



**Government
of South Australia**

**DIRECTOR OF
PUBLIC PROSECUTIONS**

Annual Report

2006-07

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ISSN 1833-7902

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DIRECTOR'S OVERVIEW

My second full year in Office has been as challenging as my first fifteen months. The Office has continued to experience unacceptably high levels of demand on its scarce resources and I have been forced to reduce some services and consider ways of prioritising other work in my Office. Notwithstanding the heroic efforts made by staff, the Office finished the year with an increase of 200 active files. In view of the Government's proposed legislative program for the second half of this year, the demands on the Office are set to increase significantly. It is abundantly clear that this situation is unsustainable. I am grateful, therefore, for the Attorney General's willingness to examine the Office's needs in the mid year budget review process. To assist in this process, on 10 August 2007, I provided the Attorney General with a full report on the resource needs of the Office and set out a number of recommendations that would assist this Office to go forward. A copy of those recommendations is annexed to this Annual Report.

Recommendations from the Organisational Review were examined by Government and some have been supported and financed over the past twelve months while others have been rejected. Those recommendations which were supported were basically structural in nature and provided a basis for a re-organisation of the way in which work is managed within the Office.

The principal recommendation, namely an activity based costing exercise ("ABC"), was rejected. This was presented as the key recommendation by the consultants conducting the review and one which was pivotal to the success of the other recommendations. I was very disappointed that this key recommendation was not accepted. I am firmly of the view that until an objective and realistic assessment is made of the resources necessary to carry out the functions of the Office, there will be ongoing resource difficulties which cannot be appropriately dealt with by piecemeal solutions. The rejection by government of an ABC was why it was necessary for many senior staff in the Office to devote much of their time and effort to produce the report on resources referred to above.

The net result of Government decisions in relation to recommendations made by the Organisational Review has been an additional 2 FTE's for the Office. If this situation continues, the outcome will be an inferior prosecution service offered to the citizens of South Australia. It is my duty as Director to warn that unless my calls for sufficient resources are heeded, this Office will struggle to fulfil its charter under the Director of Public Prosecutions Act 1991.

Further exacerbating the problems caused by insufficient resources are the restrictive processes associated with attracting and retaining legal staff in a public sector framework. While the Public Sector Management Act 1995 provides essential benefits and protections for the vast majority of public servants, the Act can often prove to be unwieldy when this Office attempts to compete with the private profession in recruiting experienced staff.

As Director, I have no ability to identify talented individuals and offer them employment without going through a protracted selection process. The time taken in legislative compliance regularly results in these individuals no longer being available when a job offer can finally be made. Similarly, recruitment from interstate or overseas is very difficult to manage within the constraints of the Act. Not only is the pool restricted but the time taken to

advertise, select and appoint regularly takes 3 months or more before an appointee takes up employment.

From the time approval was given in September 2006 to fill the management positions in my Office, we waited until May 2007 before the first appointment was made. I am still awaiting the arrival of one of my practice team managers. A busy Office performing critical functions needs flexible, efficient employment practices. I hope to work with the Chief Executive in the next twelve months to improve this area of operation so that the Office does not continue to fund its operations out of vacancies in its salaries line. Given the workloads facing the Office it is irresponsible to have any position vacant, even for a few months.

On a more positive note I welcome the appointment of my Deputy, Mr Martin Hinton QC and I look forward to working closely with him over the coming years. I am also fortunate to have a new dynamic management team which is looking forward to the challenges facing the Office. With their energy and commitment I am sure this Office will pull through this critical period with distinction.

It is pleasing to note that despite current difficulties, over the last twelve months we finalised more matters in the District and Supreme Courts, more trials were conducted, conviction rates improved and more matters were committed for sentence in the Magistrates courts. These excellent results are due to the dedication and professionalism of the very talented group of people who make up the staff of the ODPP. I say without any hesitation whatsoever, that without this group of exceptionally talented and committed people, the criminal justice system could not function and our community as a whole would not receive the level of excellent service that is currently provided under difficult circumstances.

My sincere thanks also go to Police Commissioner Mal Hyde and all SAPOL members. We in the ODPP fully understand that successful prosecutions are all about partnerships. While we see on a daily basis the difficulties faced by our police in their work, for their part SAPOL has been very receptive to the challenges faced by this Office - challenges which have necessitated a cut back in the assistance we have been able to provide to them in some areas of our work. I look forward to a continued productive working relationship.

Finally I wish to thank my personal assistant Ms Dianne Flynn for her continued invaluable and truly outstanding assistance.

ACHIEVEMENTS 2006-07

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

Reg v Sambora and Pacifico

Sambora and Pacifico were charged with a number of interrelated fraud offences. The total amount involved was about \$23 million. It was estimated that the trial would occupy some six months of court sitting time involving significant resources.

Court of Criminal Appeal

R v Goulding

Goulding pleaded guilty to manslaughter and attempting to pervert the course of justice. For the offence of manslaughter he was sentenced on the basis of manslaughter by unlawful and dangerous act in that he had subjected the deceased to two severe beatings on two separate occasions at two separate locations over a period of about two hours from which the deceased ultimately died some days later. For the offence of attempting to pervert the course of justice he was sentenced on the basis that he had procured others to assist him in dumping the still living victim by a roadside. He was sentenced to imprisonment for 15 years with a non-parole period of 12 years. His appeal against sentence was dismissed, the Court holding that the sentence was “*reasonable, proportionate and appropriate punishment.*”

R v Irwin

Amongst other things Irwin was charged with attempted aggravated robbery. He had approached his victim and demanded money. The victim said that he did not have any money. This was true. Irwin was convicted. On appeal it was contended that he had an absolute defence of impossibility because he could never have obtained any money as a result of his actions. The law of impossibility and attempt had been in a state of some uncertainty for quite some years arising out of conflicting decisions in the United Kingdom and Australia. The Court resolved this uncertainty, rejected the contention and held that as he had intended to commit aggravated robbery and had taken action consistent with his intention he had therefore committed the offence of attempted aggravated robbery.

R v Ninnies

Ninnies was charged with possessing ecstasy for sale and convicted. The prosecution had relied on the fact that he had been in possession of more than the prescribed quantity of the drug and was thus presumed by operation of the *Controlled Substances Act 1984* to have been in possession of the drug for the purposes of sale unless he could prove otherwise. On appeal it was contended that the presumption only applied to charges of possession for sale *or* supply. The Court rejected this contention.

R v Tanner

Tanner was convicted of aggravated criminal trespass and related offences. The trial judge permitted prosecuting counsel to call rebuttal evidence. On appeal it was contended that the trial judge had erred in admitting the rebuttal evidence. The Court held that the procedure followed by the judge was flawed but nonetheless dismissed the appeal. The decision derives its importance from its discussion of the admissibility of rebuttal evidence the procedures that ought to be followed in determining its admissibility.

R v YDB

YDB was convicted of a number of counts of unlawful sexual intercourse. The *Evidence Act 1929* regards records of counselling sessions as protected communications which are not to be made available to the parties to criminal proceedings unless certain specified criteria are met. At trial prosecuting counsel sought access to records of counselling sessions relating to a witness called by the accused. The trial judge permitted access. On appeal it was contended that the trial judge had erred in so doing. The Court rejected this contention and dismissed the appeal. The decision derives its importance from its discussion of the ambit of the provisions of the *Evidence Act* relating to protected communications and the procedure to be followed in considering applications for access to such communications.

R v Knott

Knott pleaded guilty to two offences of armed robbery, two offences of false imprisonment and two offences of causing grievous bodily harm with intent. The offences were committed during the course of a particularly violent and terrifying home invasion. The sentencing judge imposed one sentence to cover the totality of Knott's offending of six years three months and fixed a non-parole period of two years three months. The Director applied for leave to appeal on the ground that the sentence was manifestly inadequate. The Court granted the application, allowed the appeal and increased the sentence to 12 years and fixed a non-parole period of eight years.

High Court***Wannan v R***

Wannan was convicted of rape. His appeal to the Court of Criminal Appeal was dismissed. Special leave to appeal was sought on the basis that the Court of Criminal Appeal had erred in principle in holding that evidence given by the complainant about her sexual practices was relevant and thus admissible on the question of consent. The application was refused.

WGC v R

WGC was convicted of two counts of unlawful sexual intercourse with a person aged less than seventeen years. His appeal to the Court of Criminal Appeal was dismissed. Special leave to appeal was sought on the basis the Court of Criminal Appeal had erred in holding that in the circumstances of the case the date on which the offences were said to have taken place was not a material particular which had to be proved beyond reasonable doubt. Special leave was granted. The appeal was heard and judgement is reserved as at the time of publication of this report.

HML v R, SB v R

HML and SB were both convicted of unlawful sexual intercourse. Both appealed to the Court of Criminal Appeal and both appeals were dismissed. The circumstances of their offending were unconnected and they had been tried separately. In each trial evidence was led of uncharged acts of intercourse which each was said to have committed against their respective victims. Each applied for special leave to appeal. Each application contended that the Court of Criminal Appeal had erred in holding that the evidence of the uncharged acts was properly admitted and that the directions which each trial judge had given about the evidence of the uncharged acts were appropriate. Special leave was granted on each application. The High Court ordered that the appeals be heard together. The appeals have been heard and judgment is reserved as at the time of publication of this report.

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 recognised for its independence, professionalism and standards of excellence;
- endeavours to deal with victims of crime with sensitivity and respects their special needs; and
- strives for excellence, efficiency and effective communication in its work with police, the courts and other entities within the criminal justice system.

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.

Strategic Focus

The strategic focus this year has been very much focussed on the implementation of the organisational review—recruitment and filling the four additional and several long-standing vacancies in senior legal positions including the Deputy Director's position and moving the office toward the recommended practice-based structure. These and other changes were works in progress at the end of the year. Nevertheless, much ground work has been done.

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

- Ensure an independent and effective criminal prosecution service.
- Work cooperatively 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 Legislation SA website, www.legislation.sa.gov.au.

Bail Act 1985

Controlled Substances Act 1984

Correctional Services (Parole) Amendment Act 2005

Criminal Assets Confiscation Act 2005

Criminal Law Consolidation (Instruments of Crime) Amendment Act 2005

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
Statutes Amendment (Sentencing of Sex Offenders) Act 2005
Statutes Amendment and Repeal (Aggravated Offences) Act 2005
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 by the Deputy Director who was appointed during the year. Previously Associate Director, this position had been vacant for several years. The Office structure during 2006-07 reflected the functional areas of solicitors, prosecutors, witness assistance officers and administrative support staff.

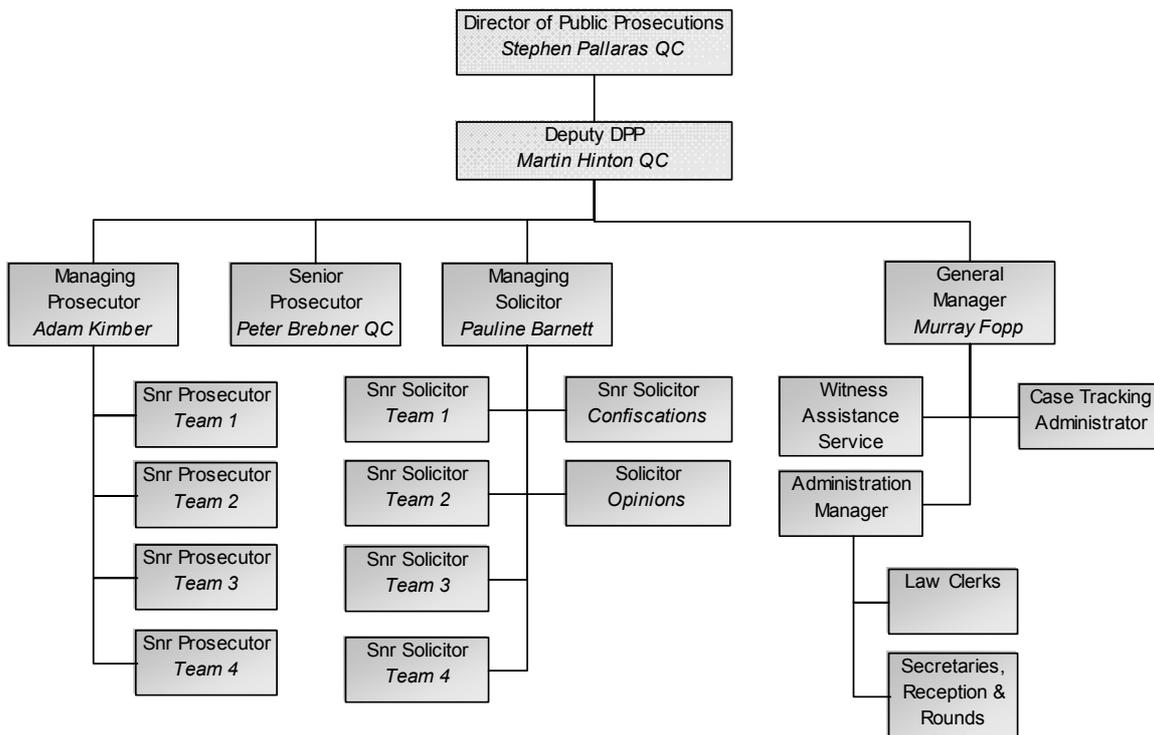
The Solicitor Section provided all solicitor services on the files conducted by the Office. These services include legal advice, committals, arraignments, all matters in the pre-trial stage and after sentencing submissions. Solicitors also appear as counsel in all aspects of judicial hearings. The Office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

The Prosecution Section provided 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. Prosecutors also appear in Magistrates Appeals conducted before single judges of the Supreme Court. The Office has three teams of prosecutors who report directly through the senior prosecutors to the Managing Prosecutor.

The Witness Assistance Service provides a service to ensure that all victims of crime and their immediate family have access to information and support services, and are aware of their rights and responsibilities when dealing with the criminal justice system. 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. While the General Manager is responsible for financial administration, human resources, information technology and other corporate services, the office has no dedicated resources for these functions and is reliant on the Attorney-General's Department.

Organisational Chart - at 30 June 2007



During the latter part of the year the Office was moving toward the Practice-based structure recommended by the Organisational Review. The Practice Managers had been announced but these and other key appointments were yet to be made. The new structure is expected to be implemented in the first quarter of 2007-08.

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.

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

Executive Profiles

***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.

***Martin Hinton QC LLM (Lond) LLM (Adel)* DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS**

Graduated from University of Adelaide in 1989, and worked in London from 1990 to 1992 as a Senior Crown Prosecutor with the Crown Prosecution Service. In 1993, joined the ODPP as a Crown Prosecutor before moving to the Crown Solicitor's Office in 1997 where he worked as a senior solicitor in the Prosecution, Business and Professional Administrative and Environment Section. In 2000 Martin returned to the ODPP as a Senior Prosecutor, conducting trials in the superior courts and appeals and applications before the Supreme Court, Court of Criminal Appeal and High Court. In December 2006 Mr Hinton was appointed a Queen's Counsel.

Martin Hinton QC was appointed as Deputy Director of Public Prosecutions in May 2007. Prosecutes major trials in the District and Supreme Courts. Conducts appellate work in the Court of Criminal Appeal and High Court. Subject to the direction of the Director, manages all facets of the Office.

***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.

***Adam Kimber BA (Juris), LLB (Hons), GDLP* - ACTING MANAGING PROSECUTOR**

Graduated from the University of Adelaide in 1993 and worked as an Associate in the Supreme Court and then briefly in private practice before joining the ODPP in 1995. Prosecuted in the District and Supreme Courts and then managed a group of solicitors and concentrated on appellate counsel work. Rejoined the Prosecution Section as a Senior

Prosecutor in 2005. Became the Managing Prosecutor in 2006. Significant trial experience in the District and Supreme Courts.

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

Murray Fopp, AssocDipEng(Electronics), Cert IV in Training and Workplace Assessment, BPublicAdmin, MBA - GENERAL MANAGER

For many years Murray worked in broadcast engineering, in 1990 becoming Regional Operations Manager responsible for ABC, SBS and Radio Australia transmitter networks throughout South Australia and the Northern Territory. In 1996 he launched a private consultancy in regulatory compliance and community consultation. Murray joined the Office in October 2005.

The general manager 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.

Corporate Governance

Although the Director of Public Prosecutions has statutory independence under the Director of Prosecutions Act 1991, the Office is a business unit of the Attorney-General's Department within the Justice Portfolio. For business administration 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 separate 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. The Department also reports on HR and related matters on behalf of the ODPP.

As an associated office of the Attorney-General's Department the Office seeks to draw on a range of corporate services provided by the Department. The services sought during the past year included:

- payroll functions;
- human resource consulting, advice and assistance (also occupational health, safety and welfare and equal employment opportunities);
- information technology support;
- procurement;
- financial services; and
- library services.

The Office has a limited internal general administrative resource and relies heavily on support from the Justice Portfolio Services Division.

Directions from the Attorney-General

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

Directions to the Commissioner of Police

There was no direction issued to the Commissioner of Police by the Director of Public Prosecutions pursuant to section 11 of the *Director of Public Prosecutions Act 1991* during the year.

Performance Indicators

The numbers of prosecution briefs in the Office continued to grow during 2006-07. However, the number of victim and witness referral to the Witness Assistance Service (WAS) fell.

	2006	2007	Change
Defendant Briefs on hand (at June 30)	2160	2458	+ 13.8%
Witness /Victim Assistance Referrals (received)	1049	857	- 18%

The operations of the WAS are detailed elsewhere in this report. However, the decline in client numbers was driven by greater focus on the most needy and vulnerable witnesses together with a small reduction in the WAS staff from 9.4FTE last year to 9.1FTE in 2006-07.

