



**Government
of South Australia**

**DIRECTOR OF
PUBLIC PROSECUTIONS**

Annual Report

2005-06

**Office of the Director of Public Prosecutions
Level 7, 45 Pirie Street (GPO Box 464)
ADELAIDE 5000**

**Phone: (08) 8207 1529
Fax: (08) 8207 1799
Email: dpp@agd.sa.gov.au
www.dpp.sa.gov.au**

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DIRECTOR'S OVERVIEW

This is my second report to Parliament. In my overview to last year's annual report I expressed some concerns for the future of the ODPP in light of the difficulties I experienced in my first four months in office. I remain concerned about the Office's ability to properly discharge its responsibilities in the immediate future, but I am cautiously optimistic that we have identified a way forward through the recommendations set out in the organisational review report. The Honourable Premier has continued to provide me with assistance during this difficult period and I thank him for his support.

The Office's workload has continued to grow over the past twelve months and file loads remain at an unacceptably high level, at least double those carried by interstate DPP staff. The consequences of high file loads over a sustained period are being reflected in those statistics measuring our performance. There are more matters going to trial; conviction rates are reducing and we finalized fewer matters than in other years. Given that there was an increase of 300 files handled by the Committal Unit this year, it is apparent that the situation will become worse unless urgent remedial action is taken. As I have said before and repeat here, this workload is unsustainable. If another twelve months goes by without a significant injection of funds, not only will my office be unable to discharge its responsibilities in a timely and efficient manner, but Courts and Corrections will also struggle with increased trial delays and high levels of prisoners on remand.

When I was appointed I was told that the staff in my office were as impressive a group of individuals as worked in any DPP's office in our nation. Having observed them for the past sixteen months, I am delighted to say that notwithstanding the workloads and the long hours, they continue to enthusiastically embrace their work and discharge their responsibilities with distinction.

With the high turnover of staff in the past few years, the office has lost a significant proportion of its experience. We have been fortunate, however, to have attracted a pool of exceptionally talented individuals who, with appropriate support, will provide this State with an excellent prosecution service for many years to come.

The Office has continued to engage with stakeholders and the community to ensure that the prosecution process is demystified and that there is a clear understanding of the decisions made during the course of prosecutions. The Open Day held in February this year was well attended and very successful. A video of the day was recorded and will be used in educational meetings in the future. Similarly, the office actively participated in Law Week with staff being on hand to field inquiries from the public during the Court's Open Day.

The next few months are critical to the future satisfactory performance of the Office. I am awaiting an evaluation of the new Case Tracking system for the Office; the budget for the 2006-07 financial year and an indication from Government of which, if any, of the organisational review's recommendations, will be supported. When those matters have been clarified, I expect to be in a position to provide a supplementary report to Parliament addressing those issues.

My sincerest thanks go to my personal assistant Ms Dianne Flynn, the Executive and Management Groups for their support in my first full year as Director.

ACHIEVEMENTS 2005-06

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.

Pleas

R v Higgs

In July 2006, 66-year-old Donald Peter Higgs pleaded guilty to Inciting Assault Occasioning Actual Bodily Harm and Soliciting Murder.

In late 2002, Higgs was in prison awaiting sentence for indecency offences against a child. Whilst in prison, Higgs met another prisoner, 'K'. After K's release from prison in January 2004 he came to live with Higgs.

Not long after 'K' moved in with Higgs, Higgs spoke to him about doing a job for him. The 'job' involved harming Higgs' son, 'N' who had reported him to police some years earlier for the indecency offences. 'K' told Higgs that he had arranged for the job to be done by a former police officer known as 'Terry'. Some weeks later, 'K' told Higgs that 'Terry' had killed 'N' and that he now owed 'Terry' \$10,000 for the completion of the job. This was false. 'N' had not been harmed and at this stage 'Terry' did not exist.

In February 2004, K told police about his scheme with Higgs. Police then launched an investigation which involved putting in place an undercover operative who would assume the identity of 'Terry'. The undercover officer wore a recording device and recorded all conversations with Higgs. 'Terry' met with Higgs on a number of occasions and eventually arranged for Higgs to pay him \$10,000 for the 'killing' of 'N'.

Before the money was handed over, Higgs spoke to 'Terry' about the risk that 'K' posed to them. 'K' was considered to be a drug addict and unreliable. It was feared by Higgs that 'K' might implicate him for the 'killing' of 'N'. Higgs offered Terry more money to kill 'K'. This became the subject of the second charge against Higgs.

Higgs was arrested in June 2004 after he handed over \$10,000 to the undercover police officer.

The sentencing judge imposed 15 months imprisonment on the charge of inciting assault occasioning actual bodily harm and 7 years and 10 months for the soliciting murder charge. The sentence was ordered to run cumulatively, giving Higgs an overall sentence of 9 years and 1 month imprisonment. Higgs had outstanding parole which was added to this sentence. A non-parole period of 6 years and 6 months was ordered to commence from the date of sentence. The \$10,000 cash paid by Higgs was forfeited to the Crown.

In arriving at this sentence, the judge took into account the pleas of guilty, the 2 years and 2 months that Higgs had already spent in custody, and his age and state of health.

Trials

R v Bosworth, Gibbins, Nance and Richards - Adrian Bosworth, Wayne Gibbins, Ashley Nance and Clinton Richards were charged with the murder of a 15 year old boy and wounding with intent in relation to another victim. The charges arose out of a fight, which occurred on the side of a main road after a car chase where the victims were chasing the accused through the streets of Elizabeth.

Richards was the only defendant to give evidence at the trial. His evidence was that he had stabbed the 15-year-old victim, but that he was acting in self-defence. The charge of wounding with intent arose out of a separate fight involving Nance and Gibbins and the second victim. The charges against each of the accused were on the basis that when their car stopped, there was a joint enterprise to attack the people in the cars following them.

The jury found all four defendants guilty of both counts. The defendants received mandatory life imprisonment, but sentencing submissions are still in progress in relation to their non-parole periods.

R v To and Tran - Duong Thanh To and Mau Tran were charged with murdering Man Bun Hung on 18 February 2005 at Mr Hung's home at Auldana in the Adelaide foothills. Mr Hung had been stabbed twice. Both wounds were very deep and savage. When he was killed he had been alone in the office located in the downstairs part of his home. The death was discovered by Mrs Hung when she returned home from shopping. Police inquiries revealed that Mau Tran, the son-in-law of Mr Hung had been stealing thousands of dollars from the business he managed on behalf of Mr Hung. The thefts had been discovered and Mau Tran had been asked to return all of the business records and to cease acting as manager of the business.

Records of telephone calls made through mobile telephone networks contained evidence crucial to the trial. To's DNA was located in a smear of blood located in the garage adjacent to the office.

At trial To gave evidence that he had been present during the murder committed by Tran, but had not participated. The jury found both men guilty of murder. Both received a mandatory sentence of life imprisonment with a non-parole period of 26 years in each case.

Both defendants appealed to the CCA, Tran against the conviction and To against the sentence, both appeals were dismissed.

R v Finch - Josiah Finch was charged with the murder of Karim Morrison. Mr Morrison was shot once to the head in the carpark of the McDonalds restaurant on Anzac Highway at Morphettville before his body was dumped nearby in one of the entrances to the nearby racecourse. The prosecution case was that Mr Morrison was shot in the course of a drug rip-off gone wrong. Whilst it was not alleged that Mr Finch was the shooter, it was alleged that he was present when Mr Morrison was shot and was instrumental in the arrangements that led to Mr Morrison being in the carpark at the relevant time. The shooter remains unknown to the prosecution.

Mr Finch was found guilty by a jury. He was sentenced to life imprisonment with a non-parole period of 14 years. The basis upon which he was sentenced was felony murder. That is, the learned sentencing judge, who presided at the trial, was satisfied beyond reasonable doubt that the murder was not intended or foreseen by Mr Finch, but that it occurred in the course of the commission of a major indictable offence to which he was party.

R v Parenzee - Andre Parenzee was convicted of three counts of endanger life. In 1998, Mr Parenzee was diagnosed with HIV. After he was diagnosed, he continued his unprotected sexual relationship with his first victim, without disclosing his diagnosis to her. Furthermore, when his relationship with

his first victim broke down, he embarked on another unprotected sexual relationship with another young woman, again failing to disclose his diagnosis to her. Finally, after he had been charged in relation to endangering the lives of those two women (victim 2 had been herself diagnosed with HIV), he embarked on yet another unprotected sexual relationship with a third woman (whilst facing charges in relation to victims 1 and 2).

Mr Parenzee's defence was that he did not know that HIV was sexually transmitted or that he always took precautions.

Mr Parenzee is now appealing those convictions. The basis of his appeal is two-fold. Firstly, that HIV does not cause AIDS. Secondly, that if HIV does cause AIDS, it is not sexually transmittable. This is the first time either proposition has been judicially tested.

The leave to appeal will be heard on 23rd October 2006. Mr Parenzee is awaiting sentence.

Court of Criminal Appeal

R v Mackevits - Crown Appeal against inadequacy of sentence. Mackevits pleaded guilty to one count of wounding with intent to do grievous bodily harm and two counts of threatening life. The offences can be categorised as road rage. Mackevits was a passenger in a car, which was being driven dangerously in a suburban street. A resident remonstrated with the driver. Mackevits alighted from the car carrying a hunting knife. He stabbed the resident in the chest and threatened to kill two members of his family. Despite serious injuries, the victim survived. On appeal the original sentence of four years and three months with a non-parole period of two years was increased to six years and eight months with a non-parole period of three years and four months.

R v Wannan - Wannan was convicted of rape. In proceedings for charges of sexual offences, evidence of the sexual experiences or practices of the complainant are only admissible if, amongst other things, the evidence is of substantial probative value. Wannan's appeal dealt with the circumstances in which and the extent to which the prosecution can properly be permitted to lead such evidence in order to lend credence to the complainant's account of the sexual activity forming the basis of the charge. The appeal was dismissed.

R v Gassy - Gassy had been convicted of the murder of the then Director of Mental Health for South Australia. He appealed against his conviction on a multitude of grounds alleging illegality on the part of the investigating police officers and numerous errors of law on the part of the trial judge. By majority the court dismissed the appeal.

R v Haydon - Mark Ray Haydon was originally charged with a number of counts of murder and a number of counts of assisting offenders arising out of the so-called Snowtown or Bodies in the Barrels murders. As a result of a combination of verdicts and pleas of guilty he stood to be sentenced on seven counts of assisting offenders. He was sentenced to twenty-five years with a non-parole period of eighteen years. His appeal against sentence was dismissed.

R v TWB - Crown Appeal against inadequacy of sentence. B was charged with one count of causing death by dangerous driving and associated offences, criminal trespass and theft. B was a youth. A Youth Court judge committed B to the District Court for trial. B pleaded guilty. The District Court judge declined to treat B as an adult and sentenced him as a youth. The District Court judge imposed a sentence of detention for two years for the offence of causing death by dangerous driving and associated offences, which was suspended, and a bond for the offences of criminal trespass and theft. On appeal the court held that the sentencing discretion had miscarried, the court then sentenced B as an adult and imposed cumulative sentences totaling three years with a non-parole period of eighteen months. The court declined to suspend the sentence.

High Court

MWJ v R - J was convicted of charges of sexual misconduct against a child. He appealed against his conviction on the ground that the trial judge had incorrectly applied an important rule of practice relating to the cross-examination of witnesses. The Court of Criminal Appeal dismissed his conviction. He appealed to the High Court alleging that the Court of Criminal Appeal had erred in principle. The High Court held that the Court of Criminal had correctly interpreted and applied the rule.

R v Telford - Telford pleaded guilty to a number of charges of fraudulent misappropriation and associated offences. He had been an executive of a number of associated corporations based in regional South Australia. He had breached trust to the extent of misappropriating about \$22 million from the corporations in order to finance his gambling and to enrich himself. He was sentenced to sixteen years with a non-parole period of fourteen years. The Court of Criminal Appeal dismissed his appeal against sentence. Telford sought special leave to appeal to the High Court on the basis that as a matter of principle gambling addiction is a matter in mitigation when thefts are committed in order to support the addiction. The application was refused.

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 (pp.43-44).

Strategic Focus

The Key Performance Indicators (KPI) and Goals of the Office are:

1 Ensure an independent and effective criminal prosecution service.

Goals:

- a) Provide structures and systems that ensure a timely and efficient prosecution service.*
- b) Uphold professional and legal ethical standards.*

2 Work co-operatively with Government and other key stakeholders to improve the criminal justice system.

Goals:

- a) Contribute to the improvement and reform of the criminal justice system.*
- b) Contribute to education and the development of community awareness of the Office and the criminal justice system.*

3 Ensure the most efficient use of the resources (human, physical, financial and technological) provided for the prosecution of criminal matters.

Goals

- a) Ensure that appropriate resources are provided to the Office to continue to adequately provide an effective criminal prosecution service.*
- b) Review and implement office systems and structures to ensure the most efficient use of the resources provided.*
- c) To recruit, retain and develop quality staff.*
- d) Ensure that the performance indicators adequately measure the appropriate use of financial resources of the Office.*

Legislative Framework

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

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

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 in this by the Associate Director. During the 2005-06 financial year the position of Associate Director remained vacant pending the outcome of the Organisational Review. The Office structure represents the functional areas of solicitors, prosecutors, witness assistance officers and administrative support staff.

The Solicitor Section provides all solicitor services on the files conducted by the Office. These services include legal advice, committals, arraignments, all matters in the pre-trial stage and after sentencing submissions. 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 provides counsel services to the Office in trials, appeals and complex legal arguments. The prosecutors appear in the Magistrates Court and the District and Supreme Courts for trial and the Full Court of the Supreme Court and High Court for appeals. 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 services to victims and witnesses. The Witness Assistance Officers report through the Manager Witness Assistance to the General Manager.

The Administrative Support Team provides all administrative services to the Office including secretarial, law clerk, reception and rounds, financial administration, human resources and information technology. The administrative staff report through the Administrative Manager to the General Manager.

Management Structure

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

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

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

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

Executive Profiles

The profiles of the Executive staff of the Office are:

Stephen Pallaras QC DIRECTOR OF PUBLIC PROSECUTIONS

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

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

Pauline Barnett LLM MANAGING SOLICITOR

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

Acts as solicitor and counsel in the conduct of prosecutions and appeals on behalf of the Director. Manages the Solicitor Section of the Office, which includes Adjudications, Opinions,

Committals, General Solicitor Section, Fraud Unit, Criminal Assets Confiscations and Drug Court.

Geraldine Davison LLB, GDLP MANAGING PROSECUTOR

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

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

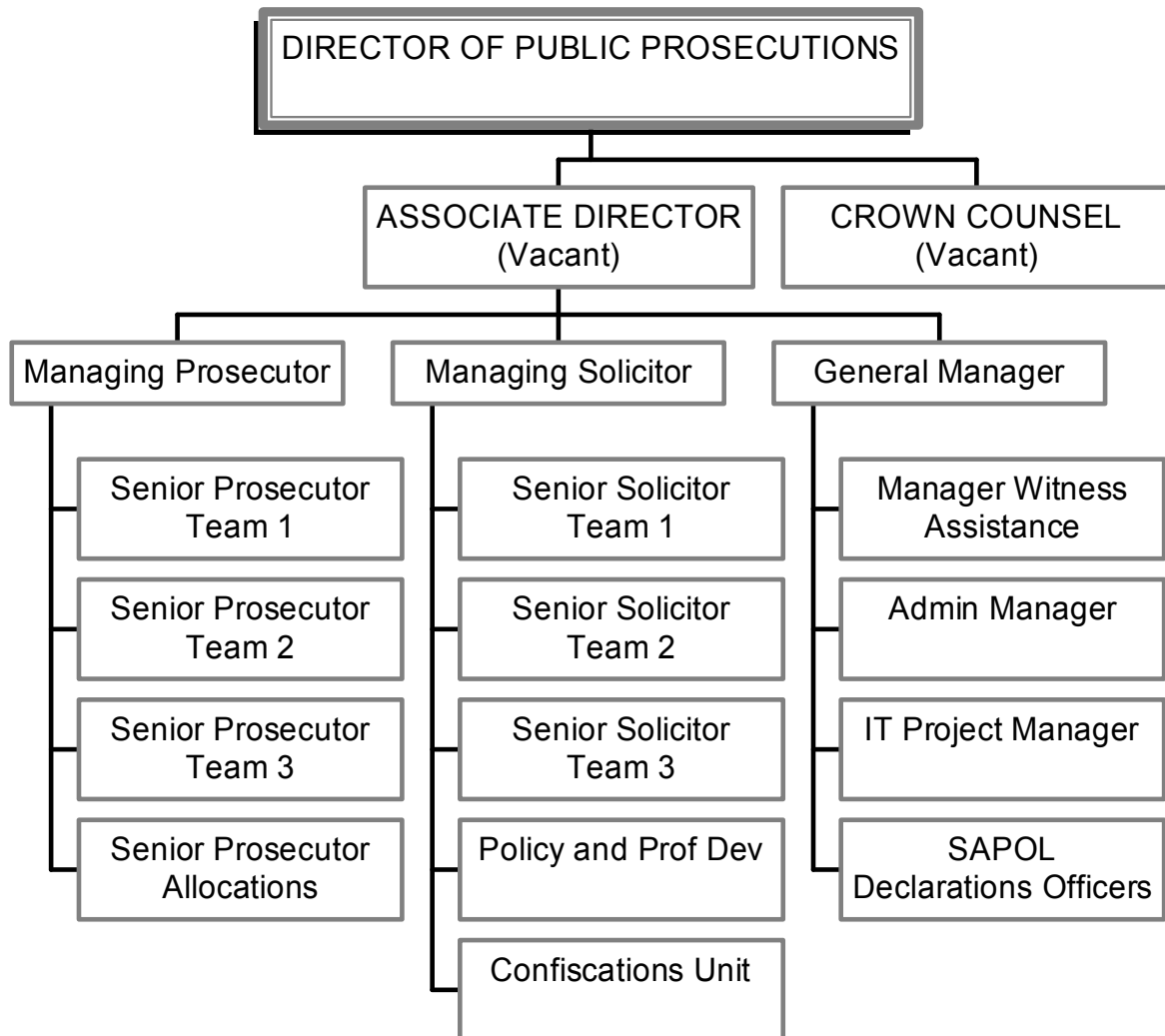
Murray Fopp, AssocDipEng(Electronics), Cert IV in Training and Workplace Assessment, BPublicAdmin, MBA GENERAL MANAGER

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.

