



**Government  
of South Australia**

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Director of Public  
Prosecutions

**DIRECTOR  
OF  
PUBLIC PROSECUTIONS**

Annual Report

2010-11

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## **DIRECTOR'S OVERVIEW**

Looking back over my Director's Overviews for the last six years some common themes emerge. Relations with government, reforms to the Criminal Justice System, organisational changes, staffing and workload are amongst them.

### **Resourcing**

However the single most concerning issue for the viability of the State's prosecution service, both prior to and since my appointment, has been the inadequate level of resourcing of the Office. It is a debate that is entered into every year and it is a debate that with good faith and good sense need not occur.

Experience has proven that despite best intentions, file numbers delivered to this Office and consequently the workload carried by the Office increases annually. If we and government can be assured of one thing, it is that next year's workload will be higher than this year's and that the following year will be higher still. We know that. Treasury knows that.

How then can it ever make good sense to talk about *reducing* the budget allocations to the Office? We start from a guaranteed minimum workload and allocation (the current measure) and know that it will increase over the next financial year. Surely the only sensible approach is for Treasury to accept that the current year's allocation will be the starting point for assessing the allocation for the coming year with the final increase being sufficient to cover the actual increase that occurs.

Instead we have the unedifying process—entered into annually—of having to repeatedly explain that this is a service that cannot be provided without funds; that our workloads are totally beyond our control, being subject, as they are, to the input of SAPOL and the demands of the Courts; and that government pays the cost annually of taking advantage of the goodwill of the prosecutors and support staff of the Office who work very many unpaid hours in an attempt to manage the relentless workloads.

The cost paid is in terms of occupational health and safety, in burnout and in experienced people seeking the higher paid and often less intense pastures of private practice.

I plead once again for Treasury to stop this unnecessary and senseless practice, to recognise that the provision of a prosecution service for South Australia represents a minimum fixed investment each year and that this amount will increase incrementally annually.

Given this scenario, the current demands for the Office to reduce our budget by approximately 20% by 2014 is impossible to understand. Since the great majority of our budget represents salaries (approximately 85%), what we are being asked to do is, effectively, reduce staff numbers by 20%.

Do those who make these demands seriously not understand that this will result in the destruction of the capacity of the Office to provide an efficient prosecution service for South Australia? Is it not understood that the significant increasing of police numbers, the provision of more courts and judges and the regular changes to legislation have a *direct* impact on the volume of work that the Office is required to process?

I can only hope that good sense will prevail and that these latest impositions will be reviewed and removed.

### **Relations with Government**

Apart from the issue of resourcing, I am delighted to report that a far more open, consultative and respectful relationship has emerged with government with frequent meetings with the Attorney

General occurring over the last year. These meetings have generally revolved around seeking our views on proposed legislation, current problems in the criminal justice system or discussing issues that have emerged in current cases. It has been hopefully productive and worthwhile for both government and this Office and has come as a most welcome development.

### **Reforms to the Criminal Justice System**

Much has been said about criminal gangs over the past year with aspects of the State's Serious and Organised Crime legislation being successfully challenged in the High Court. While this represented a set back, it was temporary in nature only and I am convinced that appropriately drafted and targeted legislation is the best approach to confront the unwanted criminal gangs that circulate in our community and that success will come.

A related issue, but on a different scale, are youth gangs whose members continue to commit offences even after being convicted and serving terms of imprisonment for their offending. This is not a problem that is limited or confined to one ethnic group and attempts to paint it as such are unhelpful, insulting and inaccurate. Concerted attempts are continuing to be made to find appropriate strategies to a difficult community problem and I am guardedly optimistic that we will come closer to a solution in the coming year.

A problem that cries out for inventive solutions is how better to facilitate the complaints of sexual abuse made by children and, in particular, children with disabilities. The demands placed on prosecutors are to prosecute only those cases in which they assess the prospects of achieving a conviction as being "reasonable". In making that assessment, a prosecutor looks to the witnesses to provide a coherent account of the allegations, for unless that can be done no court can properly convict an accused. In the absence of a coherent account the prospects of obtaining a conviction could never be adjudged to be reasonable.

However the very thing that a child complainant, disabled or not struggles to do is to give a coherent account. Sometimes their language or social skills or the trauma associated with the offending against them, prevents them from giving any account at all. In those circumstances the prosecutor is left with no alternative but to decide against continuing the prosecution. It is not because the complainant is disrespected or even disbelieved, it is because the state of the evidence available to be led could never produce a reasonable prospect of achieving a conviction.

Another issue that causes concern in the community is that of suspended sentences. As the law stands, sentencing judges are given the power to suspend any sentence of imprisonment they impose provided that they form the view on the facts before them that there is "good reason" to suspend the sentence. Theoretically at least this discretionary power can be used in relation to a conviction for any offence.

The "good reason" when found is typically to do with the offender's personal circumstances rather than any aspect of the offence itself, so that those who are convicted of offences which are often regarded as particularly heinous (such as sexual offences against children) are still eligible to have their sentence suspended if "good reason" is found to exist.

Some are of the view that this power is too unfettered, that there ought to be some offences which are excluded from the application of the suspended sentence provisions or that suspended sentences should only be applied in exceptional circumstances exist rather than when simply "good reason" is said to exist.

The power to suspend sentences of imprisonment is, or at least has become, a controversial aspect of judicial power. I would welcome a review of these provisions on the basis that it aimed to achieve a higher level of certainty in the sentencing process than currently exists and that it provided more readily understandable criteria for the application of sentencing principles.

As I am coming to the end of my seven year term as Director and as my future is currently uncertain, I would like to take this opportunity to say how much of an honour it has been for me to be of service to the people of South Australia during my term of Office.

Particularly in the less agreeable early days of my term but even throughout these seven years, my family and I have been overwhelmed at the constant level of public support that we have received in our new home. To the many who have sent letters, emails, made phone calls or even stopped me in the street, I say a heartfelt thank you.

Finally I pay tribute to the men and women, the lawyers, administrators, clerical staff and Witness Assistance officers who work so diligently and so professionally to provide the State's prosecution service. Their dedication goes far beyond what anyone outside the Office could ever appreciate.

And to my super organised, multi talented, long suffering Executive Assistant Ms Dianne Flynn, thank you.

**Stephen Pallaras QC**  
Director of Public Prosecutions

## MANAGEMENT AND ORGANISATION

### *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.



## **Partners in criminal justice**

The key stakeholders for the Office are the Attorney-General and his department, the South Australian Parliament, the judiciary, victims, and, on their behalf, the Commissioner for Victims' Rights, 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 providing representation on various committees, steering groups and working parties.

## **Strategic Focus**

The process of re-engineering the workflow of the Office continued in 2010-11. With the implementation of *cradle to grave* file management across the Office in October 2010, one Solicitor now has carriage of a prosecution brief from its arrival from Police—through the Committal and General stages and finalisation. Trials are conducted by counsel from the ODPP Prosecutor section or, on occasions, the private bar, briefed by the ODPP Solicitor.

In parallel with this change, Law Clerks also moved to *cradle to grave* processes with each now performing paralegal work in both Committal and General stages.

To better match the structure of the Office to its function and processes, the Office was reorganised into three Solicitor teams and one Prosecutor section. The targeted development of a cadre of young prosecutors continued to redress the loss, in recent years, of experienced trial counsel.

## **Legislative Framework**

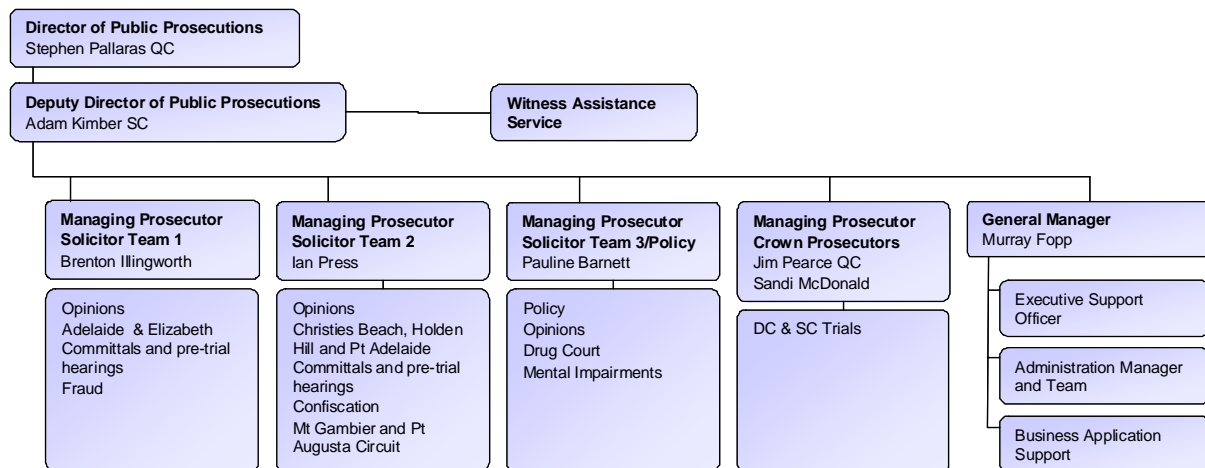
The following legislation was relevant to the professional, administrative and industrial obligations of the Office during the year.

These Acts may be accessed via the Legislation SA website, [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

*Bail Act 1985*  
*Controlled Substances Act 1984*  
*Correctional Services (Parole) Amendment Act 2005*  
*Criminal Assets Confiscation Act 2005*  
*Criminal Law Consolidation (Instruments of Crime) Amendment Act 2005*  
*Criminal Law (Forensic Procedures) Act 1998*  
*Criminal Law (Sentencing) Act 1988*  
*Criminal Law (Undercover Operations) Act 1995*  
*Criminal Law Consolidation Act 1935*  
*Director of Public Prosecutions Act 1991*  
*District Court Act 1991*  
*Equal Opportunity Act 1984*  
*Evidence Act 1929*  
*Firearms Act 1977*  
*Freedom of Information Act 1991*  
*Legal Practitioners Act 1981*  
*Listening and Surveillance Devices Act 1972*  
*Magistrates Court Act 1991*  
*Occupational Health, Safety and Welfare Act 1986*  
*Public Finance and Audit Act 1987*  
*Public Sector Management Act 1995*  
*Serious and Organised Crime (Control) Act 2008*  
*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



## Organisational Profile

The core business of the Office, performed on behalf of the Director of Public Prosecutions, is conducted by Solicitors in three teams and trial counsel in the Crown Prosecutor section.

After a pilot in 2009-10, this year the Office implemented *end-to-end* file management with a single Solicitor taking a prosecution brief through the committal and general (preparation for trial) stages. Trial Counsel from the Crown Prosecutor section represent the DPP in those matters going to trial.

Each Team has administrative, predominantly para-legal, support. Social workers from the Witness Assistance Service are assigned to work in a consultancy role with each Solicitor team. A full time Witness Assistant has about 60-80 witness and victims in their case file. Many of these are *vulnerable* witnesses. Whole of office administrative support is provided by a small team of Rounds Clerks, Record Clerk, Secretary/Typists and Receptionists led by the Administration Manager.

In addition to his legal work, the Deputy Director of Public Prosecutions, together with the General Manager, has a specific role in managing the non-prosecutorial affairs of the Office including occupational health and safety, risk management, workforce planning, review of work practices, emerging demands and opportunities, and fine tuning the roles and responsibilities of managers and supervisors, both legal and non-legal. In October Deputy DPP, Adam Kimber's, proficiency as advocate and his contribution to the justice system was recognised through his appointment, by the South Australian Governor, as Senior Counsel. He joins two other *silks* in the Office—DPP, Stephen Pallaras QC and Jim Pearce QC.

## **Executive Profiles**

There were no changes to the senior executive group in the Office in 2010-11. Members 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. Executive Committee Member of both the International Association of Prosecutors and the International Association of Anti Corruption Agencies.

*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.*

### ***Adam Kimber SC, BA (Juris), LLB (Hons), GDLP - Deputy Director of Public Prosecutions***

Graduated from the University of Adelaide in 1993 and worked as an Associate in the Supreme Court and then briefly in private practice before joining the ODPP in 1995. Prosecuted in the District and Supreme Courts, then managed a group of solicitors and concentrated on appellate counsel work. Rejoined the Prosecutions Section as a Senior Prosecutor in 2005. Became the Deputy Director in 2008. Significant trial experience in the District and Supreme Courts. Adam was made *silk* in 2010.