Special purpose funding for 2006-07

	Sought	Received
Pre-82 Sex Offences	\$940,000	\$700,000
Org Review staff increase	\$958,464	\$754,000 *

* \$754,000 for a full year discounted to \$525,000 for the period funded—viz, 21 September 2006 to 30 June 2007.

Activity Levels

The number of matters handled by the Office in any year is, to a large degree, beyond the control of the Office. The number of defendant briefs received is determined by the number of accused persons and associated charges referred to the Office by SAPOL. The number of matters finalised by way of a trial in the District and Supreme Courts is dictated by, among other things, the scheduling and resources of the Courts Administration Authority.

Year in Review

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 tried in the District and Supreme Courts and matters finalised in the Magistrates Court, as well as administration of confiscation orders issued by the Courts.			
Performance Indicators:	Descriptions	Expected activity level for 2006-07	Actual for 2006-07	Expected activity for 2007-08
Quantity	Number of Briefs finalised by the Committal Unit (a)	1600	1747	1750
	Number of Briefs finalised by the ODPP	950	1175	1100
	Number of Clients seen by the Witness Assistance Service	1050	857	860
Quality	Percentage of Briefs committed through the Committal Unit in which the DPP entered a nolle prosequi after committal	<10%	10%	<10%
	Percentage of committed matters which were finalised by a guilty verdict or guilty plea	>75%	72%	>75%
Timeliness	Percentage of trials where the ODPP met the court timetable requirements for the trial list	95%	96%	95%
Cost	Total Cost	\$13.1m	\$13.15m	\$13.41m
Footnotes	(a) These matters completed the Committal stage of prosecution but the matter may still be within the ODPP at the pre-trial or trial stages. (b) For definitions of Brief refer to the Glossary.			

BUSINESS OPERATIONS

The Office provides statistical information on the number of matters completed during the year and other performance indicators.

General counting rules

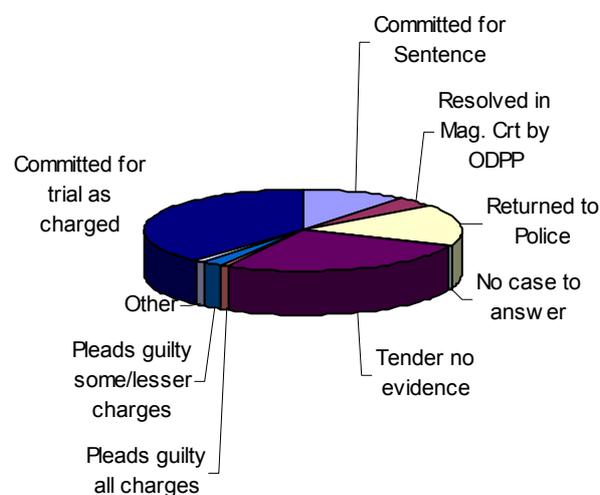
Unless otherwise stated all tables and charts report the number of *Briefs*. Example: If the DPP is prosecuting John Citizen on multiple charges arising from a single police investigation, one *Brief* will be reported. If the DPP is prosecuting him on charges arising from two unrelated police investigations, two *Briefs* will be reported. If John and Jane Citizen are both charged in relation to the same offence, two *Briefs* (one for each defendant) will be reported.

The Glossary at Appendix F will assist with terms used in the following charts.

DISTRICT AND SUPREME COURT PROSECUTIONS (ADELAIDE & CIRCUIT)

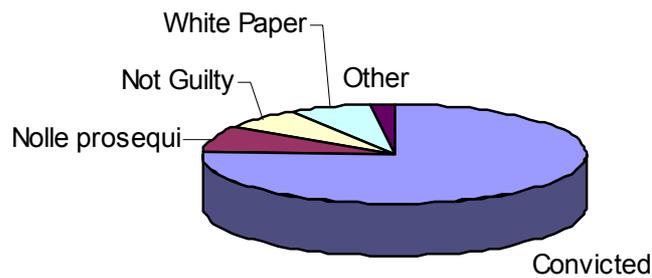
Brief Outcomes at the Committal Stage

Outcomes - at Committal Stage	2006-07	2005-06	2004-05	2003-04
Committed for Sentence	177	10.8%	116	96
Resolved in Magistrates Crt by ODPP	61	3.7%	337	331
Returned to Police	268	16.4%	324	228
Tender no evidence	431	26.4%	324	228
No case to answer	9	0.6%		
Pleads guilty all charges	11	0.7%		
Pleads guilty some/lesser charges	32	2.0%		
Other	18	1.1%	58	56
<i>Committed for trial as charged</i>	627	38.4%	786	617
Total	1634	100%	1621	1347



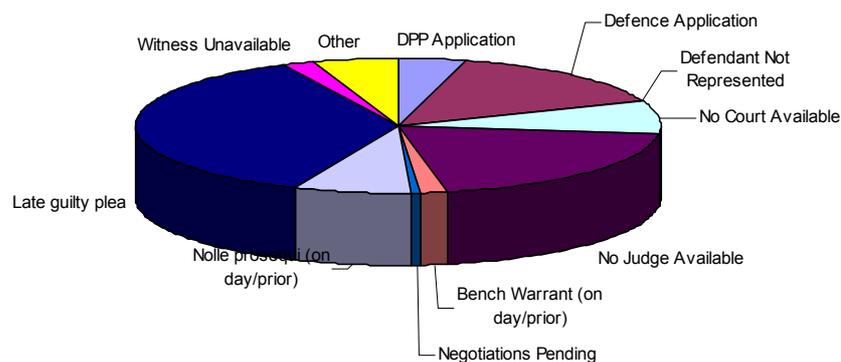
Supreme and District Court Briefs finalised

Supreme & Districts Court briefs finalised	2006-07		2005-06	2004-05	2003-04
Convicted	1038	75%	589	725	701
Nolle prosequi	123	9%	127	132	99
Not Guilty	91	7%	83	55	62
White Paper	96	7%	18	30	46
Other	27	2%	22	43	33
Total	1375	100%	839	985	941



Supreme and District Courts - Trials Vacated

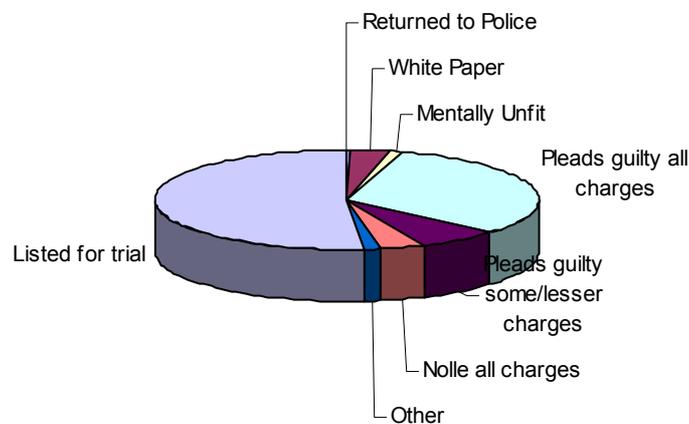
Reason trial vacated	Adelaide	Circuit	Total	%
DPP Application	21	4	25	4.0%
Defence Application	84	8	92	14.8%
Defendant Not Represented	2		2	0.3%
No Court Available	40	8	48	7.7%
No Judge Available	122	2	124	20.0%
Bench Warrant (on day/prior)	10		10	1.6%
Negotiations Pending	2	1	3	0.5%
Nolle prosequi (on day/prior)	43	3	46	7.4%
Late guilty plea	202	23	225	12.4%
Witness Unavailable	10	2	12	1.9%
Other	30	3	33	5.3%
TOTAL	566	54	620	100.0%



ADELAIDE DISTRICT AND SUPREME COURTS

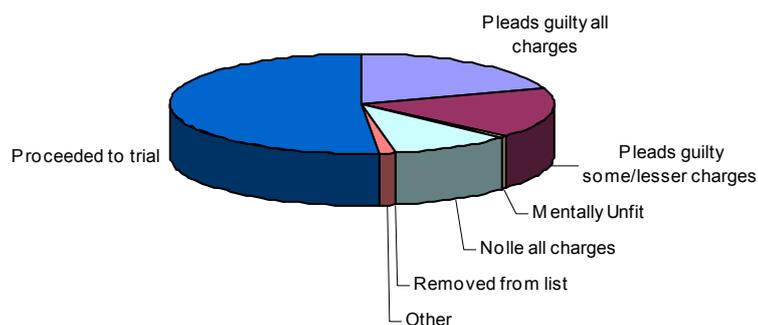
Brief Outcomes prior to listing for trial - Adelaide

Outcomes - Resolved prior to trial	2006-07	
Returned to Police	3	0.3%
White Paper	32	3.4%
Pleads guilty all charges	301	32%
Pleads guilty some/lesser charges	61	6.5%
Mentally Unfit	9	1.0%
Nolle all charges	37	4.0%
Other	14	1.5%
<i>Listed for trial</i>	482	51.3%
Total	939	100%



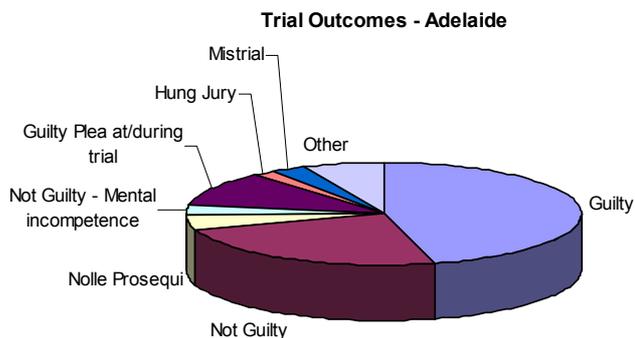
Briefs listed for trial - Adelaide

Outcome of Briefs listed for trial	2006-07	2005-06	2004-05	2003-04
Pleads guilty all charges	96	19.9%	149	118
Pleads guilty some/lesser charges	80	16.6%		112
Mentally Unfit	2	0.4%		
Nolle all charges	50	10.4%	49	54
Removed from list			160	181
Other	6	1.2%	29	28
<i>Proceeded to trial</i>	248	51.5%	263	238
Total	482	100.0%	650	621



Trial outcomes - Adelaide District and Supreme Courts

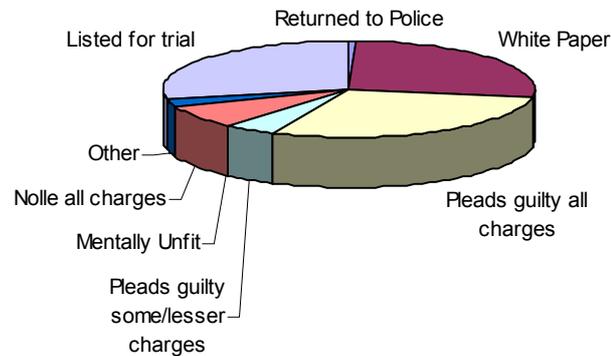
Trial Outcomes	2006-07		2005-06	2004-05	2003-04
Guilty	133	46%	135	134	154
Not Guilty	70	24%	71	38	43
Nolle Prosequi	14	5%	14	6	6
Not Guilty - Mental incompetence	8	3%	5	4	3
Guilty Plea at/during trial	32	11%	-	-	-
Hung Jury	6	2%	8	12	6
Mistrial	8	3%	13	12	11
Other	19	7%	17	34	15
Total Trials Finalised	290	100%	263	240	238



CIRCUIT COURTS

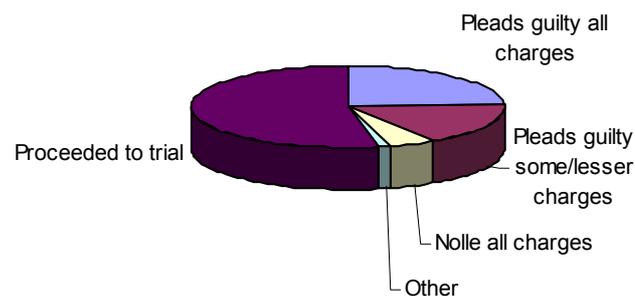
Brief Outcomes prior to listing for trial - Circuit Courts

Outcomes - Prior to trial	2006-07	
Returned to Police	1	0.4%
White Paper	64	27.1%
Pleads guilty all charges	69	29.2%
Pleads guilty some/lesser charges	11	4.7%
Mentally Unfit		
Nolle all charges	18	7.6%
Other	7	3.0%
Listed for trial	66	28.0%
Total	236	100%



Briefs listed for trial in Circuit Courts

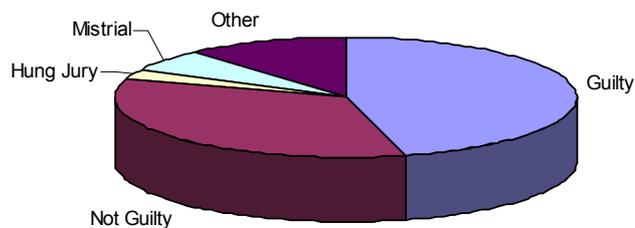
Outcome of Briefs listed for trial	2006-07	2005-06	2004-05	2003-04
Pleads guilty all charges	16	24.2%		
Pleads guilty some/lesser charges	11	16.7%	20	43
Nolle all charges	3	4.5%	6	5
Other	1	1.5%	7	13
Proceeded to trial	35	53.0%	47	38
Total	66	100.0%	80	99



Trial outcomes - Circuit Courts

Trial Outcomes	2006-07		2005-06	2004-05	2003-04
Guilty	16	46%	25	18	16
Not Guilty	12	34%	12	13	19
Nolle Prosequi			1	1	1
Not Guilty - Mental incompetence			1	1	
Guilty Plea at/during trial			-	-	-
Hung Jury	1	3%	2	2	
Mistrial	2	6%	5	3	2
Other	4	11%	1		
Total Trials Finalised	35	100%	47	38	38

Trial Outcomes - Circuit Courts



Adjudications and Opinions

Adjudication Outcomes	2006-07		2005-06	2004-05	2003-04
Charge major Indictable	1590	83.95%	1556	1288	1165
Charge Minor Indictable	180	9.50%	80	102	151
Charge Summary	43	2.27%	21	23	30
Do not lay charges	35	1.85%	16	4	8
Other	46	2.43%	21	14	10
Total Adjudications finalised	1894	100.00%	1694	1431	1364

Opinion Outcomes	2006-07		2005-06	2004-05	2003-04
Charge major Indictable	149	34.73%	137	141	108
Charge Minor Indictable	45	10.49%	32	31	35
Charge Summary	37	8.62%	28	23	23
Do not lay charges	102	23.78%	90	73	73
Other	96	22.38%	62	54	90
Total Opinions finalised	429	100.00%	349	322	329

Criminal Court of Appeal

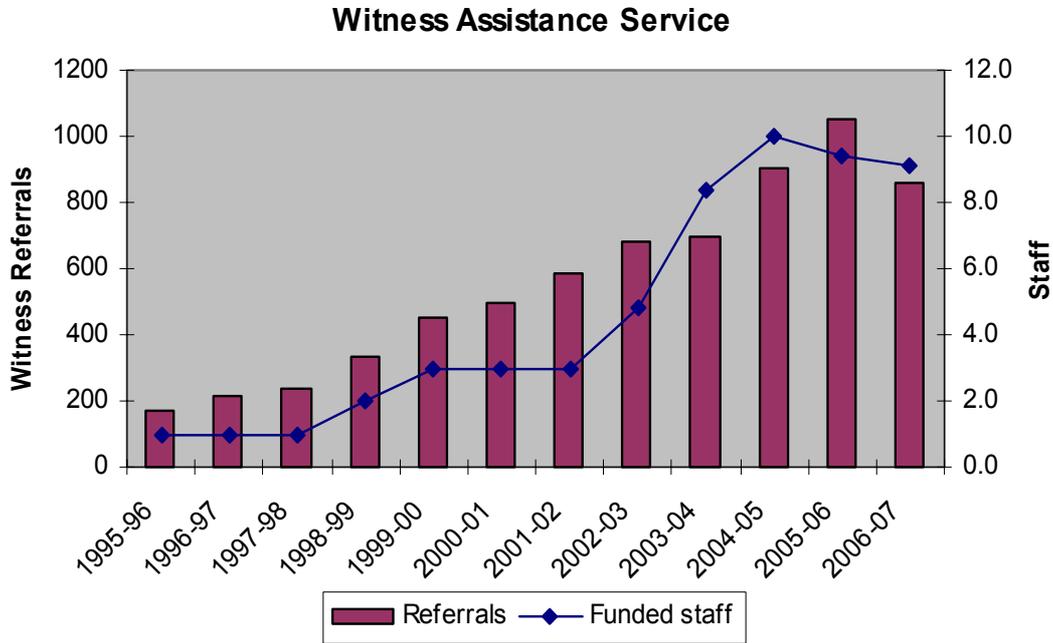
Leave to Appeal Applications	By DPP against sentence	By Defence against Sentence	By Defence against Conviction
Abandoned / Withdrawn		6	15
Dismissed	4	20	21
Sentence reduced		1	
To CCA		31	53
Other			2
Total Crown Applications	4	58	91

Crown Appeals	Against sentence	Other grounds
Allowed	7	
Dismissed	1	1
Total Crown Appeals decided	8	1

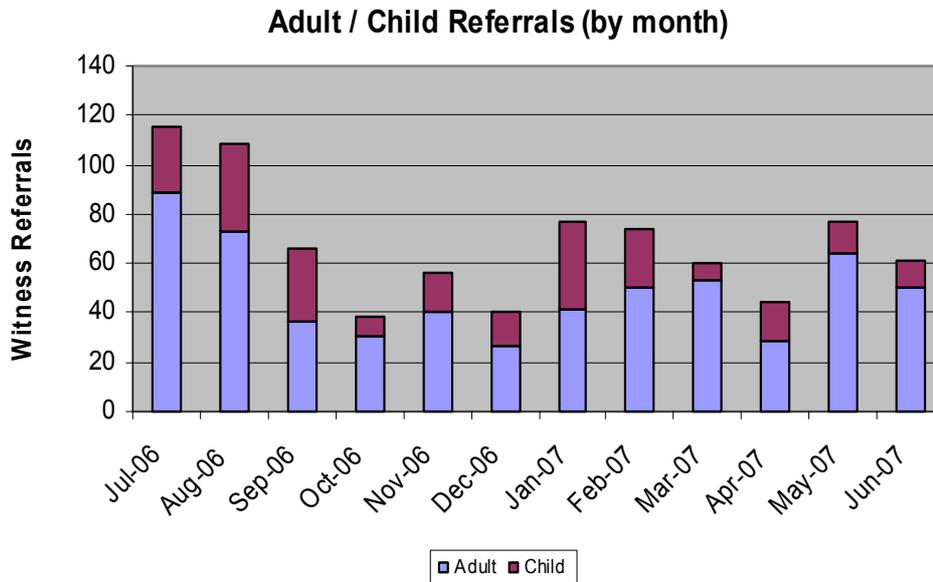
Defence Appeals	Against sentence	Against conviction	Other Grounds
Conviction quashed	1	13	
Sentence reduced	8		1
Appeal Dismissed	21	31	1
Other outcome		5	
Total Defence Appeals decided	30	49	2

WITNESS ASSISTANCE SERVICE

Year-by-Year trend



Referrals of Adult and Child Witnesses



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 issues. 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).

