



Government of South Australia

Director of Public Prosecutions

Adam Kimber SC

Our ref: 14/0490

3 October 2017

Hon John Rau, MP
Attorney-General
GPO Box 464
ADELAIDE SA 5001

Level 7
45 Pirie Street
Adelaide SA 5000

GPO Box 464
Adelaide SA 5001
DX 336

Tel 08 8207 1529
Fax 08 8207 1799

dpp@agd.sa.gov.au
www.dpp.sa.gov.au

Dear Attorney

2016-17 ANNUAL REPORT

I present to you the Annual Report of the Office of the Director of Public Prosecutions for the year ending 30 June 2017.

The report has been prepared pursuant to section 12 of the *Director of Public Prosecutions Act 1991* for laying before both Houses of Parliament.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Adam Kimber', with a long horizontal flourish extending to the right.

Adam Kimber SC

Director of Public Prosecutions



Government of South Australia

Director of Public Prosecutions

Office of the Director of Public Prosecutions

2016-17 Annual Report

Office of the Director of Public Prosecutions

45 Pirie Street

www.dpp.sa.gov.au

Contact phone number 08 8207 1529

Contact email dpp2@sa.gov.au

ISSN 1835-1786

Date presented to Minister: 29 September 2017

To:

The Honourable John Rau MP

Deputy Premier

Attorney-General

Minister for Justice Reform

Minister for Planning

Minister for Industrial Relations

Minister for Child Protection Reform

Minister for the Public Sector

Minister for Consumer and Business Services

Minister for the City of Adelaide

This annual report is presented to Parliament to meet the statutory reporting requirements of *Director of Public Prosecutions Act 1991* and meets the requirements of Premier and Cabinet Circular *PC013 Annual Reporting*.

This report is verified to be accurate for the purposes of annual reporting to the Parliament of South Australia.

Submitted on behalf of the Office of the Director of Public Prosecutions by:

Adam Kimber SC

Director of Public Prosecutions



Signature

3.10.17

Date

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Section A: Reporting required under the *Public Sector Act 2009*, the *Public Sector Regulations 2010* and the *Public Finance and Audit Act 1987*

Agency purpose or role

The Director of Public Prosecutions is a statutory officer, independent of the Attorney-General's Department, who initiates and conducts criminal prosecutions in the Magistrates, District and Supreme courts of South Australia. The Director of Public Prosecutions also initiates and conducts appeals in the Full Court of South Australia and the High Court of Australia.

Objectives

- Provide the people of South Australia with an independent and effective criminal prosecution service that is timely, efficient and just.

Key strategies and their relationship to SA Government objectives

Key strategy	SA Government objective
The Office of the Director of Public Prosecutions' processes incorporate the Prosecution Guidelines and applicable legislation. The ODPP applies those processes to ensure that prosecutions for indictable offences are conducted as efficiently, fairly and expeditiously as possible, and are in the public interest.	South Australian Strategic Plan: Target 17 - State-wide crime rates

Agency programs and initiatives and their effectiveness and efficiency

Program name	Indicators of performance/effectiveness/efficiency	Comments
Country and Circuit Committals	The planning for the Circuit and Country Committals project is complete and the Office for the Director of Public Prosecutions took over responsibility from South Australian Police for Country and Circuit committals as of 1 July 2017.	Changes to the circuit and country committals system are expected to deliver significant efficiencies and benefits to the sector including: reducing the number of matters listed in the higher courts; better utilising South Australia Police resources in country locations; engaging with victims and witnesses in the critical early stages of matters; and providing defence the opportunity to participate in meaningful negotiations before matters are committed to the higher courts.
Major Indictable Reform	The Major Indictable Reform project, being led by the Attorney-General's Department, is responsible for the implementation of the <i>Summary Procedure (Indictable Offences) Amendment Act 2017</i> and the <i>Sentencing Bill 2017</i> .	The Reforms fundamentally change the way in which the ODPP will manage the prosecution of major indictable matters. In preparation for the introduction of the legislation in March 2018, the ODPP has established a project team to implement the required changes to its structure and processes.
ODPP Review 2016, conducted by Partners in Performance International	Four recommendations of the Review have been addressed with outcomes including <ul style="list-style-type: none"> • a revised and detailed reclassification policy; • the development of a formal ODPP training framework; • transition of the knowledge management system onto contemporary technology; and • development of a briefing out financial model. 	A review into the operations of the Office for the Director of Public Prosecutions (ODPP), conducted by Partners in Performance International, was commissioned in 2015 and finalised in May 2016. The review was commissioned in order to identify opportunities for process improvements and the more efficient use of resources. As part of the review, the ODPP was compared with similar jurisdictions interstate. The review made 17 recommendations.