*Adam Kimber has been Deputy Director of Public Prosecutions since December 2008. He prosecutes major trials in the District and Supreme Courts, conducts appellate work in the Court of Criminal Appeal and High Court. Subject to the direction of the Director, he manages or is directly involved in all facets of the Office's operations.*

### ***Murray Fopp MBA, BPublicAdmin, AssocDipEng (Electronics), Cert IV in Training and Workplace Assessment - General Manager***

For many years Murray worked in broadcast engineering, in 1990 becoming Regional Operations Manager responsible for domestic and international transmitter networks throughout South Australia and the Northern Territory. In 1996 he launched a private consultancy in telecommunications 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.*

### ***Pauline Barnett LLM - Managing Prosecutor***

Admitted as a legal practitioner in 1986. A member of the Crown Solicitor's Office from 1984 to 1994 in the Advising Section. Pauline was seconded to the Attorney-General's Office as Principal Private Secretary to the Hon CJ Sumner MLC from November 1988 until April 1990. In 1994 she joined the Office as an MLS 1 Solicitor and in 1997 was appointed as Managing Solicitor.

*Acts as solicitor and counsel in the conduct of prosecutions and appeals on behalf of the Director. Responsible to the Director and Deputy Director for strategic planning, business process and work flow planning, Department and Office wide projects and for legal policy development for the Office.*

**James (Jim) Pearce QC, LLB GDLP - Managing Prosecutor**

James graduated from The University of Adelaide in 1987. He worked in private practice before joining the ODPP in 1990. Between 1990 and 1996 James worked as a prosecutor, conducting trials in the District and Supreme Courts. Between 1996 and 1998 James worked as In House counsel at a commercial law firm before rejoining the ODPP in 1998. Since that time he has worked as a Senior Prosecutor at the ODPP conducting complex trials in the District and Supreme Courts. In January 2008, James was appointed as Queen's Counsel.

*Prosecutes major trials in the District and Supreme Courts. Conducts appellate work in the Court of Criminal Appeal. Responsible for the management and supervision of one of the four practice teams in the office*

**Brenton Illingworth - Managing Prosecutor**

Graduated from the Law Society Certificate in Law, including five years of articles in 1979. Admitted as a legal practitioner in December 1979. Worked in private practice until 1985, then joined the Crown Solicitor's Office Criminal Prosecution Section as Senior Assistant Crown Prosecutor. From 1990 to 1992 worked at the Bar as defence counsel, particularly in the area of War Crimes Prosecution. Returned to the Crown Solicitor's Office, Civil Litigation Section in 1992. Was appointed Managing Solicitor in 1993 and subsequently Assistance Crown Solicitor of Civil Litigation in 2005. Appointed to the position of Managing Prosecutor at the Office of the Director of Public Prosecutions in 2009.

*Prosecutes complex trials in the District and Supreme Courts. Conducts appellate work in the Court of Criminal Appeal. Responsible for the management of a practice team responsible for prosecutions arising out of the Adelaide Magistrates Court and Elizabeth Magistrates Court. Responsible for liaison with external agencies.*

**Sandi McDonald BA (Juris), LLB, GDLP - Managing Prosecutor**

Graduated from the University of Adelaide in 1993 and was admitted as a legal practitioner in 1994. Commenced employment as a prosecutor in the ODPP immediately upon admission. Since that time has prosecuted criminal trials in the District and Supreme Courts as well as conducting appellate work in the Court of Criminal Appeal. In more recent years has focussed on more serious and complex trial and appellate work whilst managing a practice team.

*Prosecutes major trials in the District and Supreme Courts. Conducts appellate work in the Court of Criminal Appeal. Responsible for one of the office's practice teams and portfolios including the Continuing Legal Education program.*

**Ian Press - Managing Prosecutor**

Graduated from the University of Adelaide in 1989 and admitted as a practitioner in December 1989. Worked for the Legal Services Commission between 1989 and 2000 as a defence solicitor and counsel in the Adelaide and Port Adelaide offices, and as part of the War Crimes Defence Unit. Appeared as counsel in all jurisdictions. Joined the ODPP in October 2000 undertaking roles in the Solicitors,

Committal and Prosecution Sections. Appointed to the position of Senior Solicitor in 2004 and Managing Prosecutor in 2008.

*Has conduct of complex files, prosecutes trials and conducts appellate work in the Court of Criminal Appeal. Responsible for the management and supervision of one of the four practice teams in the office*

## **Management Committees**

### ***Executive Committee***

The *Executive Committee* consists of the Director, Deputy Director, General manager (Chair) and the five Managing Prosecutors. The Executive Committee meets monthly and has overall responsibility for the establishment, implementation and evaluation of the strategic direction of the Office. It has final responsibility for policy and also determines appropriate responses to the important legal issues affecting the Office. During 2010-11, the Executive Committee reviewed its governance role and operation. The structure has been maintained but the Committee is now supported by three sub-committees—Legal Policy and Practice Management, Corporate Support and Training & Professional Development—each headed by a member of the Executive group.

## **Internal Committees and Steering Groups**

### **Continuing Legal Education Program**

This year saw the introduction of Continuing Professional Development as a mandatory requirement for legal practitioners. The Office has built on its traditional program of continuing legal education (CLE), formalising the program and attendance records.

Presenters, internal and external—ODPP specialists, Magistrates, police crime experts and forensic scientists—have presented on topics as diverse as examining hostile witnesses, confiscating assets of crime, interpreting blood spatter patterns, a DNA ‘update’, SAPOL’s Child Exploitation Tracking System and motor vehicle accident reconstruction. In a reciprocal arrangement, staff of the ODPP and Crown Solicitor’s Office are able to attend relevant sessions hosted by either organisation.

### **Workforce and Workflow Planning**

#### ***Cradle to grave file management***

During 2009 to 2010 one of the Office’s practice teams piloted *cradle to grave* file management, whereby a solicitor would have carriage of a matter throughout the life of a prosecution, from the start of committal proceedings through to a guilty plea and sentence or the point when a matter was listed for trial in a superior court. When listed for trial that solicitor would brief an in-house prosecutor or, on occasions, a member of the private bar. The results of this pilot were compared to the performance of the other three legal teams where one solicitor took the matter through the committal stage and another prepared it for trial after it was committed to a higher court.

After comparing the two practice methods, the Executive determined that *cradle to grave* file management provided a more efficient and improved management of prosecution files. In particular it

- ensured the continuity of a solicitor through the life of a matter and provided better service to stakeholders, especially the courts, police and victims of crime;

- gave solicitors a greater sense of ownership, responsibility and consistent approach to file management;
- ensured that a manager would have a greater connection with the work of the solicitor and the files within that solicitor's practice and the office;
- gave practitioners the opportunity to work and develop skills across all of the courts involved in the criminal justice system; and
- empowered solicitors to identify matters for early resolution thereby assisting the efficiency of the criminal justice system. With the Case Conferencing pilot introduced into the Adelaide Magistrates Court and the Special Directions Hearings in the District Court, the dedicated solicitor and manager have been able to make valuable contribution to bringing about trial resolutions.

In October 2010 the whole Office moved to *cradle to grave* practice with two Solicitor Teams handling this phase of the work. Matters listed for trial are then briefed by the solicitor to prosecuting counsel in the Prosecuting Section or to a barrister at the private bar.

### ***Prosecutor Development Program***

While the forensic and advocacy skills of our lawyers compare well with those at the defence bar, the ODPP recognises that these skills must be constantly maintained and improved. The challenges faced by prosecutors in the growing complexity of cases and the demands placed upon them by the judiciary, require all involved to keep up with the increasing demands of the work.

However the Office has a significant number of relatively inexperienced lawyers who are still developing their skills and their capacity to deal with the growing challenges of a busy practice.

Planning for a Trial Prosecution Training Program commenced in 2010-11 to harness the talent and knowledge of the more experienced members of the Office and to enable them to pass on some of their knowledge to others. Senior practitioners will take the role of mentors and lead sessions on significant aspects of trial advocacy.

### ***Policy Committee***

During 2010-2011 the Policy Committee continued to pursue its charter to consider policy issues arising from both within the Office and through enquiries and referrals from outside agencies, most frequently the Attorney-General's Department's Legislation and Legal Policy Division.

The Committee is chaired by a Senior Prosecutor and comprises 13 members, including solicitors, prosecutors, legal managers, the business application manager and a Witness Assistance Officer. Stephen Pallaras QC sits on the Committee and AGD's Legislation and Legal Policy Division was represented by Senior Legal Officer, Matthew Goode. Other members of this Division have attended Committee meetings depending on the particular issues being discussed.

During the 2010-2011 financial year the Committee provided oral or written comments on the following topics:

- Criminal Law (Sentencing) (Sentencing Considerations) Bill 2010;
- Summary Offences (Tattooing, Body Piercing and Body Modification) Amendment Bill 2011;
- Controlled Substances (Offences) Amendment Bill 2011 (in relation to criminalisation of the sale of documents regarding the manufacture of illicit drugs) ;

- Statutes Amendment (Attorney General - Sentencing, Procedure and Other Matters) Bill 2011 (concerning miscellaneous amendments to procedure and sentencing relevant to the Office);
- General proposals to amend section 34CA of the Evidence Act (admissibility of complaints made by protected witnesses in charges of sexual offending) and the Evidence (Hearsay Rule Exception) Amendment Bill 2011, representations which related to the specific terms of the amendments to section 34CA; and
- Child Sex Offenders Registration Act and proposed amendments to the requirements for convicted child sex offenders to register.

The Policy Committee has proven to be a valuable conduit between the Legislation and Legal Policy Division and this Office. The Committee has had the chance to make valuable contributions to policy matters relevant to the day to day work of the Office, and ensure that the expertise within the Office are engaged to enhance legislative reform of the criminal justice.

### ***Legal Recruitment and Staffing***

For 2010-11, the Office had an approved staffing establishment of 144.08 FTE. This was 1.8 FTE less than the previous year. Of this number, 89.43 FTE were legal staff (administrative staff, 43.05 FTE; Witness Assistance Officers, 11.6 FTE.). During the year three legal Managers left the office: two assumed other positions within the Attorney General's Department and one went to the Bar. This placed a considerable burden upon the counsel section as it lost three experienced prosecutors to fill those management positions. Whilst the departure of these people was a considerable loss to the Office, it provided opportunities for staff to assume temporary roles and gain experience in managerial positions.

In addition to the three managers, approximately ten other legal staff with varying degrees of experience left the Office either permanently or for substantial periods on maternity leave or leave without pay. This number is significantly less than in 2009-10.

The Office continued its practice of maintaining a pool of potential employees from which to fill vacancies arising from resignations and extended leave. On one occasion the Office advertised externally for a senior lawyer and that position was filled. However, all other vacancies were filled from a pool of entry-level lawyers. This often meant an experienced lawyer was replaced by a recent graduate or lawyer with limited experience. The use of the pool allowed the Office to reduce the time taken to fill vacancies and to reduce budgetary pressures by decreasing salary payments. The comprehensive CLE/CPD program and structured supervision from Managers enabled the Office to minimise the impact of replacing experienced lawyers with less experienced staff.

The Office continued to provide opportunities for staff attending management and kill training courses and to assume acting roles when managers were absent from the Office for short periods.

A number of staff continue to work part-time and to utilise flexible working arrangements to facilitate a balance between work and personal commitments.

### ***ODPP Client Satisfaction Survey***

Since the implementation of the *ODPP Client Satisfaction Survey (Pilot) Project* in March 2010, the Office has now sent over 830 survey forms to victims, witnesses and their families and has received around 175 survey responses—a return rate of about 21%

Participants, those victims and witnesses who had dealings with the Witness Assistance Service, were asked anonymously how satisfied they were with various aspects of the Office's service.