In the Solicitor Section's Report last year I indicated that these twelve months would be critical to the delivery of an efficient and effective prosecution service. We started out the year with unacceptably high file loads and a number of relatively inexperienced solicitors. Consequently, heavy demands were placed on the four team leaders in the Section to run busy practices and oversee the work of eight or nine other solicitors. My thanks go to Caroline Mealor, Ian Press, Tim Heffernan and Dominic Petraccaro for all their hard work.

The Office took a number of steps to attempt to bring down file numbers. The first such step was the creation of a special team to attempt to resolve matters earlier than would otherwise occur. These were matters which we identified as being capable of resolution by a guilty plea to some or all of the charges contained on the Information. Two very experienced Barristers from the private bar joined two senior DPP prosecutors, a Witness Assistance Officer and support staff for a three month period. The team processed about 150 files during this period with a resolution rate 10% higher than would normally be the case. The pilot scheme demonstrated that concentrating experience in the early stages of a prosecution leads to earlier resolution. This is particularly so where the ODPP is proactive in seeking resolution. The benefits of earlier resolution is less stress on victims, limiting the amount of work needing to be done by busy agencies such as SAPOL and the Forensic Science Centre and reducing trial delays by ensuring that only those matters which are actually going to trial are given a hearing date. The initiative was successful; however, the impact on file numbers was less than anticipated by the Organisational Review Consultants. It was hoped that there would be a reduction in the file numbers of something in the order of 500. Only about one third of this target was achieved in the timeframe available.

A second step to reduce the amount of work in the Office was the arrangement with SAPOL to reduce the number of opinions coming into the Office to a minimum number of complex matters. SAPOL seeks legal advice from the ODPP prior to charging first appearance in court in two ways. The first way is through an adjudication process and the second way is through a formal opinion process.

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, adjudicating 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 ODPP Committal Unit which considers the appropriateness of the draft charges. If necessary, the charges will be redrafted. SAPOL's 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.

Year in Review

During the year there were 1,894 adjudications finalised. At this formative stage of the prosecution process 223 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

The second way of providing advice to SAPOL is through formal advice. It was this process which was the subject of discussion between the agencies to reduce the demand on ODPP services.

The Office receives a large number of requests from SAPOL for legal advice prior to charging people with offences. This request may stem from the serious nature of the offence, or because of the complex legal issues potentially arising in the matter which makes an assessment of a reasonable prospect of conviction difficult. 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 criminal justice 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.

It is unfortunate at a time where the more difficult to prosecute sex cases (i.e. historical sex cases) are coming into the Office, that the Office is having to severely reduce its involvement with SAPOL on a decision as to reasonable prospect of conviction. 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 advise 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 had to decline to provide advice before charging on all but the most complex of matters as staff are struggling to manage those matters already before the Court. Experience demonstrates that early involvement with a file by this Office leads to better outcomes, in that deficiencies in proof are identified prior to court deadlines coming into play; victims expectations are not unnecessarily raised when a legal assessment of the file points to difficulties in proving the case; alternatively, some matters which would have been run by the Office are never seen by a prosecutor because a decision has been made by SAPOL not to charge or refer the matter.

The Office has also had to restrict the advice it provides pre charge to the many matters coming out of the Local Service Areas and Major Crash. To date advice to the Major Fraud, Major Crime, Internal Investigations and the Anti Corruption Branch is unaffected but it will be necessary to keep the requests for advice from these areas under constant review.

Year in Review

During 2006-07, 471 Opinion Briefs were received and 429 were finalised. Of those finalised, minor or summary charges were recommended on 82 briefs (and major charges were recommended on 149 briefs).

A third step in reducing workloads in the Solicitors' Section has been the preliminary work done between this Office and SAPOL to develop checklists for briefs coming to the Office for prosecution. In more routine matters there will be a limit to the amount of preparation this Office can do on a file once a matter is committed. It is hoped with the development of charge specific checklists that there will be less need for this Office to be involved in lengthy follow-up processes with the Investigating Officer and that most of the necessary material will be on the file prior to the matter leaving the committal process.

A fourth step has been the involvement by the Office in the Ministerial Taskforce into trial delays. At this forum the Office has had considerable input into the identification of those matters which could be satisfactorily resolved in the Magistrates Court. Whether these suggestions will be accepted by the Attorney-General in due course is an unknown. It is clear, however, that proposed changes to laws affecting Firearms, Motorcycle gangs, Criminal Assets Confiscations, Dangerous Offenders or Aggravated Offences will significantly increase the workload of the Office.

The past twelve months have not resolved the unacceptably high workloads in the Section. If anything the situation has worsened in that staff have continued to seek employment

opportunities outside the Office, file loads continue to increase and proposed legislative change points to additional work coming into the Office. Changes of work practices can only make incremental improvements in this troubling scenario. Unless significant resources are made available to the Office the only alternative is to lessen the work to be done by the Office, either by way of reduced work on individual files or by declining to accept any further files at the same rate they are currently coming into the Office.

A summary of the individual areas within the solicitor sections follows:

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.

Year in Review

The Committal Unit finalised 837 briefs during the period. A further 237 were committed by the Magistrates court for sentencing in a higher court. Below is a table showing the breakdown of Committal stage outcomes.

Committal Stage Outcomes

Outcomes - Committal Stage (Adelaide and Metro) Note 1	Briefs
(Committed for sentence)	(237)
Returned to police	268
Tender no evidence	433
No case to answer	8
Resolved in Magistrates Court by ODPP White Paper	60
Pleads guilty all charges	11
Pleads guilty some/lesser charges	30
Plea during/after voir dire	
Guilty plea and Not Guilty verdict	
Found guilty all charges	1
Found guilty some/lesser charges	1
Found not guilty all charges - acquitted	2
Mentally unfit	
Not guilty - mental incompetence	
Not guilty - Prasad	
Nolle all charges	
Amalgamated	9
Other	14
Total for 2006-07 (Excluding Committed for Sentence)	837

Note 1. ODPP does not generally deal with Committal at the Circuit Courts.

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 (where the accused pleads guilty) and committed for sentence but not trial 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 and also Appendix G).

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 the accused was 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.

The solicitor section has had less opportunity to junior prosecutors in trials and act as counsel in trials over the past twelve months. It is unfortunate that this experience has had to be curtailed as it assists in the development of solicitors and will provide an increased pool of persons able to conduct trials.

Criminal Assets Confiscation Section

A dedicated Confiscation Section was created within the ODPP in 1999. This section works closely with the South Australia Police Department Confiscation Section to undertake the procedures necessary to restrain and confiscate relevant property.

The *Criminal Assets Confiscation Act, 2005* came into effect on 2nd April 2006. Prior to this, the Confiscation Section operated pursuant to the Criminal Assets Confiscation Act, 1996.

The Act provides for property to be restrained on application by the ODPP until it can be determined by the relevant court whether forfeiture or a pecuniary penalty order is appropriate. All monies recovered by the ODPP are deposited into the Victims of Crime Fund pursuant to section 209 of the Act.

The most significant differences between the 1996 Act and the 2005 Act are:

- the court may order payment of expenses such as reasonable living expenses (including dependants), reasonable business expenses and specified debt incurred in good faith;
- “freezing orders” which are a short term restraint that police may place upon financial assets before a Restraining Order is sought;
- civil based forfeiture (i.e.: forfeiture without proof beyond reasonable doubt that a criminal offence 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 ODPP may seek payment 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 extensive investigative powers.

The 2005 Act is similar to Commonwealth legislation and legislation already enacted in other States. As most Australian States are now operating under civil based forfeiture statutes, the ODPP is able to provide assistance to corresponding interstate agencies in instances where it could not do so in the past.

During this financial year, the revenue deposited into the Victims of Crime fund amounted to \$1,222,116. This represents an increase in collected revenue of 51% compared to the previous financial year.

Fraud Unit

The Fraud Unit prosecutes matters of complex fraud principally investigated by the commercial and Electronic Crime Branch of SAPOL. It also conducts most of the matters referred to the Office by the Anti-corruption Branch of SAPOL.

The Fraud Unit consists of 3 FTE legal practitioners and a law clerk. On paper this represents an increase in legal staff of 0.5 FTE from last year. The extra allocation of resources has not been felt as fully in the section as it might otherwise have been however, as the senior fraud solicitor maintains a full file load whilst performing the additional duties of acting as Senior Solicitor Manager with direct responsibility for a team of 13 solicitors. This has meant that the conduct of new files within the fraud section has been absorbed primarily by the two more junior members of the fraud unit.

The benefits to the Office and the State of a specialised Fraud Unit cannot be over stated. As has been noted in last year's annual report, the pattern of fraud offending has changed over the last several years. Fraud offending now involves more issues of electronic banking, 'low document' loans obtained over the internet and telephone, and other forms of offending which have collectively become known as 'identity fraud'. In short, it is more complex and can be more difficult to prove. A recognition of the need for our skills to be maintained and improved in this Protean area of offending lead to one of the team members being granted approval in this financial year to attend a one week course on 'Cyber Crime' at the University of Melbourne in July 2006. The course was conducted by a recognised international expert on electronic crime and the Office's involvement has enhanced our knowledge in this area.

The expertise of the Office continues to be recognised on an international level. In last year's report the involvement of two prosecutors in the Solomon Islands was noted. In June of this year, the senior fraud solicitor took annual leave to conduct a course in Samoa on fraud and commercial crime for the Attorney General's Department of Samoa. The request for his involvement in this course came initially from The Legal and Justice Project Alliance, a South Australian group, and the course itself was funded by a New Zealand aid agency after selecting the South Australian proposal in a competitive international tender process.

On present indications there is no reason to believe that the level of referrals to the Fraud Unit will decrease over the next twelve months.

Training, Professional Development and Policy

As in previous years the ODPP both delivered training and received training from the following key stakeholders in the criminal justice system:

- SAPOL
- Yarrow Place Rape and Sexual Assault Service
- Forensic Science Centre

The mutual exchange of ideas and knowledge is beneficial to all the agencies involved. A significant number of these professional development sessions related to sexual assault offences.

Appendix D presents a table of external training and public information sessions conducted by staff of the Office. The Office endeavours to meet all reasonable requests for speakers, both to provide public information about the role of the DPP, and to participate in mock examination and cross-examination exercises for various specialist agencies e.g. SAPOL, medical students. The participation of many staff from the Office, frequently in their own time, allows us to perform this function.

The ODPP provides training and professional development opportunities to staff including courses, conferences and seminars for all staff and continuing legal education for solicitors and prosecutors. However, pressure on ODPP funds has seen the allocation for staff training and development halved since 2002-03, a period which has seen increased staff numbers and a greater proportion of less experienced staff in the office. The Office was fortunate to have some eminent speakers address legal staff on a variety of topical issues in the criminal justice arena.

Training and development courses undertaken by staff during the year included management, leadership, communication, stress management, defensive driving, ergonomics and media skills training.

Staff Development and Policy Officer

The position of Staff Development and Policy Officer became vacant during the year, pending the implementation of the new team structure the position and has yet to be filled.

REPORT FROM THE MANAGING PROSECUTOR

The prosecution section of the Office conducts prosecutions for a range of offences including Murder, Sexual Assault, Manslaughter, other offences of violence, drug offences, Causing Death and Bodily Harm by Dangerous Driving and Fraud. The prosecution section also conducts appeals in the Court of Criminal Appeal and in the High Court of Australia. The legal staff within the prosecution section are primarily devoted to counsel work in these jurisdictions and have very little solicitor's component to their daily duties. However, there are some prosecutors who have the responsibility for solicitor's work on some more complex matters.

Over the last 12 months the prosecution section has conducted a number of significant trials. These have included a number of Murder trials, some with more than one defendant. In addition, members of the section have taken most of the responsibility for the counsel work conducted in the Court of Criminal Appeal and in the High Court of Australia. In May 2007, the High Court of Australia granted special leave to appeal in three appeals against conviction. In each of those matters members of the prosecution section appeared. The full appeal in one matter was heard in August 2007. The balance will be heard in September 2007.

Management of the Prosecution Section

The prosecution section has experienced a number of changes in this year. The former Managing Prosecutor, Geraldine Davison, resigned from the Office to pursue a career at the Bar. Initially, her responsibilities were shared between James Pearce and Adam Kimber. In the latter part of this year the overall management of the prosecution section has been the mutual responsibility of Peter Brebner QC and Adam Kimber.

This year also saw the departure of some legal staff on extended leave. Some of those staff have been replaced by members of the solicitors' section and by other staff who have returned from extended leave. Overall, the section is made up of legal staff with a wide range of legal experience. Some are inexperienced in the conduct of trial work and as a result the section has continued to place particular emphasis upon more experienced members of the section being required to supervise and assist the less experienced members of the Office.

In recognition of both the skills of the more senior members of the section and of the importance of providing intense guidance and supervision to less experienced staff, there was some reorganisation of the prosecution section this year. The number of work groups was increased. As each group is supervised by a senior prosecutor, this change improved the ratio of supervisors to staff permitting more training, instruction and mentoring to less experienced staff than had previously been possible.

The responsibility of allocating trial work remains the responsibility of the prosecution section. Responsibility has continued to rest with a panel of senior prosecutors, although ultimate responsibility for the trial list and for allocations rests with a single senior prosecutor.

Trial Overview

During this year there were 874 trials listed for trial in the District and Supreme Courts sitting in Adelaide. Of these, 823 were listed in the District Court and 51 in the Supreme Court. Of

the 874 listed, 290 proceeded to trial. The remainder were resolved by way of pleas of guilty, were withdrawn, were the subject of an application to remove them from the list for some reason or were not able to be allocated to a Judge and/or a court room by the Court. One hundred and sixty six of the trials listed were not able to proceed due to no judge or no court being available. The prosecution is also responsible for the prosecution of matters in the District and Supreme Courts sitting on Circuit in Mount Gambier and Port Augusta. Eighty nine trials were listed in these Circuit Courts. Thirty five proceeded to trial. The balance were resolved in the same way as the matters in Adelaide as referred to above.

Vacated trials - No Judge, No Court

There has continued to be many occasions upon which trials have been listed for trial and prepared for trial by the Office but have not proceeded due to the unavailability of Judges or court rooms. As set out above, of the 874 trials listed in the District and Supreme Courts sitting in Adelaide, 166 could not proceed for those reasons. That is an alarming figure. There has been no improvement in this situation over the past year. Indeed, the situation has become worse. This is of concern to the Office and should be of concern to all who work in the criminal justice system and the community as a whole. The over-listing of trials with the result that a substantial proportion cannot proceed as listed causes great inconvenience to victims, witnesses and police officers. It also brings with it a significant financial cost. Some of that financial cost is carried by this Office as much of the work done in the preparation of trials has to be repeated in circumstances where the trial is not reached. It also causes significant additional expense for defendants when matters are not reached and are then re-listed at a later time.

In this financial year the ODPP again continued to do what it could to remove matters from the trial list by allocating a senior prosecutor to review trial files and to negotiate appropriate resolutions well in advance of trial. Unfortunately, while this process was tried as a further pilot of what had taken place in the previous financial year, this again did not achieve any significant reduction in the trial list. There remains a culture of defendants not being willing to negotiate until the matter is very close to trial. The Office also cooperated with the Court in a short-lived program of conducting a call-over for all trial matters in the District Court in the week before trial. The aim of that call-over was to ensure that matters were ready for trial and would proceed. This program was short lived. It was a failure. It was not established by the Court as an opportunity to discuss any matter of substance that might have assisted to shorten the length of the trial or might have assisted in it being resolved in advance without trial. The hearing was presided over by a member of administrative staff from the Court and not a judicial officer. As a consequence, no orders requiring either party to attend to matters that might have assisted in the matter being resolved or facilitated the running of the trial could be made. Further, the accused was not obliged to attend the call-over. After a period of a couple of months this program was discontinued.