Organisational Chart

As at 30 June 2005



Corporate Governance

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

The Office's budget is isolated from that of the Department generally, even though it is still formally included within the Department's expenditure, and the Department remains responsible for preparing accounts for audit purposes.

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

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

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

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 financial 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 financial year.

Performance Indicators

The volumes of work in the Office continued to grow through 2005/06. A brief comparison of work in progress shows:

	2005	2006	Growth
Defendant files (on hand at 30 June)	1850	2375	28%
Witness/Victim Assistance Referrals (received)	902	1049	16%

Growth in Child referrals to the Witness Assistance Service was particularly strong, increasing by 37.5% over 2005 levels. These numerical increases do not fully reflect the expanding workload of the Office, which is the result of increases in both the number and complexity of matters handled by the Office.

In addition to recurrent funding through appropriation, the Office was partially successful in obtaining additional funds for specific activities where it was demonstrated that changes in Government policy resulted in increase workload for the Office. The funds sought and received were:

Purpose	Sought	Received
Pre-1982 Sex Offences	\$922,000	\$700,000
Confiscation of the Assets of Crime	\$414,000	\$207,000
Criminal Assets Confiscation Proceedings	\$182,000	Nil
IJP Case Tracking Phase II Development (carryover)	\$717,000	\$400,000
IJP Case Tracking - IT System Support	\$101,000	Nil *
Untied general funding		\$300,000

* Although no funds were made available to the ODPP specifically for IJP Case Tracking System Support, general ODPP funds were utilised for essential support. The Office is grateful for the assistance provided by the Attorney-General's Department through its Justice Business Services group for the IJP Case Tracking Project

Activity Levels

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

The Office's current key performance indicators reflect only the quantity of defendant files finalised by this Office at the committal stage and in the District and Supreme Courts. These indicators do not fully reflect the actual level of activity within the Office as they do not reflect the entirety of the work conducted by the Office (eg opinions, adjudications). Nor do these quantitative measures adequately demonstrate the diversity and complexity of individual files. The detail and nature of the diversity of the work undertaken by this Office is outlined in the reports from the Managing Solicitor and the Managing Prosecutor.

Year in Review

OUTPUT:	5.3 PROSECUTION SERVICES 5.5 PENALTY AND CONFISCATION MANAGEMENT			
Description:	ODPP contributes to these outputs through providing advice to Police, assistance for victims and witnesses, solicitor and counsel services on all matters ultimately heard in the District and Supreme Courts and all matters finalised in the Magistrates Court, as well as administration of confiscation orders issued by the Courts.			
Performance Indicators:	Descriptions	Expected activity level for 2005-06	Actual for 2005-06	Expected activity for 2006-07
Quantity	Number of matters finalised by the Committal Unit (a)	1400	1621(b)	1600
	Number of defendant files finalised by the ODPP	950	839	950
	Number of clients seen by the Witness Assistance Service(c)	900	1049	1050
Quality	Percentage of matters committed through the Committal Unit in which the DPP enters a nolle prosequi after committal	<10%	9.18%	<10%
	Percentage of committed matters which are finalised by a guilty verdict or guilty plea	>75%	72.58%	>75%
	Percentage of referring agencies who rate the standard of service by the Witness Assistance Service as high	85%	85%	85%
Timeliness	Percentage of trials where the ODPP meets the court timetable requirements for the trial list	95%	93.01%	95%
Cost	Total Cost	\$12.9m	\$12.5m	\$13.43m(d)
Footnotes	<p>(a) 'Finalised by the Committal Unit' means the Committal Unit has finished with the file, but the matter may still be within the ODPP with the General or Prosecution Sections.</p> <p>(b) During the year the ODPP introduced a new prosecutions Case Tracking IT system. The reporting rules in the new system differ from those in the obsolete CRIMES system. For six months of 2005-06 both systems were in use. The figures quoted combines results from both systems and is an estimate reflecting the counting rules used previously in 2004-05.</p> <p>(c) There has been a further increase in the number of new clients seen by the Witness Assistance Service during the year. The significant increase in the number of new clients over the last four years reflects the increased level of demand. The resources provided by the Victims of Crime Coordinator to provide additional support to child witnesses, and the ongoing focus of the Office on victims and witnesses of crime are reflected in this increase. It is expected that this high level of activity will continue.</p> <p>(d) Estimated total cost based on 2005-06 plus additional ongoing funding recommended by Organisational Review.</p>			

Most measures for the 2005-06 year remain relatively static compared to the previous year, except for victims and witnesses supported by the Witness Assistance Service, which has increased by 16% and the number of defendant files finalised by the Office which has decreased by 15% compared to 2004-05. The reasons for this latter decline include the increased complexity of prosecutions, longer trials

and limited numbers of Courts and Prosecutors. The number of files coming into the office each year is relatively stable. However, the rate at which matters are being finalised is declining. This has led to a backlog of active files in the office.

The Organisational Review of the ODPP recommends a specially funded effort to reduce the build-up of files, concentrating on finalising matters in the committal stage. The increased target for matters finalised by the committal unit in 2006-07 is subject to funding for this initiative.

The 16% increase in the number of victims and witnesses assisted by the Witness Assistance Service reflects the continuing growth in demand for this service and the ability of the ODPP in 2005-06 to fund additional resources in this area. The ODPP has been advised that the approved (and funded) FTE for this service is one less than was available in 2005-06. Accordingly, the target number of victims and witnesses assisted is not increased for the 2006-07 year.

BUSINESS OPERATIONS

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

Statistical Information

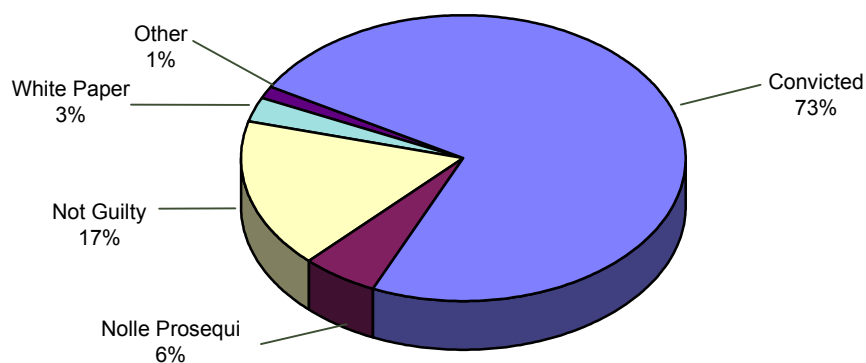
The following tables should be read in conjunction with the Glossary (Appendix F pp.55-58))

District and Supreme Court Prosecutions (Adelaide & Circuit)

	2005-06		2004-05	2003-04	2002-03
Convicted	589	70.20%	725	701	791
Nolle Prosequi*	127	15.14%	132	99	188
Not Guilty	83	9.89%	55	62	56
White Paper	18	2.15%	30	46	65
Other	22	2.62%	43	33	16
TOTAL FINALISED MATTERS	839	100.00%	985	941	1046

*Of Total Nolle Prosequi**

<i>Committal Unit Involved</i>	83	65.35%	9.89%	94	72	94
<i>No Committal Unit Involvement*</i>	44	34.65%	5.24%	38	27	24



General Counting Rules

Matter

An accused charged with an offence or series of offences upon the same Information.

Notes:

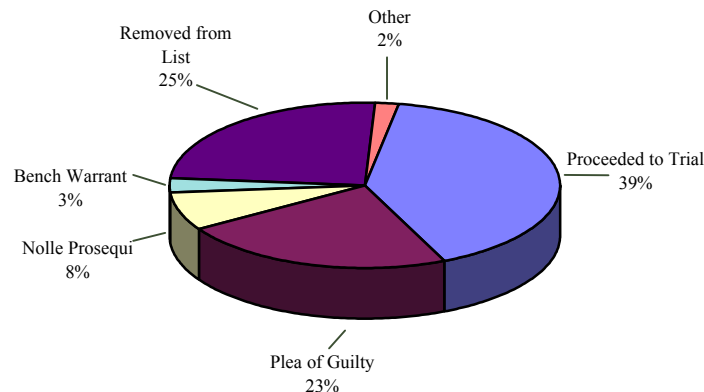
1. *Where a single Information contains charges against several accused, each accused is counted.*
2. *Where an accused is charged upon separate unrelated Informations, each Information counted (subject to note 3).*
3. *An accused charged or committed on separate Informations, that are subsequently joined upon a single Information, is counted as one only (subject to note 4).*
4. *Where an accused charged or committed on one Information and subsequently charged on separate Informations, or separate trials are ordered, each trial is counted separately.*
5. *Where trial proceeds to conviction, but retrial is ordered on appeal:*
 - a) *from the time that the Director elects to proceed with retrial is counted as a new matter*
 - b) *if a Nolle Prosequi is entered immediately it is not counted as a new matter*

[NB: where appeal is instituted data on the original prosecution is not altered, irrespective of appeal outcome.
6. *A single matter will sometimes include multiple trials/proceedings. For example, where a trial results in a mistrial, hung jury or is otherwise inconclusive and relisted. These are counted as one matter in accordance with the eventual outcome. But, each trial is included in trial outcomes. Hence total trial and other outcomes may exceed total matters finalised.*

Trend Data for Matters Listed for Trial in Adelaide

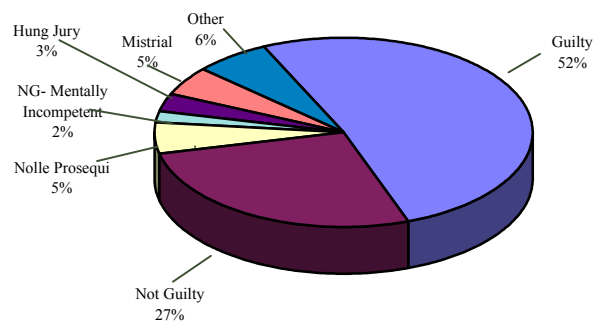
Outcomes of matters that were listed for trial

	2005-06		2004-05	2003-04	2002-03
<i>Proceeded to Trial</i>	263	40.46%	240	238	230
<i>Plea of Guilty</i>	149	22.92%	118	112	155
<i>Nolle Prosequi</i>	49	7.54%	54	49	51
<i>Bench Warrant</i>	17	2.62%	12	10	9
<i>Removed from List</i>	160	24.62%	181	249	184
<i>Other</i>	12	1.84%	16	27	27
Total Finalised	650	100.00%	621	685	656



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

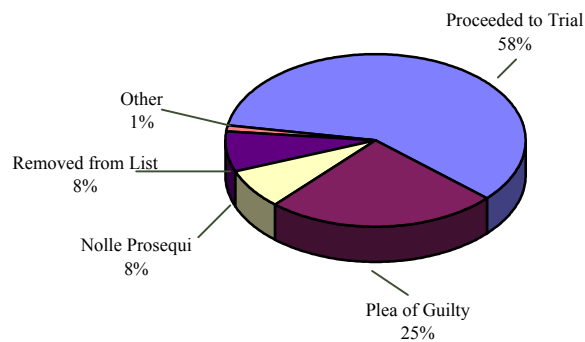
	2005-06		2004-05	2003-04	2002-03
<i>Guilty</i>	135	51.34%	134	154	119
<i>Not Guilty</i>	71	27.00%	38	43	43
<i>Nolle Prosequi</i>	14	5.32%	6	6	7
<i>Not Guilty (mentally incompetent)</i>	5	1.90%	4	3	3
<i>Hung Jury</i>	8	3.04%	12	6	7
<i>Mistrial</i>	13	4.94%	12	11	15
<i>Other</i>	17	6.46%	34	15	36
Total	263	100.00%	240	238	230



Trend Data for Circuit Matters Listed for Trial

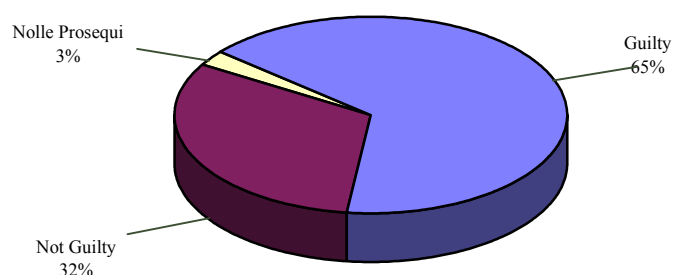
Outcomes of Circuit matters that were listed for trial

	2005-06		2004-05	2003-04	2002-03
<i>Proceeded to Trial</i>	47	58.75%	38	38	29
<i>Plea of Guilty</i>	20	25.00%	38	43	43
<i>Nolle Prosequi</i>	6	7.50%	16	5	8
<i>Bench Warrant</i>	0	0.00%	2	2	0
<i>Removed from List</i>	6	7.50%	11	6	8
<i>Other</i>	1	1.25%	15	5	3
Total Finalised	80	100.00%	100	79	71



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

	2005-06		2004-05	2003-04	2002-03
<i>Guilty</i>	25	53.19%	18	16	17
<i>Not Guilty</i>	12	25.53%	13	19	11
<i>Nolle Prosequi</i>	1	2.13%	1	1	1
<i>Not Guilty - Mentally Incompetent</i>	1	2.13%	1	0	0
<i>Hung Jury</i>	2	4.26%	2	0	0
<i>Mistrial</i>	5	10.64%	3	2	0
<i>Other</i>	1	1.25%	0	0	0
Total Finalised	47	100.00%	38	38	29

**Trend Data for Outcomes of the Committal Unit**

	2005-06		2004-05	2003-04	2002-03
Adjudications Finalised	1694		1431	1364	1521
Charge Major	1556	92.00%	1288	1165	1174
Charge Minor	80	5.00%	102	151	255
Charge summary	21	1.00%	23	30	62
Do not lay charges	16	1.00%	4	8	27
Other	21	1.00%	14	10	3
Total	1694	100.00%	1431	1364	1521

	2005-06		2004-05	2003-04	2002-03
Opinions Finalised	349		322	329	334
Charge Major	137	39.00%	141	108	104
Charge Minor	32	9.00%	31	35	37
Charge Summary	28	8.00%	23	23	39
Do not lay charges	90	26.00%	73	73	84
Other	62	18.00%	54	90	70
Total	349	100.00%	322	329	334

Summary of Committal Unit Outcomes

	2005-06		2004-05	2003-04	2002-03
Committed for Sentence	116	7.00%	96	115	113
Committed for trial as charged	786	48.50%	631	617	663
Resolved Summarily	337	21.00%	349	331	380
Tender No Evidence (TNE)	317	19.60%	237	215	207
TNE - to Drug Assessment Aid Panel	7	0.40%	6	13	16
Other	58	3.50%	44	56	132
TOTAL	1621	100.00%	1363	1347	1511

Summary of Drug Court Outcomes

	2005-06	2004-05	2003-04	2002-03
Number of matters received	154	135	125	193
Number of matters finalised	108	116	154	107

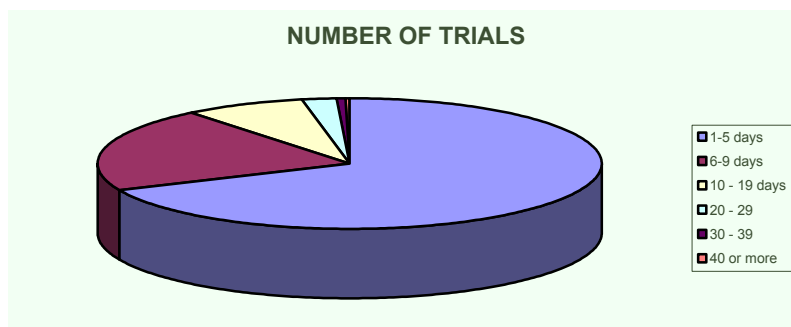
Summary of All District and Supreme Court Trial Days

YEAR	Number of Trials	Number of Defendants	Number of Trial Days	Average Days
2005-06	256	310	1420	5.54**
2004-05	171	208	1045	6.11
2003-04	231	275	1258	5.45
2002-03	212	258	1160	5.47

** Of the 256 trials conducted 32 matters were finalised in the early stages of the trial for the following reasons:

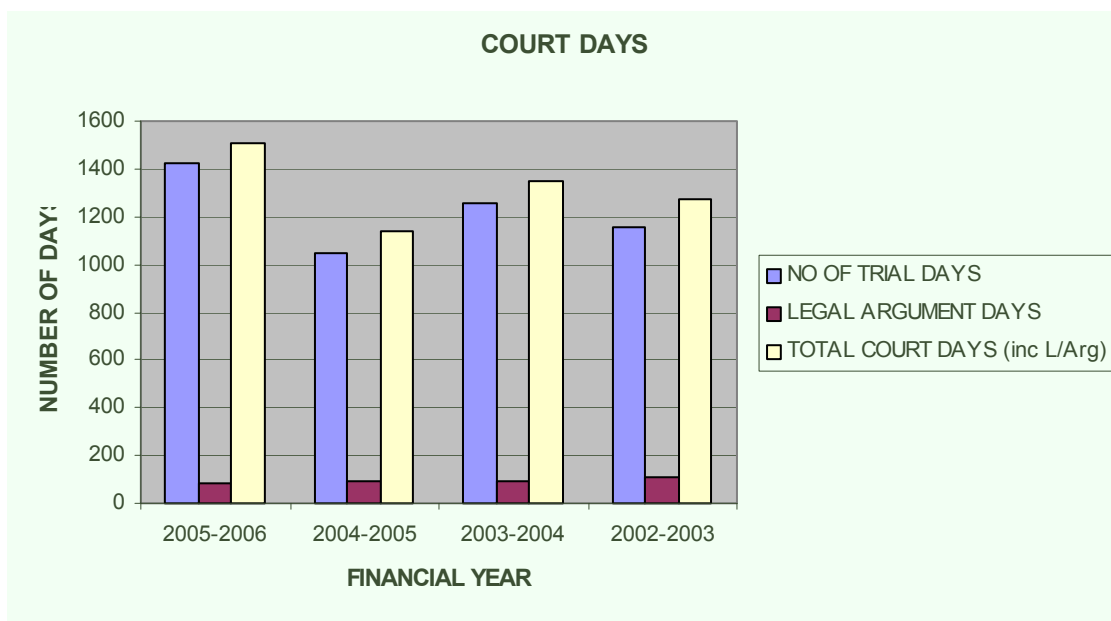
Reason for early finalisation of trial	2005-06
Nolle - After Voir Dire	8
Plea change during trial	13
Plea during/after voir dire	8
Bench Warrant during trial	3
	2031