Survey results indicate the elements of service considered most important by respondents are, in order:

1. *Being Updated about the Progress of the Prosecution Matter*
2. *Having the Legal Process Explained*
3. *Receiving a High Standard of Service*

Other survey results indicate that:

- 90.7% of survey respondents *agree* or *strongly agree* that staff from the ODPP were professional at all times.
- 86.2% of survey respondents indicate that they are *satisfied* or *very satisfied* with the quality of services they received from the Office.
- 81.0% of survey respondents *agree* or *strongly agree* that the services and support provided by the Office met their needs.

Encouragingly, where 73.6% of respondents had a *neutral* impression of the ODPP prior to their involvement with the Office, 83.2% of respondents reported a *positive* or *very positive* impression of the Office after their involvement.

Two areas needing improvement relate to timeliness. They are:

- the time taken to update victims and witnesses about developments in the prosecution process (Court outcomes); and
- consistently commencing the assistance to victims and witnesses at an early stage in the prosecution process.



## CORPORATE OVERVIEW

### Financing Public Prosecutions

Parliament increased the appropriation to the ODPP by \$760,000 to \$19,055,000 in the 2010-11 State Budget<sup>1</sup>. Of this, the Office received \$17,360,000 with a further \$398,000 expected to come from the Victims of Crime Fund for salaries of staff engaged in confiscating the proceeds of crime<sup>2</sup>. However, the ODPP used less than the budgeted legal staff resources for this activity and a reduced amount of \$244,000 was recovered from the Fund.

The Office of the DPP has no control over the portion withheld from the Parliamentary appropriation by the Attorney-General's Department—\$1,695,000 in 2010-11—nor is it able to detail how this portion is used. The Office understands the withheld amount is used to fund Departmental corporate services and overheads.

	2009-10 Allocation (\$,000s)	2010-11 Allocation <sup>3</sup> (\$,000s)	2010-11 Actual <sup>4</sup> (\$,000s)
<b>Revenue Sources</b>			
From Appropriation	18,095	17,360	-
Victim of Crime Fund	392	398	244
Other	18	18.5	10
<b>Total Revenue</b>	<b>18,505</b>	<b>17,777</b>	<b>-</b>
<b>Expenditure</b>			
Staff remuneration	14,756	14,239	14,216
Goods and Services	775	1,319	1,967
AGD Charges (Rent, IT etc)	2,222	2,093	2,097
AGD Depreciation	125	1,29	129
<b>Total Expenses</b>	<b>17,878</b>	<b>17,780</b>	<b>18,180</b>

The amount spent on staff remuneration fell in line with staff reductions. Some recruitment was deferred to save money. Temporary vacancies generate some unspent salary and this was able to be transferred to meet shortfalls elsewhere.

Through the transfer of \$865,000 salary funding to Supplies and Services, the funds available for this purpose was around half a million dollars more than in 2009-10. This followed three years of reduction in the Supplies and Services allocation.

However, the cost of Supplies and Services still exceeded, by over \$600,000, the funds available. Supplies and Services—excluding Attorney-General's Department charges for rent, ICT and depreciation—cost the Office \$1.97 mil but just \$1.32 mil was available for these expenses. Unplanned expenditure was incurred in equipping and fitting out parts of the Office renovated as part of an Attorney-General's Department whole-of-building project. Without sacrificing salary funds, this Supplies and Services deficit would have been greater. Scheduled asset replacement was deferred.

With Salaries on-budget, Supplies and Services \$650,000 over budget, Asset purchases deferred and Revenue \$160,00 under budget the Office finished the year with a deficit of \$776,084.

<sup>1</sup> Source: 2010-11 Budget Paper 4, Vol 2 - Portfolio Statement, p.7.41

<sup>2</sup> These funds cover the salaries of the Confiscation Unit which pays the proceeds of confiscations back into the Fund.

<sup>3</sup> Source: 2010-11 Budget Assumptions, Attorney-General's Department

<sup>4</sup> Source: 2010-11 ODPP Finance Operating Statement for Period 14, Attorney-General's Department

## Staffing levels

In April 2008 the Government announced a four-year staffing plan for the Office. At the beginning of 2010-11, 1.8 FTE of the 7.5 FTE Children in State Care positions expired with the remainder expiring at the end of the year.

	Approved at end of 2008-09	Approved for 2009-10	Change in 2010-11	Approved for 2010-11
Executive Group	3	3		3
Legal (Including managers)	81.23	88.23	-0.8	87.43
Witness Assistance Officers	10.5	11.6		11.6
Administration staff	37.65	43.05	-1.0	42.05
<b>Total FTE <sup>1</sup></b>	<b>132.38</b>	<b>145.88</b>	<b>-1.8</b>	<b>144.08</b>

Notes: 1. Includes staff working in on-going, separately-funded positions in the Office.

The Office continued to receive funding from the Commissioner for Victims' Rights for three full- and one part-time Witness Assistance Officers dedicated to the provision of services to child victims and witnesses.

Salaries for legal and administration staff working on the confiscation of assets of crime are recovered from the Victims of Crime Fund into which the proceeds of confiscated assets are paid. Further details about the Office's confiscation activities can be found on page 23.

## **DIRECTIONS UNDER THE DPP ACT 1991**

### **Directions from the Attorney-General**

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

### **Directions to the Commissioner of Police**

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

### **Listening and Surveillance Devices Act 1972**

Pursuant to section 12 (1) of the *Director of Public Prosecutions Act 1991*, the Office reports that during the year the DPP considered 23, and approved all 23 applications for warrants under the *Listening and Surveillance Devices Act 1972*.

## PROSECUTION RESULTS

<b>OUTPUT:</b>	<b>KEY RESULT AREAS</b>		
<b>Description:</b>	ODPP contributes to these outputs through providing advice to Police, assistance for victims and witnesses, solicitor and counsel services on all matters ultimately heard in the District and Supreme Courts and all matters finalised in the Magistrates Court, as well as administration of confiscation orders issued by the Courts.		
<i>Performance Indicators: 2010 - 2011</i>	<i>Descriptions</i>	<b>Target</b>	<b>Actual result for 2010 - 2011</b>
<b>Quantity</b>	Early resolution in Magistrates Court (a)	>45%	53.81 %
<b>Guilty Pleas</b>	Early Pleas (b)	>20%	34.73 %
	Late Pleas (c)	<40%	62.13 %
	Defendant pleads early to some charges, late to other charges (d)	n/a	3.14 %
<b>Verdicts</b>	Guilty Verdict at trial (e)	>60%	59.61%
	Overall conviction rate (f)	>70%	68.37 %
<b>Nolle prosequi</b>	Nolle Prosequi Rate (g)	<15%	16.88 %
	Late and Very Late Nolle Prosequi (h)	<50%	57.79 %
	Very Late Nolle Prosequi (i)	<15%	38.54 %
<b>Footnotes</b>	<p>(a) Prosecution Briefs resolved at the Committal Stage, i.e. the resolution is entered before the matter is committed to the District or Supreme Court, shown as a percentage of the total number of Prosecutions Briefs resolved within the reporting period (excluding Circuit).</p> <p>(b) Prosecution Briefs resolved by way of a guilty plea at the Committal Stage, i.e. the plea is entered in the Magistrates Court, shown as a percentage of the total number of briefs resolved by way of a guilty plea within the reporting period.</p> <p>(c) Prosecution Briefs resolved by way of a guilty plea after being Committed for Trial, i.e. the plea is entered in the District or Supreme Court, shown as a percentage of the total number of prosecution briefs resolved by way of a guilty plea within the reporting period.</p> <p>(d) Prosecution Briefs resolved by way of a guilty plea after being Committed for Trial and Sentence, i.e. a plea to some of the charges is entered in the Magistrates Court, and a plea to remaining charges is entered in the District or Supreme Court, shown as a percentage of the total number of briefs resolved by way of a guilty plea within the reporting period.</p> <p>(e) Trials resolved by way of a guilty verdict, shown as a percentage of all trial verdicts (Guilty, Not Guilty and Prasad) within the reporting period.</p> <p>(f) Prosecution Briefs resolved by way of a conviction in the District or Supreme Courts (either by guilty verdict or guilty plea), shown as a percentage of the total number of Prosecution Briefs resolved in the District &amp; Supreme Courts within the reporting period.</p> <p>(g) Prosecution Briefs resolved by way of a Nolle Prosequi, shown as a percentage of the total number of Prosecution Briefs resolved in the District &amp; Supreme Court within the reporting period.</p> <p>(h) Prosecution Briefs for which a Nolle Prosequi was entered after the brief was listed for trial, shown as a percentage of the total number of prosecution briefs resolved by way of a Nolle Prosequi within the time period.</p> <p>(i) Prosecution Briefs for which a Nolle Prosequi was entered within a month before and a week after the start date of the trial, shown as a percentage of the total number of prosecution briefs resolved by way of a Nolle Prosequi within the time period.</p>		

## **BUSINESS OPERATIONS**

### **Prosecution Highlights**

#### **High Court**

Five defence applications for special leave to appeal were finalised before the High Court during 2010-11:

- Abdulla v R - Special leave refused 3/9/10
- Gassy v R - dismissed 22/9/10
- Chandra and Hart - dismissed 30/9/11
- Papadopoulos v R- Special leave refused 11/2/11
- Heyward v R- Special leave refused 8/4/11.

#### ***Court of Criminal Appeal***

##### Defence Appeals Against Conviction

Forty six defence appeals against conviction were heard and finalised before the Court of Criminal Appeal during 2010/11. Twenty nine of these appeals were dismissed. In fifteen of the appeals, a re-trial was ordered. In one a conviction on one count was quashed and no re-trial ordered but the balance of the appeal was dismissed. One appeal was withdrawn.

##### Defence Appeals Against Sentence

Forty defence appeals against sentence were heard and finalised before the Court of Criminal Appeal during 2010/11. Twenty nine of these appeals were dismissed. Eleven were allowed. One appeal was withdrawn.

##### Crown Appeals Against Sentence

In 2010/11 the Director pursued permission to appeal against sentences imposed in fourteen matters. In eight, the appeal was allowed and the sentence was increased. In six, permission to appeal was refused or the appeal was dismissed.

##### Appeals against Conviction

#### ***R v Andrews [2010] SASFC 5***

The appellant was tried before a jury for Aggravated Serious Criminal Trespass in a Place of Residence and two count of Aggravated Robbery. A number of issues were raised in the appeal. One was that in determining a claim for public interest immunity with respect to the identity of the person who had provided information to the police, the trial judge took evidence in the absence of the accused and his counsel. The court held that that course was inappropriate but did not result in a miscarriage of justice. The appeal was dismissed.

#### ***R v N [2010] SASFC 74***

This was the first matter in which the Court of Appeal dealt with the directions required at trial when a person is charged with the offence of Persistent Sexual Exploitation under section 50 of the *Criminal Law Consolidation Act, 1935*. At trial the trial judge had asked for special verdicts with respect to the

particulars. The court held that it was unnecessary to seek special verdicts and that the charge could still be made out if the jury differed as to the particulars they found proved. The court also discussed for the first time the provisions of the amended section 278 of the Act with respect to joinder of charges. The court held that the amendment did not alter the proposition that where the evidence on one count is not admissible on another the court will usually exercise its discretion to order separate trials where the allegations are of sexual offending against more than one complainant. The court must still have regard to the principles set out by the High Court in a number of judgments other than the fact that the question of whether a reasonable explanation consistent with innocence, including collusion or concoction, is now a question for the jury.

### ***R v P* [2010] SASFC 81**

The complainant in this matter alleged that she was raped by her husband in 1963. The accused argued that a person could not rape his spouse as that was not an offence known to the law of South Australia in 1963. The question was reserved for consideration by the Full Court. By majority, the court held that it was an offence known to the law and the prosecution of the matter could proceed. The accused has been granted special leave to appeal to the High Court of Australia. The High Court appeal will be heard in the second half of 2011.

### ***R v S* [2010] SASFC 80**

The appellant was found guilty of two counts of sexual abuse of his daughter. A number of issues arose in the appeal. First, the court held that when a complaint is made of sexual abuse that is general in nature, it is not admissible unless it encompasses the conduct of one or more of the offences charged. Where there is more than one offence charged attention must be paid to whether the complaint is admissible with respect to all offences or not. There is also a discussion in the judgement about the operation of section 34M of the *Evidence Act*, 1929 which has replaced the common law with respect to complaint evidence. Finally, the trial judge had not informed the complainant of her right to apply for an exemption from giving evidence under section 21 of the *Evidence Act*. The court held that this complaint was made out but the court would not have held that this error amounted to a miscarriage of justice. The appeal was allowed for other reasons.