Program name	Indicators of performance/effectiveness/efficiency	Comments
<p>Prosecution Case Management System (PCMS)</p>	<p>The PCMS project will result in the implementation of the system in August 2017. The project will be finalised within its allocated budget.</p>	<p>In May 2016, the successful tenderer for the PCMS was announced which was the Resolve Software Group. The PCMS system solution proposed the implementation of two key products:</p> <ul style="list-style-type: none"> • Resolve Enterprise Case Management solution; and • Objective for the management of electronic document records <p>The PCMS will transform existing manual, paper based business processes within the ODPP by improving workflow and communications and reducing duplication and manual handling of information in the management of major indictable matters. The new system will also facilitate electronic interaction and data exchange with other Criminal Justice Sector agencies.</p> <p>The PCMS project commenced in 2015.</p>
<p>eBrief System</p>	<p>Participate in sector initiatives including the cross-justice agency eBrief system to transfer documents electronically between SAPol, the Courts and the ODPP. Phased implementation of eBrief commenced in March 2017.</p>	<p>The eBrief initiative provides a secure, online and collaborative prosecution brief management system for major indictable matters across three justice agencies.</p>
<p>Prosecutions in Remote Indigenous Communities (PIRIC)</p>	<p>This project will identify models to increase engagement of Aboriginal complainants and witnesses with the criminal justice systems and to improve outcomes for Aboriginal complainants and communities through the trial process.</p>	<p>PIRIC has been established with the support of the Criminal Justice Sector Reform Council (CJSRC), and involves representatives from the judiciary, courts, SA Police, Department of State Development - Aboriginal Affairs and Reconciliation, SD-AAR, Attorney-General's Department (AGD) and the ODPP. It is expected that a recommendation for a model aimed at improving engagement with Aboriginal communities prior to and at trial will be presented to the CJSRC in February 2018.</p>

Prosecution Briefs Received and Finalised 2016-17	Briefs received	2742	The 'Briefs Finalised' during the reporting period do not correlate directly with the 'Briefs Received' during the reporting period. The time that lapses between the receipt of a prosecution brief in the office, and the finalisation of that brief in the District or Supreme Court can be as much as 12 months or more. Therefore, a percentage of the 'Briefs Finalised' will have been received in a previous reporting period, and a percentage of the 'Briefs Received' will be finalised in a future reporting period.	
	Briefs finalised	2821		
	Current briefs	2226		
Prosecution Briefs Outcomes - Committal		Number	%	Only Adelaide Committal outcomes are recorded. Circuit committal proceedings are undertaken by South Australia Police, not the ODPP.
	Committed for sentence	505	20.00%	
	Committed for trial	845	33.47%	
	Resolved in Magistrates Court by ODPP	29	1.15%	
	Returned to Police	204	8.08%	
	No Case to Answer	6	0.24%	
	Tender No Evidence	591	23.41%	
	Pleads Guilty All Charges	197	7.80%	
	Pleads Guilty Some/Lesser Charges	141	5.58%	
	Other	7	0.28%	
	Total	2525	100%	