Duration - in Days	Number of Trials
1-5 days	175
6-9 days	53
10 - 19 days	20
20 - 29	6
30 - 39	1
40 or more	1
	256



Summary of All District and Supreme Court Trial Days by Type

YEAR	Number of Trial Days	Legal Argument Days	Total Court Days (including Legal Argument)
2005-06	1420	85	1505
2004-05	1045	95	1140
2003-04	1258	92	1350
2002-03	1160	113	1273

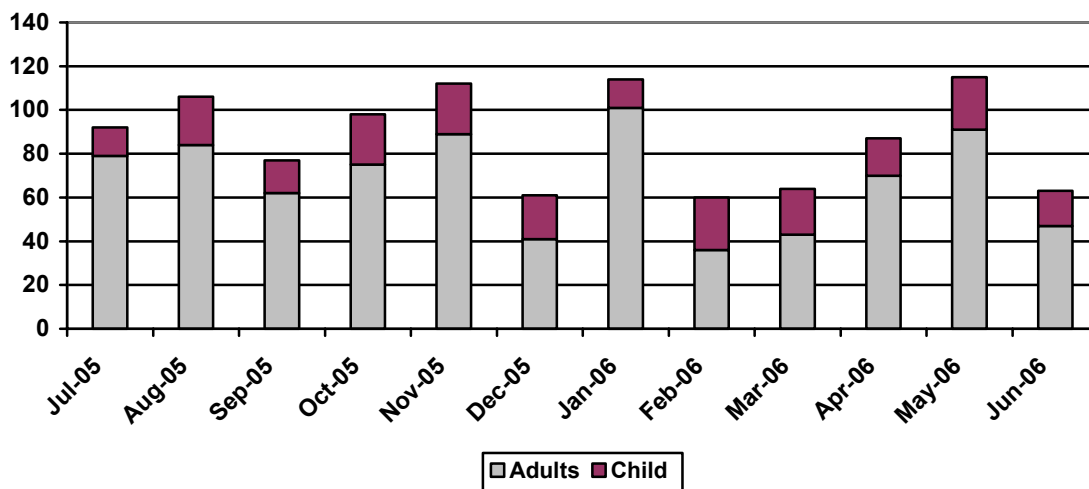
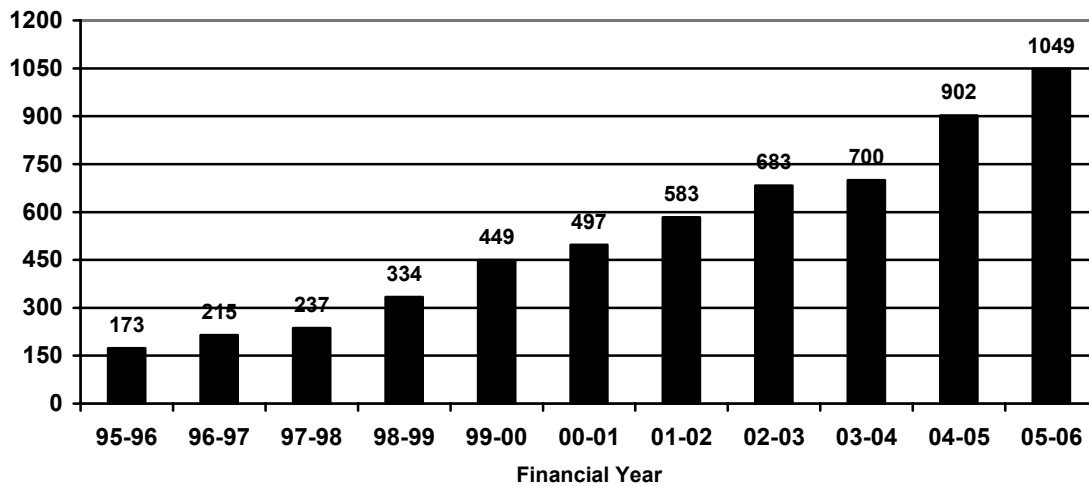


WITNESS ASSISTANCE SERVICE STATISTICAL SUMMARY

Trend Data For New Referrals to the Witness Assistance Service

Offence Type	2005-06		2004-05	2003-04	2002-03	2001-02
Attempted Murder	31	3.00%	35	20	21	11
Criminal Trespass (Burglary)	160	15.20%	168	111	104	76
Major Crash	78	7.50%	47	48	50	51
Murder/Manslaughter	63	6.10%	39	33	42	43
Robbery	108	12.10%	110	97	50	45
Sex	168	14.54%	132	99	134	89
Sex (Child)	238	22.70%	157	133	197	169
Sex (pre 1982 offences)	38	9.99%	90	32	0	0
Threaten Life/Threaten Harm	43	4.10%	51	34	32	28
Other	122	4.77%	73	93	53	71
Total	1049	100.00%	902	700	683	583

NUMBER OF REFERRALS



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).

The past twelve months has seen a period of significant change in the solicitor section. Two of the three team leaders in the section were needed to prosecute on a full-time basis as a consequence, the two vacant positions were filled on a rotational basis by three acting MLS1 solicitors. The role of a team leader in the solicitors' section is critical to the successful delivering of our work. He or she assesses a file when it first comes into the Office and provides instructions to the committal solicitor on the committal process. The team leader then assists the general solicitor in providing instructions on any pleas or overseeing the preparation of the matter to trial. Given the high workload, these team leaders have also been required recently to carry a file load consisting of some of the most complex matters in the office. Tim Heffernan, Caroline Mealor and Dominic Petraccaro have shared the responsibility for two team leader roles over the past nine months. They have done so extremely well; my thanks and that of the section goes to them. Ian Press, as ever, continues to be the backbone of the section in the third team leader's position. My thanks to Ian also.

The file loads in the office continue to be unacceptably high, particularly in light of the experience levels of the section. While numbers of solicitors have increased, approximately 50% of the current legal staff in the section have less than four years experience. Given the seriousness and the complexity of much of the work in the office there is a heavy demand on team leaders for advice and instruction. To ensure that solicitors receive timely assistance with their files, we have obtained approval from the Chief Executive to create four teams with four team leaders. This structure will stay in place until the end of the year or until the implementation of the organisational review, whichever is the sooner.

The organisational review has examined the work of the section and made some recommendations, which it hopes will create efficiencies and reduce file numbers. It is essential that efforts be made to reduce the numbers of matters held in the office. Unless this occurs, the system will struggle to cope and trial delays will continue to increase. Matters are staying in the office for a longer period and pleas are being identified later in the process. The Office needs to be proactive in identifying those matters, which will be resolved by pleas at a much earlier stage. This has the benefit of ensuring that work, which would be necessary for a trial by jury, but is not necessary for a plea, is not wasted. All parts of the system are under pressure to deliver their services as efficiently as possible. Preparing all briefs as if for trial at an early stage is not the most efficient use of those scarce resources.

To obtain the efficiencies mentioned above, all of the stakeholders must contribute equally. SAPOL must provide as much of their prosecution brief as they can in the first month or two after arrest or report. The provision of sufficient of the brief so as to establish the charges is a critical first step in achieving early resolution of the matter. Unless defence counsel have sufficient material on which to take informed instructions from their clients, the matter has no chance of early resolution. The ODPP must continually review its charging practices to ensure that its Informations contain only those

charges necessary to ensure that there is an appropriate basis for sentence before the courts. Defence counsel must read the brief in a timely manner and be in a position to advise their clients before the matter is set for trial. We would suggest Courts give further consideration to current listing practices to ensure that matters are not listed for trial when parties have indicated difficulties for that time and that matters are not taken out of the list because there is no judge or courtroom available. The Office also supports the creation of a criminal master for the District Court to oversee the negotiation and preparation stages of a matter. If these processes are operating efficiently, then only those matters which are actually going to trial will be listed, thus shortening the period from arraignment to trial and providing more certainty to the system. Obviously, there will always be some late pleas, but these matters should be the exception if systems are efficient.

The next twelve months will be critical to the delivery of an efficient and effective prosecution service on the part of the office. We look forward to the challenges to be faced in those months.

A summary of the individual areas with the solicitor section follows:

Adjudication Services

The Committal Unit of the Office provides adjudication services. The Committal Unit has continued the formal arrangement with SAPOL Criminal Justice Sections in the metropolitan area, 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 1,694 adjudications finalised. At this formative stage of the prosecution process 101 of these matters were diverted from the superior courts by the laying of minor indictable or summary charges, which were then finalised in the Magistrates Court.

Legal Advice/Opinions

During the year the Office provided advice as to the appropriate charges, if any, to be laid in 349 cases. This represents a marginal increase in the number from last year. Of the 349 cases, 137 were determined to be major indictable offences. It was determined that in the balance of cases (212) that the appropriate charges could be laid in the Magistrates Court or that no charges at all should be laid.

The Office receives a large number of requests from SAPOL for legal advice, predominantly as to the appropriate charges, if any, to be laid in cases investigated by police. Advice is provided after an examination of the complete police brief, containing all statements and an account of any interview with the alleged offender. If an examination of the brief reveals that further investigation is required, the brief will ordinarily be returned to police. A solicitor then evaluates the available evidence to determine, in accordance with the ODPP Prosecution Policy and Guidelines, whether and which charges should be laid. Advice is then provided to SAPOL in writing.

SAPOL's Prosecution Policy Number 7 prescribes the nature of matters, which should be referred to the Office for advice:

Proceedings which are of unusual importance, significance or sensitivity or involve a witness the subject of the Witness Protection Act or involve serious crime or complex issues of law or fact are to be referred to the DPP, through the Officer in Charge, Prosecution Services Branch, for information, assistance and/or advice. All such matters are to be accompanied by a covering report outlining the reasons for referral to the DPP.

This Policy further provides a general discretion about such referrals but requires certain categories of cases to be referred. These include in particular:

- 1 *Cases involving a potential conflict of interest for SAPOL to prosecute, such as offences allegedly committed by close friends or relatives of a SAPOL employee and also where offences have allegedly been committed by persons with a high public profile, such as Members of Parliament;*
- 2 *Major and/or complex drug offences;*
- 3 *Any case where a Court has invited/suggested such a referral;*
- 4 *Sexual offences where a Court conducting a committal has ordered that a complainant be called to give evidence during a committal. (Referrals of this nature will only come from SAPOL Prosecution Units in the country, as the DPP conducts such proceedings in the suburban courts in any event);*
- 5 *Sexual offences involving child victims where:*
 - a) *it is uncertain whether criminal charges should be laid;*
 - b) *admissibility of evidence is in question;*
 - c) *pressure to prosecute is being applied by parents, guardians, other interested parties, or government departments, and it is believed by SAPOL prosecutors that there is insufficient evidence to proceed;*
 - d) *SAPOL prosecutors believe that there is little or no reasonable prospect of securing a conviction despite the statements showing a prima facie case;*
 - e) *leave has been granted during a committal hearing to call the child to give evidence. (Again, this will only be required in country areas as in the suburban courts the DPP Committal Unit would be conducting the committal in any event.)*
- 6 *Any case in which significant difficulties are experienced during committal hearing, including abuse of process allegations. (Again, this is relevant only to committals in country courts.)*
- 7 *Any case involving a witness for the prosecution who is subject to the Witness Protection Act 1996.*
- 8 *Any other matter deemed proper for referral by the Officer in Charge of the SAPOL Prosecution Services Branch including, in particular where there is an actual or possible conflict of interest, or where an inappropriate approach has been made, or unwelcome pressure applied, to compromise a SAPOL adjudicator, prosecutor, other police officer, or a lawful process.*

In practice many other cases are also referred by SAPOL for advice including where an alleged offender has not been arrested but instead has been reported on a charge of a major indictable offence. In the case of persons arrested and charged with major indictable offences, the file goes through the adjudication process outlined above in this Report under "Adjudication Services". This ensures at the outset that appropriate charges are laid and that cases are identified which can be appropriately dealt with by less serious charges in the Magistrates Court or which ought not to proceed at all.

In cases where it is likely to depend on the assessment by a jury of the credibility of a witness, the ODPP solicitor preparing the advice will meet with the witness to assess his or her ability to give

evidence. This is particularly important in sex cases where it is usually critical to the outcome that the jury unreservedly accepts the truthfulness and accuracy of the victim's account. An early meeting with the complainant allows the prospects of conviction of a case to be properly assessed by an experienced prosecutor. This is also an opportunity for victims in sex cases to be introduced to the prosecuting authority, to be informed about the legal process and to meet with an ODPP Witness Assistance Officer, who can help the witness deal with the 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.

The Office also provides legal advice in relation to major fraud cases through the Fraud Unit of the Solicitor Section. Advice is given at an early stage in some matters to assist SAPOL in determining how the matter should proceed, what further investigations are necessary to ensure that the matter is adequately prepared and the appropriate charges are laid. A close liaison is then maintained throughout the conduct of the matter and reviewed as necessary.

Impact of Legislative Changes

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

Many of those matters, which were referred for advice, are now going through the court system. There have been a significant number of guilty pleas entered. Those matters going to trial are proving challenging to all concerned. It is too early to state with any certainty whether the system has coped adequately with these difficult prosecutions.

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

During the year the Committal Unit dealt with the committals of 1621 defendants, an increase on the previous year. Of these matters, 786 were committed for trial as charged and 116 were committed for sentence to the superior courts. The balance of 719 did not proceed to the superior courts due to the intervention of the Committal Unit (resolved summarily, Tender No Evidence, or referred to Drug Assessment Aid Panel). In addition to the committals handled directly by the Committal Unit, the Fraud Unit and General Solicitor Section of the Office also conducted committals (major fraud, murders and complicated matters).

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 pp.55-58. and also Appendix G - pp.59-96).

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 taken the opportunity to junior prosecutors in trials and act as counsel in trials increasingly over the past twelve months. It is anticipated that this experience will assist in the development of solicitors and will provide an increased pool of persons able to conduct trials.

Criminal Assets Confiscation Section

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 whether forfeiture is appropriate. Forfeiture occurs upon written application by the ODPP to the relevant Court in relation to proceeds or an instrument of a serious offence. The Act also provides for oral forfeiture before the Court in which the person is convicted of the relevant serious offence.

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 will be able to provide assistance to corresponding interstate agencies in instances where it could not in the past.

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

- the court no longer has discretion with granting a Restraining Order and must grant the order in certain circumstances;
- 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 (ie: 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 forfeiture of a sum of money that represents, or is equivalent to, the value of the property that was used as an instrument or was the proceeds of crime;
- more extensive investigative powers.

During this financial year, the revenue deposited into the Victims of Crime fund amounted to \$807,299.00. Although this represents a decrease in collected revenue of 20% compared to the

previous financial year, it is nevertheless considered a significant result given the limitations imposed under the old Act and the decision of *DPP v Alexander* handed down in 2003.

Due to the roll out of a new data base system, statistical data is not available at the time of publication. It is anticipated that the full reporting of statistical data will be available in the near future.

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.

Staff Development and Policy

The dedicated policy/training position was first created in the last financial year. This position has continued to provide responses to Government on legislative proposals and discussion papers. The senior solicitor in the role has also initiated proposals for legislative amendment.

The position has played a role in liaison, and the negotiation of protocols with external agencies.

As was the case in the last financial year, the position has been the primary focus for the ongoing training and development of staff.

This year useful professional development sessions have been undertaken between staff of the ODPP and the following agencies:-

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

The ODPP provided professional development training to these agencies. Staff from these agencies also provided professional development sessions to staff of the ODPP.

A significant number of professional development sessions were related to sexual assault crime.

Another focus for professional development was advocacy. The Office was fortunate to have some eminent speakers address legal staff on various topics. In addition, a successful weekend program was held in June for sixteen legal staff. The program was run by facilitators from the Australian Advocacy Institute.

The list of training and development sessions attended by ODPP staff is provided in Appendix C (pp.45-47).

Appendix D (pp.48-51) is 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 allows us to perform this function. The Staff Development and Policy Officer coordinates this function.

Papers were produced for the information of legal staff on the following topics:-

- Duty of disclosure.
- Guide to the Statutes Amendment and Repeal (Aggravated Offences) Act 2005
- Guide to Statutes Amendment (Sentencing of Sex Offenders) Act 2005

This year the senior staff member occupying the position has also undertaken work in prioritising the opinion work and in undertaking the preparation of some written advices to SAPOL.

Report from the Managing Prosecutor

Prosecution Section of the Office conducts prosecutions for a range of offences including murder, sexual assault, manslaughter, drug offences, other offences of violence, armed robberies, cause death by dangerous driving, fraud and offences of a public nature. The Section also conducts appeals in the Court of Criminal Appeal and in the High Court of Australia. The members of the Section are primarily devoted to the work of counsel in these jurisdictions having very little solicitor's component of their daily duties.

Over the last year the Section has conducted a number of significant trials including a number of trials for murder with co-offenders. The Section is made up of personnel, some of whom are very experienced and others who are less experienced in the conduct of trial work. As a consequence of this the more senior members of the Section are required to supervise and assist those less experienced members of the Office.

The Section was reorganised in this financial year to allow more flexibility for the senior members to conduct the lengthy and complex trials whilst still supervising and assisting their junior members. To ensure that there was maximum flexibility, the role of allocating the trials was given to one individual and it was hoped that this role, which is an important role in the office, could be shared amongst those who were able to devote sufficient time to the task. During this year 650 accused had matters listed for trial in the Adelaide District and Supreme Courts. Of those 263 accused proceeded to trial. The remainder pleaded guilty, the charges were withdrawn, or were not reached. The Prosecution Section also provides services to the Port Augusta and Mount Gambier Circuit Courts of the District and Supreme Court. There were 80 matters listed for trial in these courts. Of those 47 proceeded to trial. This equates to 1420 trial days in total. Legal arguments equated to an additional 85 court days.

It is clear that with the average length of trials being almost six days, the Prosecution Section is unable to provide prosecutors for all the trials that are listed in the financial year. To supplement the prosecutors within the Office, some trials are briefed to the private profession. This has continued to happen in this financial year. The financial impact on the Office during the year of the cost of briefing out trials to the private profession was \$353,957.55.