### ***R v Allen* [2011] SASFC 40**

The appellant was convicted by a jury of the murder of his wife from whom he had separated by strangling her. The appellant told the police that he had not caused the death of the deceased but had found her body after she had apparently committed suicide. There was evidence that the appellant had been violent to the deceased in the past. The court held that the evidence of the prior relationship had been properly admitted and that the directions given at trial as to the permissible and impermissible uses of this evidence were appropriate. The court also referred to well settled principles with respect to the duty of the trial judge in putting the defence case in the summing up and with respect to the right of the trial judge to comment on the facts in forceful terms so long as it is made plain that the facts are for the jury to decide. The appeal was dismissed. The appellant is seeking special leave to appeal to the High Court. That application is likely to be heard in late 2011.

### ***R v M* [2011] SASFC 50**

This is the second case in which the Court of Criminal Appeal has dealt with the directions necessary for the charge of Persistent Sexual Exploitation. It was held, potentially contrary to the position of the court in *R v N*, that the jury must agree the accused committed the same two or more acts of sexual exploitation before they can convict. The court made further important observations as to the operation of the amended section 278 of the Act when an accused is charged with offences against more than one complainant and as to the directions required as to the permissible and impermissible uses of evidence led in such a trial.

### ***R v Bellchambers* [2011] SASCF 60**

This was an appeal against conviction. However, the sentencing judge had delayed sentencing until after the appeal had been finalised. The Director invited the court to provide guidance to sentencing courts with respect to this issue. The court held that it is generally inappropriate for trial judges to defer sentencing following a guilty verdict while an appeal is pursued. A verdict of a jury or judge is not provisional or contingent upon the outcome of an appeal and should not be treated as such. In general, the interests of justice, the community, victims and offenders themselves are best served by sentencing taking place as soon as practicable after delivery of a guilty verdict.

#### Crown Appeals against Sentence

### ***R v Hill* [2011] SASCF 79**

Mr Hill was found guilty of three counts of Indecent Assault against a child about 40 years ago. The accused held a senior position at the institution where the child lived. He received a sentence of 2 years 3 months with a non-parole period of 16 months. The Court of Appeal increased that sentence to 6 years with a non-parole period of 3½ years. The Court of Appeal emphasised the need for penalties that reflect the seriousness of such offending and well established sentencing principles.

### ***R v Abdulla* [2011] SASCF 20**

The accused was convicted of the rape of an 11 year old boy. After allowing for 3 months spent in custody, he was sentenced to 7 years 9 months with a non-parole period of 1 year and 9 months. The Court of Appeal set aside the sentence that had been imposed and fixed a sentence of 7 years 9 months with a non-parole period of 3 years 9 months. The court dealt with the provisions of section 340 of the *Criminal Law Consolidation Act, 1935* holding that in prosecution appeals against sentence, the principle of double jeopardy was only relevant to whether or not permission to appeal should be granted. If permission to appeal is granted, double jeopardy had no role to play thereafter.

### ***R v Harkin* [2011] SASCF 24**

A father and son pleaded guilty to Aggravated Causing Serious Harm with Intent to Cause Serious Harm. The father received a suspended term of imprisonment for 3 years 9 months with a non-parole period of 18 months. The son was sentenced to a suspended term of imprisonment for 2 years and 3 months with a non-parole period of 12 months. The appeals were allowed. The father was re-sentenced to an immediate term of imprisonment of 3 years with a non-parole period of 19 months. The son's sentence remained suspended but additional conditions were imposed.

### ***R v A* [2011] SASCF 5**

The respondent pleaded guilty to murder. He stabbed and killed a 14 year old boy in the course of a fight. The respondent was also 14 years of age. The sentencing judge imposed the mandatory head sentence of life imprisonment. A non-parole period of 6 years was imposed. The Director appealed the non-parole period. The court granted permission to appeal but dismissed the appeal. In doing so, the court provided guidance with respect to the operation of section 32A of the *Criminal Law (Sentencing) Act, 1988* and suggested that Parliament should re-visit the provision of that section. Further, the court held that section 32A did not apply to youths.

#### Defence Appeals against Sentence

### ***R v Urbanski* [2010] SASCF 57**

The appellant pleaded guilty to Possessing Ecstasy for Supply on the basis that another (A) had purchased ecstasy on behalf of both of them. A then gave the ecstasy to the appellant on the

understanding that the appellant would later give A his share. On appeal, the issue arose as to whether the appellant could intend to supply A something that A owned. The court held that the mere fact that A owned the drugs did not defeat an intention to supply.

### ***R v Botterill [2011] SASFC 47***

The appellant was found guilty at trial of one count of Indecent Assault. The victim was his step-granddaughter who was about 12 or 13 years of age at the time. The appellant was 67 years of age with no prior convictions. The court dismissed the appeal. The offending involved a breach of trust and called for a substantial sentence of immediate imprisonment to reflect the need for general deterrence.

### ***R v Ohmer [2011] SASFC 44***

The appellant pleaded guilty to one count of Aggravated Production of Child Pornography and one of Aggravated Possession of Child Pornography. The appellant had filmed in change rooms in a swimming centre where male children were changing. The appellant was sentenced to imprisonment for 4 years with a non-parole period of 18 months. The Court of Criminal Appeal upheld that sentence.

### ***Trials***

#### ***R v Rodney Kane ALLEN***

Mr Allen was convicted of the strangulation murder of his estranged wife. He killed her and then quite convincingly, constructed a scene to look as though she had committed suicide by a high point hanging. Evidence of a previous violent relationship was lead using the principles in *Wilson v The Queen* (1970) 123 CLR 334. The evidence of the pathologist, that injuries to the deceased throat and neck area were very rare in a high point hanging, was very important. Mr Allen was given a 22 and ½ year non parole period.

Mr Allen appeal his conviction. The CCA by majority refused the appeal. He has applied to the High Court for leave to appeal his conviction.

#### ***R V Cunningham, Staker, Armistead, Quinlivan et al***

Six adults were charged with acts endangering life and creating risk of serious harm/criminal neglect, by starving five children aged between 5 and 10 to a point where two of them were on the verge of death and the others were at grave risk of permanent brain damage.

The accused were the mother father, stepmother, stepfather and sometime babysitters of the five children.

These adults were related to each other in various ways.

They lived in a house with the 5 children and 16 other children in the age range 16 years - 6 months. The house was filthy. It would appear that basis for withholding food from these 5 children was interrelationship jealousy with the children as pawns. This however never explained why all adults joined in and pursued a protracted course of cruelty toward these 5 children which included making them stand in line for hours at a time, refusing them access to toilets for long periods of time, making them watch others eat in front of them and being beaten or strangled if they attempted to steal even a morsel of food.

The matter only came to light because one of the children was assaulted to such an extent that it became clear that if he were not taken to get medical attention he would die. The children were in a shocking state by the time they were removed from the premises; one child had a core temperature of



25 degrees which meant death was imminent, three of the children had brain shrinkage, two had life threatening blood infections and all were covered in sores and abscesses.

Experienced front line doctors, nurses and police officers were greatly affected by having to give evidence about the children's state.

Two women and three men were sentenced to long terms of imprisonment and one other woman was found unfit to stand trial. She is now the subject of a supervision order under section 269 of the *Criminal Law Consolidation Act, 1935*.

### ***R v LY, NGO, NGUYEN, TRAN & LIM***

Each of the accused was charged with Murder. The body of the deceased was never recovered. The prosecution case was that the accused were party to an arrangement to lure the deceased to a house where they would torture him with a view to extract financial information from him in order to satisfy a drug debt. Three of the accused were found guilty of Murder and two of Manslaughter.

The convictions of 3 of the accused are now the subject of an appeal.

The matter was complex because of its circumstantial nature, number of accused and the roles that each of the accused respectively played.

### ***R v FOX***

The accused was charged with 4 Counts of Unlawful Sexual Intercourse. The complainant was his student. The offending occurred in 1984.

The matter proceeded by way of trial by Judge alone. Guilty verdicts were returned by the Trial Judge on all 4 Counts of Unlawful Sexual Intercourse.

The prison sentence imposed by the Trial Judge was suspended. The accused originally appealed his conviction but later withdrew the appeal.

### ***R v COCKS***

In November 2010 and subsequently in February 2011 Mr Craig Cocks faced trial charged with the murder of his wife Jodie Cocks. After a trial which lasted almost 3 weeks the jury empanelled to hear the trial in November 2010 were unable to reach a verdict. The second trial was held in February 2011 and a jury convicted the accused.

In the early hours of 21 February 2010 Craig Cocks called the South Australian Ambulance Service seeking assistance for himself and his wife. He told the emergency operator that his wife had stabbed herself to death pursuant to a suicide pact they had agreed upon because of their dire financial circumstances. He said he had also suffered some stab wounds that he had inflicted upon himself.

Jodie Cocks was dead when the Ambulance arrived. Her injuries were inconsistent with having been self inflicted and much more consistent with her having been the victim of a brutal stabbing and strangulation. Jodie Cocks had spent the week leading up to her death celebrating her 40th birthday with a close circle of family and friends. Enquiries with these people established that she was not suicidal at the time of her death but was unhappy in her marriage and had been exploring the possibility of leaving the accused.

At trial the accused in evidence maintained that Jodie Cocks had stabbed herself pursuant to a suicide pact. He claimed that he had inflicted stab wounds on himself because he also wanted to die.

A careful analysis of the crime scene, evidence of the nature and severity of the injuries suffered by Mrs Cocks, and evidence from her family and friends about her state of mind in the days leading up to her death combined to exclude the account of the accused as a reasonable possibility.

Mr Craig Cocks was sentenced to life imprisonment with a non-parole period of 24 years.

### ***R v MCDONALD***

The accused was charged with eight counts of Endangering Life. Each of these charges related to an allegation that the accused had engaged in unprotected anal intercourse with another man whilst he was HIV positive, knowing that he was HIV positive.

The trial was lengthy and complex because of the numbers of alleged victims and the complex scientific evidence that was presented by both the defence and the prosecution.

The jury returned guilty verdicts in relation to two of the counts. McDonald is now serving a sentence of 6 years 10 months, non parole period 4 years imprisonment.

### ***R v BEARE***

Peter John Beare was charged with two counts of Abuse of Public Office, contrary to s 251 *Criminal Law Consolidation Act 1935* (SA).

In the first count it was alleged that while holding public office as the Chief Executive Officer of Light Regional Council, Beare used the confidential Council information he obtained in the course of his employment to invest in a property development venture for land in the Council area in Kapunda that had been ear-marked for residential rezoning. That rezoning had the potential for the land to be subdivided and residentially developed thus markedly increasing the market value of the land and resulting in a financial benefit for himself and his company.

The second count alleged that Beare used confidential Council information about the potential rezoning of a large parcel of land in the Historic Conservation Kapunda Mine Zone to secure a cheap sale of that land for the benefit of himself or an associate. The Historic status of the land meant that there were very limited permissible uses for it - it could not be subdivided or residentially developed. The land belonged to a long-standing ratepayer of the Council who was attempting to sell the land to the Council for conservation and touristic purposes and who had not, despite Council resolutions, been informed by Beare about possible changes to the zoning of her land to allow for subdivision and development.

The matter was tried before a judge and jury in the District Court. The trial ran for a total of six weeks, which included a protracted voir dire of almost two weeks. The trial involved complicated issues of fact and law, including the presentation of a large volume of documentary exhibits and the calling of a large body of witnesses, many of whom were professionals in the field of town planning, development and local government. The trial was further complicated by the complexity of the elements of the offence to be proved.

At the conclusion of the Crown case, the trial judge directed an acquittal on count 1. After almost two days of deliberating, the jury returned a majority verdict of not guilty on count 2.

### ***R v B J M***

The defendant was found guilty after trial of persistent sexual exploitation of his daughter, gross indecency in the presence of his two sons, and assault on his daughter and one son. He was sentenced to 18 years imprisonment with a non parole period of 12 years.