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		Number	%	
Prosecution Brief Outcomes - District and Supreme Courts - Adelaide	Convicted	509	61.33%	
	Not Guilty	77	9.28%	
	Nolle Prosequi	145	17.47%	
	White Paper	84	10.12%	
	Other	15	1.81%	
	Total	830	100%	
		Number	%	
Prosecution Brief Outcomes - District and Supreme Courts - Circuit	Convicted	117	61.90%	
	Not Guilty	13	6.88%	
	Nolle Prosequi	24	12.70%	
	White Paper	34	17.99%	
	Other	1	0.53%	
	Total	189	100%	
		Number	%	
Trial Outcomes - District and Supreme Court - Adelaide	Guilty	168	45.28%	District and Supreme Courts - Adelaide. Outcomes of trials that proceeded.
	Not Guilty	77	20.75%	
	Nolle Prosequi	37	9.97%	
	Not Guilty - Mental Incompetence	11	2.96%	
	Guilty Plea at/during trial	36	9.70%	
	Hung Jury	12	3.23%	
	Mistrial	22	5.93%	
	Other	8	2.16%	
	Total	371	100%	
		Number	%	
Trial Outcomes - District and Supreme Court - Circuit	Guilty	26	50.98%	District and Supreme Courts - Circuit. Outcomes of trials that proceeded.
	Not Guilty	15	29.41%	
	Nolle Prosequi	1	1.96%	
	Not Guilty - Mental Incompetence	1	1.96%	
	Guilty Plea at/during trial	1	1.96%	
	Hung Jury	2	3.92%	
	Mistrial	4	7.84%	
	Other	1	1.96%	
	Total	51	100%	

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		Number	%	
Trial Outcomes - District and Supreme Courts - Adelaide. - Reasons for Vacated Trials	DPP Application	28	5.19%	District and Supreme Courts - Adelaide.
	Defence Application	85	15.77%	
	Joint Application	17	3.15%	
	No Court Available	10	1.86%	
	No Judge Available	65	12.06%	
	Bench Warrant (on day/prior)	11	2.04%	
	Negotiations pending	1	0.19%	
	Nolle prosequi (on day/prior)	96	17.81%	
	Late Guilty Plea	208	38.59%	
	Witness Unavailable	5	0.93%	
	Other	13	2.41%	
	Total	539	100%	

		Number	%	
Trial Outcomes - District and Supreme Courts - Circuit. - Reasons for Vacated Trials	DPP Application	3	3.75%	District and Supreme Courts - Circuit.
	Defence Application	9	11.25%	
	Joint Application	1	1.25%	
	No Court Available	11	13.75%	
	No Judge Available	17	21.25%	
	Bench Warrant (on day/prior)	2	2.50%	
	Negotiations pending	0	0%	
	Nolle prosequi (on day/prior)	8	10.00%	
	Late Guilty Plea	29	36.25%	
	Witness Unavailable	0	0%	
	Other	0	0%	
	Total	80	100%	

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		Against Sentence	Against Conviction	Other Grounds	
Appeals - Crown Appeals	Allowed	7	1	0	
	Dismissed	5	0	0	
	Other Outcome	0	0	0	
	Withdrawn/ Abandoned	2	0	0	
	Total	14	1	0	
		Against Sentence	Against Conviction	Other Grounds	
Appeals - Defence Appeals	Conviction quashed	0	15	0	
	Sentence reduced	24	0	0	
	Appeal Dismissed	30	27	2	
	Other Outcome	7	2	0	
	Total	61	44	2	
		By ODPP Against Sentence	By Defence Against Sentence	By Defence Against Conviction	
Appeals - Leave to appeal applications	Abandoned / Withdrawn	0	12	7	
	Dismissed	0	14	9	
	To CCA	0	56	41	
	Other	0	0	0	
	Total	0	82	57	

		Number	%	
Adjudication Outcomes	Charge Major Indictable	2361	87.09%	
	Charge Minor Indictable	185	6.82%	
	Charge Summary	96	3.54%	
	Do not lay charges	52	1.92%	
	Other	17	0.63%	
	Total	2711	100%	