Reform of the criminal justice process

This Office has contributed to the discussion of reforms that are necessary in the criminal law in this financial year. In particular, this year the Office has made submissions to the Ministerial Task Force which has looked at delays in the criminal justice system. As was observed in the last annual report the difficulties that are faced by trial delays can only be remedied by a combined approach to this problem. It will necessitate an approach from the Courts, this Office, defence and other agencies to ensure that each agency conduct itself

appropriately. It requires the defence having to define the issues of the trial at an early stage when the Crown case has been adequately disclosed to them. If such a process can be adopted then there is the opportunity for trials to take less time and for juries to focus upon the issues that truly need to be decided. To this end, in March 2007 amendments to the Criminal Law Consolidation Act, 1935 became operational. These amendments give the Office the power to apply to the Court for facts to be admitted and for disclosure of particular evidence that a defendant is to lead. It is too early to say whether or not there will be any impact in trial lists and the length of trials from these provisions.

Prosecution staff resources

Given the number of trials listed and the resources available, the prosecution section has been unable to provide prosecutors for all trials that have been listed in the financial year. This has been the case in past financial years but the problem has been particularly significant this year. The number of staff within the prosecution section is fewer than it has been in the past while at the same time the number of matters listed for trial has increased. When staff have left the section in this financial year they have not always been able to be replaced due to the Office prioritising the need to address staffing levels within the solicitors' section given the increased workloads there. When staff have been replaced within the prosecution section that has been sometimes after not insignificant delay due to the fact that it is extremely rare for the Office to be able to attract staff with the necessary trial experience.

In the second half of this year the prosecution section trialled having a prosecutor who was only employed part-time and who would do the bulk of their trial preparation work from home. Working in this way presents particular challenges for the individual staff member and for the Office. The pilot project is ongoing. This is an important experiment for the Office as an increasing number of prosecutors might want to work part-time in the future - particularly due to family commitments. The prosecution section cannot afford to lose the skills that experienced prosecutors have and the Office has an obligation to think creatively as to how staff might be able to continue as trial counsel while balancing family obligations.

Factors such as staff numbers within the prosecution section and the listing practices of the court have presented particular challenges to the prosecution section this year. Relatively inexperienced prosecutors have taken responsibility for trial work that is far more complex than would have been expected of people of their level of experience in the past. It is a credit to their commitment to their work, their ability and the guidance provided by more senior members of the Office that these less experienced staff have conducted the trial work in the way that they have.

Briefing out to private counsel

The listing practice of the Court, the number of matters listed for trial and the staffing numbers within the prosecution section have had a significant financial impact. To meet the number of trials listed in the Supreme and District Courts, the prosecution section has continued to brief trials to the private profession. This has been more necessary this year than ever before. The cost to the Office of briefing out trials to the private profession was \$627,000 this year. That is a very substantial increase of \$273,000 over last year. Ideally, this level of briefing out to the private profession would not occur to the extent that it does. While there are many able counsel in the profession only a limited number will take our briefs

at the rates that are paid. Maintaining the quality of the counsel work performed is more difficult when the work is not performed “in house”.

Opportunities for the future

It is hoped that in the second half of 2007/2008 there will be more legal staff who will be able to conduct trials than was the case this year. In part, that might occur as a result of the recent Organisational Review. However, some of these staff will have significant management responsibilities that will need to be balanced with their trial work. In any event, any increase will be from an unrealistically low base. It remains to be seen whether this will have any impact upon the funds spent on briefing in the new financial year.

The prosecution section has continued to attempt to provide opportunities for legal staff within the solicitors’ section to conduct trials in the District and the Supreme Courts. As was observed in last year’s report, the exposure of solicitors to trial work either as counsel in their own right or as junior counsel is an important part of the training that this Office provides to its staff. Due to the workloads for staff in the solicitors’ section it has not been easy for staff within that section who wish to do trial work to do so. For those solicitors conducting trials in their own right, the prosecution section has this year adopted a more formal “mentoring” process by providing a designated experienced prosecutor to be available to provide advice and instruction both before and during the trial. The conduct of trials by members of the solicitors’ section also provides invaluable assistance to the prosecution section. A number of solicitors have also assisted with outlines of argument for the High Court of Australia and for the Court of Criminal Appeal.

Outside activities

During this year members of the prosecution section have continued to provide training to bodies outside of the Office such as police, social workers, law students and expert witnesses. The extent to which this can continue to take place to the level of the past is in some doubt in light of the trial and appellate work that needs to be done within the prosecution section.

Prosecution personnel

During this financial year Martin Hinton, a senior prosecutor within the prosecution section, became a Queen’s Counsel. That honour is richly deserved recognition of the quality of the counsel work that Martin has performed over many years. In addition, it reflects very positively upon the Office as a whole.

Finally, as observed above, in this past year the managing prosecutor, Geraldine Davison, left the section to go to the Bar. Geraldine Davison joined the Office in 1989. Prior to her departure she had been the managing prosecutor for a number of years and before that had filled other senior roles in the office for many years. She made a very valued and positive contribution to not only this section but to the whole of the Office in her time here.

REPORT FROM THE GENERAL MANAGER

Many of the challenges of previous years continued in 2006-07. The prosecution management database, *IJP Case Tracking*, developed for the ODPP as part of an intended Integrated Justice Information System (IJIS) fully replaced the obsolescent CRIMES system and implementation of the organisational review commenced. While both these developments promised significant benefits for the Office, the reality has been disappointing.

IJP Case Tracking

Last year I reported on the significant deficiencies in the Integrated Justice Project Case Tracking (IJP CT) project and observed that further work is needed to bring Case Tracking up to a standard where it satisfies the business requirements of the Office. To determine the scope of these deficiencies, and in accordance with Recommendation 62 of the Organisational Review, a Post Implementation Review (PIR) was jointly commissioned by the ODPP and Justice Business Services. The consultant's report provided the following background on the project:

*"The ODPP Case Tracking/Case Management Project was initiated under the Integrated Justice Program as a two-stage project, expecting commitment by and benefits to a number of other Justice Agencies. Following the completion of Phase I of the project a further project was undertaken (enhancements), limited by budget and time, that implemented a number of high priority enhancements to Phase I but which did not include the full functionality expected from Phase II.)"*¹

The consultant concluded, among other things, that²:

- The business case and benefits on which the project was initiated and funded was opportunistic rather than based on robust assessment of actual needs and realisable outcomes;
- There was a high risk due to the questionable commitment to the project by key stakeholders outside the ODPP;
- The project should have been re-positioned or even stopped when essential support (including funding) disappeared;
- Overall outcomes were less than satisfactory;
- There is still much work to do in both process and business outcomes; and
- The impact on the office was not clearly understood – for example, CT replaced CRIMES, however, WAS functionality and reporting requirements, both available in CRIMES, were not designed into CT.

The lack of reporting capability has caused significant difficulties for the Office this year. A decision was made early in the project to develop reporting functionality for the ODPP only after the system became operational. Since Case Tracking became operational, some reporting capability has been developed by the Office without specific funding being available. However much additional work in this area is needed before the system becomes a valuable operational and performance management tool for the Office. No funding for this work has been provided to date and the position supporting Case Tracking was abolished in December

¹ Office of the Director of Public Prosecutions March 2007, *Post Implementation Review of Case Tracking*, report prepared by D Kavanagh, KDN Services Pty Ltd, Adelaide. p. 4

² *Ibid.*, pp.4-5

2006 due to a reduction in funding for administrative positions in the Office. The cooperation of Justice Technology Services (JTS) and Justice Business Services (JBS) in providing support to the Office has been willingly given and appreciated.

Organisational Review - Implementation

The impact of the organisation review on the Office's legal staff is described in detail elsewhere in this report. However, during the year four additional legal manager positions were advertised and filled, taking the total number of legal positions from 65.53 to 69.53 full time equivalents (FTEs). However, the Office budget for 2006-07 was calculated on the basis that there was a reduction of 1.99FTE administrative staff. As a result the Office had less administrative support in 2006-07 than in the previous year.

One position directly affected by the cuts was the single Case Tracking support position. With the loss of this position (and the incumbent who was made "excess to requirements" and temporarily redeployed to another Department), the Office has struggled to adequately support the business requirements of Case Tracking, deliver operational reports to management and develop essential on-going reporting systems.

The following table summarises changes in work load and staff over the last two years.

	June 05	June 07	% Increase
Defendant Briefs	1850	2458	33%
Lawyers (FTE)	53.52	67.53	26.2%
Admin (FTE)	31.8	32.05	0.8%

While the individual files loads for legal staff have been the subject of some attention, the perilous loads for administrative staff are an unacceptable and unsustainable risk to the Office.

Witness Assistance Service (WAS)

In 2006-07 the Witness Assistance Service (WAS) continued to provide specialist social work services to victims of serious indictable crime, witnesses for the prosecution and their immediate family members.

The WAS team provided direct support to significant numbers of victims and witnesses throughout the year and continued to offer its skills, knowledge and expertise to legal and non-legal staff in the Office.

Staffing

Following consolidation of the Office staffing establishment, WAS staff decreased slightly to 9.1 FTE (Full Time Equivalents) from 9.4 FTE in 2005-06. The WAS staffing is now:

	FTE
Manager	1.0
Witness Assistance Officer - Adult Focus	4.5
Witness Assistance Officer - Child Focus	3.6

Child-focussed Witness Assistance positions are funded by the Victims of crime Fund. The WAS continued to operate with an acting manager while the substantive manager took extended leave. The WAS also recruited additional staff throughout the year to back-fill vacancies created through special leave without pay and maternity leave entitlements.

In addition to its Adelaide-based services, the WAS provided information and support to victims, witnesses and their families in regional areas including Pt Augusta, the Riverland and Mount Gambier.

With the annual funding provided from the Victims of Crime Fund, the WAS provided support to more child and adolescent victims and witnesses, their parents and caregivers than ever before. This group represented 29% of all WAS referrals last year compared to 22% in 2005-06.

Year in Review

In the 2006-07 financial year, the WAS received a total of 857 referrals (1049 in 2005-06). While this figure represents an 18.3% decrease in total referrals to the WAS, child referrals increased by 6.1% (from 231 to 245), and adult referrals decreased by a total of 25.2% (from 818 to 612).

Contributing to the decrease in total referrals was a small decrease in total staff, a decrease in the number of Opinion matters referred to the service and changes to the WAS Allocation & Referral Policy (aimed at focussing the available resources to the areas of greatest need).

In 2005-06 WAS staff began to show the strain of continued growth in referrals to the service coupled with small reductions in the WAS staff. As a result the declining resources were spread more thinly across an increasing number of victims and witnesses. The result was increased waiting times for victims and witnesses to be allocated to a WAO, and an increasing 'backlog' of unallocated referrals. The changes made to allocation and referral practices this year better reflect manageable file loads for WAS staff, improved quality of service to those victims and witnesses most in need of the WAS, the reduction in waiting times and unallocated referrals, and improved alignment with organisational OH&S requirements.

While the WAS received fewer referrals overall, the actual number of services provided to victims and witnesses increased throughout the financial year. The number of face-to-face services increased slightly in the current financial year by a total of 5.3%

Face-to-Face Services Provided by the Witness Assistance Service

	2005-2006	2006-2007	Change
Face-to-Face Services	1608	1694	+ 5.3%
Attendance at proofing	931	947	+ 1.7%
Court Attendance / Support	355	437	+ 32.1 %
Court familiarisation / Preparation	156	168	+ 7.7%
Assistance with Victim Impact Statement	105	94	- 10.5 %
Court Companion Support	61	48 *	- 23.1%

* This figure reflects the additional reliance on Victim Support Service's (VSS) Court Companion Volunteers.

Community Education & Training

The WAS continued to provide information, education and training services to a variety of external organisations and key stakeholders. Education and training provided in 2006-07 included:

- TAFE Interagency Child Abuse Training (3 sessions)
- Criminal Justice Seminars in Adelaide (2 sessions) & Pt Lincoln
- SAPOL - Major Crash Course
- SAPOL - Police Expo
- Victim Support Service (Non-Offending Caregivers Group)

In addition to external training provided, WAS staff continued to undertake induction and training sessions with new legal practitioners and other members of staff, in an effort to increase their awareness of, and responsiveness to, issues for witnesses and victims of crime.

Throughout the year WAS contributed to a number of State and National victims of crime forums, representing the Office on the Victims of Crime Ministerial Advisory Committee, and attending two National Conferences including the *“Positive Ways: Indigenous Say” National Conference (Northern Territory - Oct 2006)* and the *National Witness Assistance Conference (Darwin - May 2007)*.

Future Developments & Challenges

The activities of the WAS continue to be guided by the need to provide timely, responsive and quality services to victims, witnesses and their families.

In the current financial year the WAS team undertook two days of strategic planning in an effort to review past performance, identify ongoing service trends and plan for future needs. As a result of planning activities, the WAS team has identified a number of improvement and development actions focused in six key areas of Team Development & Well-being, Systems & Processes, Policy & Practice, Leadership & Development, Strategic Relationships / Partnership and Service Delivery (Client Services).

Key actions identified for further improvement and development in 2007-08 include

- Refining systems and processes for working with legal staff (with a focus on referral practices to WAS).
- Improving training and induction practices with new legal and non-legal staff.
- Providing additional training and support to legal staff regarding child victims and victims with intellectual disability.
- Improving processes for providing information, updates and support to victims and witnesses.
- Improving written resources for children, adolescents and parents.
- Developing written resources to victims and witnesses from Aboriginal & Torres Strait Islander (ATSI) and Culturally and Linguistically Diverse (CALD) backgrounds
- Improving policy and practices for working with vulnerable victims (namely child victims and victims with intellectual disabilities).
- Improving partnerships and protocols with external agencies.
- Increasing participation (and presenting) at relevant information forums.
- Exploring opportunities for improved research & evaluation.

The WAS continues to experience a number of staffing challenges associated with the annual funding allocation provided from the Victims of Crime Fund. Under the annual funding arrangements our ability to attract experienced staff on short term contracts combined with our inability to extend Child WAOs beyond two year contracts (*because of two year public service rule requirements*) presents a particular challenge. As it currently stands 3.6 FTE Child WAOs effectively 'turn-over' every two years necessitating the recruitment of new and often less experienced staff. This has ongoing implications for our ability to recruit and retain the specialist skills and experience needed to work with children and adolescents, and a significant impact for the continuity of services to those children and young people. We welcome the positive discussions with the Commissioner for Victims Rights to resolve this ongoing situation.

In the face of the number of developments and future challenges, the WAS team maintains a positive commitment to continuous improvement of services to victims, witnesses and their families in South Australia.

Administrative Section

The Administration team of 27.53 FTE staff provide support to the Solicitors/Prosecutors, Witness Assistance Officers and non-legal staff. Roles undertaken by administration include Law Clerks, Reception, Legal Secretarial and Rounds.

Opportunities are given for support staff to extend their skills and knowledge by providing a framework to learn and act in other administrative positions. For periods of time however there has continued to be a requirement to have temporary agency staff to fill essential position in the Office.

Staffing

Although the Office has an approved establishment of 111.68 FTE, it relied on an average of 95.39 FTE during the year, made up of both legal and administrative support staff. The staff shortfall was due to some long term vacancies, delays in filling newly created positions, staff seeking alternative positions in government, staff released on leave without pay to work in the Solomon Islands and the UK, and a significant number of applications for maternity leave.

The equivalent of 95.39 full time staff includes a mix of full-time, part-time and casual employees. In promoting a work-life balance, ODPP supports flexible working options including part-time roles, special leave with or without pay, purchased leave and working from home.

Staff are recruited from a variety of sources including school leavers, graduates, public sector re-deployees, Disability Referral Service and the Aboriginal Employment Service.

Case Tracking

A number of minor enhancements were made to the Case Tracking system to accommodate legislative changes in the area of Criminal Assets Confiscations, and to allow the Office to record statistical information specifically for prosecution matters being managed by a special Backlog Project Team.

Post implementation training and awareness sessions were provided to staff across the Office.

During the second half of the year a Law Clerk has been working when available with the principal consultant at the Justice Data Warehouse to improve the system's ability to produce timely and accurate statistical and operational reports. Work in this area will need to continue throughout the 2007-08 financial to improve the reporting capabilities of Case Tracking. Options are being considered to dedicate at least part time resources to Case Tracking support for the office—dealing with user support, training, investigating problems, assessing how to reflect changes to legislation and liaising with AGD corporate IT service providers.

Voluntary Flexible Working Arrangements

The ODPP continues to provide Voluntary Flexible Working Arrangements to staff.

Of the 95.39 staff employed during the year 2006-2007, sixteen worked part time, two purchased leave and job-sharing arrangements are in place for four administration staff. Administration staff and Witness Assistance Officers (approximately 40 staff) enjoy flexi-time arrangements.

During 2006-07 the Office entered into agreements with four legal staff to work from home as a trial in an effort to retain experienced staff and maintain a work and home life balance. This has been effective in retaining the services of skilled staff but does create challenges for the effective and efficient operations of the Office. Nevertheless, the move is seen as a positive step by for both the staff concerned and the Office.

Training, Professional Development

As in previous years the ODPP both delivered training and received training from the following key stakeholders in the criminal justice system:

- SAPOL
- Yarrow Place Rape and Sexual Assault Service
- Forensic Science Centre

The mutual exchange of ideas and knowledge is beneficial to all the agencies involved. A significant number of these professional development sessions related to sexual assault offences.

Appendix D presents a table of external training and public information sessions conducted by staff of the Office. The Office endeavours to meet all reasonable requests for speakers, both to provide public information about the role of the DPP, and to participate in mock examination and cross-examination exercises for various specialist agencies e.g. SAPOL,

medical students. The participation of many staff from the Office, frequently in their own time, allows us to perform this function.