There has been a significant training emphasis during the past year. To this end, a number of the solicitors have been junior counsel on trials that have been conducted in both the District and Supreme Court. This experience enables them to have first-hand court experience and, on occasions, to be able to assist by also preparing and leading evidence from witnesses in those trials. In addition to this, a number of the solicitors have assisted with the preparation of Outlines of Argument for the Court of Criminal Appeal and they have also conducted a number of trials in their own right. It is to be hoped that by the continuous training offered to the solicitors the pool of those able to prosecute matters will be widened within the Office. Not only does this experience enable them to conduct trials but it also provides them with invaluable training and insight into the preparation of trials that will later be prosecuted by another person. There is little substitute for practical experience in the conduct of trials as part of the training and development of all legal officers in the Office of the Director of Public Prosecution.

Over the past year the Office has continued to monitor and manage the allocation of the trials. There have been many occasions upon which trials that have been prepared and have been allocated a time in court have not been reached by the court due to the unavailability of judges or courtrooms. There has been no improvement in this situation over the past year. This is of course of great concern and something that I mentioned in last year's Report. The over-listing of trials causes great inconvenience to the witnesses, victims and police officers. It also causes concern and expense for defendants whose matters must then be relisted, quite often, many months into the future.

Over the last year the Director of Public Prosecutions has been contributing to the report by Judge Rice of the District Court. This Office has made many suggestions in respect of how the trials may be accommodated in a more timely fashion and initiated a fall-over for trials that were listed in three months of the last financial year. Unfortunately this fall-over did not have the desired effect, as there was no will by defence to negotiate at a sensible level or to engage in the process appropriately.

The difficulties that are faced by trial delays can only be remedied by a combined approach to this problem. This will necessitate the courts, the DPP, defence and the other agencies including SAPOL ensuring that each agency conducts itself appropriately. It will inevitably involve the defence having to define the issues of the trial at an early stage in the proceedings when the Crown case has been disclosed to them. It is not until this stage that it becomes apparent which witnesses will be required and which matters are truly in dispute for the trial process. If this process can be adopted then it is likely the trial will take significantly less time in the courtroom and therefore ensure that more trials can be heard over the course of the year.

In the last year the Office and the Prosecution Section have also been involved with the Organisational Review that has been conducted. At the end of the financial year this Review had still not reached a stage of completion.

The Prosecution Section hopes that the Review recommendations and the implementation of those recommendations accepted will ensure a more efficient and timely disposal of matters through the system.

During the year in review Martin Hinton, Senior Prosecutor, supervised 20 students undertaking their Graduate Diploma in Legal Practice - Placement Supervision.

In the past year Paul Muscat has left the Section to work with the Legal Services Commission. We thank Paul Muscat for his role in this Office that extended over twelve years. He played a significant role and made an enormous contribution to the Office in that time.

Court of Criminal Appeal

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

Crown Appeal

The prosecution only has a right to appeal against sentence. The principles that apply to a consideration of Crown appeals are different from those that apply to appeals filed by a convicted person. In considering prosecution appeals against sentence it is acknowledged that the sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the prisoner, and the effect on the victim. Consequently, for any given offence there exists a range of legitimate penalty options. In *R v Osenkowski* (1982) 30 SASR 212, the Court held:

“...The proper role for prosecution appeals, in my view, is to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic views of individual judges as to particular crimes or types of crime to be corrected and occasionally to correct a sentence which is so disproportionate to the seriousness of the crime as to shock the public conscience.”

Case Stated on a Question of Law

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

Magistrates Appeal

The Office conducts appeals from the Magistrates Court to the Supreme Court on indictable offences. The prosecution has a right to appeal against acquittal where there has been an error of law or fact by the Magistrate. These appeals are only instituted on rare occasions. The same considerations apply to appeals against sentence brought by the prosecution for a sentence imposed by a magistrate or a judge.

APPLICATIONS FOR LEAVE TO APPEAL FILED PRIOR TO 1 JULY 2005

	Appeals by Defendant	Appeals by ODPP
<i>Applications for leave to appeal heard in 2005-06</i>		
Leave to appeal granted previously	41	
Leave to appeal granted 2005-06	2	
Leave to appeal refused and subsequently Form 7 lodged for further consideration	4	
Leave to appeal refused	0	
Leave to appeal abandoned	3	
TOTAL	50	
Form 7 refused	1	
Form 7 granted	2	
Form 7 decision pending	1	
TOTAL	4	
Of those applications where leave to appeal was granted		
Appeal against conviction upheld	6	
Appeal against sentence upheld	5	2
Appeal against conviction dismissed	22	
Appeal against sentence dismissed	11	1
Other allowed	0	1
CCA decision pending	0	
CCA abandoned	1	
TOTAL	45	4

APPLICATIONS FOR LEAVE TO APPEAL FILED DURING 2005-06

	Appeals by Defendant	Appeals by ODPP
Applications by ODPP		11
Leave to appeal granted in 2005-06	52	
Leave to appeal refused and subsequently Form 7 lodged for further consideration	12	
Leave to appeal refused	12	
Other (limiting term, appeal against MC appeal decision, appeal against antecedent prior to trial)	4	2
Leave to appeal abandoned	8	
Applications pending as at 30/6/06	22	
TOTAL	110	13
Form 7 refused	5	
Form 7 granted	1	
Form 7 declaration pending	6	
TOTAL	12	
<i>Of those applications where leave to appeal was granted</i>		
Appeal against conviction upheld	4	
Appeal against sentence upheld	11	4
Appeal against conviction dismissed	8	
Appeal against sentence dismissed	10	6
Other dismissed	2	1
Other pending	1	1
Other allowed	1	
CCA decision/hearing pending	16	
CCA abandoned	4	1
TOTAL	57	13

Report from the General Manager

This year saw the beginnings of resolution to a number of issues, which had been in a state of flux for a prolonged period. The uncertainty these issues created remains to this day but stability is beginning to be seen.

After several years during which a number of people acted as General Manager or the role was shared between senior non-legal staff, the position was upgraded early in the year to an Executive level position and filled by external recruitment.

Organisational Review

In the 2003-04 Annual Report the Office announced the intention to conduct an organisational review to maximise the effective use of additional funds granted to the Office at that time. In 2004-05 the Office reported that this review did not proceed, as a request to carry over funds for this purpose was not approved.

In October 2005 the Attorney-General signed a consultancy agreement with Lizard Drinking Pty Ltd to conduct an Organisational Review of the Office. A Steering Committee of the heads of the Attorney-General's Department, SAPOL, the Courts Administration Authority and the Department of Treasury and Finance, together with the Office Executive, was established. The consultants handed down their final report with over 70 recommendations in early July 2006. Although the report was delivered after the reporting period, as it will be another year until the next Annual Report, it is appropriate to outline the general conclusions and recommendations of the report.

- Work loads in the office have grown rapidly in recent years
- Files are arriving at a faster rate than they are resolved leading to a build-up of files in the Office
- Individual work loads in the Office are much greater than interstate criminal prosecution offices
- Staff are professional, ethical, exceptionally talented and very hard working.
- Prosecutions have become much more complex than a few years ago, requiring more time and resources to prosecute
- The Office needs skilled resources to manage its relationship with the media and public

Organisational Review - Key Recommendations

- Additional recurrent funding to increase capacity in the Office
- Additional short term funding to clear the backlog of files
- Activity Based Costing to objectively measure the on-going resource needs of the Office.
- Organise the Office in Practice teams that have full carriage of a file from receipt to resolution

IJP Prosecutions

The 2002-03 the Annual Report outlined the Integrated Justice Program (IJP), stating:

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

- *Deal more effectively with offenders,*
- *Provide a professional service to the general public, and*

- *Enhance support for victims and witnesses.*

In 2003-04 the Office reported that IJP Prosecutions Case Tracking, an IT system developed for the Office as part of the IJP Project, was piloted and that it “*builds links with systems within SA Police, and the Court Outcomes systems...*”. IJP Prosecutions Case Tracking was intended to be the first phase of the IJP Prosecutions system for the Office; Prosecutions Case Management to be the second and deliver many productivity initiatives. The IJP Prosecution systems were also intended to be part of a suite of IJP systems built for the agencies and functions reported in 2002-03. Regrettably for this Office, the second phase of IJP Prosecutions (Case Management) was abandoned and the complementary integrated systems in other agencies have not been developed.

Recognising the deficiencies and design defects in Prosecutions Case Tracking, and the lack of essential functionality intended to be delivered in the abandoned Prosecutions Case Management system, and faced with only half the funding previously allocated for Case Management, the Office worked closely with Justice Business Services to remedy as much of this deficiency as possible. The outcome was an intensive “enhancement” project. In little over four months a project plan was developed and implemented. As a result of close cooperation between Justice Business Services, Justice Technology Services, this Office and the software contractor significant improvements including full functionality for witness and victim case management was implemented and Case Tracking now provides an adequate level of operational functionality. Nevertheless, further work needs to be done to bring the system up to a standard where it fully meets the business requirements of the Office.

The Office acknowledges the assistance provided by JBS, JTS and the contractor and that the outcome achieved would not have been possible without their dedication to the enhancement project.

Witness Assistance Service

The Witness Assistance Service provides a statewide information, education, support and referral service to victims of crime, their immediate families and witnesses for the prosecution in matters dealt with by the Office.

In the 2005-06 financial year, the Witness Assistance Service continued to provide a specialist social work service that worked alongside, and in partnership with the prosecution process. The service was staffed by a team of 9.4 FTE Witness Assistance Officers that included:

- 1 FTE Manager
- 4.5 FTE Witness Assistance Officer - Adult Focus
- 3.6 FTE Witness Assistance Officer - Child Focus funded by Victims of Crime Coordinator

In addition to its central based services, the Witness Assistance Service provided support and services to victims and witnesses living in regional areas including Port Augusta, the Riverland and Mount Gambier.

Year In Review

In the 2005-06 financial year, the Witnesses Assistance Service received a total of 1049 referrals (in comparison to 902 in the previous financial year). This significant growth represents a 16.3% increase in the total number of referrals to the Witnesses Assistance Service. Of the total number of referrals, adult referrals increased by a total of 11.4% (from 734 to 818) and child referrals increased by a total of 37.5% (from 168 to 231).

The Witnesses Assistance Service provided a range of services and supports to victims, witnesses and significant others throughout the year. The number of face-to-face services increased by a total of 6.2% in the 2005-06 financial year period (from 1514 to 1608). Of the total number of face to face services provided, attendance at proofing meetings represented 57.9%, court attendance / support represented 22.1%, court familiarisation / court preparation represented 9.7%, assistance with victim impact statements (VIS) represented 6.5% and court companion support represented 3.8%.

Staffing

The Witness Assistance Service experienced significant changes in staffing in the 2005-06 financial year period, including the resignation of a permanent member of staff, the completion of temporary contracts by two Witness Assistance Officers, and the return of a longer-standing member of staff to part-time. In addition to this, the Manager of the Witnesses Assistance Service took extended leave from October 2005 with an Acting Manager operating in the position to date.

The Witness Assistance Service recruited additional staff throughout the year to fill the various vacancies created. Of particular note, a total of four temporary Witness Assistance Officer positions were filled on a permanent basis in May 2006. This enabled the service to secure experienced incumbents on a permanent basis and represents a significant commitment by the ODPP to services and support to victims, witnesses and their families.

Child Witness Assistance Officers

Of the Witness Assistance Service team, 3.6 FTE positions are funded by the Victims of Crime Coordinator (Attorney-General's Department) to provide services directly to child victims and witnesses and their parents or caregivers.

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

Community Education and Training

The Witness Assistance Service continued to provide information, education and training services to a variety of external organisations and key stakeholders. Training and education provided in the 2005-06 financial year period included:

- ODPP Open Day
- Courts Administration Authority Open Day
- TAFE Interagency Child Abuse Training (x 4 sessions)
- Criminal Justice Seminar (x 5 sessions)
- (Port Adelaide, Northern Metro, Murray Bridge, Port Lincoln & Whyalla)
- Judicial Training - Justice Strategy Division
- SAPOL - Police Prosecutor Training
- SAPOL - Major Crash Course
- SAPOL - Victims of Crime Education Course
- Victim Support Services Volunteer Training - Court Companions
- Victorian Police
- Flinders University - Law Students
- University of SA - Social Work & Social Policy Students

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

Future Developments and Challenges

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

The Witnesses Assistance Service team remains committed to working collaboratively with prosecutors, solicitors, law clerks and administration staff in a manner that ensures the best possible outcomes for victims of crime and witnesses. The service continues to identify ways of improving service delivery to victims and witnesses, and maintains a commitment to the development of policies and practices that have regard for the needs of victims, witnesses and their families.

In addition to this, the Witness Assistance Service Team continues to improve and develop its links and relationships with external stakeholders to ensure a coordinated and responsive approach to victims and witnesses in the community.

Administrative Section

The Administrative Section has continued to provide an effective support function to the Office of the Director Public Prosecutions during the year. The 33 administrative staff provide a range of services which include secretarial, law clerk, reception, rounds and an executive assistant function even though there have been significant impacts from the high workloads, several major trials and the increase of files from less than 1800 at the beginning of the year to 2400 at the current time.

The administrative staff have met the challenge of maintaining focus and direction in providing a quality service to the professional staff in spite of the disruption created by the implementation of the new Case Tracking system. These information system improvements have been supported by staff training and development provided by an on-site trainer.

Regular team meetings encourage staff to raise ideas for continual improvement and these ideas are implemented upon consultation.

General Achievements

In addition to the frontline legal work of the ODPP, considerable effort has been directed to improving business and management processes during the past year, including:

- Implementation of the Case Tracking system and staff training.
- Continued provision of internal and external legal, professional and skill development for administration staff.
- Consultation with staff in relation to Occupational Health and Safety.
- Development of creditable processes for performance management and implementation of an effective job analysis and evaluation system that enables appropriate classification of positions and assists in the most effective staffing ratio of solicitors to administration positions.

Looking to the Future

Office accommodation again remains an ongoing issue. The staff of the Office are spread over four floors - one whole floor and three part floors. While the quality of the accommodation is acceptable the separation of important functions reduces both the effectiveness and the efficiency of the Office. The Organisational Review has recommended accommodation for the Office be secured in the Courts precinct to reduce the time spent daily traveling to Courts.

Implementation of the Organisational Review recommendations will bring significant change to all sections of the office. New organisational structures and procedures, new roles and positions will challenge our ability to adapt while 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 total funding for the Office for the year 2005-06 was \$12.47 million of which \$9.25 million was for salaries and wages. Funding for the Bodies in the Barrels prosecutions ceased in March 2006. The cost associated with Haydon's appeal in this matter was met from within the ODPP budget.

The Office bid for additional funds for the year and these were partially successful, as detailed in the section Performance Indicators.

The Office received \$400,000 carry-over funding of the \$717,000 previously allocated for the IJP Prosecutions Case Management Project.

This funding was insufficient for the full Case Management application and was used to provide only the most essential intended elements of Case Management into the Case Tracking System. It also funded enhancements and defect fixes in Case Tracking.

Despite the recommendation of the Organisational Review for an additional allocation to fund extra legal and administration resources, the interim budget for 2006-07 has been cut in real terms after allowing for pay rises.

Staffing Levels

With the increasing workload in the Office it was necessary to increase the legal and administration staffing levels. With funding from Government it was possible to increase staff over last years levels.

However, during the year the Office was unable to fill two senior positions - the Crown Counsel and the Associate Director of Public Prosecutions. The impact of these vacancies on the operations of the Office is covered elsewhere in this report.

	Actual 2004-05	Approved* 2005-06	Actual* 2005-06
Executive	5.00	5.00	4.00
Legal (including managers)	53.52	62.53	60.20
Witness Assistance Officers	8.80	9.10	9.50
Administration Staff	31.84	33.04	34.92
TOTAL	99.16	109.67	108.62

*Includes staff who are working on separately funded projects within the Office

The Future

At the end of the financial year the Organisational Review report was about to be tabled and was subsequently accepted by the Steering Committee in early July 2006. Whether all recommendations will be approved and funded by Government remains to be seen. The Department of Treasury and

Finance response to the recommendations would indicate that not all recommendations will be supported and funded.

Nevertheless, the recommendations will, if implemented, provide both immediate remedies to the acute overload in the Office and a means of managing and adapting to continuing changes in the future.

Significantly, the Review noted that concerns about workload and delays in the criminal justice system were not restricted to this Office and were not, to any significant extent, caused by this Office. The Report noted that the causes were spread across the criminal justice system and concluded that fully effective solutions could only be found by addressing the causes at this level.

APPENDIX A

Publications/Information

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

During 2004-05 the Office launched its internet site, this site is continually updated and provides the public with (amongst other things) links to publications and information about the criminal justice system.