The defendant had sexually abused his daughter over a period of years principally at the family home.

The evidence also revealed that for years the Appellant had been violent, cruel, and controlling of his wife and family. He was a ruthless disciplinarian who would punish and intimidate his children through the use of canes, sticks, his belt, and his fists. This might be for trivial matters and often for no real reason at all.

The presentation of the trial inevitably raised particularly difficult issues of joinder and severance; whilst trying all offences together would arguably cause real prejudice to the Appellant, the alternative of having several individual trials would have been wholly misleading for the Jury and oppressive to the family.

Ultimately the trial Judge accepted the prosecution argument that in the unusual circumstances of the case, a joint trial of all offences was the only way for the jury to properly understand the context in which all the offences occurred.

On appeal this ruling and several other aspects of the trial were challenged. The court unanimously dismissed the appeal.

### ***R v SAUNDERS***

The defendant SAUNDERS was convicted upon his own plea on 2.8.10 of an offence of aggravated robbery and two offences of causing serious harm with intent.

The defendant who had committed the offences whilst on bail was declared to be a Serious Repeat Offender pursuant to Section 20B of the Sentencing Act and was initially sentenced to an aggregate head sentence of 12 years 7 months and 3 days with a non parole period of 8 years.

The offences were committed at the premises of Normetals, a scrap metal dealership at 255 Grand Junction Road, Ottoway, in the early morning of 29.10.08.

The prosecution case was that the defendant entered an office at Normetals, armed with a machete and viciously attacked two employees with the weapon, causing them both serious injuries, before making off with cash from a safe in the sum of \$15,415.70.

The defendant was later positively identified from a photographic array by one of the victims.

The prosecution later appealed the sentence in respect of the making of the Serious Repeat Offender declaration. The sentence was increased to 15 years, nine months and 20 days with a non-parole period fixed in relation to the total head sentence and the unexpired balance of 11 years and 10 months.

### **Confiscation of Assets of Crime**

The *Criminal Assets Confiscation Act 2005* gives the Director of Public Prosecutions the power to seek to confiscate proceeds and instruments of crime. The Act allows, among other things, the following:

- The court can make a restraining order over property, so that it is not disposed of while criminal proceedings run their course.
- The court can make a forfeiture order, forfeiting property which is the proceeds of an offence, or was used in connection with the commission of an offence.
- The court can make a pecuniary penalty order, which is an order that a monetary sum be paid to the Crown, based on the value of benefits received from the commission of an offence, or the value of property used in connection with the commission of an offence.

Money received from the sale of forfeited property and pecuniary penalty orders is paid into the Victims of Crime Fund.

The ODPP deposited \$2,219,598 into the Victims of Crime Fund for the financial year ending 30 June 2011—almost two and a half times the \$924,728 deposited the previous year.

<b>Criminal Assets Confiscation</b>	<b>2010-11</b>	<b>2009-10</b>
Briefs received	186	209
Briefs finalised	214	167
Deposited the Voc Fund	\$2,219,59	\$924,728

## **Drug Court Files**

Under a 2004 Memorandum of Administrative Arrangement between the Courts Administration Authority, the Departments of Health and Correctional Services and the Attorney-General's Department, the Office participates in the Drug Court Program. Drug Court offers a diversionary program to eligible offenders under which they receive supervision, monitoring and assistance in dealing with their drug dependence. Satisfactory completion of the program, typically lasting about twelve months, is taken into account at sentencing. The Office receives ongoing funding for one lawyer and one law clerk to conduct the Drug Court business on behalf of the Director.

Over the years the volume of work has remained relatively static, with 137 Drug Court Briefs received in 2010-11.

## **STATISTICAL OVERVIEW**

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

### **General counting rules**

Unless otherwise stated all tables and charts report the number of *Briefs*.

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

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

<b><u>Prosecutions Briefs - Received and Finalised (Committal)</u></b>	
	<b>2010-11</b>
Total Prosecution Briefs Received	2780
Briefs Finalised During Committal Stage (Table A)	2543
<p>Please note that the 'Briefs Finalised' during the reporting period do not correlate directly with the 'Briefs Received' during the reporting period. A percentage of the 'Briefs Finalised' will have been received in a previous reporting period, and a percentage of the 'Briefs Received' will be finalised in a future reporting period.</p>	

### **Prosecutions Briefs - Received and Finalised (District and Supreme Courts)**

	<b>2010-11</b>
Briefs Committed for Sentence (Adelaide)	273
Briefs Committed for Trial (Adelaide)	1043
Briefs Received into the Circuit District and Supreme Courts	276
Briefs Finalised in the District and Supreme Courts (Adelaide & Circuit) (Table B)	1487
<p>Please note that the 'Briefs Finalised' during the reporting period do not correlate directly with the 'Briefs Received' during the reporting period. The time that lapses between the receipt of a prosecution brief in the office, and the finalisation of that brief in the District or Supreme Court can be as much as twelve months or more. Therefore, a percentage of the 'Briefs Finalised' will have been received in a previous reporting period, and a percentage of the 'Briefs Received' will be finalised in a future reporting period.</p>	

### **Prosecutions Briefs - Guilty Pleas in the District & Supreme Courts**

	<b>2010-11</b>
Pleads Guilty All Charges (Adelaide & Circuit)	453
Pleads Guilty Some/Lesser Charges (Adelaide & Circuit)	302

### **Prosecutions Briefs - Verdicts in the District & Supreme Courts**

	<b>2010-11</b>
Found Guilty All Charges (Adelaide & Circuit)	89
Found Guilty Some/Lesser Charges (Adelaide & Circuit)	61
Not Guilty All Charges - Acquitted (Adelaide & Circuit)	109

## Prosecutions Briefs - Nolle Prosequi entered in the District & Supreme Courts

	<b>2010-11</b>
<b>Nolle Prosequi (Adelaide &amp; Circuit)</b>	302

### Prosecutions Brief Outcomes

<b>Table A</b>		
<b>Committal - Brief Outcomes</b>		
Outcomes - at Committal Stage	Adelaide 2010-11	
Committed for Sentence	273	10.74%
Committed for Trial	1043	41.01%
Resolved in Mag. Crt by ODPP	46	1.81%
Returned to Police	366	14.39%
No case to answer	5	0.20%
Tender no evidence	666	26.19%
Pleads guilty all charges	43	1.69%
Pleads guilty some/lesser charges	46	1.81%
Other	55	2.16%
<b>Total</b>	<b>2543</b>	<b>100.00%</b>

**Please note only Adelaide Committal outcomes are recorded as Circuit Committal proceedings are undertaken by South Australia Police, not the Office of the Director of Public Prosecutions**

<b>Table B</b>								
<b>District and Supreme Courts - Brief Outcomes</b>								
Outcomes - Supreme & District Court	Adelaide 2010-11		Circuit 2010-11		Adelaide 2009-10		Circuit 2009-10	
Convicted	769	62.98%	136	51.13%	719	152	664	136
Nolle prosequi	241	19.74%	61	22.93%	237	68	183	51
Not Guilty	90	7.37%	19	7.14%	87	23	73	21
White Paper	79	6.47%	43	16.17%	58	44	37	55
Other	42	3.44%	7	2.63%	43	9	46	8
<b>Total</b>	<b>1221</b>	<b>100.00%</b>	<b>266</b>	<b>100.00%</b>	<b>1144</b>	<b>296</b>	<b>1003</b>	<b>271</b>

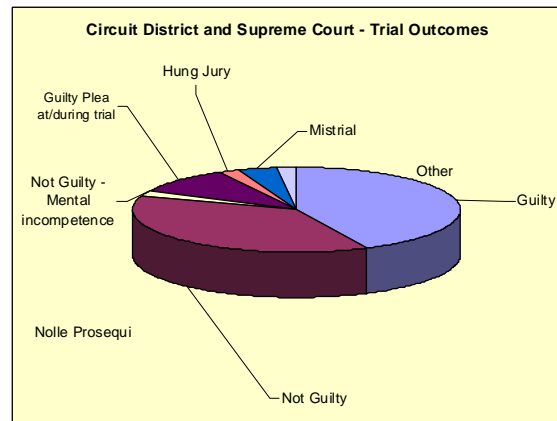
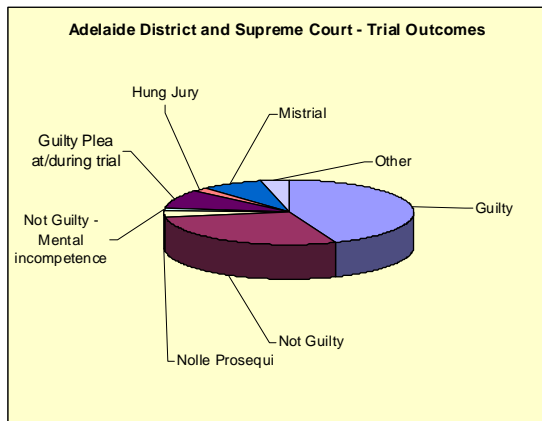
### Trials - Listed, Finalised and Vacated

	2010-11	2009-10	2008-09
<b>Total Number of Trials Listed in the District and Supreme Court (Adelaide &amp; Circuit)</b>	1448	1245	1021
<b>Number of Trials Finalised (Adelaide &amp; Circuit) (Table C)</b>	361	371	301
<b>Number of Trials Vacated (Adelaide &amp; Circuit) (Table D)</b>	1073	883	686

Please note that a single brief may have multiple trials listed during the reporting period. For example, a Trial may be listed in relation to the brief of John Citizen, but may be vacated. The trial may then be listed again during the reporting period, and could proceed and finalise. This would be counted as two trials listed, one trial vacated and one trial finalised during the reporting period.

### Trial Outcomes

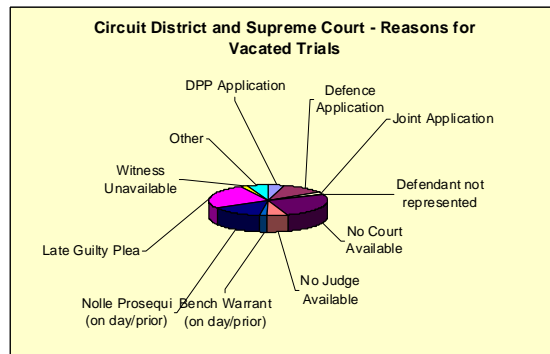
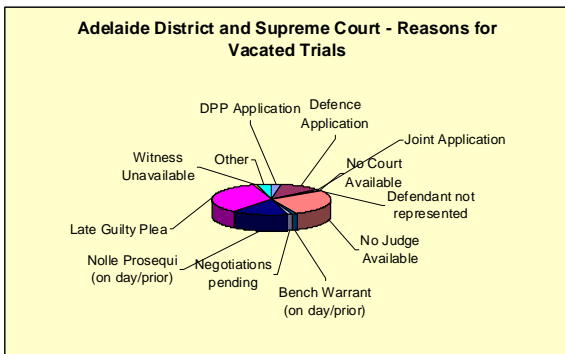
<b>District and Supreme Courts - Outcomes of Trials that Proceeded</b>								
Trial Outcomes	Adelaide 2010-11		Circuit 2010-11		Adelaide 2009-10	Circuit 2009-10	Adelaide 2008-09	Circuit 2008-09
Guilty	136	43.87%	22	43.14%	117	20	117	6
Not Guilty	89	28.71%	19	37.25%	87	23	74	20
Nolle Prosequi	10	3.23%	1	1.96%	9	4	16	3
Not Guilty - Mental incompetence	4	1.29%	0	0.00%	9	0	4	0
Guilty Plea at/during trial	29	9.35%	5	9.80%	35	5	13	3
Hung Jury	6	1.94%	1	1.96%	12	1	1	4
Mistrial	25	8.06%	2	3.92%	21	3	19	2
Other	11	3.55%	1	1.96%	24	1	18	1
<b>Total Trials Finalised</b>	<b>310</b>	<b>100.00%</b>	<b>51</b>	<b>100.00%</b>	<b>314</b>	<b>57</b>	<b>262</b>	<b>39</b>