The ODPP provides training and professional development opportunities to staff including courses, conferences and seminars for all staff and continuing legal education for solicitors and prosecutors. However, pressure on ODPP funds has seen the allocation for staff training and development halved since 2002-03, a period which has seen increased staff numbers and a greater proportion of less experienced staff in the office. The Office was fortunate to have some eminent speakers address legal staff on a variety of topical issues in the criminal justice arena.

Training and development courses undertaken by staff during the year included management, leadership, communication, stress management, defensive driving, ergonomics and media skills training.

Occupational Health, Safety, Injury Management and Rehabilitation

As the ODPP is a division of the Attorney-General's Department, occupational health and safety matters are largely reported in the annual report of the Justice Portfolio incorporating the Department of Justice and the Attorney-General's Department.

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

The ODPP has had no new rehabilitation cases this year. Of the two cases reported in 2005-2006 both employees have returned to full time duties. Both were provided equipment to aid in the prevention of further injuries.

Looking to the Future - Administration Section

Implementation of the Organisational Review will commence in October 2007 bringing with it significant changes to all sections of the office. New organisational structures and procedures, new roles and positions will challenge our ability to adapt while at the same time maintaining the core business of the Office. They will also give us the opportunity to plan for the future and more effectively and efficiently perform our role in the criminal justice system.

CORPORATE OVERVIEW

Financial Budget

The funding arrangements for 2006-07 were largely unchanged from 2005-06 other than adjustments to meet pay rises and other increases in “internal transfers” (rental, and the ‘chargeback’ fees for IT services provided by the Attorney-General’s Department).

The one significant change to the budget was increased funding of \$525,000 to meet the cost of four additional Managing Prosecutors adjusted for a reduction of two administrative positions. With an expectation that the additional positions would not be immediately filled and, as a consequence not all of the funding increase would be spent, approval was given to use the unspent amount to part-finance a project (the so-called Backlog Clearance Project) to reduce the build-up of prosecution briefs in the office. The 2% ‘efficiency dividend’ demanded of each AGD business unit in 2006-07 was deferred for the Office until 2007-08, allowing the Office to divert a further \$220,000 of existing to the file reduction project. This amount will however be deducted from future years’ budgets.

Despite directing unspent salary allocation to the Backlog Project, delays in recruiting four new legal managers and filling seven other vacant legal positions, four Administration Team Leader positions and other vacancies caused by the normal turnover of staff, the salary budget was underspent by \$966,000 for the year. However, the Supplies and Services budget was overspent by \$892,000 partly as a result of higher than normal ‘briefing out’—the practice of engaging private barristers to conduct trials and other court work on behalf of the Office.

Other costs which significantly exceeded budget allocation included Witness Payments—with expenditure of \$864,000 against a budget of \$567,000 (the amount actually spent in 2005-06). Costs incurred to bring witnesses to court and to reimburse witnesses’ costs are paid by the Courts Administration Authority (CAA) and recovered from the ODPP. Witness Costs grew in 2006-07 by 54% compared to the previous year. The ODPP has sought a change to the payment-reimbursement arrangements because, while the office is accountable for the impact of these expenses on its budget, it has little or no control over the amounts paid. While the ODPP does not receive itemised accounts from the CAA, there are indications that vacated (rescheduled) trials are leading to duplication of travel and other costs for some witnesses.

Staffing levels

Legal positions in the office increased by four during 2006-07. Administrative support positions were cut by almost two FTEs.

	Approved 2005-06 ¹	Approved 2006-07	Actual 2006-07 ³
Executive Group	4.00	3	3
Legal (Including managers)	62.53	67.53	56.26
Witness Assistance Officers	9.10	9.1	8.6
Administration staff	34.04	32.05	27.53
Total ²	109.67	111.68	95.39

Notes

- 1 Not all positions were filled—e.g. Associate Director and Crown Counsel were filled for several years.
- 2 Includes staff working on on-going, separately-funded projects in the office.
- 3 Positions occupied during the final pay period of 2006-07 but typical of the whole year.

The significant understaffing, with less than 100 FTE being available for most of the year, was primarily due to the delays in filling newly created and existing vacancies. Approved in September and advertised in December, only one MLS appointment was made before June, five more were announced on June 26 and the remainder unresolved at the end of the financial year. This delay has severely hampered the implementation of the new organisational structure in the Office and filling of approved administration support positions which are integral to the new structure. With continuing delays in filling the MLS positions at the end of the year, approval was sought and received to utilise the funding for these positions to engage five junior lawyers for three months to assist with the accumulating file load.

In July and again in September the Office surveyed hours actually worked by legal staff. The results indicate a high workload being carried by legal staff over and above that for which they are paid. While heavy work loads are not uncommon in the legal fraternity, the hours worked in the ODPP pose a significant occupational health and safety risk. Particularly worrying is the number of weekend days worked, with staff working nearly one in three of their days off. Four additional staff will help reduce the work loads but they are unlikely to reduce it to an acceptable level.

	Survey respondents	Respondents' paid hours for the month	Hours actually worked	Excess hrs as % of paid hours	Value of unpaid hours (pa)
July 2006	48 (40 lawyers)	7245	9326	28.7%	\$928,120
Nov 2007	31 lawyers	4785	6171	28.9%	\$705,480

While extrapolating the figures beyond the survey group to the entire legal staff of approximately sixty can only be imprecise, the value of unpaid hours contributed by the legal staff is certainly in excess of \$1,000,000 pa.

In recognition of the OH&S risk posed by heavy work loads and other hazards, most office staff participated in one of four OH&S workshops initiated by the Chief Executive, Attorney-General's Department. Due to work demands, two of these were conducted after hours (again, in unpaid time). At the end of the year work was continuing on assessing the risks identified in these workshops and developing risk management controls.

The Future

Early in the financial year the Organisational Review consultants' final report was presented to the Review Steering Committee. The committee, consisting of the heads of SAPOL, Courts Administration Authority, Attorney-General's Department and Treasury and executive staff of the ODPP, agreed with 53 of the 79 recommendations and was neutral or held mixed views on most of the remainder. The Attorney-General's Department accepted 23 recommendations, rejected 14 (with a further 3 deemed not applicable) and identifying that 38 were management decisions for the Office.

Implementation of those recommendations accepted by government and those deemed to be management decisions for the ODPP began during 2006-07. Of the three Headline

Recommendations of the Organisational Review Final Report—an Activity Based Costing project, a practice-based organisational structure and a file complexity rating—significant progress was made on the last two with full implementation of the practice-based structure delayed by recruitment of managers for the four practices. Much work remains to be done. The Activity Based Costing project recommendation was not accepted by Government.

APPENDIX A

Publications and 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. These publications are available through the ODPP's internet site. This website is regularly updated and provides links to publications and information about the criminal justice system, employment opportunities and work experience.

The following publications are available on the ODPP website - www.dpp.sa.gov.au.

- ODPP Annual Reports
- Director of Public Prosecutions Act 1991 and other relevant legislation (links)
- ODPP Prosecution Policy and Guidelines
- Witness Assistance Service - Information leaflet (*Information for witnesses and victims of crime*)
- Unlocking the 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 rape or sexual assault (*ODPP and Yarrow Place Rape and Sexual Assault Service*).
- Consultants' Final report into the Organisational Review of the ODPP

The following internet sites provide further information related to 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 Rape & Sexual Assault Service</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

APPENDIX B**Representatives on Committees/Steering Groups****Internal**

NAME	REPRESENTATIVE
ODPP Executive Committee	Director - Stephen Pallaras QC Associate/Deputy Director - Martin Hinton QC (from May 06) Managing Solicitor - Pauline Barnett Managing Prosecutor - Geraldine Davison / Adam Kimber General Manager (Chair) - Murray Fopp
ODPP Management Committee	General Manager (Chair) - Murray Fopp Managing Solicitor - Pauline Barnett Managing Prosecutor - Geraldine Davison / Adam Kimber Senior Solicitors Senior Prosecutors Manager, Witness Assistance Service - Dean Oliver Administration Manager - Lois Papafotiou
IJP Prosecutions Management Committee	General Manager (Chair) - Murray Fopp George Kouts - Project Officer (till Aug 2006) Lorraine Bull - Project Officer (till Dec 2006)

External

NAME	REPRESENTATIVE
AGD IT Executive Forum	Murray Fopp
Australian and New Zealand Association for Psychiatry, Psychology and the Law	Elizabeth Griffith
Conference of Australian Directors of Public Prosecutions	Stephen Pallaras QC
Crime Statistics Advisory Council	Pauline Barnett
Criminal Justice Ministerial Taskforce	Stephen Pallaras QC Martin Hinton QC
Director of Public Prosecutions National Executive Group	Pauline Barnett
Disability Action Plan Reference Group	Lois Papafotiou
Drug Court Steering Committee	Pauline Barnett
Forensic Science Advisory Committee	Adam Kimber
Information Technology Business Representatives Committee	Jane MacInnes Lois Papafotiou (Proxy)
Homicide Network Meeting	Dean Oliver WAS Team rotation if proxy required
Justice Business Heads Forum	Martin Hinton, QC Pauline Barnett (Proxy)

NAME	REPRESENTATIVE
Justice Information and Communication Technology Committee	Murray Fopp
Justice Information System: Business Operations Committee	Murray Fopp
Justice Information System: Business Operations Committee - Finance	Murray Fopp
Justice Portfolio Planning Group	Pauline Barnett
Law School Advisory Board	Martin Hinton, QC
Law Society of South Australia: Criminal Law Committee	John Wells
Law Society of South Australia: Advocacy Committee	Martin Hinton, QC
Mental Impairment Review Committee	Pauline Barnett
Police Liaison Committee	Pauline Barnett
University of Adelaide	Martin Hinton, QC
Victims of Crime Ministerial Advisory Committee	Dean Oliver

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)
 Royal Association of Justices of South Australia Inc

APPENDIX C**Training and Professional Development****CONFERENCES AND SEMINARS**

NAME/TITLE	ODPP REPRESENTATIVE
10TH International Criminal Law Congress, Perth	Stephen Pallaras QC (Director) Jane Abbey (Solicitor) Mikala Ballard (Solicitor) Dominic Petraccaro (Solicitor) Rosie Thewlis (Solicitor)
35TH Australian Legal Convention	Stephen Pallaras QC (Director)
Abuse in State Care: About the Enquiry - About the Therapy	Dean Oliver (Manager, WAS)
Beyond PTSD: Trauma's Impact on Identify and Interpersonal Structures	Heather O'Dea (WAS Officer)
Community Engagement	Nina Travers (WAS Officer)
Conference Of Australian Directors Of Public Prosecution (CADS) - Canberra	Stephen Pallaras QC (Director)
Conference Of Australian Directors Of Public Prosecution (CADS) - Sydney	Stephen Pallaras QC (Director)
Cranala Program - Justice & Society	Stephen Pallaras QC (Director)
Criminal Justice Visa Info/Consultation Session, conducted by the Dept of Immigration	Stephen Pallaras QC (Director) Caroline Mealor (Senior Solicitor)
Disability Train the Trainer	Fabiana Vielle (WAS Officer)
Leading a Team	Dean Oliver (Manager, WAS) Fabiana Vielle (WAS Officer)
Management of thhe Vexatious & Usually Persistent Complainant	Belinda Ness (WAS Officer)
National Corrective Services Administrators Conference - (Female Offenders Forum)	
National Witness Assistance Conference 2007 - Darwin	Dean Oliver (Manger, WAS) Belinda Walker (WAS Officer)
OHS&W for Managers & Supervisors	Dean Oliver (Manager, WAS)
OHS&W Training - Maximising your Safety in the Office	Tiffany McArthur (Solicitor) Alan Stacey (Administration) Ann Marie Tucker (Solicitor)
Owenia House (Formerly SOTAP). Presentation by Dr Andrea Louis	Nina Travers (WAS Officer)
Performance Management Training (Non Managers)	Andrew Moulding (WAS Officer)
Performance Management Training - Development for Managers	Adam Kimber (Practice Manager) Sandi McDonald (Senior Prosecutor) Ian Press (Senior Solicitor)
Performance Management Training - Refresher for Managers	Dean Oliver (Manager, WAS)
"Positive Ways:An Indigenous Say" Conference 2006 Northern Territory	Andrew Moulding (WAS Officer) Nina Travers (WAS Officer)
Restorative Justice - Fundamental Principles & Theoretical Underpinnings	Dean Oliver (Manager, WAS)
Understanding & Analysing Financial Information	Dean Oliver (Manager, WAS)

NAME/TITLE	ODPP REPRESENTATIVE
Young Professionals Forum: Mastering Power & Status in Relationships Seminar	Fabiana Vielle (WAS Officer)
Young Professionals Forum: Talking About My Generation.... Generations Working Together	Fabiana Vielle (WAS Officer)

Staff of the Office attended professional development sessions run by the Law Society of South Australia, in particular, Abuse of Process in Criminal Law

In-House Training for staff

In-House Training Sessions conducted during the year in review for legal staff, included the following topics:

- Prior Inconsistent Statements
- Programmes available for offenders in custody
- Hostile witnesses
- Disclosure

Some of these sessions were given by in-house speakers and others by guest presenters.

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APPENDIX D

External Training and Public Information Sessions Conducted by ODPP Staff

SESSION	ODPP REPRESENTATIVE
Address to Supreme & District Court Associates <i>Topic: ODPP Career Options</i>	Stephen Pallaras QC (Director)
Australian and New Zealand Forensic Science Society, Adelaide <i>Topic: Case Studies & giving Evidence</i>	Stephen Pallaras QC (Director)
Australian and New Zealand Association of Psychiatry, Psychology & Law <i>Topic: Prosecuting Sexual Offences</i>	Stephen Pallaras QC (Director)
Australian Social Policy (ASP, UNI SA, Magill Campus) <i>Topic: Role of the ODPP; Community Perceptions of Justice, Law & Order</i>	Stephen Pallaras QC (Director)
Clandestine Drug Laboratory Investigation and Safety Course 2007	Ian Press (Senior Solicitor)
Criminal Justice Seminar - Adelaide <i>Topic: Overview of the CJS, Witness Assistance Services, Vulnerable Witness provisions an Victim Impact Statements</i>	Joanne Howski (Solicitor) Belinda Ness (WAS Officer) Fabiana Vielle (WAS Officer)
Criminal Justice Seminar - Port Lincoln <i>Topic: Overview of the CJS, Witness Assistance Services, Vulnerable Witness provisions an Victim Impact Statements</i>	Phil Crowe (Solicitor) Belinda Lines (WAS Officer) Caroline Steel (WAS Officer)
Criminal Justice Seminar - Law Week <i>Topic: Overview of the CJS, Witness Assistance Services, Vulnerable Witness provisions an Victim Impact Statements</i>	Nina Travers (WAS Officer) Belinda Walker (WAS Officer) Emma Wildman (Prosecutor)
Forensic Scientist Training Day	Emma Wildman (Prosecutor)
General Public (Pt Pirie/Whyalla) <i>Topic: Role & Responsibilities of ODPP</i>	Stephen Pallaras QC (Director)
Governor's Leadership Foundation, Adelaide <i>Topic: Law Order & Justice</i>	Stephen Pallaras QC (Director)
Neighbourhood Watch Forum, Fort Largs Police Academy <i>Topic: Role of ODPP</i>	Stephen Pallaras QC (Director)
Philosophers CAFÉ, North Adelaide <i>Topic: Sustaining Communities - L.A.W (Law, Advocacy & Waffle) (Jul 06) Crime, Punishment & Community (March 2007)</i>	Stephen Pallaras QC (Director)
SAPOL: Advanced Investigative Interviewing of Children Development Program <i>Topic: Best practices interview methodologies for child interviews</i>	Carmen Matteo (Solicitor) Rosemary Steen (Solicitor) Emily Telfer (Senior Prosecutor)
SAPOL: Crime Training Section Detective training course <i>Topic: Role of the ODPP</i>	Carmen Matteo (Solicitor)
SAPOL & CYFS: Interagency training session <i>Topic: Overview of the CJS, Prosecution Process and Witness Assistance Service</i>	Andrew Moulding (WAS Officer) Michelle Sutcliffe (Solicitor) Emily Telfer (Prosecutor) Annie Trengove (Solicitor) Fabiana Vielle (WAS Officer)
SAPOL: Detective Training Course	Lisa Dunlop (Solicitor)
SAPOL Financial Investigators Course	Tim Heffernan (Senior Solicitor) Gary Phillips (Solicitor)

SESSION	ODPP REPRESENTATIVE
SAPOL: Major Crash Investigation Topic: <i>Prosecution Process & Witness Assistance Services & Vulnerable Witness Provisions</i>	Kos Lesses (Solicitor) Sharon Ryan (WAS Officer) Belinda Walker (WAS Officer)
SAPOL: Police Expo Topic: <i>Witness Assistance Services</i>	Belinda Lines (WAS Officer) Andrew Moulding (WAS Officer) Belinda Ness (WAS Officer) Caroline Steel (WAS Officer) Nina Travers (WAS Officer)
SAPOL: Adelaide Local Service Area (LSA) Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Sturt (LSA) September 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Holden Hill September 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Operations Support Service September 2006 Far North (LSA) Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Far North (LSA) September 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Port Adelaide October 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: South East (LSA) October 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Riverland LSA (Berri) October 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: South Coast LSA (Christies Beach) October 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Hills Murray LSA (Mount Barker) November 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Elizabeth LSA November 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: Barossa Yorke LSA (Clare) November 2006 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
SAPOL: West Coast LSA (PT Lincoln) May 2007 Topic: <i>ODPP/SAPOL General Information/Discussion session</i>	Stephen Pallaras QC (Director)
Victim Support Service/ Dale St Women's Health - After Child Trauma Group Topic: <i>Prosecution Process & Witness Assistance Services & Vulnerable Witness Provisions</i>	Kris Handshin (Prosecutor) Anna Whittam (WAS Officer)
Yarrow Place Training Course Topic: Giving Medical Evidence	Lisa Dunlop (Solicitor)

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 the year 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 the year 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 during the year it considered and approved 26 warrants issued under the *Listening and Surveillance Devices Act 1972*.