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

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

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

- Witness Assistance Service

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

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

APPENDIX B

ODPP Representatives on Committees/Steering Groups

Internal

NAME	REPRESENTATIVE
IJP Prosecutions Management Committee	Golda Munro, Murray Fopp, George Kouts, Lorraine Bull,
Executive	Stephen Pallaras QC, Pauline Barnett, Geraldine Davison, Murray Fopp
Management Committee	Pauline Barnett, Geraldine Davison, Murray Fopp, Jim Pearce, Ian Press, Adam Kimber, Dean Oliver, Sue Raymond, Lois Papafotiou
Professional Development Committee	Sue Raymond, Amanda Pienaar, Emily Telfer, Michelle Sutcliffe, Kos Lesses, Emma Shaw, Caroline Steel, Carmen Matteo, Pam Jones

External

NAME	REPRESENTATIVE
AGD IT Executive Forum	Murray Fopp
Australian and New Zealand Psychiatrists, Psychologists and Lawyers	Geraldine Davison Elizabeth Griffith
Australian Association of Crown Prosecutors	Emily Telfer
Conference of Australian Directors of Public Prosecutions	Stephen Pallaras QC
Crime Statistics Advisory Council	Pauline Barnett
Criminal Courts Committee	Stephen Pallaras QC
Criminal Justice Leadership Group	Stephen Pallaras QC Pauline Barnett (Proxy)
Criminal Justice Officers Group	Pauline Barnett
Data Quality Committee	Golda Munro, Lorraine Bull
Director of Public Prosecutions National Executive Group	Pauline Barnett
Director of Public Prosecutions/Police Liaison committee	Pauline Barnett
Disability Action Plan Reference Group	Pam Jones
Drug Court Steering Committee	Pauline Barnett
Forensic Science Advisory Committee	Stephen Pallaras QC
Information Technology Business Representatives Committee	Golda Munro Jane MacInnes Lois Papafotiou
Justice Business Heads Forum	Stephen Pallaras QC Pauline Barnett (Proxy)
Justice Data Warehouse Steering Committee	Golda Munro George Kouts
Justice Information and Communication Technology Committee	Murray Fopp
Justice Information System Java Environment Review Group	Kirsty Pyper
Justice Information System: Business Operations Committee	Murray Fopp
Justice Information System: Business Operations Committee - Finance	Murray Fopp

NAME	REPRESENTATIVE
Justice Portfolio Planning Group	Pauline Barnett
Law Society of South Australia (Professional Standards), Legal Professional Conduct Board and DPP Liaison Group	Tim Heffernan
Law Society of South Australia: Criminal Law Committee	Geraldine Davison Paul Muscat
Law Society of South Australia: Advocacy Committee	Geraldine Davison
Mental Impairment Review Committee	Pauline Barnett
Police Liaison Committee	Geraldine Davison Pauline Barnett Murray Fopp
Review of the Controlled Substances Act	Adam Kimber
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

NAME/TITLE	DPP REPRESENTATIVE
Australian Association of Crown Prosecutors Conference Canberra	Kos Lesses Anne Trengove Emily Telfer
Drug Court Conference, Brisbane	Nick Wong
Conference of Australian Directors of Public Prosecution, Brisbane	Stephen Pallaras QC
Balanced Justice Conference, Adelaide	Stephen Pallaras QC
National Chemical Diversion Conference, Darwin	Emma Wildman, Dominic Petraccaro
DPP National Executive Meeting, Brisbane	Pauline Barnett Murray Fopp
International Association of Prosecutors Conference, Copenhagen	Stephen Pallaras QC
Heads of Prosecuting Agencies Conference, Belfast	Stephen Pallaras QC

TRAINING SESSIONS/SEMINARS

NAME/TITLE	DPP REPRESENTATIVE
Australian Institute of Management, Women in Management Breakfast Forum	Belinda Ness Fabiana Vielle
Case Tracking Training	Multiple sessions - all staff
Change Management	Sue Raymond
Court Drug Diversion Initiatives Conference	Nick Wong
Crystal Reports	Pam Jones Lois Papafotiou
Disability Dilemmas - Managers' Responsibilities	Pam Jones
Effective Business Writing	Fabiana Vielle
Finance for Managers	Pam Jones
Fire Warden Training	Dean Oliver
Key Issues Facing Executive Assistants	Dianne Flynn
Legal Research <ul style="list-style-type: none"> • Lexis Nexis General Training • Lexis Nexis Refresher Training 	Legal and Administration Staff
Management of Vexatious/Unusually Persistent Complainant Workshop for customer service staff	Debra Morris
Management of Vexatious/Unusually Persistent Complainant Workshop for Supervisors and Managers	Pam Jones
Manual Handling	Louise Parker Sarah Rodwell
Mental Health First Aid	Pam Jones Sue Raymond

NAME/TITLE	DPP REPRESENTATIVE
	Amanda Trevarrow
Microsoft Word - Intermediate	Lisa Cassidy Dianne Flynn
Negotiation Skills for Supervisors	Dean Oliver
New Supervisor 4 x workshops - Developing Interpersonal Skills Building a Team Introduction to Performance Management Introduction to Change Management	Christine Bretones Mark Norman Dominic Petraccaro Fran Reid
Office Ergonomics	Fabiana Vielle Darryl Woolven
One-on-One Computer Training - (10 x 2 hr sessions as part of AGD pilot)	10 staff members
Past Present Future - An Introduction to Aboriginal Cultural Awareness	Andrew Moulding Fabiana Vielle Anne-Marie Tucker Alison Coulthard Nina Travers Stephen Pallaras QC
Principles of Bail	Witness Assistance Service Officers
Principles of Records Management (online course)	Pam Jones
Public Speaking	Witness Assistance Service Officers
Records Management - Induction (online course)	Pam Jones
Senior First Aid Recertification	Pam Jones
Springboard for Women	Lynne Sampson
The Gartner Viewpoint	Golda Munro
The Indispensable Assistant	Jacinta Tonkin
Vexatious and Unusually Persistent Customers	Dianne Flynn
Women and Leadership Forum	Sue Raymond
Working in the Legal Accident and Emergency Department and how to Survive it	2 x sessions <ul style="list-style-type: none"> • Witness Assistance Service Officers • Administration Staff

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 Sessions conducted during the year in review for legal staff, included the following topics:

- DNA Evidence (2 sessions)
- Advocacy Sessions:
Leading Expert Evidence
Cross-Examination
Closing Addresses
(Part of an ongoing advocacy program)

- Two-Part Exercise jointly with ODPP legal staff and doctors from Yarrow Place Rape and Sexual Assault Service.
 - Part I - Role of the DPP
 - Information about Sexual Assault Forensic Examinations
 - Part II - Joint Practical Exercise in Leading Medical Evidence
- Australian Advocacy Institute
 - 16 legal staff - advocacy workshop
- The Duty of Disclosure
- Running an Investigation
- Proofing Witnesses
- Child Witnesses
- Sexual Offenders Treatment and Assessment Program
- Witnesses: How to Deal with Difficult Situations
- Motorcycle Gangs - Their Culture and Involvement in Criminal Activities
- Subpoenas
- Drafting Charges
- Sexual Assault Examinations

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

APPENDIX D

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

SESSION	ODPP REPRESENTATIVE
Aboriginal Family Support Services <i>Topic:</i> Case Notes	Sandi McDonald
Aboriginal Legal Rights Movement, Adelaide <i>Topic:</i> Role and Responsibilities of the DPP	Stephen Pallaras QC
Balanced Justice Conference, Adelaide	Stephen Pallaras QC
Bar Readers Course <i>Topic:</i> Role of the DPP	Jim Pearce Sandi McDonald
Commonwealth Club, Adelaide <i>Topic:</i> Role and Responsibilities of the DPP	Stephen Pallaras QC
Conference of Australian Directors of Public Prosecution, Brisbane <i>Topic:</i> ODPP Open Day	Stephen Pallaras QC
Courts Administration Authority Open Day	ODPP staff members
Criminal Justice Seminar - Law Week - Port Adelaide <i>Topic:</i> Overview of the CJS, Witness Assistance Services, Vulnerable Witness Provisions and Victim Impact Statements	Tony Carella Andrew Moulding Stephanie Geyer
Criminal Justice Seminar - Murray Bridge <i>Topic:</i> Overview of the CJS, Witness Assistance Services, Vulnerable Witness Provisions and Victim Impact Statements	Caroline Steel Louise Dowling Carmen Matteo
Criminal Justice Seminar - Whyalla <i>Topic:</i> Overview of the CJS, Witness Assistance Services, Vulnerable Witness Provisions and Victim Impact Statements	Sharon Ryan Nina Travers
Doctors and Paediatric Specialists from Australia and New Zealand <i>Topic:</i> Expert Witnesses - 'The Forensic Medical Evaluation of Injury in Relation to Suspected Child Abuse'.	Rosemary Steen
Doctors and Paediatric Specialists from Australia and New Zealand <i>Topic:</i> The Medical Evaluation of Suspected Sexual Abuse in Children and Adolescents	Rosemary Steen
Flinders University Law School	Caroline Steel Belinda Lines
Flinders University Legal Careers Fair <i>Topic:</i> ODPP - Career Related	Stephen Pallaras QC
University of South Australia Forensic Psychology Students <i>Topic:</i> Cross-Examination of Witnesses	Mark Norman
Forensic Science Centre	Jane Powell

SESSION	ODPP REPRESENTATIVE
<i>Topic:</i> Judicial Process in South Australia	
Graduate Diploma in Legal Practice <i>Topic:</i> Role Play: Examination-in-Chief and Cross-Examination demonstration	Lucy Boord
Graduate Diploma in Legal Practice - Placement Supervision	Martin Hinton
Hellenic Australian chamber of Commerce, Adelaide Pavilion <i>Topic:</i> Role of the DPP	Stephen Pallaras QC
Judicial Training Seminar <i>Topic:</i> The Courtroom Environment, Children in the CJS, Vulnerable Witness Provisions and Witness Assistance Services	Rebecca Abbott Sharon Ryan
Law Society - Graduate Diploma in Legal Practice <i>Topic:</i> Bail Applications	Stephanie Geyer Lisa Duong Karen Ingleton Kathy Rozaklis Lisa Dunlop
Law Society - Graduate Diploma in Legal Practice - Presentation	Martin Hinton
Law Week Criminal Justice Seminar	Stephanie Geyer
Legal Profession Regulatory Officers Conference	Tim Heffernan
Mount Gambier - General Public <i>Topic:</i> Role and Responsibilities of the DPP	Stephen Pallaras QC
National Palliative Care Week Hypothetical - Panel Member	Stephen Pallaras QC
National Witness Assistance Service Conference <i>Topic:</i> Vicarious Trauma and Witness Assistance Officers - Developing an Understanding of the risks associated with our work and the responses required.	Caroline Steel
ODPP Open Day	Stephen Pallaras QC Peter Brebner Qc Geraldine Davison Ian Press Stephanie Geyer Dean Oliver Tim Heffernan Anne Trengove Phil Crowe Sandi McDonald
Practical Legal Training - Advocacy workshop	Jane Abbey
SA Institute of Justice Studies Annual Oration <i>Topic:</i> Reforms to the Criminal Justice System	Stephen Pallaras QC
SAPOL <i>Topic:</i> Child and Vulnerable Witnesses	Rebecca Abbott
SAPOL - Hindley Street <i>Topic:</i> Giving Evidence	Elizabeth Griffith
SAPOL - Major Crash Investigation <i>Topic:</i> Witness Assistance Services, Vulnerable Witness Provisions and Victim Impact Statements	Fabiana Vielle Belinda Lines
SAPOL Detective Training Course	Sue Raymond

SESSION	ODPP REPRESENTATIVE
	Alex Rathbone Martin Hinton Lucy Boord Stephanie Geyer Stephen Pallaras QC Adam Kimber
SAPOL Financial Investigators Course	Tim Heffernan Gary Phillips
SBS Insight Programme, Sydney - Panel Member <i>Topic:</i> National Forum Examining Sexual Assault	Stephen Pallaras QC
St Mark's College, North Adelaide <i>Topic:</i> DPP's Prosecution Policy	Stephen Pallaras QC
St Michael's College <i>Topic:</i> The Role of the DPP	Sue Raymond
TAFE - SAPOL AND CYFS Interagency training	Nina Travers Emily Telfer Sharon Ryan Lucy Boord Belinda Ness Adam Kimber Rosemary Steen Henrietta Wighton Jane Rusalen Briony Kennewell
University of Adelaide - Law School <i>Topic:</i> Evidence and Advocacy Seminars	Martin Hinton
University of Adelaide - Law School <i>Topic:</i> Careers	Sue Raymond
University of Adelaide - Medical School <i>Topic:</i> Mock Trial Experience	James Stewart
University of South Australia - 4th Year Bachelor of Social Work <i>Topic:</i> The ODPP and Witness Assistance Service	Dean Oliver
University of the Third Age <i>Topic:</i> Role of the DPP and Criteria for Decision to Prosecute	Stephen Pallaras QC
Victim Support Service <i>Topic:</i> Expectations - a court companion	Belinda Lines Nina Travers
Victims of Crime Education course - SAPOL <i>Topic:</i> Role of WAS in respect to victims of crime. Procedures used by WAS when dealing with victims of crime. Issues for victims of crime within the Criminal Justice System	Belinda Ness Tony Carella
Victorian Police <i>Topic:</i> Overview of Witness Assistance Services	Belinda Ness Rosemary Steen
Yarrow Place - Trainee Medical Practitioners <i>Topic:</i> Prosecution Process	Jim Pearce

SESSION	ODPP REPRESENTATIVE
Yarrow Place, Rape and Sexual Assault Service <i>Topic:</i> Expert Witness Training	Amanda Pienaar
Yarrow Place, Rape and Sexual Assault Service - Medical Practitioners <i>Topic:</i> Part I - Role of the DPP Information about Sexual Assault Forensic Examinations Part II Leading Medical Evidence	Sandi McDonald Lucy Boord

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 2005-06 is incorporated within the Annual Report of the Attorney-General's Department.

Contractual arrangement

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

Disability Action Plan Reporting

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

Energy Efficiency Action Plan Reporting

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

Equal Employment Opportunity

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

Executive Employment Reporting

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

Financial Reporting

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

Fraud

All relevant matters in relation to Fraud Reporting under the Public Sector Management Regulations 18 (i), are incorporated within the Annual Report of the Attorney-General's Department.

Freedom of Information

The Office is an “exempt agency” for the purposes of the *Freedom of Information Act 1991*.

Human Resource Reporting

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

Listening and Surveillance Devices Act

Pursuant to section 12 (1) of the *Director of Public Prosecutions Act* the Office reports that it has considered and approved 17 warrants issued under the *Listening and Surveillance Devices Act 1972*.

Occupational Health, Safety & Injury Management

The Office continues to be pro-active in its approach to occupational health, safety and welfare and regular hazard identification audits are carried out by both the OH&S representative and management.

This year staff were again offered free influenza immunisations as a preventative measure.

During the year staff attended courses in fire safety training, first aid, and workstations ergonomic assessments. The Office has also been proactive in the provision of equipment to staff members to assist in the prevention of injuries and promote safety in the workplace.

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

The Office would like to thank its OH&S representatives for the last 12 months, Mr Brenton Egarr and Ms Christine Bretones who have displayed a high level of commitment to this role.

Rehabilitation

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 Office experienced two new rehabilitation cases this year. The two employees in question are undertaking modified pre-injury duties and have been provided with equipment to aid in the prevention of further injuries.

Overseas Travel

Stephen Pallaras QC travelled to Copenhagen for a meeting of the International Association of Prosecutors and then on to Belfast, Northern Ireland for a Heads of Prosecuting Agencies Conference. The total cost to the Office was \$16,941.83.

Regional Impact Assessment Statements

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

Training and development

All relevant matters in relation to Training and Development Reporting are incorporated within the Annual Report of the Attorney-General's Department. Various details of the types of training and development undertaken in the Office and conference attendance is reported in at pp.44-46

Triple Bottom Line Reporting

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

Voluntary Flexible Working Arrangements

Voluntary flexible working arrangements are provided for staff under the provisions of the *Public Sector Management Act* (s6) and the Attorney-General's Policy HRM 11. During the 2004-05 year there were 16 staff working part time and four staff who availed themselves of the flexible arrangement to purchase leave.

In addition flexitime arrangements were in place for 33 administrative staff and nine Witness Assistance Officers.

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

APPENDIX F

GLOSSARY

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

Convicted <i>SEE TABLES AND STATISTICS</i>	Convicted of any offence, ie committed for sentence, plea of guilty as charged or a lesser charge, or found guilty as charged or of a lesser charge. <i>Note: Convictions recorded on Magistrate Court matters called up, not included</i>
Defendant	In the Magistrates Court the accused may be referred to as the defendant.
Exhibit	A document or physical item tendered as evidence in a court hearing or referred to in an affidavit.
Forfeiture Orders	Orders granted under either section 8, 9 or 15(5) of the <i>Criminal Assets Confiscations Act 1995</i> which confiscate property of a person convicted of a criminal offence: <i>Forfeiture Orders can be made:</i> a) <i>formally where application is made by the ODPP in relation to property used in an offence,</i> b) <i>orally before the court in which an offender is convicted,</i> c) <i>automatically where drug offences are involved and a section 15(5) restraining order automatically converts to a forfeiture order six months after that person is convicted of the drug offence.</i>
Form 7	If an accused is refused Leave to Appeal by a single Judge, an accused can file a Form 7 asking the Court of Criminal Appeal to consider the application to grant Leave to Appeal.
Indictable Offence	An offence with which an accused has been charged for which the accused has an initial right to be tried by a judge and jury.
Information	The document which sets out the offence or offences that an accused is alleged to have committed and in relation to which the accused must stand trial and be sentenced if found guilty.
Major Indictable Offence	Those indictable offences where the maximum term of imprisonment exceeds five years. All major indictable offences are heard and determined in the District and Supreme Courts.
Mentally Incompetent <i>SEE TABLES AND STATISTICS</i>	Where accused is found <i>not guilty</i> on grounds of mental competence (CLCA Part 8A) and declared liable to supervision.
Nolle Prosequi <i>SEE TABLES AND STATISTICS</i>	All charges on the Information have been discontinued and it is formally recorded that the accused is not to be prosecuted further and the criminal proceedings against an accused are to cease. In statistical data - All charges against the accused not proceeded with. <i>Note:</i> 1 <i>Nolle entered purely because of substitute Information filed, not counted as a Nolle</i> 2 <i>“Technical Nolle Prosequi” where incorrectly committed matters are returned to Magistrates Court, or lesser charge, or alternative remedy is pursued in the Magistrates Court, not counted as a Nolle, but counted separately under “other”</i> 3 <i>“White Paper” filed pursuant to CLCA s276 not counted as a Nolle, but shown separately</i> 4 <i>Where multiple charges laid, then one or more (but not all) are discontinued (Nolle), not counted as a Nolle but recorded under the outcome of the charge(s) which proceed</i> 5 <i>Where matter Nolled immediately after appellate court orders retrial, not counted as a Nolle</i>

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

White Paper*SEE TABLES AND STATISTICS*

After a matter has been committed for trial and where the Director declines to prosecute **any** charge and files prior to arraignment, a notice pursuant to CLCA s276.

Note: Where an accused is separately committed for trial and sentence, and the Director declines to prosecute any of the charges committed for trial, but proceeds with the charges(s) committed for sentence, not counted as a White Paper

APPENDIX G

ODPP Statement Of Prosecution Policy and Guidelines

PROSECUTION POLICY

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

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

THE DIRECTOR OF PUBLIC PROSECUTIONS

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

The primary obligation on a prosecutor is one of fairness. Fairness must dictate eventually the discharge of all of a prosecutor's functions. But the question must be asked as to whom these obligations are owed. Obviously a prosecutor must be fair to an accused but that cannot be the sole consideration. There are other parties with legitimate interests who are also entitled to expect a prosecutor to act in a particular way. Sometimes these interests will conflict with those of the accused.

