised at the time of this report.
<i>Voir Dire</i>	Legal argument in the absence of the jury.
<i>Undertakings</i>	Where a person charged with a criminal offence undertakes not to sell or deal with the property. Undertakings therefore cannot automatically convert into forfeiture orders. A forfeiture application must be made after conviction.
<i>White Paper</i> SEE TABLES AND STATISTICS	After a matter has been committed for trial and where the Director declines to prosecute any charge and files prior to arraignment, a notice pursuant to CLCA s276. <i>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</i>

APPENDIX G

ODPP Statement Of Prosecution Policy and Guidelines

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

THE ROLE OF THE PROSECUTOR

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

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

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

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

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

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

and again -

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

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

THE DECISION TO PROSECUTE

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

The decision whether or not to prosecute is the most important step in the prosecution process. In every case

great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, tends to undermine the confidence of the community in the criminal justice system.

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

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

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

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

- (a) Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute?
- (b) If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?
- (c) Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?
- (d) Has a witness a motive for telling less than the whole truth?
- (e) Are there matters which might properly be put to a witness by the defence to attack his or her credibility?
- (f) What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination?
- (g) If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the accused?
- (h) If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?
- (i) Is there anything which causes suspicion that a false story may have been concocted?
- (j) Are all the necessary witnesses available and competent to give evidence, including any who may be out of the jurisdiction? Is any witness likely to obtain an exemption from giving evidence pursuant to Section 21 of the Evidence Act, 1929?
- (k) Where child witnesses are involved, are there statutory difficulties in the reception and evaluation of their evidence?

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

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

The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While some public interest factors may militate against a decision to

proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution, for example the seriousness of the offence and the need for deterrence. In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.

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

- (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a "technical" nature only;
- (b) any mitigating or aggravating circumstances;
- (c) the youth, age, intelligence, physical health, mental health, or special infirmity of the accused, a witness or victim;
- (d) the accused's antecedents and background;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the accused in connection with the offence;
- (g) the effect on public order and morale;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- (j) the availability and efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence, both personal and general;
- (l) whether the consequences of any resulting prosecution or conviction would be unduly harsh and oppressive;
- (m) whether the alleged offence is of considerable public concern;
- (n) any entitlement of the State or other person or body to criminal compensation, reparation or forfeiture;
- (o) the attitude of the victim of the alleged offence to a prosecution;
- (p) the likely length and expense of a trial;
- (q) whether the accused is willing to co-operate in the investigation or prosecution of others, or the extent to which the accused has done so;
- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (s) whether the alleged offence is triable only on indictment; and
- (t) the necessity to maintain public confidence in such institutions as the Parliament and the Courts.

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

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

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

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

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

In deciding whether or not the public interest warrants the prosecution of a young offender regard should be had

to such of the factors that apply to adults as appear to be relevant, but particularly to:

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

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

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

Guideline No 1 - Choice of Charges

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

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

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

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

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

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

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

Guideline No 2 - Charge-Bargaining

Charge-bargaining involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or

taken into account without proceeding to conviction.

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

A proposal should not be entertained by the prosecution unless:

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

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

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

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

Guideline 3 - Giving Advice to Investigators

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

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

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

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

Should the person seeking advice be unable, due to the urgency of the matter, to seek advice by way of a written

request, this should not preclude advice being provided. In such instances the written advice should recite the particular request made of this Office and the information provided upon which the advice is given.

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

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

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

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

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

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

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

Guideline No 4 - Ex Officio Information

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

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

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

On the other hand, a decision to indict notwithstanding the accused was discharged at the committal proceedings will not constitute as great a departure from accepted practice. The result of committal proceedings has never been regarded as binding on those who have the authority to indict. An error may have resulted in the Magistrate discharging the accused, and in such a case the filing of an ex-officio information may be the only feasible way that the error can be corrected. Nevertheless, a decision to indict following a discharge at the committal proceedings should never be taken lightly. An ex-officio information should not be presented in such cases unless it can be confidently asserted that the Magistrate erred in declining to commit, or fresh evidence has since become available and it can be confidently asserted that, if the evidence had been available at the time of the committal proceedings, the Magistrate would have committed the accused for trial. In the event that fresh

evidence is received, consideration will be given to reinstating the committal proceedings.

Guideline No 5 - Declining to Proceed after Committal

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

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

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

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

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

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

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

Guideline No 6 - Immunity from Prosecution

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

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

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

In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in alleged offences in order to secure their evidence in the prosecution of others (for example, by granting them immunity from prosecution). However, it has long been recognised that in some cases this course may be appropriate in the interests of justice. Nevertheless, an immunity under Section 7(1)(f) will only be given as a last resort. In this regard, as a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public

interest considerations being satisfied. Upon pleading guilty the accomplice who is prepared to co-operate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate. However, this course may not be practicable in some cases; for example, time may not permit charges against the accomplice to proceed to conviction before the trial of the principal offender, or there may be insufficient admissible evidence to support charges against the accomplice alone.

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

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

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

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

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

Guideline No 7 - Unrepresented Accused

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

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

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

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

Guideline No 8 - The Court Process

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

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

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

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

prosecutor, the court must be informed of them.