Occupational Health, Safety & Injury Management

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

Overseas Travel

There was no overseas travel by any employee of the ODPP during the reporting year.

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 details in relation to Training and Development Reporting are incorporated within the Annual Report of the Attorney-General’s Department.

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 (VFWAs)

All relevant matters in relation to VFWAs are incorporated fully within the Annual Report of the Attorney-General’s Department.

APPENDIX F

GLOSSARY

Accused	A person who is alleged to have committed an offence.
Acquit	To find an accused person not guilty at a trial.
Adjourn	To delay a court hearing, until later that day, to a future date or indefinitely.
Adjudication	Legal advice sought by, and given to, SA Police in the metropolitan area on the appropriateness of draft charges intended to be laid on the first appearance after arrest. Adjudication requests are generally turned around within two hours in time for the accused's first appearance in the Magistrates Court (the morning of the day after arrest if bail has been refused). See also <i>Opinion</i> .
Affidavit	A sworn or affirmed written statement which may be used as a substitute for oral evidence.
Antecedent Report	A report that lists a person's previous criminal convictions.
Appeal	<p>An application to a higher court to review a decision of a lower court regarding a conviction or sentence. If the higher court agrees with the <i>appellant</i> that the lower court made an error, the lower court decision is quashed or overturned. A different sentence will be imposed or, in the case of appeal against conviction, a new trial may be ordered or the <i>appellant</i> may be acquitted.</p> <p>If the higher affirms (agrees with) the lower court decision, the appeal is dismissed</p> <p>The DPP can appeal against sentence only (not against an acquittal). The defendant can appeal against both a sentence and conviction.</p>
Appellant	When a party (prosecution or accused) appeals against a court decision, he/she is referred to as the appellant throughout the appeal process. See also <i>Respondent</i> .
Arraignment	After a defendant is committed to stand trial in the District or Supreme Court he/she must formally plead to the charges. This first appearance in the District or Supreme Court is the arraignment.
Arrest	To apprehend or take into custody a person suspected of having committed a crime.
Bail	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 (promises made by others) and subject to conditions.
Brief	The DPP file relating to the prosecution of one defendant on one charge or multiple related charges. Co-accused will have separate Briefs. The accused may have separate Briefs for unrelated charges stemming from a separate criminal activity.
Burden of Proof	The onus of proving disputed facts. In criminal trials the onus is almost always on the prosecution to prove the facts, including the charge. Defence does not have to prove innocence. See also <i>Standard of Proof</i> .
CLCA	Criminal Law Consolidation Act 1935

Committal Proceedings	After a person is charged with an indictable offence they appear before a magistrate who determines if there is sufficient evidence upon which to order that they stand trial before a judge and jury in the District or Supreme Court.
Committed for Sentence	If, at the committal proceedings, the accused pleads guilty, the magistrate will order the accused person to appear before a District or Supreme Court to be sentenced according to law.
Convicted	Found guilty of the crime charged or of a lesser charge.
Crown	The Crown means the State.
Declarations	A written witness statement given to police, signed by the person giving the statement.
Defendant	In the Magistrates Court the accused may be referred to as the defendant.
Directions Hearing	A pre-trial administrative hearing to ensure that all parties are ready for trial and to set a trial date.
Exhibit	A document or physical item tendered as evidence in a court hearing or referred to in an affidavit.
Forensic science	The use of science or technology to investigate and establish facts or evidence in a court of law. Forensic scientists search for and examine physical evidence to establish or disprove links between material or a person and the scene of the crime or another person.
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.
Form 7	An application to the Full Bench of the Supreme Court for leave to appeal following rejection of an application to appeal by a single judge.
Indictable Offence	An offence, either Major Indictable or Minor Indictable, for which the accused has an initial right to be tried by a judge and jury.
Information	An Information is the document that formally initiates the prosecution process when lodged with the court prior to Arraignment. It names the accused, details of the charge or charges and the names of witnesses.
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.
Matter	The prosecution of one or more defendants charged in relation to a crime. Where two or more defendants are charged (irrespective of the number of charges laid) the Office will have a Brief for each defendant
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	<ol style="list-style-type: none">(1) Where an accused is found not guilty on grounds of mental competence at the time the offence was committed (CLCA Part 8A) and declared liable to supervision.(2) Where a person is found by a court to be mentally unfit to stand trial because they can not satisfactorily assist in their own defence.
Minor Indictable Offence	Those indictable offences where the maximum term of imprisonment exceeds two years but is less than five years. Minor indictable offences are heard and determined in the District Court.

<i>Nolle Prosequi</i>	A decision by the DPP not to proceed with the prosecution. The formal recording of that decision by the court. This decision is taken when it is indicated as appropriate by the Statement of Prosecution Policy and Guidelines (available on the ODPP website - http://www.dpp.sa.gov.au .)
<i>Non-Parole Period</i>	The period a prisoner must serve without any eligibility for parole. When a judge imposes a sentence of imprisonment, a non-parole period will generally 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>	(1) A plea by an accused that he/she did not commit the crime charged. (2) The finding of a court that the accused is acquitted of the charges.
<i>Opinion</i>	Advice requested by SA Police from the ODPP in accordance with SAPOL guidelines which permit discretion to request an Opinion in some situations but mandates specified categories of offence be referred to the ODPP for an Opinion. Following a detailed examination of the charges, the available evidence and a review of all statements and the account of interview of the alleged offender, the ODPP may confirm charges should proceed as laid, advise a change of charges or recommend further investigation. It may also confirm an arrest or report is justified on the basis of the material provided.
<i>Police prosecutors</i>	Members of SA Police who prosecute offences in the Magistrates Court.
<i>Plea</i>	A plea is the formal response of an accused at trial or arraignment. At the accused's trial the charge is read out to the accused (i.e., 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>Resolved Summarily</i>	Matters where <i>major indictable</i> charges have been reduced to <i>minor indictable</i> or <i>summary</i> charges and finalised by guilty plea or trial in the Magistrates Court.
<i>Respondent</i>	The party (prosecution or the accused) called to respond in a higher court to an appeal by the other party against a decision of a lower court.
<i>Restraining Orders</i>	Restraints placed by a court to prevent a person from acting in a particular manner—for example, to prevent the accused from contacting or approaching victims or witnesses. Restraining orders made by a court under section 15 Criminal Assets Confiscation Act 1995 prevent person(s) disposing of or otherwise dealing with specified property until criminal offences and confiscations proceedings are resolved. Domestic violence restraining orders prevent a defendant from contact with specific people or visiting specific addresses. Paedophile restraining orders prevent a defendant from loitering near children or in the vicinity of specified locations, for example, schools, malls, playgrounds and public toilets.
<i>Sentence</i>	The penalty imposed on the accused if he/she pleads, or is found guilty of an offence. For murder there is a mandatory head sentence of life imprisonment. The judge will usual set a non-parole period.
<i>Subpoena</i>	A legal document requiring attendance in court to give evidence and/or the production of a document or exhibit.

<i>Standard of proof</i>	The degree of certainty which must be established to prove a charge. In criminal proceedings facts must be proven "beyond reasonable doubt". In civil proceedings the contested facts are proven "on the balance of probabilities".
<i>Summary Offence</i>	An offence with a maximum possible prison sentence less than two years. Summary offences are tried in the Magistrates Court and not sent for trial before a judge and jury. Police prosecutors (not the DPP) normally prosecute summary offences.
<i>Suspended Sentence</i>	A judge giving a sentence of imprisonment may suspend the sentence on condition that the defendant enters into a bond to be of good behaviour and to comply with any other conditions of the bond.
<i>Voir Dire</i>	Legal argument before the judge in court but without the jury present.

APPENDIX G -**OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS:****Workload Report 2007*****Introduction***

The biggest challenge facing the ODPP can be simply stated. There is too much work for too few to do. There are too few people to do the work generated by SAPOL without, *inter alia*, a significant risk to the health and wellbeing of staff.

The solutions to this challenge can be stated equally as simply. Either the amount of work needs to be reduced or the number of people tasked to do it must be increased.

Given that the ODPP has no practical control over the input of work and given too the reality that work is in fact rapidly increasing with time, the only realistic solution is to resource the Office sufficiently to cope with the volume of work.

In the longer term what is needed is a system or process by which the resourcing of the Office can be responsive to changes in the demands on the Office without the inevitable delays and consequential development of case backlog that the current system of financing the Office produces.

You would be aware of the concerns that ODPP managers have had for the health and wellbeing of identified staff members and action that has had to be taken to address those concerns. There is also concern that the standard of work done by this Office will suffer as a consequence of trying to manage too much work.

The issue of high workloads for the staff of the ODPP has been the subject of comment for a number of years. In particular, in the last twelve months the issue has been raised formally at meetings with the Attorney General, the Chief Justice, the Chief Judge, the Police Commissioner, and in correspondence with the Premier and the Treasurer.

Steps have been taken to address the cost to our people of their heavy workloads. These include:

- MLS 2, MLS 1, LEC 4/5 and LEC 2 panels all running concurrently with a view to filling all vacant positions as soon into the financial year as possible;
- the funding of the backlog team;
- the use of unspent and anticipated unspent wages to fund 3 LEC 1s and 2 ASO 2s for a period of 3 months to assist in the release of pressure upon employees pending the filling of all vacancies; and
- the OHS&W workshops which have been run in recent weeks.

Further, within the ODPP the following has been recently set about:

- drafting a development program for all legal staff incorporating a plan for the movement of staff through the Office with a view to the development of skills in addition to continuing legal development;
- developing a 'Wellness Program' for the staff - a scheme that allows us to offer opportunities to our staff that add value to the experience of working in the ODPP and assist in alleviating the stress of work requirements;
- developing an improved OHS&W Employee Psychological Health and Wellbeing Policy to ensure that we identify staff at risk at an early stage and provide them with the support and help they may require.

The Report of the Organisational Review recommended, as a preliminary step, that we adopt a new structure for the Office. It was also recommended that we move to the suggested new structure as soon as possible. That structure, it was said, would improve efficiencies by reducing the staff/management ratio, thereby increasing management input and resulting in decisions being made in a more timely and cost effective manner. Thereafter, the consultants advised that the ODPP would have to assess what additional resources might be needed.

As you know there was an inordinate delay in filling the new management positions and the reasons for that delay have been discussed with you. The ODPP has not, therefore, been up to complement for a considerable time, let alone been in a position to begin assessing what additional resources it may need against the backdrop of the consultant's recommended structure being in place.

We have not, as a consequence, had people on deck to assist with the workload. In fact, of the 67.53 FTE legal positions for which the ODPP is funded, only 57.67 are currently occupied and this has been more or less the position for sometime.

While we have taken steps to bring the ODPP up to complement as soon as possible, it should be clearly understood that even at full complement the workload will remain excessive with the clear need for the application of significantly more resources for the challenges to be met.

The purpose of this report is to:

- advise you of the current workload of the ODPP,
- inform you of the workload carried by our counterparts interstate,
- advise you of actual and anticipated increases in workload since the reviewers reported,
- explain the inadequacy of our current funding and
- make recommendations to you to address these issues

so that the ODPP continues to contribute positively to the effective and efficient operation of the criminal justice system.

1. The current workload within the SA ODPP

At present the average file load for general solicitors is 50 files³. The average file load for committal solicitors is 60 files. These file loads are calculated on the basis that all approved

³ The term 'file' relates to a discrete matter (including multiple defendants) and is consistent with the way work volumes are measured interstate. The term 'brief' relates to a single defendant.

positions are filled. While this is being pursued it is not currently the case, so file loads in real terms are higher. In our Office even the most inexperienced solicitors carry file loads in excess of 45 files.

In the ODPP, files are complexity rated via a recently developed rating system that is at least the equal to any similar system in other prosecuting Offices. They are then allocated to solicitors having regard to their existing file load and relative experience. However as the number of experienced solicitors falls, complex work has to be allocated to junior solicitors putting additional strain on those solicitors and their managers.

Significantly, and in contrast to practice elsewhere in Australia, all managing solicitors currently carry file loads (of approximately 14). Due to their relative seniority, the files they have are usually complex cases.

The comparative workload position in the prosecuting offices in New South Wales, Victoria and Western Australia are set out below. At this juncture it is worth noting that one consequence of the exceptionally high file loads in South Australia is the inability to develop advocacy skills. By contrast, in New South Wales and Victoria general solicitors always instruct a Crown Prosecutor. Solicitors therefore are able to spend much of their time in court instructing counsel.

In South Australia solicitors almost never have the opportunity to instruct (and learn) at trial as it is simply not possible with current resources to reduce their workload or 'free them up' to do so. The inability to gain this courtroom experience is especially relevant to an Office with a large percentage of 'junior' legal staff (LEC3 and below). Given that many of these junior solicitors are the prosecutors of the future, in the current resource environment their court room skills cannot be properly developed.

Further, solicitors can only prosecute trials if they take this work on as additional to their heavy file loads. Those solicitors who do occasionally prosecute trials are therefore working under extreme pressure without any available additional assistance to run their solicitor's practices while they are in court.

The inability to develop skills as an advocate and to develop practical knowledge of criminal procedure and the rules of evidence undermines the individual's development and detracts from the skill base of the ODPP. This has significant implications for succession planning and the ability to cover the criminal courts on an ongoing basis. This, in turn, has cost implications.

Further, unlike New South Wales and Victoria, our trial prosecutors do not have the benefit of an instructor in court and even in the most serious or complex cases, a junior is still the exception. Thus the prosecutors undertake complex work under great pressure without the benefit of what many consider to be essential assistance in the interests of not only individual health and safety but of the proper administration of justice.

Adjudications:

A comparison with interstate ODPPs shows that very little adjudication of matters occurs before charging in those States. In fact, in New South Wales and Victoria they do none. In the financial year 2005-2006 our Office adjudicated 1,691 matters.

Written Opinions:

In relation to written opinion work, far fewer opinions are provided by interstate Offices than are provided in South Australia. In New South Wales approximately 200 opinions per annum are provided by the 350 solicitors, and in Western Australia, approximately 120 by the 210 FTE's.

In the financial year 2005-2006 the South Australian ODPP completed 349 written opinions for SAPOL. These opinions can take from 2 hours to 2 days to complete.

Additional Support:

In Western Australia each file is allocated to a prosecutor and a paralegal. The ratio of lawyers to paralegals is approximately 3:1 (i.e. prosecutor file load of 20, paralegal file load of 60). In addition, law clerks and secretaries assist the prosecutor in the file work. It is the paralegal's job to draft the Information and accompanying memorandum. They respond to all general correspondence and liaise with the court and the police. In our Office this time consuming work is done by the solicitor.

In our view, the employment of paralegals is one option worth considering. First, and obviously, a paralegal costs less than a lawyer. Secondly, paralegals would significantly relieve the pressure on solicitors and potentially free up the solicitor to attend court as an instructor, a junior or a prosecutor. In turn, this would not only develop their legal skills but help to relieve some of the pressure on the prosecutors.

In the last two years file loads in the Office, the major driver of the demand for administrative support has grown by 43% while the number of legal staff has grown by 26%. In the same time however, administrative support numbers have increased by less than 1% - an increase of 0.2FTE. The work load created by IJP Case Tracking alone more than consumes this increase. The Office has passed the point where administrative support is failing to address the needs of both the prosecution process and the business process management.

An independent report by KDN Services P/L, commissioned by Justice Business Services has identified a minimum requirement of almost 1.0FTE within the ODPP just to support the administration of Case Tracking. Additional resources were identified as essential for continuous improvement of the system - improvements which are essential, given the gaps between the intended minimum features and the delivered case tracking system.

As a result of Government decisions made about administrative support in the Office, 1.99 positions were cut from the 2006-07 budget and FTE cap. In its Implementation Report, Organisational Review consultant, Lizard Drinking, concludes:

‘The impact of the rejection of these recommendations is significant, as it has or will result in a net reduction in administrative staff within the Office of 1.99 FTE.

The...reduced admin FTE is not consistent with our recommendations or with the perceived intent of the AGD comments on those recommendations.

There remains a pressing need to have records management adequately addressed, and IT user support of the Case Tracking system would be most appropriate to be addressed by a resource that has in-depth business knowledge of the ODPP. This view is

supported by... JBS which [has] commissioned a separate report identifying a need to have the role of user support for Case Tracking fulfilled by a resource within the Office (the report recommended 1.0 FTE for this role on an ongoing basis). We therefore recommend that the 1.99 FTE reductions be reinstated.'

While we fully support the reviewer's recommendation to reinstate the lost 1.99 FTE, this will deliver the Office an increase of less than 4% in administration support since 2004/05 (after the additional role of application user support is resourced). This contrasts with the 43% increase in files and 26% increase in legal staff for the same period. The current administration ~~FTE cap~~ (staff) is less than in July 2005 and the Office is struggling to cope with 'core' administration work. Important, but non-urgent work (process improvement, staff training in core business processes, upkeep of training manuals, etc) is not being addressed. An increase in administrative support, at least to a comparable level of the increase in work to be done, is urgently required.