A prosecutor has obligations to varying degrees to the following:

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

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

THE ROLE OF THE PROSECUTOR

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

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

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

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

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

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

and again -

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

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

THE DECISION TO PROSECUTE

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

The decision whether or not to prosecute is the most important step in the prosecution process. In every case great care must be taken in the interests of the victim, the suspected offender and the community at large to ensure that the right decision is made. A wrong decision to prosecute or, conversely, a wrong decision not to prosecute, tends to undermine the confidence of the community in the criminal justice system.

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

The initial consideration in the exercise of this discretion is whether the evidence is sufficient to justify the institution or continuation of a prosecution. A prosecution should not be instituted or continued unless there is admissible, substantial and reliable evidence that a criminal offence known to the law

has been committed by the accused. There is a continuing obligation to assess the evidence as the matter proceeds.

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

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

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

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

Having satisfied himself or herself that the evidence is sufficient to justify the institution or continuation of a prosecution, the prosecutor must then consider whether, in the light of the provable

facts and the whole of the surrounding circumstances, the public interest requires a prosecution to be pursued. It is not the rule that all offences brought to the attention of the authorities must be prosecuted.

The factors which can properly be taken into account in deciding whether the public interest requires a prosecution will vary from case to case. While some public interest factors may militate against a decision to proceed with a prosecution, there are public interest factors which operate in favour of proceeding with a prosecution, for example the seriousness of the offence and the need for deterrence. In this regard, generally speaking the more serious the offence the less likely it will be that the public interest will not require that a prosecution be pursued.

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

- (a) the seriousness or, conversely, the triviality of the alleged offence or that it is of a “technical” nature only;
- (b) any mitigating or aggravating circumstances;
- (c) the youth, age, intelligence, physical health, mental health, or special infirmity of the accused, a witness or victim;
- (d) the accused’s antecedents and background;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the accused in connection with the offence;
- (g) the effect on public order and morale;
- (h) the obsolescence or obscurity of the law;
- (i) whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute;
- (j) the availability and efficacy of any alternatives to prosecution;
- (k) the prevalence of the alleged offence and the need for deterrence, both personal and general;
- (l) whether the consequences of any resulting prosecution or conviction would be unduly harsh and oppressive;
- (m) whether the alleged offence is of considerable public concern;
- (n) any entitlement of the State or other person or body to criminal compensation, reparation or forfeiture;
- (o) the attitude of the victim of the alleged offence to a prosecution;
- (p) the likely length and expense of a trial;
- (q) whether the accused is willing to cooperate in the investigation or prosecution of others, or the extent to which the accused has done so;

- (r) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
- (s) whether the alleged offence is triable only on indictment; and
- (t) the necessity to maintain public confidence in such institutions as the Parliament and the Courts.

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

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

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

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

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

In deciding whether or not the public interest warrants the prosecution of a young offender regard should be had to such of the factors that apply to adults as appear to be relevant, but particularly to:

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

- (g) whether a prosecution would be likely to be harmful to the young offender or be inappropriate, having regard to such matters as the personality of the young offender and his or her family circumstances.

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

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

Guideline No 1 - Choice of Charges

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

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

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

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

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

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

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

Guideline No 2 - Charge-Bargaining

Charge-bargaining involves negotiations between the defence and the prosecution in relation to the charges to be proceeded with. Such negotiations may result in the accused pleading guilty to fewer than all of the charges he or she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

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

A proposal should not be entertained by the prosecution unless:

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

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

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

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

Guideline 3 - Giving Advice to Investigators

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

- (a) the availability of criminal charges, involving -
 - (i) the sufficiency of evidence;

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

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

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

Should the person seeking advice be unable, due to the urgency of the matter, to seek advice by way of a written request, this should not preclude advice being provided. In such instances the written advice should recite the particular request made of this Office and the information provided upon which the advice is given.

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

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

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

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

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

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

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

Guideline No 4 - Ex Officio Information

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

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

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

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

Guideline No 5 - Declining to Proceed after Committal

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

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

A defence application may be based on the fact that the offence charged is a relatively minor one and does not warrant the time and expense involved in a trial on information. Such an application is most

unlikely to receive favourable consideration if the alleged offence is one that could have been determined summarily but the accused refused to consent to the matter being dealt with in that way.

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

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

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

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

Guideline No 6 - Immunity from Prosecution

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

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

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

In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in alleged offences in order to secure their evidence in the prosecution of others (for example, by granting them immunity from prosecution). However, it has long been recognised that in some cases this course may be appropriate in the interests of justice. Nevertheless, an immunity under Section 7(1)(f) will only be given as a last resort. In this regard, as a general rule an accomplice should be prosecuted irrespective of whether he or she is to be called as a witness, subject of course to the usual evidentiary and public interest considerations being satisfied. Upon pleading guilty the accomplice who is prepared to cooperate in the prosecution of another can expect to receive a substantial reduction in the sentence that would otherwise have been appropriate. However, this course may not be practicable in some cases; for example, time may not permit charges against the accomplice to proceed to conviction before the trial of the principal offender, or there may be insufficient admissible evidence to support charges against the accomplice alone.

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

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

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

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

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

Guideline No 7 - Unrepresented Accused

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

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

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

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

Guideline No 8 - The Court Process

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

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

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

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

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

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

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

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

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

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

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

To do this the prosecutor should where appropriate:

- (a) comply with Sections 7 and 7A of the Criminal Law (Sentencing) Act with respect to injury, loss or damage suffered by the victim;
- (b) tender the relevant antecedents of the accused;
- (c) correct any error of fact or law;

- (d) refer the court to any relevant authority or legislation that may assist in determining the appropriate sentence;
- (e) make submissions on the appropriate sentencing options that are available including non-custodial options;
- (f) acknowledge any cooperation of the accused with the law enforcement agencies when this has occurred and proved to be of value. This must be done in a manner that does not endanger the safety of the accused or prejudice the operations of those agencies.

Guideline No 9 - Disclosure

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

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

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

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

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

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

- (a) particulars of the accused's prior convictions;
- (b) copies of all written statements, and an opportunity to examine electronically recorded interviews of all witnesses to be called, together with a copy of any prior inconsistent statements of those witnesses;
- (c) copies of any written or electronically recorded statement obtained from the accused by a person in authority;

- (d) copies of any photographs, plans, documents or other representations which will be tendered by the prosecution at trial.
- (e) an opportunity to examine exhibits which will be tendered;
- (f) copies of statements of any expert witnesses to be called and the prosecution will facilitate an opportunity for a defence expert from the same or a similar discipline to speak with that expert, pre-trial;
- (g) copies of any warrant or any statutory authority used in the gathering of evidence to be adduced at trial;
- (h) an opportunity to inspect bank records, books of account or other records or documents relevant to the prosecution case which may not be introduced into evidence but be relied upon.

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

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

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

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

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

Guideline No 10 - Media Contact

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

Guideline No 11 - Vulnerable Witnesses

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

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

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

Guideline No 12 - Victims of Crime

In all dealings with victims of crime due regard must be had by all members of the Office to the Declaration of Principles governing treatment of victims of crime in the criminal justice system contained in the Victims of Crime Act 2001 (Annexure A). This is a direction given by the Attorney-General pursuant to the Director of Public Prosecutions Act.

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

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

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

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

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

Guideline No 13 - Victim Impact Statement

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

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

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

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

Guideline No 14 - Prosecution Appeals

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

Appeals against sentence

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

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

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

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

In considering a prosecution appeal against sentence it is to be borne in mind that the sentence for a specific offence will vary according to its nature, the circumstances of its commission, the antecedents of the prisoner, and the effect on the victim. Consequently, for any given offence there exists a range of legitimate penalty options. An appellate Court will not interfere with the exercise of a Judge's or Magistrate's sentencing discretion unless an error in the exercise of that discretion can be demonstrated. In practical terms the Court must be satisfied that the sentence imposed falls clearly outside the appropriate penalty range and may consequently be characterised as manifestly inadequate. Mere disagreement with the sentence passed is insufficient. The High Court decisions are clear that there must be a matter of principle to be established by the appeal in relation to the matter of the sentence Everett and Phillips v R [1994] 181 CLR 295.

Magistrates Appeals

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

Case Stated

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

CONCLUSION

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

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

ANNEXURE A

VICTIMS OF CRIME ACT 2001

An Act to lay down principles to govern the treatment of victims of crime in the criminal justice system; to provide limited rights to statutory compensation for injury suffered as a result of the commission of criminal offences; to repeal the *Criminal Injuries Compensation Act 1978*; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:**Part 1—Preliminary****1—Short title**

This Act may be cited as the *Victims of Crime Act 2001*.

3—Objects

The objects of this Act are—

- (a) to give statutory recognition to victims of crime and the harm that they suffer from criminal offending; and
- (b) to establish principles governing how victims of crime are to be treated in the criminal justice system; and
- (c) to help victims of crime recover from the effects of criminal offending and to advance their welfare in other ways; and
- (d) to provide from public funds limited monetary compensation to victims most directly affected by criminal offending.

4—Interpretation

In this Act, unless the contrary intention appears—

child—a reference to a child is not limited to biological and adopted children—it extends to a person in relation to whom another (who is not a biological parent) stands in the position, and undertakes the responsibilities, of a parent; but a reference to a child does not, in the absence of an indication to the contrary, extend to an adult child;

claimant means a person by whom, or on whose behalf, an application for statutory compensation is made;

conviction includes a formal finding of guilt and **to convict** has a corresponding meaning;

court means the District Court;

dependants, in relation to a victim, means any spouse, parents or children (including adult children) of the victim who are financially dependent on the victim;

harm means injury, damage or loss;

homicide means murder or manslaughter;

immediate family of a person means any one or more of the following:

- (a) a spouse;
- (b) a parent;
- (c) a grandparent;
- (d) a child (including an adult child);
- (e) a grandchild (including an adult grandchild);
- (f) a brother or sister;

immediate victim, in relation to an offence, means a victim of any of the following classes:

- (a) a person who suffers physical injury as a result of the commission of the offence;
- (b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences;
- (c) if the offence was committed against a child—a parent or guardian of the child;
- (d) if the offence was committed against a person who dies as a result of the offence—a member of the immediate family of the deceased;

injury means physical or mental injury, and includes pregnancy, mental shock and nervous shock;

non-financial loss means—

- (a) pain and suffering;
- (b) loss of amenities of life;
- (c) loss of expectation of life;
- (d) disfigurement;

offence includes conduct on the part of a person that would constitute an offence if it were not for that person's age or mental impairment;

offender, in relation to an offence, means the person who committed the offence;

parent includes a person who stands in the position, and undertakes the responsibilities, of a parent;

spouse includes a putative spouse;

statutory compensation means compensation under this Act;

victim, in relation to an offence, means a person who suffers harm as a result of the commission of the offence (but does not include a person who was a party to the commission of the offence).

Part 2—Victims of crime in the criminal justice system

Division 1—Explanatory provisions

5—Reasons for declaration and its effect

- (1) In this Part, Parliament seeks to declare the principles that should govern the way victims are dealt with in the criminal justice system.
- (2) The need for the declaration arises out of national and international concern about the position of victims of crime in the criminal justice system.
- (3) The principles—
 - (a) are not enforceable in criminal or civil proceedings; and
 - (b) do not give rise to any right to damages for breach; and
 - (c) do not affect the conduct of criminal proceedings.

- (4) However, public agencies and officials are authorised and required to have regard, and to give effect, to the principles so far as it is practicable to do so having regard to the other obligations binding on them.

Division 2—Declaration of principles governing treatment of victims in the criminal justice system

6—Fair and dignified treatment

A victim should be treated—

- (a) with courtesy, respect and sympathy; and
- (b) with due regard to any special need that arises—
 - (i) because of the victim's—
 - age; or
 - sex; or
 - race or ethnicity; or
 - cultural or linguistic background; or
 - (ii) for any other reason.

7—Right to have perceived need for protection taken into account in bail proceedings

If a victim feels a need for protection from the alleged offender, a person representing the Crown in bail proceedings should ensure that the perceived need for protection is brought to the attention of the bail authority¹.

Note—

- 1 See also section 10(4) of the *Bail Act 1985* which requires that where there is a victim of an offence, the bail authority must, in determining whether an applicant for bail should be released on bail, give primary consideration to the need that the victim may have, or perceive, for physical protection from the applicant.

8—Right to information about criminal investigation and prosecution

- (1) A victim should be informed, on request, about the following:
- (a) the progress of investigations into the offence;
 - (b) the charge laid and details of the place and date of proceedings on the charge;
 - (c) if a person has been charged with the offence—the name of the alleged offender¹;
 - (d) if an application for bail is made by the alleged offender—the outcome of the application and, in particular, any condition imposed to protect the victim from the alleged offender;
 - (e) if the prosecutor decides not to proceed with the charge, to amend the charge, or to accept a plea to a lesser charge or agrees with the defendant to make or support a recommendation for leniency—the reasons for the prosecutor's decision;
 - (f) the outcome of the proceedings based on the charge and of any appeal from those proceedings;
 - (g) details of any sentence imposed on the offender for the offence;
 - (h) if the offender is sentenced to imprisonment and later makes an application for release on parole—the outcome of the proceedings and, in particular, any condition imposed to protect the victim from the offender.
- (2) A victim should be informed, on request, about the following:
- (a) if the alleged offender absconds before trial—the fact that he or she has absconded;

- (b) if the offender escapes from custody—the fact that he or she has escaped;
 - (c) if the offender, having escaped from custody, is returned to custody—the fact that he or she has been returned to custody;
 - (d) if the release of the offender into the community is imminent—details of when the offender is to be released.
- (3) However, a victim is not entitled to information that might jeopardise the investigation of an offence.
- (4) A victim should be informed, on request, about procedures that may be available to deal with a grievance the victim may have for non-recognition or inadequate recognition of the victim's rights under this Part.

Note—

- 1 Section 64 of the *Young Offenders Act 1993* provides a mechanism for exercising this right in relation to a young offender.

9—Victim to be advised on role as witness

- (1) A victim who is to be a witness for the prosecution at the trial of the offence should be informed by the prosecution about the trial process and the victim's rights and responsibilities as a witness for the prosecution.
- (2) The information should be given (if practicable) so as to allow the victim sufficient time to obtain independent advice, and arrange independent support, in relation to the exercise of those rights or the discharge of those responsibilities.

10—Victim entitled to have impact of offence considered by sentencing court and to make submissions on parole

- (1) A victim is entitled to have any injury, loss or damage suffered as a result of the offence considered by the sentencing court before it passes sentence¹.
- (2) A victim of an offence is entitled to make written submissions to the Parole Board on questions affecting the parole of a person imprisoned for the offence.²

Notes—

- 1 Section 7A of the *Criminal Law (Sentencing) Act 1988* provides a mechanism for exercising this right. See also section 7 of that Act under which the prosecutor is obliged to place before the sentencing court details of injury, loss or damage resulting from the offence.
- 2 See section 77(2)(ba) of the *Correctional Services Act 1982*.

11—Victim to be informed about access to health and welfare services

A victim should be informed about health and welfare services that may be available to alleviate the consequences of injury suffered as a result of the offence.

12—Rights in relation to compensation and restitution

- (1) A victim should have access to information about how to obtain compensation or restitution for harm suffered as a result of the offence.
- (2) If the prosecutor is empowered to make an application for restitution or compensation on behalf of a victim in criminal proceedings—
- (a) the prosecutor should bring that fact to the attention of the victim; and
 - (b) should, if asked to do so by the victim—
 - (i) make the application on the victim's behalf; and
 - (ii) bring to the attention of the court any relevant information provided by the victim in connection with the application.

13—Return of property

If a victim's property is taken for investigation or for use as evidence, the property should, if practicable, be returned to the victim as soon as it appears that it is no longer required for the purposes for which it was taken.

14—Protection of privacy

- (1) There should be no unnecessary intrusion on a victim's privacy.
- (2) In particular, a victim's residential address should not be disclosed unless it is material to the prosecution or defence.
- (3) A victim should be protected as far as practicable from unnecessary contact with the alleged offender and defence witnesses during the course of the trial and in proceedings under this Act¹.
- (4) A victim should only be asked to attend proceedings related to the offence if the victim's attendance is genuinely necessary.

Note—

- 1 See also section 13 of the *Evidence Act 1929* which contains special provisions for the protection of a person who is a vulnerable witness within the meaning of that section.

Part 3—Victims of crime advisory committee and coordinator

15—Power to establish advisory committee

- (1) The Attorney-General may establish an advisory committee to advise on—
 - (a) practical initiatives that the Government might take—
 - (i) to ensure that victims of crime are treated with proper consideration and respect in the criminal justice system; and
 - (ii) to help victims of crime to recover from harm suffered by them; and
 - (iii) to advance the interests of victims of crime in other ways; and
 - (b) any other matter referred to the advisory committee by the Attorney-General for advice.
- (2) A member of the advisory committee will be appointed and hold office for a term and on conditions determined by the Attorney-General.

16—Victims of Crime Co-coordinator

- (1) The Governor may appoint a suitable person to be the Victims of Crime Co-coordinator.
- (2) The Victims of Crime Co-coordinator has the following responsibilities:
 - (a) to advise the Attorney-General on marshalling available government resources so they can be applied for the benefit of victims of crime in the most efficient and effective way;
 - (b) to carry out other functions related to the objects of this Act assigned by the Attorney-General.
- (3) The Victims of Crime Co-coordinator is a member *ex officio* of the advisory committee.
- (4) The Victims of Crime Co-coordinator is to be appointed, and is to hold office, on a basis determined by the Governor.