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

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

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

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

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

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

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

To do this the prosecutor should where appropriate:

- (a) comply with Sections 7 and 7A of the Criminal Law (Sentencing) Act with respect to injury, loss or damage suffered by the victim;
- (b) tender the relevant antecedents of the accused;
- (c) correct any error of fact or law;
- (d) refer the court to any relevant authority or legislation that may assist in determining the appropriate sentence;
- (e) make submissions on the appropriate sentencing options that are available including non-custodial options;
- (f) acknowledge any co-operation of the accused with the law enforcement agencies when this has occurred and proved to be of value. This must be done in a manner that does not endanger the safety of the accused or prejudice the operations of those agencies.

Guideline No 9 - Disclosure

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

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

- (a) statements of witnesses for the prosecution on which the prosecutor relies as tending to establish the guilt of the accused;
- (b) copies of any documents on which the prosecutor relies as tending to establish the guilt of the accused;

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

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

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

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

- (a) particulars of the accused's prior convictions;
- (b) copies of all written statements, and an opportunity to examine electronically recorded interviews of all witnesses to be called, together with a copy of any prior inconsistent statements of those witnesses;
- (c) copies of any written or electronically recorded statement obtained from the accused by a person in authority;
- (d) copies of any photographs, plans, documents or other representations which will be tendered by the prosecution at trial.
- (e) an opportunity to examine exhibits which will be tendered;
- (f) copies of statements of any expert witnesses to be called and the prosecution will facilitate an opportunity for a defence expert from the same or a similar discipline to speak with that expert, pre-trial;
- (g) copies of any warrant or any statutory authority used in the gathering of evidence to be adduced at trial;
- (h) an opportunity to inspect bank records, books of account or other records or documents relevant to the prosecution case which may not be introduced into evidence but be relied upon.

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

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

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

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

to the material.

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

Guideline No 10 - Media Contact

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

Guideline No 11 - Vulnerable Witnesses

When dealing with witnesses under 16 years of age, a person who suffers from an intellectual disability, a victim of an alleged sexual offence or a person who is at some special disadvantage, consideration must be given to the provisions of Section 13 of the Evidence Act 1929. In cases where the section might apply, a witness should be advised of the options that are available under the Evidence Act including a screen, closed circuit television, a court companion and a closed court. If the section is applicable to a witness the application should be made after consulting with the witness where possible prior to the commencement of the trial.

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

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

Guideline No 12 - Victims of Crime

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

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

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

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

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

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

Guideline No 13 - Victim Impact Statement

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

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

- (a) The statement must be prepared in writing and provided to the DPP. The statement will then be provided to the Sentencing Judge who will then appoint a time for it to be read to the court. It may be read by the victim or by a person nominated by the court;
- (b) the court will not be closed to the public (unless an order of the Court is made);
- (c) the prosecutor can apply for a closed court and/or a suppression order in appropriate cases;
- (d) the statement will not be disclosed to the defence prior to conviction unless it contains inconsistencies that go to a material matter. In the event of such inconsistencies the usual practice of disclosure should be adopted;
- (e) the victim may amend the statement at any time prior to it being read to the court;
- (f) the victim may withdraw the statement at any time in accordance with the Rules of Court.

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

Guideline No 14 - Prosecution Appeals

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

Appeals against sentence

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

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

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

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

In considering a prosecution appeal against sentence it is to be borne in mind that the sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the prisoner, and the effect on the victim. Consequently, for any given offence there exists a range of legitimate penalty options. An appellate Court will not interfere with the exercise of a Judge’s or Magistrate’s sentencing discretion unless an error in the exercise of that discretion can be demonstrated. In practical terms the Court

must be satisfied that the sentence imposed falls clearly outside the appropriate penalty range and may consequently be characterised as manifestly inadequate. Mere disagreement with the sentence passed is insufficient. The High Court decisions are clear that there must be a matter of principle to be established by the appeal in relation to the matter of the sentence Everett and Phillips v R [1994] 181 CLR 295.

Magistrates Appeals

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

Case Stated

There is no right of appeal against a verdict of acquittal in the District or Supreme Court. However the prosecution can apply to the court during the trial or sentencing process, or after an acquittal, for the court to refer a question of law for consideration to the Full Court. This power should be exercised sparingly. The Director of Public Prosecutions should not seek to have a question of law referred to the Full Court unless it can be asserted with some confidence that the Court will answer the question in the manner sought by the prosecution. The question of law must be of sufficient importance to require the attention of the Full Court.

CONCLUSION

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

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

ANNEXURE A

The Declaration of Victim's Rights has been superceded by the Victims of Crime Act 2001.

VICTIMS OF CRIME ACT 2001

A copy of this Act has not been reproduced here.

A copy of this Act may be accessed at the Government's Website SA Central.

<http://www.sacentral.sa.gov.au/government/parliament>

or

Australasian Legal Information Institute's Website

<http://www.austlii.edu.au>

or

The Office's website:

<http://www.dpp.sa.gov.au> 'links' 'legislation'.

ANNEXURE B

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

SUMMARY OF PROVISIONS

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

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

An Act to establish the Office of Director of Public Prosecutions; 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.

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