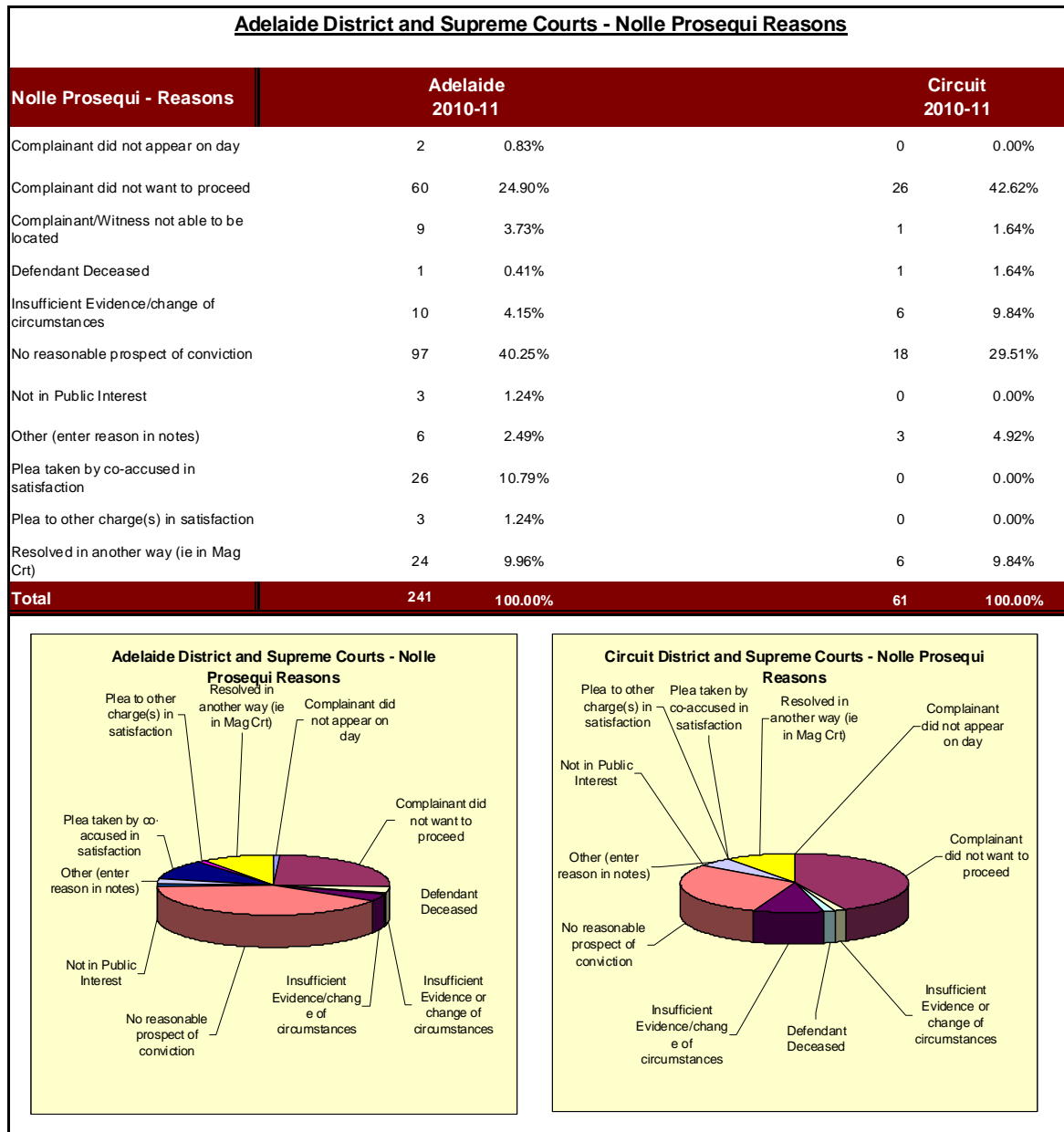


**Table D**

### District and Supreme Courts - Reasons for Vacated Trials

Reason Trial Vacated	Adelaide 2010-11		Circuit 2010-11		Adelaide 2009-10	Circuit 2009-10	Adelaide 2008-09	Circuit 2008-09
DPP Application	23	2.51%	7	4.46%	47	5	47	0
Defence Application	101	11.03%	19	12.10%	77	20	106	16
Joint Application	11	1.20%	3	1.91%		0	0	0
Defendant not represented	2	0.22%	1	0.64%	1	0	2	0
No Court Available	2	0.22%	40	25.48%	8	89	22	26
No Judge Available	256	27.95%	9	5.73%	104	0	93	0
Bench Warrant (on day/prior)	9	0.98%	3	1.91%	12	2	10	3
Negotiations pending	17	1.86%	0	0.00%	3	0	10	0
Nolle Prosequi (on day/prior)	136	14.85%	22	14.01%	136	17	91	11
Late Guilty Plea	313	34.17%	41	26.11%	277	31	161	27
Witness Unavailable	11	1.20%	3	1.91%	24	0	26	
Other	35	3.82%	9	5.73%	27	3	25	10
<b>Total Trials Vacated</b>	<b>916</b>	<b>100.00%</b>	<b>157</b>	<b>100.00%</b>	<b>716</b>	<b>167</b>	<b>593</b>	<b>93</b>





## Appeals

Crown Appeals	Against sentence		Other grounds	
	2010-11	2009-10	2010-11	2009-10
Allowed	8	4		
Dismissed	12	1		
<b>Total Crown Appeals decided</b>	<b>20</b>	<b>5</b>	<b>0</b>	<b>0</b>

Defence Appeals	Against sentence		Against conviction		Other Grounds	
	2010-11	2009-10	2010-11	2009-10	2010-11	2009-10
Conviction quashed		2	16	6		
Sentence reduced	10	5				
Appeal Dismissed	29	16	28	23		
Other outcome	1	1	2	2		
<b>Total Defence Appeals decided</b>	<b>40</b>	<b>24</b>	<b>46</b>	<b>31</b>	<b>0</b>	<b>0</b>

Leave to Appeal Applications	By DPP against sentence		By Defence against Sentence		By Defence against Conviction	
	2010-11	2009-10	2010-11	2009-10	2010-11	2009-10
Abandoned / Withdrawn			9	5	7	2
Dismissed		1	14	11	5	5
Sentence reduced						
To CCA	1		30	30	43	29
Other						
<b>Total Applications</b>	<b>0</b>	<b>1</b>	<b>53</b>	<b>46</b>	<b>55</b>	<b>36</b>



## Adjudication and Opinion Outcomes

Adjudication Outcomes	2010-11	2009-10	2008-09
Charge major Indictable	1946	82.63%	2074
Charge Minor Indictable	137	5.82%	158
Charge Summary	58	2.46%	71
Do not lay charges	51	2.17%	47
Other	163	6.92%	255
<b>Total Adjudications finalised</b>	<b>2355</b>	<b>100.00%</b>	<b>2605</b>

Opinion Outcomes	2010-11	2009-10	2008-09
Charge major Indictable	48	27.12%	72
Charge Minor Indictable	11	6.21%	15
Charge Summary	8	4.52%	2
Do not lay charges	68	38.42%	35
Other	42	23.73%	76
<b>Total Opinions finalised</b>	<b>177</b>	<b>100.00%</b>	<b>200</b>

## Other Brief Types

Criminal Assets Confiscation	Mental Impairment
No of Briefs received during the period	186
No of Briefs finalised during the period	214

No of Briefs received during the period	17
No of Briefs finalised during the period	14

### *DPP Website*

During 2010-11, the Office website averaged over 2300 'hits' each month, up from 1400 in 2009-10. (A *hit* is counted each time a visitor opens a page.)

## CHANGES IN THE CRIMINAL JUSTICE SYSTEM

### Case Conferencing in Magistrates Court

The Adelaide Magistrates Court Case Conferencing Pilot was developed by the Criminal Justice Ministerial Taskforce in consultation with the judiciary, the Courts Administration Authority and the Office of the Director of Public Prosecutions.

The aim of the pilot was to provide a forum for constructive, early negotiations facilitating speedy and appropriate resolution of matters or identify issues and the exchange of information between the parties to expedite pre-trial and trial timeframes. This pilot commenced in April 2009.

The Office of Crime Statistics and Research (OCSAR) conducted a process and outcome evaluation of the Pilot, including interviews with Magistrates, prosecutors and defence counsel, a survey questionnaire and analysis of court statistics. The majority of respondents were very positive about the outcomes of the conferences. Of the 155 conferences finalised by June 2011, 77% resulted in resolution of the matter or progress towards resolution (including 50% of cases resolved with a guilty plea). OCSAR is now conducting a further evaluation to more accurately determine the circumstances in which the conference produced an early plea, as opposed to an outcome that would have occurred in any event.

The positive results have led to an expansion of the pilot to the Holden Hill Magistrates Court. That pilot commenced on 21 April 2011 and will be evaluated over 2011-12.

## **District Court Conferencing**

Special Directions Hearings commenced in the District Court in March 2011. These hearings are an attempt to resolve, without trial, matters which have been committed to the District Court or, if that is not possible, to narrow the issues at trial. There are around fifteen Special Directions Hearings per month. These hearings have the potential to ensure, as far as practicable, that trial lists are composed only of those matters that ultimately do go to trial.

## **Country Committals**

Country committals are handled by SAPOL, unlike metropolitan committals which are handled by the ODPP. In an attempt to see if improvements can be made to the service to victims in country areas, this Office has commenced a six month pilot, assuming conduct of Port Augusta committals. It is anticipated that the ODPP will be able to negotiate appropriate resolutions more quickly and that SAPOL, complainants, this Office, Courts and the accused will benefit. Given the pilot is unfunded this initiative will not continue past the six month trial unless further resources are made available.

## **GENERAL MANAGER'S REPORT**

2010-11 was a year of change and new experiences: the first reduction in staff numbers—albeit small—in many years; a deficit budget outcome; a fundamental change in the workflow of the Office's core business; an organisational restructure to create a dedicated prosecution counsel team; adapting to initiatives in the criminal justice system—Case Conferences, Special Directions Hearings and video conferencing—and consolidating the Office's accommodation as part of the AGD accommodation plan for 45 Pirie Street.

### **Video conferencing**

Use of the Office's newly acquired video conference facility accelerated rapidly in late 2010. By the end of the reporting year it was not always able to cope with demand and the Office was simultaneously using its own system and the Attorney-General's Department facility. In a recent monthly District Court Circuit at Port Augusta, prosecutors from the Office *attended* court 82 times by video conference. In addition, witnesses living in regional and remote areas were linked to the Adelaide office by video conference for *Proofings*. In a collaborative effort with Offices of the DPP in other jurisdictions, witnesses testifying in interstate courts have appeared via the Office facilities.

While the savings are not great—the Office always ensured its prosecutor at the Circuit court appeared under instruction from the solicitor with carriage of a case—that solicitor can now appear on their own matters, an economic impossibility when they are needed at Port Augusta or Mt Gambier for just a twenty minute hearing.

### **Security incidents**

A number of incidents occurred during the year where prosecution staff were accosted by, or encountered threatening behaviour from, members of the public—defendants, their family members or, less often, dissatisfied victims. In several cases additional security was arranged for subsequent court attendance and, in one case, a duress alarm system, activation of which alerts police, was installed at a staff member's home. In conjunction with the AGD Security Advisor, SAPOL and the Court Sheriff we manage these situations to protect ODPP staff at the front line of the justice system.

## **Staffing the Office**

The expiry of some positions created specifically to handle prosecutions flowing from the *Children in State Care (Mullighan) Inquiry* led to a small staff reduction in 2010-11. In 2007 an independent Organisational Review recommended maximum file loads to ensure the Office had sufficient staff for the prevailing volumes of work and individual work loads were safe and permitted adequate levels of attention from staff. The Office continues to operate with about 10 staff less than the recommended number for current volumes of work. This is reflected in the long and unpaid hours worked by staff of the Office.

The challenge of attracting and retaining staff has been explored this year. The relentless pressure of the work is recognised as a significant obstacle to attracting and keeping good, experienced staff in a discerning and highly valued labour force.