Part 4—Compensation

17—Eligibility to make claim

- (1) A person is eligible to claim statutory compensation for injury caused by an offence if—
 - (a) the person is an immediate victim of the offence; and

- (b) at least one of the following conditions is satisfied:
- (i) the offence involved the use of violence or a threat of violence against the person or a member of the person's immediate family;
 - (ii) the offence created a reasonable apprehension of imminent harm to the person or a member of the person's immediate family;
 - (iii) the offence is a sexual offence;
 - (iv) the offence caused death or physical injury.
- (2) A person is eligible to claim statutory compensation for grief suffered in consequence of the commission of a homicide if the person is—
- (a) a spouse of the deceased victim; or
 - (b) where the deceased victim was a child—a parent of the deceased victim.
- (3) A person is eligible to claim statutory compensation for financial loss suffered by the dependants of a deceased victim if—
- (a) the victim died as a result of the injury caused by the offence; and
 - (b) no previous order for statutory compensation has been made in respect of the injury; and
 - (c) the person is, in the opinion of the court, a suitable person to represent the interests of the dependants.
- (4) A person is eligible to claim statutory compensation for funeral expenses if—
- (a) a victim dies in consequence of the offence; and
 - (b) the person has paid, or is responsible for payment of, the victim's funeral expenses.
- (5) However—
- (a) a person is not entitled to statutory compensation if the injury arises from a breach of statutory duty by the person's employer that occurs in the course of the person's employment; and
 - (b) a person is not entitled to statutory compensation if the person has received, or is entitled to receive, workers compensation for the same harm under Division 5 or 6 of Part 4 of the *Workers Rehabilitation and Compensation Act 1986*; and
 - (c) a person is not entitled to statutory compensation if the injury is caused by, or arises out of the use of, a motor vehicle in circumstances in which the injury falls within the ambit of a compulsory third-party insurance scheme covering the motor vehicle (whether the vehicle is in fact insured under the scheme or an action for damages lies against a nominal defendant); and
 - (d) a person is not entitled to statutory compensation for hospital or medical expenses that would, if no award for compensation were made, be recoverable from a health fund or scheme; and
 - (e) a prisoner is not entitled to statutory compensation for psychological injury resulting from an offence committed in the prison unless the prisoner was assaulted or suffered physical injury.
- (6) If workers compensation and statutory compensation are paid for the same harm¹, the payment of statutory compensation does not give rise to a right to recovery under a law relating to workers compensation.

Note—

- 1 Note that this provision will only apply in the comparatively rare cases where the payment of, or right to, workers compensation does not operate to the exclusion of a right to statutory compensation under subsection (5)(b) above.

18—Application for compensation

- (1) A person who is eligible to claim statutory compensation may, within the initial application period, apply for statutory compensation.
- (2) The initial application period is—
 - (a) for an application by a victim—3 years after the commission of the offence;
 - (b) for an application arising from the death of a victim—12 months after the date of death.
- (3) An application is to be made in the first instance to the Crown Solicitor.
- (4) The following requirements apply to and in relation to the application:
 - (a) the application must—
 - (i) contain the information required by the regulations; and
 - (ii) be accompanied by any medical reports relevant to the injury in the possession of, or accessible to, the claimant; and
 - (iii) be accompanied by any further documents required under the regulations; and
 - (b) the information contained in an application must be verified by statutory declaration; and
 - (c) a copy of the application must be served on the offender unless—
 - (i) the identity of the offender is unknown; or
 - (ii) the Crown Solicitor exempts the applicant from this requirement on the ground that the whereabouts of the offender are unknown and cannot be readily ascertained.
- (5) If a claim for statutory compensation has not been settled by agreement between the Crown Solicitor and the claimant within 3 months after the application is made or a longer period agreed between the Crown Solicitor and the claimant (the *period for negotiation*), the claimant may apply to the court for an order for statutory compensation.
- (6) An application to the court under subsection (5) must be made on or before the later of the following:
 - (a) the end of the initial application period; or
 - (b) the end of the period of 6 months that follows immediately after the end of the period for negotiation.
- (7) The court may, for any proper reason, extend a period of limitation fixed by this section.

19—Joinder of offender as party to court proceedings

- (1) If an application for statutory compensation is made to the court, the offender is (subject to this section) to be a party to the proceedings before the court.
- (2) A claimant who makes an application to the court must (subject to this section) serve a copy of the application on the offender.
- (3) The above requirements are subject to the following qualifications:
 - (a) if the identity of the offender is not known, there is no need to serve a copy of the application on the offender and the offender does not, in that case, become a party to the proceedings;
 - (b) if the whereabouts of the offender are not known and cannot be readily ascertained, the court may, on application by a claimant, exempt the claimant from the obligation to serve a copy of the application on the offender and, if such an exemption is granted, the offender is not a party to the proceedings.

20—Orders for compensation

- (1) Subject to this Act, on an application for statutory compensation, the court may order—
 - (a) that the victim be paid by the Crown such amount as the court thinks fit by way of compensation for the injury arising from the offence; or

- (b) that the dependants of a dead victim be paid by the Crown such amount as the court thinks fit by way of compensation for the financial loss suffered by them (to be proportioned between the various claimants as the court thinks fit); or
 - (c) in the case of an application for compensation for grief—that a claimant be paid by the Crown such amount (not exceeding \$4 200 in the case of a spouse or \$3 000 in the case of a parent) as the Court thinks fit by way of compensation for the grief suffered by the claimant; or
 - (d) in the case of an application for compensation for funeral expenses—that the claimant be paid—
 - (i) the amount of funeral expenses incurred by the claimant; or
 - (ii) \$5 000,
 whichever is the lesser.
- (2) If the Crown consents to the making of an order for statutory compensation, the court may, without further inquiry, make an order on terms agreed by the claimant and the Crown but—
- (a) the settlement does not bind the offender in any way unless the offender was a party to the settlement agreement; and
 - (b) the settlement does not limit rights that the claimant may have independently of this Act against the offender (whether or not the offender is a party to the settlement).
- (3) In awarding statutory compensation, the court must observe the following rules:
- (a) in the case of an award under subsection (1)(a) or (b)—
 - (i) if financial loss is to be compensated and the amount that would, but for this subparagraph, be awarded exceeds \$2 000, the amount awarded will, subject to subparagraph (iii), be \$2 000 plus three-quarters of the excess; and
 - (ii) if a claim for non-financial loss is made—
 - the total non-financial loss must be assigned a numerical value on a scale running from 0 to 50 (the greater the severity of the non-financial loss, the greater the number); and
 - if the numerical value so assigned is 2 or less, no award will be made for non-financial loss but, if the numerical value exceeds 2, the amount awarded will be arrived at by multiplying the number so assigned by \$1 000; and
 - (iii) in any case—where an amount arrived at to compensate financial loss, or the aggregate of amounts arrived at to compensate financial loss and non-financial loss, would, but for this subparagraph, exceed \$50 000, the amount awarded will be \$50 000;
 - (b) in the case of an award of compensation for grief—
 - (i) if both the spouse and the putative spouse of a person killed by homicide have applied for such compensation, the aggregate of the amounts awarded to them by way of such compensation will not exceed \$4 200;
 - (ii) if both parents of a child killed by homicide have applied for such compensation, the aggregate of the amounts awarded to them by way of such compensation will not exceed \$3 000;
 - (c) subject to the following qualifications, statutory compensation amounting in aggregate to more than \$50 000 cannot be awarded to any single claimant.

Qualifications—

- 1 If the claimant claims both as a dependant or representative of the dependants of a deceased victim and in some other capacity, the limitation applies separately to each capacity in which the claimant claims.

- 2 An amount to which an applicant is entitled by way of funeral expenses will not be brought into account in determining whether the limitation has been exceeded.
- (4) In determining an application for, and the quantum of, statutory compensation, the court must have regard to—
- (a) any conduct on the part of the victim (whether or not forming part of the circumstances immediately surrounding the offence or injury) that contributed, directly or indirectly, to the commission of the offence, or to the injury to the victim; and
 - (b) such other circumstances as it considers relevant.
- (5) The court must not make an order for compensation in favour of a claimant if the court—
- (a) is satisfied beyond reasonable doubt that the injury to the claimant occurred while the claimant was engaged in conduct constituting an indictable offence; and
 - (b) is satisfied on the balance of probabilities that the claimant's conduct contributed materially to the risk of injury to the claimant,
- (unless the court is satisfied that, in the circumstances of the particular claim, failure to compensate would be unjust).
- (6) For the purposes of subsection (5)(a), a relevant conviction or acquittal is to be regarded as conclusive of the claimant's guilt or innocence of the indictable offence.
- (7) The court must not make an order for compensation in favour of a claimant if it appears to the court that the claimant, without good reason—
- (a) failed to report the offence to the police within a reasonable time after its commission; or
 - (b) refused or failed to provide information to the police that was within the claimant's knowledge as to the offender's identity or whereabouts; or
 - (c) refused or failed to give evidence in the prosecution of the offender; or
 - (d) otherwise refused or failed to co-operate properly in the investigation or prosecution of the offence,
- and, in consequence, investigation or prosecution of the offence was not commenced or was terminated or hindered to a significant extent.
- (8) In deciding the amount of compensation to be awarded, the court must take into account—
- (a) any failure by the claimant to avail himself or herself of proper medical treatment or rehabilitative therapy; or
 - (b) any other failure to take proper steps to mitigate his or her loss.
- (9) No interest may be awarded by the court in respect of the whole or any part of the amount of statutory compensation ordered.
- (10) If the court has made an order for compensation under this section—
- (a) it must, where the offender has been convicted, or adjudged or found guilty, of the offence, endorse on or annex to the order a statement of the offender's means (so far as they are ascertainable by the court); and
 - (b) it must endorse on or annex to the order a statement of any payments that the claimant has received, or would, were the claimant to exhaust all other available remedies, be likely to receive, in respect of the injury or the death of the victim, apart from this Act.
- (11) The court may make such orders for the costs of proceedings under this Act as the court thinks fit.

21—Medical examination of claimant

- (1) A claimant must, if the Crown so requires, submit himself or herself for medical examination by a medical practitioner nominated by the Crown.

- (2) The costs of the medical examination, and any expenses reasonably incurred by the claimant in complying with the request for the examination, must be borne by the Crown.
- (3) If an offender is a party to proceedings under this Act, the court may, on application by the offender, order a claimant to submit himself or herself for medical examination by an appropriate medical practitioner (at the offender's expense).
- (4) The court may order that the proceedings on an application for statutory compensation be stayed until a medical examination has been completed.
- (5) A party must, on receiving the report of the medical practitioner on the results of the examination, furnish the other parties with a copy of the report.

22—Evidence and proof

- (1) Subject to this Act, any fact to be proved by a claimant in proceedings under this Act is sufficiently proved if it is proved on the balance of probabilities.
- (2) No order for statutory compensation may be made (except by consent of the Crown) on an application unless—
 - (a) the commission of the offence to which the application relates—
 - (i) has been admitted, or proved beyond reasonable doubt, in proceedings before a court; or
 - (ii) has been admitted in statutory proceedings related to the offence or can be reasonably inferred from admissions made in any such proceedings; and
 - (b) the other facts on which the application is based have been proved on the balance of probabilities.
- (3) If an order for compensation is sought in respect of an offence, and no person has been brought to trial charged with the offence, the evidence of the claimant as to the commission of the offence, unless supported in a material particular by corroborative evidence, is not sufficient to establish the commission of the offence.
- (4) In proceedings under this Act, the court may receive in evidence a transcript of evidence in proceedings in any other court, and may draw any conclusions of fact that it considers proper.

23—Joint offences

- (1) If an application is made for statutory compensation in respect of injury suffered by a victim, financial loss suffered by a dependant, or grief suffered by a spouse or parent, in consequence of an offence committed by more than one offender, the court may make only one order for statutory compensation in respect of that injury, loss or grief.
- (2) If an application is made for statutory compensation in respect of injury suffered by a victim, financial loss suffered by a dependant, or grief suffered by a spouse or parent—
 - (a) in consequence of a series of offences committed consecutively by one offender, or a series of offences committed simultaneously or consecutively by offenders acting in concert; or
 - (b) in circumstances in which those offences constitute a single incident,
 the court may make only one order for statutory compensation in respect of the injury, loss or grief.

24—Appeals

- (1) A party to proceedings under this Act may, subject to the rules of the Supreme Court, appeal to the Full Court of the Supreme Court against any final order made by the court in those proceedings.
- (2) However, if an order for statutory compensation is made by consent of the Crown, the offender cannot appeal against that order¹.
- (3) The Supreme Court may—
 - (a) dismiss the appeal; or

- (b) quash the order and, if it thinks fit, substitute any other order that the court in the first instance could have made; or
- (c) vary the order in any respect; or
- (d) remit the subject matter of the appeal for rehearing,

and may make such other ancillary orders (including, subject to this Act, orders relating to the costs of the appeal) as it thinks fit.

Note—

- 1 Note that in these circumstances, the order does not necessarily bind the offender when the Crown applies for reimbursement—see section 28.

25—Legal costs

- (1) Despite any Act or law to the contrary—
 - (a) costs awarded in proceedings under this Act must not exceed the amount allowable under the prescribed scale (plus GST); and
 - (b) a legal practitioner must neither charge nor seek to recover in respect of proceedings under this Act an amount by way of costs in excess of the amount allowable under the prescribed scale (plus GST).
- (2) The Governor may, by regulation, prescribe a scale of costs for the purposes of subsection (1).
- (3) In this section—

GST means the tax payable under the GST law;

GST law means—

- (a) *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth); and
- (b) the related legislation of the Commonwealth dealing with the imposition of a tax on the supply of goods, services and other things.

26—Representation of Crown in proceedings

The Crown may be represented by any person nominated by the Attorney-General in preliminary or interlocutory proceedings under this Act or at a hearing for an order under this Act to be made by consent.

Part 5—Payment of compensation

27—Payment of compensation etc by Attorney-General

- (1) Subject to subsection (2), the Attorney-General must satisfy an order for statutory compensation (or for statutory compensation and costs) within 28 days of—
 - (a) the day on which a copy of the order is lodged by the claimant with the Attorney-General; or
 - (b) if an appeal has been instituted against the order, the day on which the appeal is withdrawn or determined,

whichever is the later.

- (2) If—
 - (a) the claimant has received or is entitled to payments apart from this Act in respect of the injury or loss (**other payments**); and
 - (b) the Attorney-General is satisfied that, in view of the other payments, it is just to exercise the powers conferred by this subsection,

the Attorney-General may decline to satisfy an order for statutory compensation (or for statutory compensation and costs), or may reduce the payment to be made to the extent it appears just to do so.

- (3) In the exercise of the discretion conferred by subsection (2), the Attorney-General—
- (a) should have regard to the extent to which the other payments represent an adequate compensation for the injury or loss; and
 - (b) should (in appropriate cases) have regard to the extent to which the other payments compensate (or would compensate) the claimant for pain, suffering and other non-economic loss; and
 - (c) if the other payments do not, in the Attorney-General's opinion, represent an adequate compensation for pain, suffering and other non-economic loss, should not reduce the amount to be paid under this Act below the lesser of the following two amounts:
 - (i) the amount that represents the extent of the deficiency;
 - (ii) \$10000.
- (4) The Attorney-General has an absolute discretion to make the following payments:
- (a) an interim payment of compensation (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a claimant who, in the opinion of the Attorney-General, is in necessitous circumstances and is likely to be awarded statutory compensation; or
 - (b) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a person in the following circumstances:
 - (i) the person suffers injury, financial loss or grief in consequence of conduct alleged to constitute an offence;
 - (ii) the alleged offender is acquitted of the offence;
 - (iii) the acquittal appears to the Attorney-General to have arisen—
 - in a case of rape—from lack of *mens rea*;
 - in any other case—from duress, drunkenness or automatism;
 - (iv) the person would, in the Attorney-General's opinion, probably have been awarded statutory compensation if the offence had been established; or
 - (c) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to the victim of conduct capable of constituting the objective elements of an offence if it appears to the Attorney-General that, because of lack of evidence, absence of capacity to incur criminal responsibility or other matters personal to the perpetrator, or for any other reason that does not reflect adversely on the victim, an offence has not been, or cannot be, established; or
 - (d) an *ex gratia* payment (not exceeding the limits prescribed by this Act in relation to an order for compensation) to a person in the following circumstances:
 - (i) the person suffers injury, financial loss or grief in consequence of an offence committed outside this State;
 - (ii) the victim is at the time of the commission of the offence ordinarily resident in this State;
 - (iii) some person is convicted of the offence;
 - (iv) if the law of the place where the offence is committed establishes a right to compensation—the claimant has taken reasonable steps to obtain compensation under that law but without success;
 - (v) the claimant would, in the Attorney-General's opinion, probably have been awarded statutory compensation if the offence had been committed in this State;
 - (vi) the claimant is, in the Attorney-General's opinion, in necessitous circumstances; or

- (e) such other *ex gratia* payments (not exceeding, in any particular case, the limits prescribed by this Act in relation to an order for compensation) as the Attorney-General considers necessary, and consistent with the objects and policy of this Act, to compensate harm resulting from criminal conduct or conduct of the kind described above.
- (5) A decision by the Attorney-General in the exercise of a discretion under this section cannot be challenged or called in question before any court.

28—Right of Attorney-General to recover money paid out from offender etc

- (1) If the Attorney-General makes a payment to a claimant, the Attorney-General is subrogated, to the extent of the payment, to the rights of—
- (a) the claimant, as against the offender or any other person liable at law to compensate the claimant for the injury, financial loss or grief in respect of which the payment was made; and
 - (b) the offender, as against any insurer or other person from whom the offender is entitled to indemnity or contribution in respect of liability arising from the injury or death in respect of which the payment was made.
- (2) The Attorney-General may—
- (a) bring a claim against an insurer or other person against whom the subrogated right lies by way of third party proceedings in the proceedings founded on the application for statutory compensation; or
 - (b) bring such a claim in separate proceedings against the person against whom the subrogated right lies (including an offender who was not a party to the proceedings founded on the application for statutory compensation).
- (3) If the offender is a party to proceedings founded on an application for statutory compensation—
- (a) the Attorney-General may file in the court a certificate certifying—
 - (i) the amount of the statutory compensation paid out on the claim; and
 - (ii) the applicant's costs (so far as they have been or are to be paid by the Crown); and
 - (b) judgment must then be entered in favour of the Crown and against the offender for the aggregate amount so certified.
- (4) However, if the claim was settled by agreement between the Crown and the claimant, and the offender was not a party to the agreement for settlement—
- (a) the offender may, within 1 month after the offender receives notice of a judgment entered under subsection (3), apply to have the judgment set aside or varied as may be reasonable in the circumstances of the case; and
 - (b) the court may set aside the judgment or vary it accordingly.
- (5) If an application for statutory compensation is settled without court proceedings, or proceedings were brought in court but the offender was not a party to those proceedings, the Attorney-General may—
- (a) file in the court a certificate certifying—
 - (i) the amount of the statutory compensation paid out on the claim; and
 - (ii) the applicant's costs (so far as they have been or are to be paid by the Crown); and
 - (b) apply for summary judgment in favour of the Crown and against the offender for the aggregate amount so certified.
- (6) The court must, on an application by the Attorney-General under subsection (5), enter summary judgment in accordance with the application unless the offender satisfies the court, on application made by the offender within 1 month after receiving notice of the Attorney-General's application, that there is good reason for not entering judgment in accordance with the Attorney-General's application.