Legislation administered by the agency

Director of Public Prosecutions Act 1991

Organisation of the agency

- **Executive:** The Executive Committee of the Office comprises the Director, the Deputy Director (Solicitor), the Deputy Director (Counsel), the Managing Prosecutor and the Director, Business Services (5 FTEs). The Executive Committee meets each month and has overall responsibility for the establishment, implementation and evaluation of the strategic direction of the Office. It also has responsibility for policy and determines responses to the important legal issues affecting the ODPP.
- **Solicitors' Section:** The Solicitors' Section is the largest section of the ODPP (60.3 FTE in 2016-17 including the Deputy Director and Managing Prosecutor) and resolves around 80% of the files that commence as major indictable prosecutions in the ODPP. Solicitor work includes committals in the Magistrates Court in the metropolitan area, pre-trial hearings, preparation of files for trial, fraud and Drug Court matters, mental health orders and circuit court work conducted in the superior courts in Mount Gambier and Port Augusta. The prosecutors within the Solicitors' Section appear in all criminal courts when submissions are made on guilty pleas, when disputed facts hearings proceed and in relation to permission to appeal and appeal arguments. Senior members of the Section also undertake appeal work in the Court of Criminal Appeal.

The Confiscations Section is part of the Solicitors' Section. The *Criminal Assets Confiscation Act 2005* gives the Director of Public Prosecutions the power to seek to confiscate proceeds and instruments of crime. The staff of the Confiscations Section undertake the necessary work in order to effect outcomes under the Act such as:

- Making application to the court for restraining orders over property to ensure that it is not disposed of during the course of criminal proceedings;
 - Making application to the court for forfeiture orders in which property which is the proceeds of an offence, or was used in connection with the commission of an offence, can be forfeited; and
 - Making application for pecuniary penalty orders in which a monetary sum is paid to the Victims of Crime Fund based on the value of benefits received from the commission of an offence or the value of property used in connection with the commission of an offence.
- **Trial Counsel Section:** The Counsel Section comprises 27 FTE in 2016-17 (including the Deputy Director and Chief Crown Prosecutor) and undertakes the prosecution of the most serious criminal pleas and trials within the District and Supreme Courts. In addition to the Director, Deputy Director (Solicitor) and Deputy Director (Counsel), senior members of the Counsel Section may also undertake appeal work in the Court of Criminal Appeal and in the High Court of Australia.
 - **Business Services Section** The Business Services Section of the ODPP is managed by the Director, Business Services. The section comprises a number of administrative teams including the Witness Assistance Service (WAS), law clerks,

secretaries, and administrative staff. Overall, the Section is responsible for human resource management, financial services, information management, work health and safety, administrative policy and procedures, procurement, records management, risk management and a range of other specific legal support functions such as data entry, secretarial, reception and rounds delivery.

There are currently 27.6 FTE law clerks within the ODPP, managed by a Law Clerk Manager and two team leaders. General administrative staff within the Business Services Section comprise 11.7 FTE.

Secretarial staff number 3.6 FTE and are supervised by the Law Clerk Manager. The model used by the ODPP is that of a secretarial pool where all typing work is centralised and prioritised. The majority of typing requirements involve complex court documents, general typing, as well as work for the WAS.

The WAS provides a state-wide information, education, support and referral service to victims of crime, witnesses for the prosecution, and their immediate family members in matters dealt with by the ODPP. These people may be especially vulnerable due to the type and nature of the criminal offences involving them and/or as a result of their personal circumstances.

The service continued to assist the Director to:

- meet his obligations to victims of crime under the *Victims of Crime Act 2001*;
- inform victims and witnesses of their roles, rights and responsibilities in dealing with the ODPP and the criminal justice system;
- help manage the requests, needs and expectations of victims and witnesses when dealing with the ODPP and criminal justice system; and
- provide victims and witnesses with information, support and referral resources.