## **Information Technology**

Last year we reported that the Attorney-General's Department was briefed on deficiencies in the Office's current IT systems and on potential opportunities to improve the use of IT in support of criminal prosecutions. With support from the Chief Executive, AGD, a review of *IJP Case Tracking* commenced in early-2011. It has identified critical deficiencies and opportunities for significant improvement. These address the effectiveness of the Office's work, some efficiencies, better service to victims through the provision of information, compliance with statutory obligations and collaboration necessary for justice-wide improvement and efficiencies. The review recommends further investigation to identify the preferred solution. This work is on-going at the end of the reporting year but offers the possibility of much improved business support through a replacement, or significantly enhanced, IT system.

The Office is particularly indebted to Justice Business Services for its conduct and resourcing of the review and assistance to work through the many issues and questions raised.

## **Knowledge Management**

The planned On-Line Prosecution Guide progressed, albeit slowly. It is essential that prosecutors have the tools to do their job effectively, efficiently and professionally. The first topic, *Murder offences*, is now written and loaded in the on-line Guide. When complete, the Guide will enable the capture and sharing of corporate knowledge across the Office. Authoring, collecting and managing the content will be a significant and on-going body of work. Resourcing this necessary but additional activity in the face of impending staff cuts will be a challenge.

## **Accommodation**

In 2006, the AGD commenced a project to allocate space to business units, including the ODPP, to enhance efficiency and convenience. In 2010-11 about half the ODPP staff relocated and the Office now occupies its final locations. Although the Office is now less fragmented, occupying just four floors, staff need to travel up to fourteen floors to move between sections of the Office. One of the challenges has been meeting the cost, with no budget allocation, of minor but essential works not included in the AGD project, but made necessary by project works. With insufficient funds to complete the necessary work, at least one new Proofing Room is not fit for purpose.

Necessary acoustic treatment for video conference and proofing rooms will cost \$50-60,000.

## **AGD Corporate Services**

The Office continues to rely on the AGD for corporate services—human resources, facilities management, finance, procurement, security, OHS&W, ICT, corporate communications, media

monitoring, and library. We thank the individuals and teams involved for their assistance throughout the year. We are particularly encouraged by those who have shown a desire to assist; to see the issues from the perspective of the Office and its staff; and to advocate for the Office's needs.

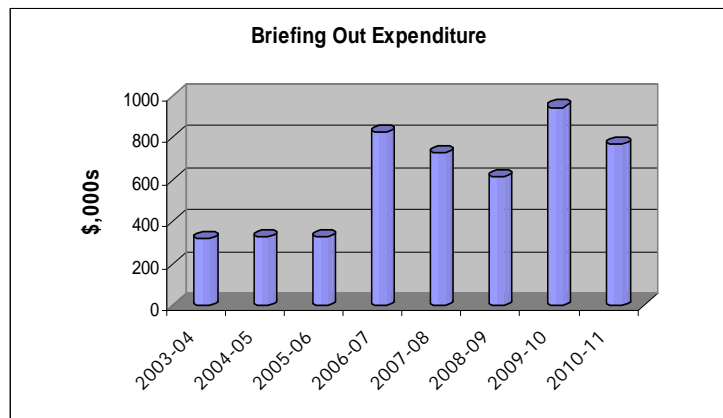
### Contribution to Justice programs and initiatives

The Office has been an active participant in a number of Justice-wide projects, sometimes as a major contributor, at other times reviewing and commenting on draft documents and proposals. The ODPP participated in:

- Victims of Crime Ministerial Advisory Committee
- Review of the Major Indictable Charging Process
- Circuit Committal Court Pilot
- Committee for Redesign of Adelaide Magistrates Court
- Legal Services Commission Review
- Criminal Justice Agencies Information Sharing projects

### Briefing Out

The Office briefs external counsel to appear in court on behalf of the DPP in both city and country (Circuit) courts. This is necessary when the Office has insufficient suitably experienced staff counsel to cover all listed trials. It also contributes to development of criminal advocacy within the private sector. The graph shows Briefing Out expenditure since 2003-04. Recent years have seen the loss of experienced counsel and increasing numbers of relatively junior staff—with a corresponding increase in briefing out. A pilot Prosecutor Development Program commenced in early 2010 with a small group of relative inexperienced prosecutors. That pilot is now showing encouraging signs and 2010-11 saw a reduction in Briefing Out expenditure.



## **Administration Manager's Report**

### ***Staff***

The Office of the Director of Public Prosecutions continues to offer a number of full-time and part-time opportunities to ongoing and term contract staff with flexible employment conditions and working arrangements.

A number of staff—legal, administrative and social workers—availed themselves of AGD work-life balance opportunities by utilizing the Departments flexible working arrangements, including working from home and or flexi time.

In the second half of the year, Administration staff experienced changes to their working environment with the introduction of *cradle to grave* file management and the internal restructure of the office. These changes have created opportunities for administration staff to develop skills and broaden their knowledge.

### ***Occupational Health, Safety & Injury Management***

As the Office is a business unit of the Attorney-General's Department, Occupational Health and Safety matters are reported in the annual report of the Justice Portfolio incorporating the Department of Justice and the Attorney-General's Department.

### ***Training and Development***

The opportunity for training and personal development continues to be offered by the Attorney General's Department and the Office of the Director of Public Prosecution.

The training needs of the professional legal staff are met by the Office through in-house training, specifically to suit their professional development needs. ODPP legal and social work staff also participate in and conduct external training seminars for organisations involved in criminal justice and other interested bodies.

*Past, Present and Future: Aboriginal Cultural Awareness* is a mandatory session for all new recruits to the AGD, including the ODPP.

Work experience options include work experience for high school and university law students, Summer Clerkships for Law under-graduates, and Practical Legal Training placement for Graduate Diploma in Legal Practice students. The Office hosts approximately twenty students each year.

## **Witness Assistance Service Report**

In 2010-11, the Witness Assistance Service (WAS) continued to provide services and support to victims and witnesses of serious crime and their families across the State, including those living in regional and remote areas. The WAS Team also uses its knowledge and expertise to assist legal and non-legal staff in the Office.

The Service remained unchanged with twelve Senior Social Workers in 2010-11. Service outcomes are consistent with recent years, reflecting a period of stability for the Service.

The Commissioner for Victims' Rights continued to fund 3.6 FTE *Child Assistance Officers* allowing the Office to provide wider, more intensive services targeted to this vulnerable population.

## WAS year in review

The activities of the WAS continue to be influenced by the needs and requests of victims and witnesses, and referral patterns of ODPP Solicitors.

Measure : Referral or Activity	2009-2010	2010 - 2011	% Change
New referrals	1122	1025	-8.7%
New adult referrals	867	761	-12.2%
New child referrals	255	264	+3.5%
Time spent assisting adults (hrs)	1880	2265	20.5%
Attendance at Proofing Meetings	1267	1159	- 8.5%
Court Attendance / Support	635	583	- 8.2%
Court familiarisation / Preparation	172	160	- 7.0%
Assistance with VIS	111	129	+ 16.2%
Court Companion Support	130	134	+ 3.1%
Total Face -to-face Services	2315	2165	- 6.5%

### *Activity levels in 2010-11*

As shown in the table, *New Child Referrals* increased in 2010-11 while *New Adult Referrals* decreased. *Total New Referrals* showed a slight reversal of the massive (21%) increase in 2009-10.

And, while the number of new adult referrals dropped, the time spent assisting adult witnesses and victims, including many of the previous year's referrals still being assisted, increased substantially. At least in part, this reflects the Service's assistance to adult victims of alleged sex offences, including complex historical sexual offences.

Reduction in the number of face-to-face services delivered is a return to more manageable levels following increases of 30% or more for each of these activities in 2009-10.

Against the trend of reduced activity in some services, is a significant up-turn in assisting with *Victim Impact Statements*, and a small increase in *Court Companion Support*, consequences of the increased demand for support of victims and witnesses during Trials and prior to Sentencing.

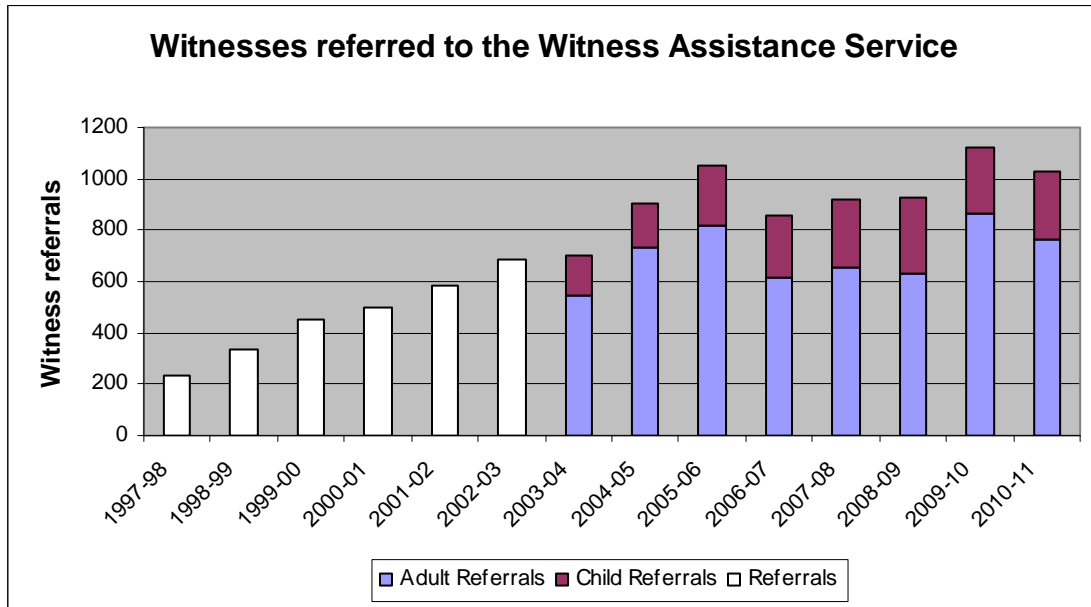
## OTHER HIGHLIGHTS

The WAS continued to work collaboratively with other criminal justice agencies. Of particular note the Service worked in close partnership with Forensic Mental Health Services (James Nash House) in providing a number of information sessions to forensic patients as part of their intensive *Victim Empathy Group Program*. The service also conducted a number of victim awareness sessions with SAPOL staff as part of their *New Detective Training*, with positive results.

Staff from the Service attended the *2011 National Witness Assistance Service Conference* in Victoria and presented the most recent results of the *Client Satisfaction (Pilot) Survey*.

The Service provided training to a range of other professionals regarding victims of crime and the criminal justice system and was invited to provide an information session to AGD legal staff regarding *Social Work Practice Ethics in a Legal Setting* as part of the Solicitors' Continuing Professional Development program.

Finally, the Service continued its key role on the Attorney General’s *Victims of Crime Ministerial Advisory Committee* and continued its commitment to the professional education and practice of graduating social work students by offering student placements



## APPENDIX A

### Publications and Information

The Office publishes information about its services and provides information about services available from other agencies for victims and witnesses. Some publications are produced jointly by the Office and other government and non-government organisations. ODPP publications are available through the Office's Internet site. This website is regularly updated and provides links and information about the criminal justice system, employment opportunities and work experience.

The following publications are available on the Office of the DPP website - [www.dpp.sa.gov.au](http://www.dpp.sa.gov.au).

- ODPP Annual Reports
- *Director of Public Prosecutions Act 1991* and links to relevant legislation
- *DPP Statement of Prosecution Policy and Guidelines*
- *Witness Assistance Service - Information* leaflet (Information for witnesses and victims of crime)
- *Unlocking the Homicide Maze* (Produced by the ODPP in conjunction with the Homicide Victims Support Group)
- *An Important Job - Going to Court* (specifically written for child victims/witnesses)
- *What Choice Do I Have?* - Information for people who have experienced rape or sexual assault (jointly produced by the ODPP and Yarrow Place Rape and Sexual Assault Service).

The following internet sites provide further information related to the work of the Office.