2. Interstate Prosecution Offices:

In the light of the Government's rejection of the reviewer's recommendation that an activity based costing be undertaken, alternative means of establishing the ODPP's resource requirements needed to be considered. It was therefore necessary, for reasonable comparisons to be made, to obtain information from other prosecution Offices throughout Australia. Meaningful estimates of the extent of any resource shortfall could then be made by assessing comparative workloads interstate. Accordingly, three members of the ODPP (a prosecutor, a solicitor and a member of the administrative staff) visited prosecution Offices in, Victoria, New South Wales and Western Australia with a view to determining what lessons might be learned from their practices.

The following is a summary of the findings. It should be noted that when 'file numbers' are mentioned they are all referring to matters not defendants. We have been at pains therefore to ensure that all States are counting the same thing to ensure the integrity of the results.

Victoria:

Has 20 dedicated prosecutors (one third of whom are Senior Counsel), plus a Chief Crown Prosecutor and the Director. Their brief out budget is \$10,000,000 per annum. There are 190 solicitors who answer to *The Solicitor*. The solicitors instruct the prosecutors at trial. Work is allocated by managers to solicitors by 'gut feeling'. There is no complexity rating system used to differentiate the files as there is in our Office. A general solicitor will typically carry a file load of between 20-30 files while a solicitor specialising in anti-corruption or fraud will have fewer (around 15). The Office also utilises the services of approximately 6 articulated clerks per year.

Administrative support to legal staff is differently organised to the South Australian Office. In Victoria, the Office has its own dedicated sections for HR, Administration, Information Technology and Finance with approximately 5 staff working in each section. It also has its own Library and Audio Visual Section.

New South Wales:

Has 94 dedicated prosecutors (or 'Crowns') in the Sydney and ten metropolitan offices together with 2 Deputy Directors and the Director. There are 350 solicitors (130 in

Sydney, 220 in regional offices) together with the Solicitor for Public Prosecutions, 2 Deputy Solicitors (Operations and Legal) and 3 Assistant Solicitors. The brief out budget is approximately half a million dollars annually. Solicitors instruct the prosecutors at trial. Files are allocated to solicitors by managers using only a basic complexity rating that takes into account the estimated length of trial. A general solicitor will carry a file load of around 15 files (Level 1 or junior solicitors) and an average of 25 files for more senior solicitors.

Administrative support is provided both by administration staff and PLT students at a ratio similar to that provided in South Australia. However the difference is in the significantly fewer number of files carried by the solicitors in New South Wales.

In recent years, industrial action was threatened due largely to staff complaints (supported by a pro-active PSA) about excessive workloads. Additional funds were injected after a 'base budget review' and the Office is currently involved in undertaking an activity based costing.

New South Wales has an IT and application administration section, 12 staff; HR, 8 staff, Finance, 5 staff; and Training and Development (including a publisher who ensures the Office is up-to-date with legislation changes, significant court judgements and conducts specific research on request).

Western Australia:

There is a total of 210 FTE's in the Office. No distinction is made between prosecutor and solicitor with all legal staff being described as 'prosecutors'. Most prosecutors have a file load and conduct trials on their own matters. Their file load is between 20-30. Files are allocated after the application of a complexity rating system similar to that used in the South Australian Office. However extensive use is made of paralegals who are responsible for preparing letters, liaising with courts or police and contacting victims and witnesses. The Office has its own dedicated resources for HR (Organisational Development - 2 staff), Information Technology (4 staff), Records (13 staff and 2 receptionists) and Finance (5 staff).

3. A comparison of the position in South Australia with our counterparts interstate

From the above it is apparent that -

- a committal solicitor in South Australia carries approximately 60 files, whereas interstate they carry between 20 and 30 (cf. Victoria 20-30, New South Wales 15-28 and Western Australia 20-30);
- junior solicitors in South Australia carry a file load of in excess of 45, whereas in New South Wales junior solicitors carry a file load of approximately 15;
- all managing solicitors currently carry file loads of approximately 14 files whereas in New South Wales, Victoria and Western Australia managers do not carry a file load;
- in addition to a solicitors file load in South Australia, the solicitor will undertake numerous adjudications. In New South Wales and Victoria solicitors do not adjudicate initial charges;

- in addition to a solicitors file load in South Australia, the solicitor will undertake the preparation of numerous opinions. Whilst opinions are done in New South Wales and Western Australia, the average number of opinions per solicitor is significantly less (in New South Wales approximately 200 per annum are provided by the 350 solicitors, and in Western Australia, approximately 120 by the 210 FTE's);
- solicitors and prosecutors in South Australia are provided with significantly less administrative support than their counterparts interstate.

The corporate service resources available to the three comparison states has been outlined above. South Australia has no in house resources for any of these functions, and there are no resources available at all for some functions.

What can be derived from this comparison? Despite some differences in work practices (which generally indicate a considerably more onerous load on South Australian prosecution staff) the information obtained indicates that the difference in file and work loads is so stark as to be clearly indicative not only of an insufficiency in the resourcing of the ODPP in this State but also of a patently unacceptable demand being placed upon those working within the South Australian ODPP.

At present the average file load for solicitors in South Australia is in the region of 50-60. In Victoria it is 20-30, in Western Australia it is 20-30 and in New South Wales it is between 15 and 25. Whilst there are naturally some differences (as described above) in the nature of the solicitors' practices and duties in these jurisdictions, these differences clearly cannot account for a threefold increase in file load.

It is not without relevance to observe that the experiences of the Western Australian and New South Wales ODPPs in recent times leading up to those Offices receiving significant increases in funding, is akin to the position in which the South Australian ODPP now finds itself. That is, the possibility of staff taking industrial action or the failure of the Office to discharge its responsibilities on behalf of the people of the State, is real.

Notwithstanding this, the Office has to date discharged its responsibilities with every endeavour to avoid justice being compromised. This is in no large part due to the professionalism, integrity and goodwill of the legal staff and the commitment and unstinting support that they receive from the administrative staff and witness assistance officers.

However there have been casualties and our ability to retain staff has been compromised.⁴ We cannot continue to expect the same people to absorb indefinitely the increase in workload. If nothing else, it represents an unacceptable risk to their health and to the integrity of the ODPP in its pivotal role in the administration of the criminal justice system.

If it is assumed that a file load of, say 40 briefs is the optimum file load for a solicitor within the ODPP, and that 23 prosecutors are required to cover the 10 criminal courts throughout a calendar year, and that 7 managers do not carry a file load (i.e. the management load for the 13 MLS positions equate to 7 full-time management positions), then you require 65 solicitors to deal with the 2,600 briefs currently within the Office. The Office, however, only has 35 solicitors.

The comparison conducted with our counterparts interstate reveals that immediate steps need to be taken to determine precisely the resource requirements of the ODPP. That this need is pressing is all the more compelling when one considers the increase in workload within the

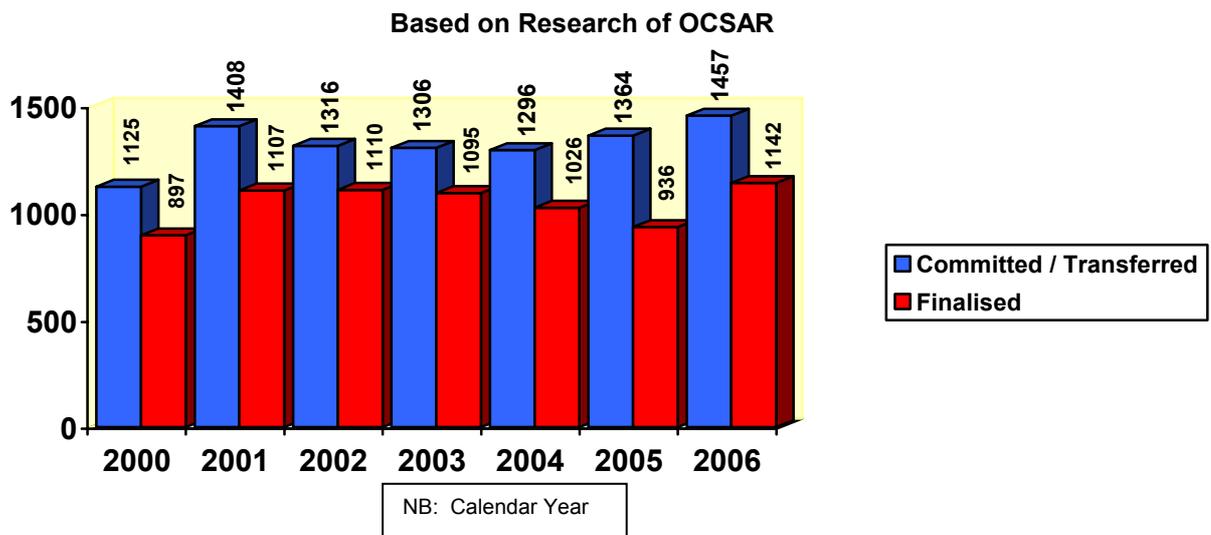
⁴ In this regard it is worth noting that we have commenced work on both a retention plan and succession plan.

South Australian ODPP that has been experienced since 2000 and since the Reviewer's report.

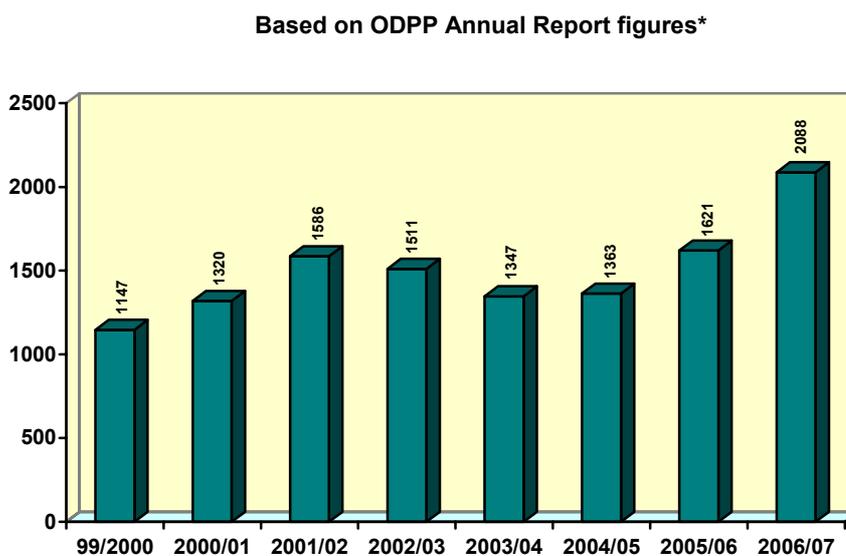
4. *Increased Workloads Since 2000*

In the years from 2000 to 2006 there has been a significant increase in the number of cases committed / transferred from the Magistrates Court to the District Court. In that same period the number of matters finalised has reduced as a percentage of the total.

The numbers are as follows:-



Over that same period of time the numbers of matters being handled by the ODPP committal unit has increased.



(* 2006/07 figures are based on current data.)

The backlog in the District Court at the moment is around 1,100 cases - approximately equal to the number of cases finalised in that court in any given year over the last decade.

The increase in matters committed / transferred to the District Court and the number of matters dealt with by the ODPP Committal Unit is directly attributable to legislative change, in particular, the *Criminal Law Consolidation (Serious Criminal Trespass) Amendment Act 1999*, the abolition of previous limitation periods in relation to sexual offences and amendments to the *Firearms Act*.

(I) Serious Criminal Trespass

Following an amendment to the Act in 1999, the number of cases with a major charge of burglary, break and enter, or serious criminal trespass committed / transferred from the Magistrates Court to the District Court increased from 81 in 1999 to 302 in 2001. Since then, the number has remained relatively stable.

(II) Historical Sex

A second area impacting on the increase in matters committed / transferred is historical sex matters. Between 2000 and 2004 less than 20 cases committed / transferred had a major charge of indecent assault but by 2006 this had increased to 52. These numbers will increase as those matters being investigated by the Paedophile Taskforce in particular, result in persons being charged and placed before the courts. We will return to historical sex matters when projected workload increases are dealt with.

(III) Firearms Act

The third significant area impacting on District Court matters were fire-arms offences. Between 1997 and 2003 less than 10 cases per year had a major charge of a fire-arms offence, but following the introduction of increased penalties for these offences in 2003, the number rose to 63 in 2006.⁵

5. Increases in Workload since the reviewers reports and into the immediate future

When the reviewers prepared the model upon which their recommendations were based, they worked on figures relevant in about September 2005. At that time the work load was in relation to about 1,800 defendants with a trial load of about 310 per annum. The current work load is something in the order of 2,600 defendants.

This rapid escalation is as a consequence of -

- the legislative changes referred to above,
- a high turnover of staff with the inefficiencies this brings, and
- the blow out in trial dates which has resulted in matters taking much longer to resolve causing a build up in the ODPP of files and increased work associated with the processing of files.

The impact of further legislative change effected with the passing of the *Statutes Amendment and Repeal (Aggravated Offences) Act 2005*, the *Criminal Law Consolidation (Child*

⁵ This workload data unless otherwise specified is based on research from OCSAR in 2007.

Pornography) Amendment Act 2004, (although the Act has been in place for a couple of years SAPOL has only just assigned two full time investigators to this work) and the *Controlled Substances (Serious Drug Offences) Amendment Act 2005*, is yet to be felt in the ODPP and by the wider criminal justice system.

The Paedophile Task Force (PTF) has provided the ODPP with 85 investigation files since 2004. These files have come in at the rate of approximately 30 per year. The PTF is currently investigating 39 matters that do not relate to the Children in State Care Commission (CISC). Those 39 investigations involve 131 victims with 73 suspects.

The PTF has received 151 referrals from CISC and expects to receive further referrals up to about 200 in total. These referrals to date relate to 371 suspects. To date only 14 such matters have been referred to the ODPP. We anticipate that approximately 20% of suspects will eventually be charged, which represents a considerable body of work given the defendants involved and the number of victims which may necessitate separate trials.

There is a clear trend developing in the conduct of the defence in these matters. More than is usual in most other types of criminal trials, the trend is to put the prosecution to strict proof at every stage of the process and to engage in comprehensive and continuing disclosure requests and subpoena activity. The result is often a significant increase in the time and effort devoted to one file with a significant impact on our resources.

Further, it is in the nature of these matters that there is often more than one victim. As a result, they inevitably involve complex areas of law (eg. joinder, severance, uncharged acts and similar fact evidence).

We are currently advised by the PTF that the next 15 matters to be referred to this Office are very complex.

Given the complexity of the investigations and the amount of time it will take to handle the matters once they get to court, PTF anticipate that they will continue to refer matters to this Office at a rate of 30 or so per year.

In addition there are currently 40 pre-1982 sex offence investigations being handled by the Local Service Areas. A tentative assessment by SAPOL in relation to these matters is that 14 will be arrested / reported in less than 6 months, 6 will be between 6-12 months and the remainder in 12 months or more.

While both file load and work load have increased significantly since 2000 and are expected to continue to increase, the added complexity and resource implications that accompany these particular types of cases, impact upon the Office in a way that far exceeds the simple number of such cases.

In the introduction above there has been reference to the steps that have been taken to bring the ODPP up to complement as soon as possible. However, should the number of FTE's remain the same, then even at full complement the file load and workload will remain excessive. The impact of legislative changes discussed above bears this out as does the constant increase in file numbers set out in Table 1 below.

Table 1

	June 05	June 07	% Inc
Files	1850	2650	43%
Lawyers	53.52 FTE	67.53 FTE	26.2%
Admin	31.8 FTE	32 FTE	0.8%

Two-year growth indicators - June 2005 to June 2007

Consistent with this the Organisational Review noted in March 2007, that the average file load per solicitor had increased from 52.98 in February 2006, to 64.58 in January 2007. They confirm that even in the short period of time since their report in March 2006, the total number of files in the Office in July 2007 has grown by 30%. While the number of solicitors available to do the work has declined, because of delays in filling vacancies Table 1 nevertheless demonstrates that even at full complement the average file load in June 2007 would have been significantly more than in June 2005.⁶

The consultants determined that on the (then) basis of the Office having 1800 briefs, each member of the recommended practice teams would conduct 4.64 trials per annum whilst simultaneously having the carriage of 26.93 briefs. When the current Office wide file load is substituted, the workloads alter to 4.64 trials whilst carrying 38.9 briefs, an increase in file load bordering on 50%. With the basic assumption of file load numbers changing so radically, the current position necessarily calls into question the viability of the new structure absent an increase in the number of legal staff and associated support staff.

It has often been said that this Government has frequently increased the funding of the ODPP since coming to power. The obvious question then arises as to why such increases in funding are so demonstrably insufficient. We turn to deal with budget increases since 2000.

6. Budget Increases since 2000

Since 2001/02 in simple dollar terms funding for the ODPP has increased every year (except for 2007-2008) compared with the previous year. The Organisational Review reported this increase in the following table.

⁶ Unfortunately it is not merely a matter of dividing the number of files by the number of FTE legal staff to gain an average file load. The number of FTE legal staff must be reduced to take into account those devoted to prosecuting not to mention management. The Organisational Review recommends 30.3 Legal FTE be applied to these roles and 35.5 legal FTE applied to Files.