In 2016-17 there were 10.0 FTE in the WAS team comprising the Manager and senior social work professionals (Witness Assistance Officers). That staffing complement included 3.6 FTE designated child officer roles funded from the ODPP of the Commissioner for Victims' Rights.

<https://www.dpp.sa.gov.au/about-us/our-organisation/>

Other agencies related to this agency (within the Minister's area/s of responsibility)

Nil

General Compliance

Reporting on the following aspects of the ODPP is contained within the AGD Annual Report 2016-17:

- Employment opportunity programs
- Agency performance management and development systems
- Occupational health, safety and rehabilitation programs of the agency and their effectiveness
- Fraud detected in the agency
- Strategies implemented to control and prevent fraud
- Whistleblower’s disclosure
- Executive employment in the agency
- Consultants
- Financial performance

Other financial information

In relation to Criminal Assets Confiscations, the following data is provided:

Criminal Asset Confiscations	2016-17	2015-16	2014-15	2013-14
Briefs Received	435	371	271	283
Briefs Finalised	232	246	236	269
Deposited to Victims of Crime Fund	\$1,105,780	\$1,1579,042	\$1,161,617	\$1,697,319

In relation to briefing out of trials to the private bar by the ODPP, the following financial data is provided:

Briefing out of trials to private bar	2016-17	2015-16	2014-15	2013-14	2012-2013
Number of matters	131	140	185	76	118
Total Cost	\$794,772	\$953,890	\$730,850	\$375,731	\$492,876

Other information requested by the Minister(s) or other significant issues affecting the agency or reporting pertaining to independent functions

ANNUAL REPORT 2016-2017 - DIRECTOR'S OVERVIEW

Although the fundamental responsibilities of my Office remain as they have always been, there is a constant obligation to consider the way those responsibilities are discharged. An obligation to look at what might be improved.

Twelve months ago I highlighted a number of drivers of change.

One was major indictable reform. In May 2017 the *Summary Procedure (Indictable Offences) Amendment Bill, 2016* was passed. As a consequence, from 2018 important aspects of the way that new major indictable matters are dealt with will be very different. Before it passed, there was significant debate about the Bill in parliament and elsewhere. Almost all of that debate focussed upon potential changes at the end of the criminal process, the trial. That focus was understandable and some aspects of the Bill were not passed.

The debate overlooked that some of the most significant changes are about what will occur at the beginning of the criminal process. The most significant change is that my Office will no longer take responsibility for a major indictable matter until the police investigation is more advanced than is the case today. This change creates the opportunity for better identification of matters that should be the subject of a major indictable prosecution, and those that should not. To do this, a specialist team will be created. It will be devoted to an assessment of all major indictable matters before the Office commits to taking responsibility. There are two important goals: to reduce the number of matters that necessitate a major indictable prosecution and to improve the briefs in those that do.

The work of this specialist team can benefit more than just my Office. There is the potential to benefit accused, Courts, SAPol and victims through earlier decision making. Importantly, an accused's ability to access the significant discounts that are available for early pleas of guilty will not be impeded. There is the potential for it to be enhanced.

My Office and SAPol are working together to design the new processes needed to ensure this change is manageable for both agencies. This is a substantial task. I am committed to continuing to assist SAPol in the implementation of this reform.

This reform does not only impose a new obligation on my Office towards the beginning of the criminal process. If a matter cannot be resolved and must be committed for trial, the prosecution will be obliged to provide a guide to some aspects of the prosecution brief. I have supported this additional obligation because it provides the framework within which an accused might more often choose to participate in narrowing the issues in a contested matter. It will be available to the trial court should it see it as appropriate to participate in that process. It is in the interests of both sides of the bar table to assist juries with the real issues in dispute and to look at ways to reduce the length of trials.