<i>Office of the Director of Public Prosecutions</i>	<a href="http://www.dpp.sa.gov.au">www.dpp.sa.gov.au</a>
<i>Commissioner for Victims' Rights</i>	<a href="http://www.voc.sa.gov.au">www.voc.sa.gov.au</a>
<i>SA Police</i>	<a href="http://www.sapolice.sa.gov.au">www.sapolice.sa.gov.au</a>
<i>Yarrow Place Rape &amp; Sexual Assault Service</i>	<a href="http://www.yarrowplace.sa.gov.au">www.yarrowplace.sa.gov.au</a>
<i>Courts Administration Authority</i>	<a href="http://www.courts.sa.gov.au">www.courts.sa.gov.au</a>
<i>Department for Correctional Services</i>	<a href="http://www.corrections.sa.gov.au">www.corrections.sa.gov.au</a>



## APPENDIX B

### Compliance Reporting

The following matters are incorporated within the Annual Report of the Attorney-General's Department.

- Aboriginal reconciliation Statement
- Asbestos Management
- Consultants
- Contractual arrangement
- Disability Action Plan Reporting
- Energy Efficiency Action Plan Reporting
- Equal Employment Opportunity
- Executive Employment Reporting
- Financial Reporting
- Fraud
- Greening of Government
- Human Resource Reporting
- Occupational Health, Safety & Injury Management
- Regional Impact Assessment Statements

### Freedom of Information

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

### Overseas Travel

The Director made the following overseas trips in 2009-10

<b>Destination:</b>	<b>The Hague, The Netherlands</b>
<b>Purpose:</b>	IAP Executive Committee Meeting and 15th Annual Conference & General Meeting of International Association of Prosecutors
<b>Date:</b>	2 - 9 September 2010
<b>Total Cost to ODPP:</b>	\$12,913.95
<b>Destination:</b>	<b>Macau, China</b>
<b>Purpose:</b>	Internationals Association of Anti Corruption Authorities (IAACA) conference & General Meeting
<b>Date:</b>	31 October - 7 November 2010
<b>Total Cost to ODPP:</b>	\$1,078.00 (Air-fares met by IAACA)
<b>Destination:</b>	<b>Seoul, Korea and Shanghai, China</b>
<b>Purpose:</b>	- International Association of Prosecutors (IAP) Executive Committee Meeting, 16th Annual Conference and General Meeting; - 4th World Summit (WS) of Prosecutors General (Seoul); and - Third International Association of Anti-Corruption Authorities (IAACA) Seminar (Shanghai)
<b>Date:</b>	26 - 29 June 2010 (IAP); 30 June - 1 July (WS); 3-6 July (IAACA)
<b>Total Cost to ODPP:</b>	IAP and WS - \$8,165; IAACA - nil (All costs met by IAACA)

**APPENDIX C****External training**

<b>SESSION</b>	<b>ODPP REPRESENTATIVE</b>
Criminal Justice Seminars - Adelaide (Law Week) - Christies Beach - Murray Bridge	Witness Assistance Officers (Var) Ballard, M Luu, H McDonald, S
Flinders University Law Students Practitioner Mentoring Program	Telfer, E
Forensic Mental Health Service (James Nash House) Victim Empathy Group	Travers, N
Forensic Science South Australia Topic: Expert Evidence Workshop	Matteo, C
Victim Support Service Topic: Help After Child Sexual Abuse The Criminal Justice System	Bertossa, J Powell, J
Law Society of South Australia Topic: Law Society Advocacy Training - Instructor	Telfer, E
Law Society of South Australia Topic: Graduate Diploma in Legal Practice - Instructor in Professional skills topics in Advocacy and Criminal Law	Lesses, K
University of the Third Age Topic: The Role and responsibilities of the DPP	Norman, M
Police Prosecutors at Largs Academy Topic: The Role and responsibilities of the Prosecutor	Norman, M
SA Police Topic: Crime Training Section	Thewlis, R
SA Police Investigators Training Course Topic: 'Interviewing' and DPP Issues	Telfer, E Pienaar, A
SA Police Topic: Major Crash Training Court - The Prosecution Process and Role of the DPP	Lesses, K
SA Police Prosecutors Training Course Topic: Cross Examination Practical	Duong, L
SA Police Prosecutors Training Course Topic: Witness Proofings	Abbey, J
SA Police Training Special (Undercover Techniques) Education Course 2011	Griffith, E

<b>SESSION</b>	<b>ODPP REPRESENTATIVE</b>
Topic: Court Appreciation	
TAFE Interagency Topic: Child Abuse Investigation Training - 6 sessions	Witness Assistance Officers Dunlop, L Matteo, C
Victim Support Service Topic: Help After Child Sexual Abuse - The Criminal Justice System	Bertossa, J Powell, J
VIEW Community Club (A Women's Community Club) Topic: Lunch meeting presentation on R v Gassy Trial	Telfer, E
Yarrow Place Topic: Expert Witness Training Practical Exercise for General Practitioners giving evidence in court.	Duong, Lisa Matteo, C

## APPENDIX D

### Glossary

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

<b><i>Committal Proceedings</i></b>	After a person is charged with an indictable offence they appear before a magistrate who determines if there is sufficient evidence upon which to order that they stand trial before a judge and jury in the District or Supreme Court.
<b><i>Committed for Sentence</i></b>	If, at the committal proceedings, the accused pleads guilty, the magistrate will order the accused person to appear before a District or Supreme Court to be sentenced according to law.
<b><i>Convicted</i></b>	Found guilty of the crime charged or of a lesser charge.
<b><i>Crown</i></b>	The Crown means the State.
<b><i>Declarations</i></b>	A written witness statement given to police, or a statement made by a police officer, signed by the person giving the statement.
<b><i>Defendant</i></b>	In the Magistrates Court the <i>Accused</i> may be referred to as the defendant.
<b><i>Directions Hearing</i></b>	A pre-trial administrative hearing to ensure that all parties are ready for trial and to set a trial date.
<b><i>Exhibit</i></b>	A document or physical item tendered as evidence in a court hearing or referred to in an affidavit.
<b><i>Forensic science</i></b>	The use of science or technology to investigate and establish facts or evidence in a court of law. Forensic scientists search for and examine physical evidence to establish or disprove links between material or a person and the scene of the crime or another person.
<b><i>Forfeiture Orders</i></b>	Orders granted under the Criminal Assets Confiscation Act, 2005 for the confiscation of property of a person convicted of a criminal offence.
<b><i>Form 7</i></b>	An application to the Full Bench of the Supreme Court for leave to appeal following rejection of an application to appeal by a single judge.
<b><i>Indictable Offence</i></b>	An offence, either Major Indictable or Minor Indictable, for which the accused has an initial right to be tried by a judge and jury.
<b><i>Information</i></b>	An Information is the document that formally initiates the prosecution process when lodged with the court prior to Arraignment. It names the accused, details of the charge or charges and the names of witnesses.
<b><i>Major Indictable Offence</i></b>	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.
<b><i>Matter</i></b>	The prosecution of one or more defendants charged in relation to a crime. Where two or more defendants are charged (irrespective of the number of charges laid) the Office will have a Brief for each defendant
<b><i>Major Indictable Offence</i></b>	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.
<b><i>Mentally Incompetent</i></b>	<ol style="list-style-type: none"><li>(1) An accused may be found not guilty on grounds of mental competence at the time the offence was committed (CLCA Part 8A) and declared liable to supervision.</li><li>(2) Where a person is found by a court to be mentally unfit to stand trial because they can not satisfactorily assist in their own defence.</li></ol>
<b><i>Minor Indictable Offence</i></b>	Those indictable offences where the maximum term of imprisonment exceeds two years but is less than five years. Minor indictable offences are heard and determined in the District Court.

<b><i>Nolle Prosequi</i></b>	A decision by the DPP not to proceed with the prosecution. The formal recording of that decision by the court. This decision is taken when it is indicated as appropriate by the Statement of Prosecution Policy and Guidelines (available on the ODPP website - <a href="http://www.dpp.sa.gov.au">http://www.dpp.sa.gov.au</a> .) See also <i>TNE</i> and <i>White Paper</i> .
<b><i>Non-Parole Period</i></b>	The period a prisoner must serve without any eligibility for parole. When a judge imposes a sentence of imprisonment, a non-parole period will generally also be imposed. This is the minimum period the prisoner will serve before he/she is eligible for release. If this period is greater than five years, the release of the prisoner is dependant upon the Parole Board.
<b><i>Not Guilty</i></b>	(1) A plea by an accused that he/she did not commit the crime charged.  (2) The finding of a court that the accused is acquitted of the charges.
<b><i>Objective elements</i></b>	The elements of a crime other than the mental state of an alleged offender. If an accused is found unfit to stand trial due to a mental impairment, the court will decide whether the criminal act occurred as alleged without turning its mind to the guilt of an alleged offender.
<b><i>Opinion</i></b>	Advice requested by SA Police from the ODPP in accordance with SAPOL guidelines which permit discretion to request an Opinion in some situations but mandates specified categories of offence be referred to the ODPP for an Opinion. Following a detailed examination of the charges, the available evidence and a review of all statements and the account of interview of the alleged offender, the ODPP may confirm charges should proceed as laid, advise a change of charges or recommend further investigation. It may also confirm an arrest or report is justified on the basis of the material provided.
<b><i>Pecuniary Penalty Order</i></b>	An order by a court that the defendant pay to the Crown a sum of money based on the value of the benefits derived by the defendant from the commission of the offence or the value of the instrument of the offence.
<b><i>Police prosecutors</i></b>	Members of SA Police who prosecute offences in the Magistrates Court.
<b><i>Plea</i></b>	A plea is the formal response of an accused at trial or arraignment. At the accused's trial the charge is read out to the accused (i.e., the accused is arraigned) and the accused then formally responds by saying he or she is <i>guilty</i> or <i>not guilty</i> .
<b><i>Precedent</i></b>	A judicial decision on a point of law which is binding on all courts lower in the hierarchy.
<b><i>Proofing</i></b>	A meeting between a witness and the prosecutor taking the matter to trial. The police Investigating Officer is present and, where appropriate, a Witness Assistance Officer. The Proofing allows the prosecutor to test the evidence before trial and provide information about the trial process to the witness.
<b><i>Resolved Summarily</i></b>	Matters where <i>major indictable</i> charges have been reduced to <i>minor indictable</i> or <i>summary</i> charges and finalised by guilty plea or trial in the Magistrates Court.
<b><i>Respondent</i></b>	The party (prosecution or the accused) called to respond in a higher court to an appeal by the other party against a decision of a lower court.
<b><i>Restraining Orders</i></b>	Restraints placed by a court to prevent a person from acting in a particular manner—for example, to prevent the accused from contacting or approaching victims or witnesses.  Restraining orders made by a court under section 24 of the <i>Criminal Assets Confiscation Act 2005</i> prevent person(s) disposing of or otherwise dealing with specified property until criminal offences and confiscations proceedings are resolved.  Domestic violence restraining orders prevent a defendant from contact with specific people or visiting specific addresses.

Paedophile restraining orders prevent a defendant from loitering near children or in the vicinity of specified locations, for example, schools, malls, playgrounds and public toilets.

***SAPOL***

***South Australian Police***

***Sentence***

The penalty imposed on the accused if he/she pleads, or is found guilty of an offence. For murder there is a mandatory head sentence of life imprisonment. The judge will usually set a non-parole period.

***Subpoena***

A legal document requiring attendance in court to give evidence and/or the production of a document or exhibit.

***Standard of proof***

The degree of certainty which must be established to prove a charge. In criminal proceedings facts must be proven 'beyond reasonable doubt'. In civil proceedings the contested facts are proven 'on the balance of probabilities'.

***Summary Offence***

An offence with a maximum possible prison sentence less than two years. Summary offences are tried in the Magistrates Court and not sent for trial before a judge and jury. Police prosecutors (not the DPP) normally prosecute summary offences.

***Suspended Sentence***

A judge giving a sentence of imprisonment may suspend the sentence on condition that the defendant enters into a bond to be of good behaviour and to comply with any other conditions of the bond.

***TNE (tender no evidence)***

A decision by the DPP at the committal stage not to proceed with some or all charges. (See also nolle prosequi)

***VIS***

See Victim Impact Statement

***Victim Impact Statement***

A written statement prepared by a victim and read or presented in Court to inform the Court of the impact of a crime on a victim.

***Voir Dire***

Legal argument before the judge in court but without the jury present.

***White Paper***

Court document lodged following a decision by the DPP at the arraignment stage not to proceed with some or all charges. (See also nolle prosequi)

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