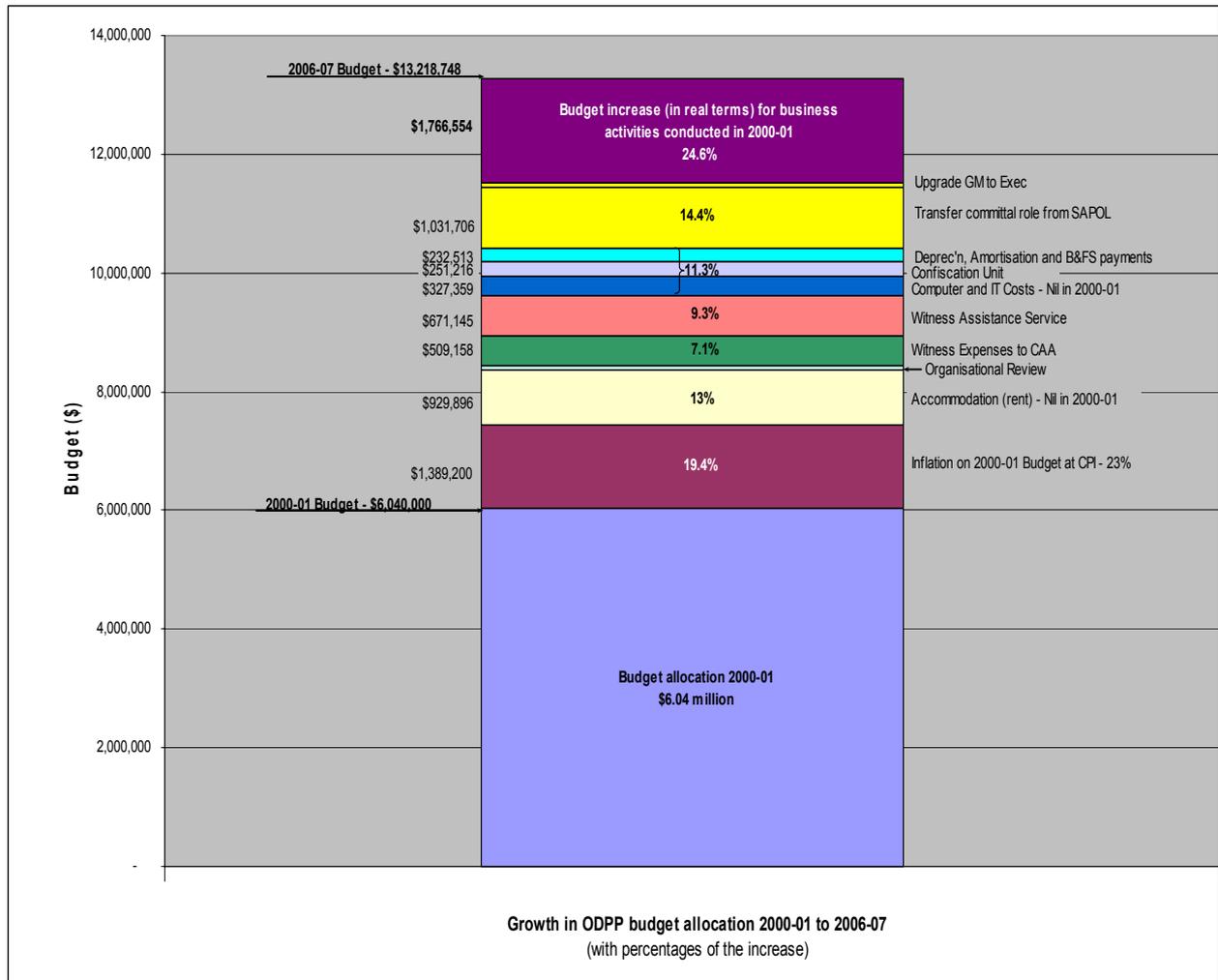
Table 2

	1999-2000	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06
Budget Rev \$m	6,138	6,039	7,036	7,501	9,158	10,591	12,393
Actual	5,855	6,167	7,409	7,859	8,941	10,628	
Matters finalised		4,067	4,361	4,577	4,076	4,223	
Ave. cost per matter finalised		1,485	1,613	1,639	2,247	2,508	
Budget approved staff	69.5	67.3	69.3	69.96	75.97	105.47	113.39
Ave \$ per staff	88,317	89,733	101,530	107,218	120,548	100,417	102,295
Increase		(99)	997	465	1,657	1,433	1,802
% Increase			0.17%	0.07%	0.22%	0.16%	0.17%

Two important observations must be made about these figures.

First, the average cost per matter figure is deceptive. At first sight the increase in cost per finalised matter between 2002-03 (\$1,639) and 2003-04 (\$2,247) is disconcerting. However, it is important to note that a change in accounting methodology within the AGD in ~~2003-04~~ (2000-01) resulted in a 22% increase in costs. That is, the ODPP was now charged for things like rent, witness fees and IT support, whereas previously these items had not featured as a cost in its accounts. A correlative increase in funding was made in that same financial year which was largely absorbed by these extra costs and puts into a proper perspective what appears to be a significant funding increase. The following table sets out the relevant increases and provides an accurate measure of actual increases to the ODPP budget.

Table 3



The second observation is a point made by the Organisational Reviewers -

'The 1996/7 review of the Office resulted in a recommendation of an additional \$1.5m in recurrent funding to address the immediate issues. Since that time a number of funding injections have been made, improving the position of the Office, however, the detailed analysis of resourcing levels mentioned above is still required to ensure the Office is sustainable and future funding bids are accurate and based on a proven methodology. Additional funding has therefore been provided on an as needs basis without any focus on systemic change'. (at 20)

'..It is strongly recommended that a detailed activity based costing process be undertaken in collaboration with the Department of Treasury and Finance. This activity will not only provide a true basis for funding and resourcing the Office, it will also provide a methodology and tool for future predictions of funding when legislative change is considered'. (at 22)

The Reviewers questioned whether the current level of funding for the ODPP was adequate. It should be recalled that this was related to funding devoted to an Office dealing with 1800

briefs at one time. It is then an issue that becomes all the more acute when the Office finds itself dealing with over 2,600 briefs.

Since the establishment of the ODPP, no government has ever devised a model that is capable of accurately determining the resource needs of the Office. Consequently, the appropriate baseline funding for the ODPP has never been determined. Any increase from the baseline funding which has proven to be in itself inadequate, must be viewed in that context and may explain why every Director or Acting Director of the ODPP has made constant requests for resources and additional funding since the inception of the ODPP. The Office is not just significantly under resourced now, it has arguably never been appropriately resourced from its inception.

Lastly, funding to reflect the impact of legislative change or an increase in police numbers has never been the subject of analysis and determination. It has been assumed, incorrectly, that the Office can continue to absorb the additional work that such changes deliver to our Office.

7. *Conclusions and Recommendations*

Returning to the report of the Organisational Review. This Office is in the process of moving to the four practice teams as recommended. It is very much hoped that migration to the new structure will have been completed before the end of this calendar year. However, in our view the ODPP cannot wait until such time as the new structure is in place to address the impact of current work and file loads. Since the reviewers submitted their report there has been a significant change in the environment in which we operate, one not accounted for by the reviewers.

As indicated above, the total file load has increased by 43% and it is anticipated that the current level of work coming into the Office will continue to increase.

Some of the reasons for the increase in workload have been set out. A consequence of this increase is that while work is being finalised at the same rate in Court, the build up sits in this Office. Unless staff have a work load that allows them to proactively attempt to resolve matters they will only be able to crisis manage their practices which clearly leads to inefficiencies.

The example of the backlog team demonstrates that if matters are to be resolved, considerable work has to be put into the process. Four experienced practitioners have spent the past three months working on 140 files. The results are as follows:

(Updated last 21/6/07)

Number of files allocated to the backlog team to date	Files Resolved - Plea (Includes those Returned to Police to finalise plea).	Files Resolved Nolle or TNE	Files where charges amended and returned to Police to deal with	Files not resolved, committed for arraignment	Files not resolved and returned to solicitor	
Person 1	34	11	4	2	7	10
Person 2	52	30	3		8	8
Person 3	26	12	2		1	9
Person 4	3	1	1			1
Person 5	28	17			2	9
Number of files received to date	142	71	10	2	18	37

In assessing the success or otherwise of the backlog team one has to take into account the experience of the team; the fact that the files were targeted by the committal solicitor as a file capable of early resolution and that the team did not have to run a busy committal practice nor prepare matters for trial. The resolution rate for the team was something in the order of 58%. For the past decade the committal unit's rate of resolution has sat around 47%. Unless the DPP continues to apply sufficient resources to resolve matters early then the file build up in the Office will worsen. The results of the backlog team suggest that the Office must continue to attempt to resolve matters as early as possible.

With respect to the backlog team two comments are made.

First, 'backlog' is a mis-description. It is not a matter of files lying about the ODPP that we have not been able to get to. There is no backlog in that sense. Rather, there is an increase in files being held in the Office as the finalisation date stretches out, which leads to resources being wasted. The backlog team has endeavoured to resolve matters prior to trial by an intensive effort where our resources do not otherwise permit such effort to be made.

Secondly, our understanding from speaking to the members of the backlog team is that the files that have been scrutinised are all properly within the ODPP. That is, there is nothing to suggest that our file load is the product of an inadequacy or inefficiency in the exercise of the prosecutorial discretion.

There is one further observation to be made. The experience of the backlog team, as reported to the Ministerial Taskforce, is that speedy resolution of matters must be prosecution driven. This requires significant resources to be devoted to the 'front end' of the process, resources which at present we do not have.

In considering the ramifications of the experience of the backlog team you are reminded that the Committal Unit comprising 10 practitioners in total, handled 1363 new matters in 2004/05, 1,621 new matters in 05/06, and 2088 new matters in 06/07. Clearly with these sorts

of numbers on our books early resolution is desirable not only in the interests of the ODPP but also to contribute to the reduction in the backlog in the District Court.

From our observation and that of ODPP managers, the marked increase in files within the Office requires a significant increase in resources to ensure the health and well-being of our people and to maintain the integrity of the criminal justice system. Further, the utility of the new structure recommended by the Organisational Review must be re-assessed in the light of the increase in file numbers.

It is anticipated that the current level of work in the Office will continue for at least the next two or three years. In that time it may be that many of the investigations and prosecutions arising out of the removal of time limits for historical sex matters will be finalised. Further, much if not all of the work derived from the CISC inquiry will be with the police and or in this Office. Changes in work practices in the ODPP and across the criminal justice system, as a result of the implementation of the anticipated recommendations of the Ministerial Taskforce, may reduce the backlog in courts and in this Office. At that point in time a further review of the resources of this Office will be required. In the meantime, however, support and funding are sought for the following initiatives:

1. The preparation of a submission for Cabinet seeking funding for an intern scheme for at least 22 months.

This will provide graduate / paralegal support for each of the practice teams. As mentioned above, the Western Australian ODPP makes heavy use of paralegals to attend to the more routine tasks on files. If this Office were in a position to hire 4 new graduates / paralegals for a period of 18 months (so as not to invoke the 2 year rule) per practice team (a total of 16), this would immediately free up the solicitorial experience in this Office to proactively attempt resolution on the files held in this Office (i.e. to perform the function currently undertaken by the backlog team) or better prepare matters for trial. It would also enable legal staff to more readily appear as counsel on their own matters or at least act as a junior to the overstretched prosecutorial section of the Office with the result that skills and the prosecutorial service provided are improved.

The cost of a graduate is \$47,988 in the first year and \$52,378 in the second 10 months. A scheme like this has many additional attractions.

- First, the people hired for an internship are very clear that it is for a fixed period. The Department can cut back very easily if it is clear that the support is no longer necessary. This could be much more problematic if the positions were created on an ongoing basis. At the end of the 18 months the scheme could be assessed to determine its effectiveness.
- Secondly, this provides an essential support base for the existing staff in this Office to acquire the skills necessary to support a hybrid practice. If, as the consultants say, working in hybrid practices will bring significant efficiencies to the Office then the sooner staff are able to move to such practices, the sooner the efficiencies will be realised. This obviously has significant implications for the whole of the criminal justice system. A more efficient ODPP will lead to a more efficient criminal justice system.
- If it transpires that the courts are resourced such that they are able to suddenly list more matters for trial in an attempt to reduce trial delays then

the ODPP has to be in a position to provide prosecutors for these trials. Clearly briefing trials out has its limitations given the small number of suitable criminal barristers at the Bar. The quality of justice can only be maintained if suitable counsel are available from the Bar. We are already concerned about some of the people we are currently briefing. The best way of doing this cheaply and quickly is to ensure that there are sufficient in-house resources. If solicitors are all experienced in running trials when necessary then the increased demand for prosecutors will be met. But this will only occur if solicitors have time to improve their trial counsel skills. Current file loads will not permit this to occur without support.

- The benefit of interns is that they can be housed in an open plan area and do not require administrative support.
- The interns will also assist in providing additional administrative support urgently needed in the Office.

2. An ODPP Process Taskforce

As set out previously, if this Office were to meet a file load of 40 briefs per solicitor we would require the ongoing appointment of thirty or more legal staff. This is exclusive of the additional administrative support required. However it is well understood that an immediate injection of funds of such magnitude is not possible.

As an alternative approach, the formation of an ODPP process Taskforce to accurately assess the resource needs of the Office is suggested. That Taskforce could comprise representatives from the CE's Office, Treasury, an external expert, the DPP, an MLS 2, the GM and 3 staff representatives.

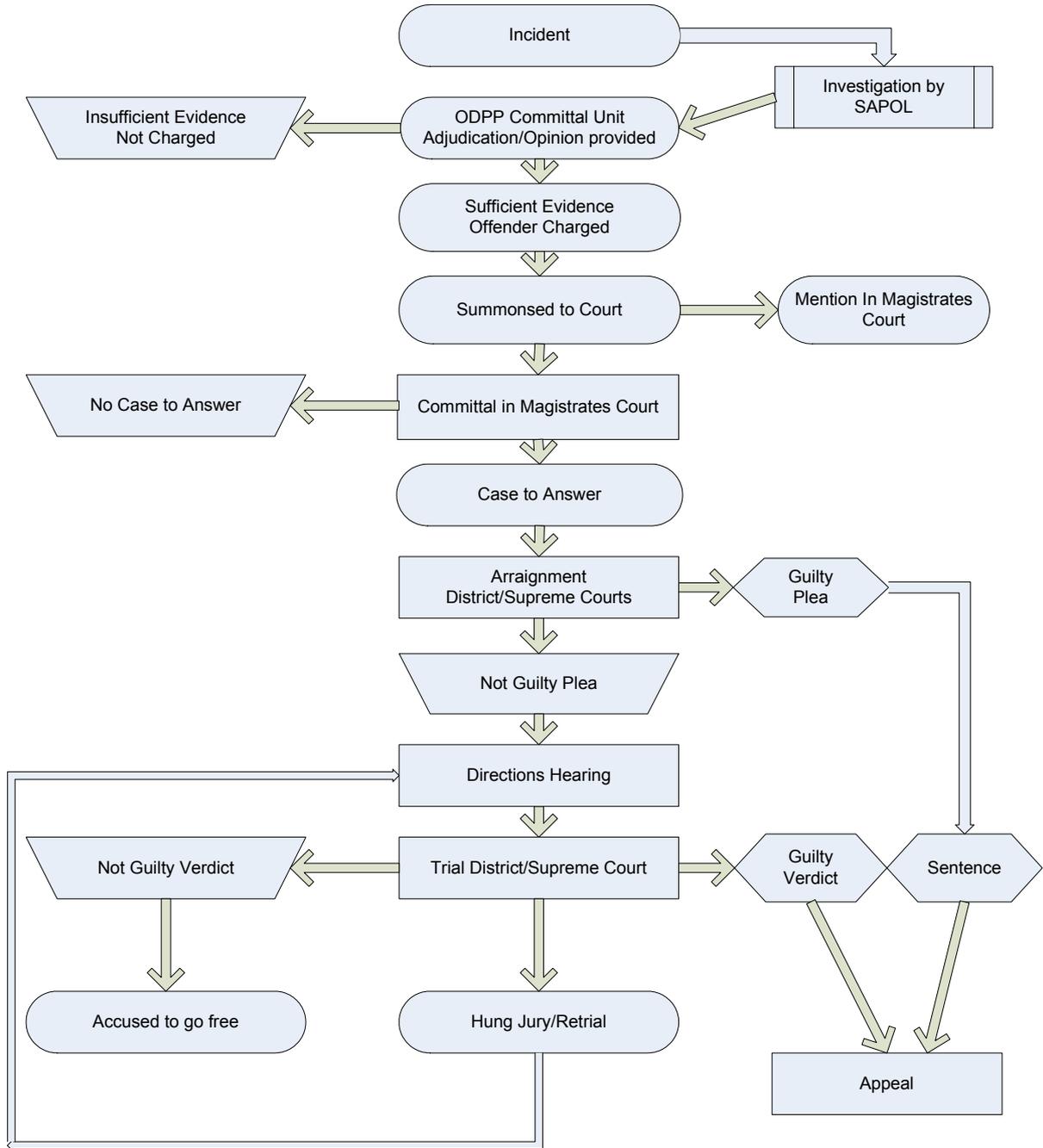
The Taskforce's terms of reference would be to report on the most appropriate method of developing a model permitting the accurate assessment of resource requirements for the ODPP that can be implemented by Government on an ongoing basis. This Taskforce would be in a position to consider properly the impact of any recommendations from the Ministerial Taskforce, the lessons arising from the backlog team, preliminary assessments of the hybrid practice approach, the internship scheme and any changes to the jurisdiction of the Magistrates Court. We would expect an interim report from the taskforce by March 2008, with a final report by 30 June 2008.

You will have noted some of the initiatives that have recently been implemented in doing what we can to help ourselves. We intend to expand upon these once the new management team is in place. However we are unable to make significant inroads into the work currently held by the Office without additional assistance from Government. It is hoped and expected that this report demonstrates that there is a genuine need for assistance in tackling the challenge of too much for too few.

The opportunity to meet with you to discuss the above would be welcomed. We trust that you will give this report your most favourable consideration.

Stephen Pallaras QC
Director of Public Prosecutions

PROGRESS OF A MAJOR INDICTABLE FILE



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