Another driver of change twelve months ago was the ODPP Review released in May 2016. As a consequence of that Review, changes have been made in all of the five key areas identified: organisational structure; process improvement; capability development; knowledge management and communication. One of the changes is that a further specialist

team is to be created. This team will focus upon vulnerable witnesses, particularly children and the cognitively impaired. This work is some of the most important, but also most demanding and complex the Office undertakes. A specialist team will enable my Office to do this work even better than it does today. A high proportion of the matters withdrawn after matters have been committed for trial involve victims changing their mind about wanting to participate in the criminal process. There are many reasons for this, few of which are within my Office's ability to control. However, if the witness is particularly vulnerable my Office will be supporting them in a different way and I would hope to see more of these matters proceed.

In the next twelve months, there will be more initiatives. As consequence of projects being advanced, I particularly hope to see an increase in the early allocation of trial counsel and the advancement of the next stage of the Office's legal training framework. Resourcing will be needed to achieve the first. In addition, the Office is taking steps to examine new approaches to the way it deals with matters involving indigenous victims in remote areas. This is occurring in two ways. First, through entry into an agreement with SAPol designed to ensure better engagement with SAPol and other relevant agencies at the beginning of such matters. Second, through a project supported by the Criminal Justice Sector Reform Council.

Another matter highlighted twelve months ago was the Commonwealth Royal Commission into Institutional Responses into Child Sexual Abuse. It has now published some recommendations, some of which relate to the policies and practices of prosecution offices. Consistent with South Australia having long been at the forefront of dealing with victims appropriately, much of what is recommended is already in place. For example, in the last twelve months new policies have been published with respect to both a victim's right of review of a decision not to prosecute and to request written reasons.

In all areas of life, technology is enabling things to be done in better ways. My Office is no different. In July 2017 the Office assumed responsibility for committal proceedings in country areas. This has only been possible as a consequence of desk-top technology being used so that staff can make court appearances into the Magistrates Court sitting in Mount Gambier and Port Augusta while sitting at their desks in Adelaide. The Magistrates involved have embraced this change. This initiative sets an example for how this might be done more broadly. There are many court appearances that, while important, do not require lawyers to be physically present in the courtroom. The efficiencies that might flow from my staff needing to attend courtrooms less than they do today are significant. In addition, the Office has commenced receiving its first electronic briefs as a consequence of the sector wide E-brief project and the Office's new practice management system recently came on-line.

Amongst all of this change, the core work has continued. I commend my staff for how much they have achieved in the last twelve months.

Adam Kimber SC

Director of Public Prosecutions

Section B: Reporting required under any other act or regulation

Name and date of act or regulation
<i>Director of Public Prosecutions Act 1991</i>
9 (2) The Attorney-General may, after consultation with the Director, give directions and furnish guidelines to the Director in relation to the carrying out of his or her functions 11 (1) The Director may give directions or furnish guidelines to the Commissioner of Police or other persons investigating, or prosecuting, offences on behalf of the Crown. 11(2) Any such directions or guidelines must be published in the Director's annual report.
There were no directions or guidelines given by the Attorney-General to the Director of Public Prosecutions pursuant to section 9 of the <i>Director of Public Prosecutions Act 1991</i> during the 2016-17 financial year.
There were no directions issued to the Commissioner of Police by the Director of Public Prosecutions pursuant to section 11 of the <i>Director of Public Prosecutions Act 1991</i> during the 2016-17 financial year.

Reporting required under the *Carers' Recognition Act 2005*

The *Carers' Recognition Act* is deemed applicable for the following: Department for Communities and Social Inclusion, Department for Education and Child Development, Department for Health and Ageing, Department of State Development, Department of Planning, Transport and Infrastructure, South Australia Police and TAFE SA.

Section 7: Compliance or non-compliance with section 6 of the Carers Recognition Act 2005 and (b) if a person or body provides relevant services under a contract with the organisation (other than a contract of employment), that person's or body's compliance or non-compliance with section 6.

Reporting required under the *Carers' Recognition Act 2015* is contained within the AGD Annual Report 2016-17.

Section C: Reporting of public complaints as requested by the Ombudsman

Summary of complaints by subject

Refer to the AGD Annual Report 2016-17. The ODPP will provide collation of complaint data from 2017-18 via the Annual Report.