

# Major Indictable Reform



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- Project initiated by the Attorney-General
- *Summary Procedure (Indictable Offences) Amendment Bill*
- Commencement date 5 March 2018
- Cross sector steering committee and working group overseeing implementation

# Committal proceedings

- No longer fixed declarations and answer charge dates
- Committal proceedings will consist of two appearances, both attended by the DPP:
  - i. an initial committal appearance
  - ii. an answer charge hearing
- Both of these appearances are now set on a case by case basis

# Summary of changes

1. Pre- committal
  - preliminary brief/charge determination
2. Committal proceedings
  - new committal timetable
3. Pre-arraignment
  - case statements

# Preliminary Brief

- Section 106(1)(a)

SA Police must provide the DPP with information in relation to the matter (*the preliminary brief*) that is, in the opinion of the DPP, sufficient for the DPP to make a determination (*the charge determination*) as to the appropriate charge or charges to be proceeded with

- Section 106(1)(c)

SA Police must, as soon as practicable after providing the preliminary brief to the Director of Public Prosecutions, (i) give a copy of the preliminary brief to the defendant or legal practitioner representing the defendant; and (ii) file a copy of the preliminary brief in the Magistrates Court.

- Section 106(1)(e)

The Magistrates Court must not commence committal proceedings unless the court has been advised that the DPP has made the charge determination.

# Preliminary Brief - Process

- First appearance attended by SAPOL
- SAPOL advise how much time they require to prepare the preliminary brief
- S105(5) the court must adjourn to a second appearance date:
  - i. allowing sufficient time for the completion of the preliminary brief; and
  - i. allowing an additional period of not less than four weeks for the DPP to consider the preliminary brief and make a charge determination.

# No charge determination

- DPP may decline to make a charge determination
- File returned to SAPOL and DPP does not assume conduct
- Police prosecutor to attend on next occasion (second appearance) and advise court of status
  - Adjourn for preliminary brief to be resubmitted
  - TNE
  - Application to dismiss
- Committal proceedings do not commence

# DPP/SAPOL structures

## Brief assessment team

- Creation of a new specialist team
- Function is to provide timely and clear advice with respect to preliminary briefs received from SAPOL
- Charge determination
- Consistency

## SAPOL Major Indictable Brief Unit

- Collaboration with SAPOL a key function of the BAT team
- DPP/SAPOL training
- DPP solicitor secondment



# Committal appearance

- DPP solicitor appears on the second occasion if a charge determination has been made
- Signifies that the DPP has assumed conduct
- DPP advise of outstanding material and time required to complete the committal brief
- The court must adjourn proceedings to an answer charge hearing ensuring that sufficient time is allowed for the completion of the committal brief – s110(2)(a) and (c)

# Committal brief

Committal brief defined in s111(1) and must contain:

- i. Statement of witnesses upon which the prosecution relies;
  - ii. Copies of any documents upon which the prosecution relies;
  - iii. A document describing any other evidentiary material upon which the prosecution relies, including sensitive material and documents that are of only peripheral relevance, together with a statement of the significance the material is alleged to have
  - iv. All other material relevant to the charge that is available to the prosecution
- The court must adjourn proceedings to an answer charge hearing ensuring that sufficient time is allowed for the completion of the committal brief – s110(2)(a) and (c)
  - Must be filed four weeks prior to the nominated answer charge date

# Answer charge date

- Upon committing a defendant to superior court, the Magistrates Court must fix a date for the defendant's arraignment.
- s120(1)(a) - the arraignment date must be fixed having regard to the time the prosecution require to complete a prosecution case statement
- s120(1)(c) – the court must ensure the date fixed for arraignment;
  - i. Allows a period of at least six weeks for the completion of the case statement; and
  - ii. Allows a period of not less than an additional six weeks for case statements to be completed
- Arraignment date must be a minimum of 12 weeks from the answer charge date

# Prosecution Case Statements

- Prosecution must file a case statement 6 weeks prior to arraignment (s123)
- a prosecution case statement must include:
  - summary of facts
  - description of evidence to be led re each element of the offence
  - list of witnesses
  - details of expert witnesses
  - details of any additional statements prosecution is aware will be obtained
  - DCN
  - copy of any pre-trial applications pursuant to the Evidence Act
  - whether the matter has priority trial status
  - estimated length of the prosecution case
  - whether an interpreter is required
- 4 weeks after being provided with the prosecution case statement, defence must file and serve a defence case statement (s123)

# Defence Case Statements

- a defence case statement must include :
  - any facts and elements of the offence set out in prosecution case statement that the defendant admits
  - any witnesses the defendant asks the prosecution to call
  - whether the defendant consents to any of the prosecution applications included in the prosecution case statement
  - whether the defendant intends to introduce expert evidence or evidence of alibi
  - whether the defendant intends to raise any of the following prior to trial commencement: issues relating to joinder or severance or cross-admissibility of evidence; challenges to the legality of any searches or any other prosecution evidence; applications for stay of proceedings; issues relating to chain of evidence or continuity of custody of exhibits; and any other points of law.
  - whether the defendant agrees with prosecution estimates of length of prosecution case and the defendants estimate of the length of trial
  - whether the defendant will apply for trial by judge alone
  - whether the defendant requires an interpreter

# DPP internal structure

## Pre charge determination

- Brief Assessment Team

## Post charge determination

- Restructuring of the general solicitor teams
- Once charge determination made by brief assessment team, filed transferred into a general solicitor team
- General team solicitor will appear on the committal appearance date with instructions from BAT
- General solicitor retains conduct through to trial

# DPP/SAPOL

- DPP will continue to adjudicate matters upon arrest
- DPP will continue to provide instructions with respect to bail reviews
- Conduct of files remains with SAPOL until charge determination made
  - Any correspondence/service of documents directed to SAPOL
- SAPOL to appear on bail matters pre charge determination

# Early Guilty Pleas/Negs

- Early guilty plea process drafted
- Input from working group and steering committee
- All negs prior to charge determination via SAPOL
  - SAPOL retain if minor indictable/summary resolution
  - All other offers forwarded to DPP for consideration
    - Alternative major charges
    - Plead as charged but on different facts
- If no resolution, file returned to SAPOL for preliminary brief preparation



# Timeframe

- All new arrests/Informations laid after 5 March 2018 subject to new provisions
- Old and new systems operating concurrently
  - Listed in the same committal court
- Anticipate first preliminary briefs April/May
- Case statements likely to be filed mid year



**Government  
of South Australia**

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Attorney-General's  
Department