29—Recovery from claimant

- (1) If the Attorney-General makes an interim payment of statutory compensation to a claimant and no order for statutory compensation is subsequently made in favour of that claimant, or an order is made but for a lesser amount, the Attorney-General may recover the amount so paid or the amount of the excess (as the case requires) from the claimant as a debt.
- (2) If—
 - (a) the Attorney-General makes a payment under this Act to a claimant; and
 - (b) the claimant is subsequently paid compensation or damages by some other person for the injury, financial loss or grief for which the payment under this Act was made; and
 - (c) the compensation or damages received from the other source was not taken into account by the Attorney-General in making the payment or exceeds the amount taken into account by the Attorney-General,

the Attorney-General may recover from the claimant, as a debt, the amount of the payment or the amount of the excess (as the case requires) but may not recover more than the amount received from the other source.

Part 6—Victims of Crime Fund

30—Victims of Crime Fund

- (1) The Fund previously known as the *Criminal Injuries Compensation Fund* continues in existence as the *Victims of Crime Fund*.
- (2) The Fund consists of—
 - (a) the money provided by Parliament for the purposes of the Fund; and
 - (b) any amounts paid into the Fund under subsection (3); and
 - (c) any amounts recovered by way of levy under this Part; and
 - (d) any amounts recovered by the Attorney-General under this Act; and
 - (e) any money paid into the Fund under any other Act.
- (3) In each financial year, the prescribed proportion of the aggregate amount paid into General Revenue by way of fines will be paid into the Fund.
- (4) A payment made by the Attorney-General under this Act will be debited to the Fund.
- (5) A deficiency in the Fund will be met from the Consolidated Account.

31—Power to make discretionary payments from Fund

- (1) The Attorney-General has an absolute discretion to make payments from the Fund to a government or non-government organisation or agency for a purpose that will, in the Attorney-General's opinion, assist in the prevention of crime or advance the interests of victims of crime.
- (2) The Attorney-General also has an absolute discretion to make other payments from the Fund to or for the benefit of victims of crime that will, in the Attorney-General's opinion, help them to recover from the effects of crime or advance their interests in other ways.
- (3) A decision by the Attorney-General in the exercise of a discretion under this section cannot be challenged or called in question before any court.

32—Imposition of levy

- (1) A levy is imposed for the purpose of providing a source of revenue for the Fund.

- (2) Subject to subsection (3) and any exceptions prescribed by the regulations, the levy is imposed on—
 - (a) all persons convicted of offences after the commencement of this section (whether the offence was committed before or after the commencement of this section); and
 - (b) all persons who expiate offences under expiation notices issued after the commencement of this section.
- (3) A levy is not imposed on a person convicted of an offence if the person has paid the levy under an expiation notice issued for the same offence.
- (4) The amount of the levy is to be fixed by regulation.
- (5) The amount of the levy may vary according to any one or more of the following factors:
 - (a) the nature of the offence;
 - (b) whether the offence is a summary or an indictable offence;
 - (c) whether or not the offence is expiated;
 - (d) whether or not the offender is an adult;
 - (e) variations in the consumer price index.
- (6) If a levy is payable under this section by a person who expiates an offence—
 - (a) the amount of the levy must be shown on the expiation notice; and
 - (b) despite any other law, the offence will not be regarded as expiated, and no immunity from prosecution will arise, unless the levy has been paid.
- (7) If a levy is payable under this section by a person who is convicted of an offence—
 - (a) the amount of the levy must be shown in—
 - (i) any formal record of the conviction and sentence; and
 - (ii) any notice of the conviction and sentence given to the defendant; and
 - (iii) any warrant of commitment issued for the imprisonment of the defendant for the offence; and
 - (b) the court may not, at the time of convicting or sentencing the defendant for the offence, reduce the levy or exonerate the defendant from liability to pay it; and
 - (c) the levy is recoverable under the *Criminal Law (Sentencing) Act 1988*.
- (8) Despite any other provision of this section, the Governor may remit a levy, or a part of a levy, payable by a person under this section.

Part 7—Miscellaneous

33—Interaction between this Act and other laws

This Act does not exclude or derogate from rights to damages or compensation that exist apart from this Act.

34—Date as at which compensation is to be assessed

If a person is entitled to statutory compensation, the amount of the compensation must be assessed in accordance with the provisions of this Act as in force at the time of the commission of the offence from which the injury arose.

35—Delegation

- (1) The Attorney-General may, by instrument in writing, delegate to a specified person, or the holder of a specified position, any of the Attorney-General's powers or functions under this Act.
- (2) A delegation under this section—
 - (a) may be made subject to conditions or limitations; and

- (b) is revocable at will and does not derogate from the power of the Attorney-General to act in any matter.
- (3) However, a delegation cannot be made under this section of the Attorney-General's power to decline to satisfy an order for statutory compensation (or for statutory compensation and costs) or to reduce the payment to be made under such an order¹.

Note—

- 1 See section 27(2).

36—Annual report

- (1) The administrative unit of the Public Service responsible, under the Attorney-General, for the administration of this Act must, on or before 30 September in each year, present a report to the Attorney-General on the operation and administration of this Act during the previous financial year.
- (2) A report required under this section may be incorporated in the annual report of the relevant administrative unit.
- (3) The Attorney-General must, within 12 sittings days after receipt of a report under this section, cause copies of the report to be laid before each House of Parliament.

37—Regulations

The Governor may make regulations for the purposes of this Act.

Schedule 1—Repeal and transitional provisions

1—Repeal of *Criminal Injuries Compensation Act 1978*

The *Criminal Injuries Compensation Act 1978* (the *repealed Act*) is repealed.

2—Transitional provision

- (1) Subject to subclause (2), the repealed Act applies to an application for compensation in respect of an injury arising from an offence committed before the commencement of this Act.
- (2) However, if compensation (other than interim compensation) had not been paid under the repealed Act before the commencement of this Act, Part 5 of this Act applies to the exclusion of the corresponding provisions of the repealed Act as if the order for compensation were an order under this Act.
- (3) This Act applies to a claim for statutory compensation for an injury caused by an offence committed on or after the commencement of this Schedule.

ANNEXURE B

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

An Act to establish the Office of Director of Public Prosecutions; and for related purposes.

Contents

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

Schedule 1—Transitional provisions

1	Retrospectivity
2	Director to take over from Attorney-General

Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

This Act may be cited as the *Director of Public Prosecutions Act 1991*.

3—Interpretation

In this Act—

Director means the Director of Public Prosecutions and includes a person acting in the position of Director of Public Prosecutions;

Office means the Office of the Director of Public Prosecutions.

4—Director of Public Prosecutions

- (1) There will be a Director of Public Prosecutions.
 - (2) The Director will be appointed by the Governor.
 - (3) A person is not eligible for appointment as the Director unless he or she is a legal practitioner of at least seven years standing.
 - (4) The Director will be appointed—
 - (a) for a term of office of seven years; and
 - (b) on terms and conditions determined by the Governor.
 - (5) At the expiration of a term of office, the Director will be eligible for re-appointment.
-

- (6) The Director must inform the Attorney-General in writing of—
 - (a) any direct or indirect pecuniary interest that the Director has or acquires in any business, or in any body corporate carrying on a business, in Australia or elsewhere; and
 - (b) any other direct or indirect interest that the Director has or acquires that conflicts, or may conflict, with the Director's duties.
- (7) The Director must not—
 - (a) engage in legal practice outside the duties of his or her office; or
 - (b) engage, without the consent of the Attorney-General, in any other remunerated employment.
- (8) The Governor may terminate the Director's appointment if the Director—
 - (a) is guilty of misbehaviour; or
 - (b) becomes physically or mentally incapable of carrying out official duties satisfactorily; or
 - (c) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
 - (d) is absent, without leave of the Attorney-General, for 14 consecutive days, or for 28 days in any period of 12 months; or
 - (e) contravenes or fails to comply with subsection (6) or (7).
- (9) Except as provided in subsection (8), the Director's appointment cannot be terminated.

5—Acting Director

- (1) If the Director is temporarily absent, or the Director's position is temporarily vacant, the Attorney-General may assign a suitable person to act in the Director's position during the temporary absence or vacancy.
- (2) A person is not eligible to act in the Director's position unless he or she is a legal practitioner of at least seven years standing.
- (3) The terms on which a person is assigned to act in the Director's position will be as determined by the Attorney-General.

6—Office of the Director

- (1) The Office of the Director of Public Prosecutions is established.
- (2) The Office consists of—
 - (a) the Director of Public Prosecutions; and
 - (b) any persons assigned under the *Government Management and Employment Act 1986* to work in the Office.
- (3) The Director has the administration and control of the Office.

6A—Delegation

The Director may, by instrument in writing, delegate to any suitable person any of the director's powers or functions under this Act but such a delegation—

- (a) is revocable at will; and
- (b) does not prevent the Director from acting personally in the matter.

7—Powers of Director

- (1) The Director has the following powers:
 - (a) to lay charges of indictable or summary offences against the law of the State;
 - (b) to prosecute indictable or summary offences against the law of the State;
 - (c) to claim and enforce, either on behalf of the Crown or other persons, civil remedies that arise out of, or are related to, prosecutions commenced by the Director;
 - (d) to take proceedings for or in relation to the confiscation of profits of crime;
 - (da) to institute civil proceedings for contempt of court;

- (e) to enter a *nolle prosequi* or otherwise terminate a prosecution in appropriate cases;
 - (f) to grant immunity from prosecution in appropriate cases;
 - (g) to exercise appellate rights arising from proceedings of the kind referred to above;
 - (h) to carry out any other function assigned to the Director by any other Act or by regulation under this Act;
 - (i) to do anything incidental to the foregoing.
- (2) The Attorney-General may, by notice in the Gazette, transfer to the Director any powers or functions of the kind referred to above, or any power to consent to a prosecution, vested in the Attorney-General by an Act passed before the commencement of this Act.
- (3) A person who has power to consent to a prosecution, or to allow an extension of the period for commencing a prosecution, for an offence of a particular kind under the law of the State may, by notice in the Gazette, delegate that power to the Director.
- (4) A delegation under subsection (3)—
- (a) is revocable by subsequent notice in the Gazette; and
 - (b) does not prevent the person from acting personally in a matter,
- but, once a decision on a particular matter has been made by the Director in pursuance of a delegation, the delegator is bound by that decision.
- (5) A document apparently signed by the Director and stating that the Director consents to a particular prosecution or that the Director allows a specified extension of the period for commencing a particular prosecution is to be accepted, in the absence of proof to the contrary, as proof of the fact so stated.
- (6) Where an information or complaint charging an offence is apparently signed by the Director or a person acting on the Director's authorisation, the information or complaint will, in the absence of proof to the contrary, be taken to have been duly signed by or on behalf of the Director.
- (7) In any legal proceedings, the Director may appear personally or may be represented by a member of the staff of the office who is a legal practitioner or by counsel or solicitor (including the Crown Solicitor or the Solicitor-General).
- (8) Details of any notices published under this section must be included in the Director's annual report.

8—Consultation

- (1) The Director must, if requested to do so by the Attorney-General, consult with the Attorney-General with respect to the exercise of the Director's powers or functions.
- (2) The Attorney-General must, if requested to do so by the Director, consult with the Director with respect to the exercise of the Director's powers or functions.

9—Independence of Director

- (1) Subject to this section, the Director is entirely independent of direction or control by the Crown or any Minister or officer of the Crown.
- (2) The Attorney-General may, after consultation with the Director, give directions and furnish guidelines to the Director in relation to the carrying out of his or her functions.
- (3) Directions or guidelines under this section—
 - (a) must, as soon as practicable after they have been given, be published in the Gazette; and
 - (b) must, within six sitting days after they have been given, be laid before each House of Parliament.
- (4) Subsection (3) need not be complied with in relation to directions or guidelines under this section relating to individual matters if, in the opinion of the Attorney-General, disclosure may be prejudicial to an investigation or prosecution, but, in that case, the directions or guidelines must be published in the Gazette, and laid before each House of Parliament, as soon as practicable after the matter is determined or otherwise completed.

- (5) If the Attorney-General is satisfied that disclosure under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Attorney-General may withhold material from disclosure so far as necessary to avoid that consequence.

10—Investigation and report

The Commissioner of Police must, so far as it is practicable to do so, comply with any request from the Director to investigate, or report on the investigation of, any matter.

11—Directions and guidelines by Director

- (1) The Director may give directions or furnish guidelines to the Commissioner of Police or other persons investigating, or prosecuting, offences on behalf of the Crown.
- (2) Any such directions or guidelines must be published in the Director's annual report.
- (3) If the Director is satisfied that publication of material under this section would place human life or safety at risk or cause some other form of severe prejudice to any person, the Director may withhold the material from publication so far as necessary to avoid that consequence.

12—Annual reports

- (1) The Director must, before 30 September in each year, prepare and provide the Attorney-General with a report on the operations of the Office during the year that ended on the preceding 30 June, including the number of applications for warrants under the *Listening and Surveillance Devices Act 1972* considered, and the number approved, by the Director.
- (2) The Attorney-General must have a copy of the report laid before each House of Parliament within six sitting days after the date of its receipt.
- (3) The Director may at any time report to Parliament on any matter affecting the proper carrying out of the functions of the Office.
- (4) The report must be given to the Speaker of the House of Assembly and the President of the Legislative Council and they must lay copies of the report before their respective Houses as soon as practicable after its receipt.

13—Saving provision

This Act does not derogate from the right of the Attorney-General to appear personally in any proceedings on behalf of the Crown.

14—Regulations

The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

Schedule 1—Transitional provisions

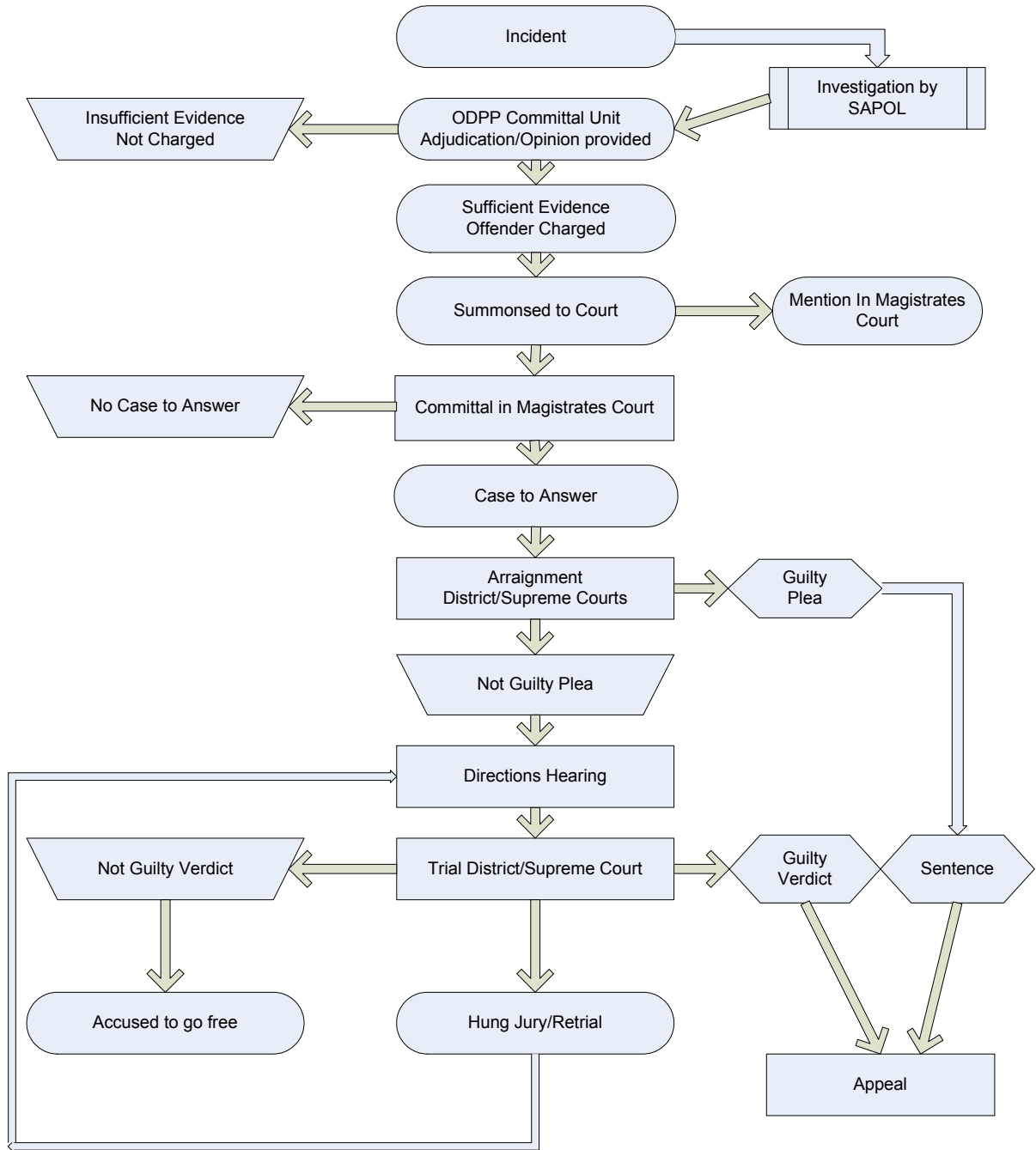
1—Retrospectivity

- (1) This Act applies in relation to proceedings commenced before the commencement of this Act.
- (2) This Act applies in relation to offences committed before the commencement of this Act.

2—Director to take over from Attorney-General

Where, before the commencement of this Act, the Attorney-General had exercised, in relation to particular proceedings, a power or function of a kind vested in the Director under this Act, the Director may assume and continue to exercise that power or function as if it had been exercised by the Director from the inception of the

PROGRESS OF A MAJOR INDICTABLE FILE



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