

Office of the Director of Public Prosecutions

New South Wales



Annual Report 2006–2007

THE OFFICE

The ODPP was established by the Director of Public Prosecutions Act 1986 ("the DPP Act") and commenced operation on 13 July, 1987. The creation of a Director of Public Prosecutions changed the administration of criminal justice in New South Wales. The day to day control of criminal prosecutions passed from the hands of the Attorney General to the Director of Public Prosecutions.

There now exists a separate and independent prosecution service which forms part of the criminal justice system in New South Wales. That independence is a substantial safeguard against corruption and interference in the criminal justice system.

Functions

The functions of the Director are specified in the DPP Act and include:–

- Prosecution of all committal proceedings and some summary proceedings before the Local Courts;
- Prosecution of indictable offences in the District and Supreme Courts;
- Conduct of District Court, Court of Criminal Appeal and High Court appeals on behalf of the Crown; and
- Conduct of related proceedings in the Supreme Court and Court of Appeal.

The Director has the same functions as the Attorney General in relation to:–

- Finding a bill of indictment, or determining that no bill of indictment be found, in respect of an indictable offence, in circumstances where the person concerned has been committed for trial;
- Directing that no further proceedings be taken against a person who has been committed for trial or sentence; and
- Finding a bill of indictment in respect of an indictable offence, in circumstances where the person concerned has not been committed for trial.

Section 21 of the DPP Act provides that the Director may appear in person or may be represented by counsel or a solicitor in any proceedings which are carried on by the Director or in which the Director is a part.

The functions of the Solicitor for Public Prosecutions are prescribed in section 23 of the DPP Act. These are:

- (a) to act as solicitor for the Director in the exercise of the Director's functions; and
- (b) to instruct the Crown Prosecutors and other counsel on behalf of the Director.

The functions of Crown Prosecutors are set out in section 5 of the Crown Prosecutors Act 1986. They include:

- (a) to conduct, and appear as counsel in, proceedings on behalf of the Director;
- (b) to find a bill of indictment in respect of an indictable offence;
- (c) to advise the Director in respect of any matter referred for advice by the Director;
- (d) to carry out such other functions of counsel as the Director approves.

ODPP NEW SOUTH WALES

OUR ROLE

To provide for the people of New South Wales an independent, efficient, fair and just prosecution service.

OUR VISION

A criminal prosecution system that is accepted by the community as being equitable and acting in the public interest.

OUR STAKEHOLDERS

The NSW Parliament, the Judiciary, the Courts, Police, victims, witnesses, accused persons and others in the criminal justice system and the community.

OUR VALUES

Independence

Advising in, instituting and conducting proceedings in the public interest, free of influence from inappropriate political, individual and other sectional interests.

Service

The timely and cost efficient conduct of prosecutions.

Anticipating and responding to the legitimate needs of those involved in the prosecution process, especially witnesses and victims.

Highest Professional Ethics

Manifest integrity, fairness and objectivity.

Management Excellence

Continual improvement.

Encouraging individual initiative and innovation.

Providing an ethical and supportive workplace.

DIRECTOR'S CHAMBERS



The Hon. J. Hatzistergos MLC
Attorney General
Level 33, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

2006-2007 Annual Report

Pursuant to section 34 of the Director of Public Prosecutions Act 1986 and in compliance with the Annual Reports (Departments) Act 1985 and the Public Finance and Audit Act 1983, I am pleased to forward to you, for laying before both Houses of Parliament, my Office's report and financial statements for the year ending 30 June 2007.

Yours faithfully

A handwritten signature in black ink, appearing to read 'N R Cowdery'.

N R Cowdery AM QC
Director of Public Prosecutions

29th October 2007

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Director's Overview



Director's Overview

This is the Office's 20th Annual Report (and my 13th). On 13 July 2007 the 20th anniversary of the commencement of the Office will be celebrated and matters associated with that event will be reported in next year's Annual Report.

For this year the challenges of the past have continued and we have sought to build upon opportunities for enhanced service to the community as they have arisen. A significant financial challenge has been presented by the re-elected State Government which requires a substantial reduction in our expenditure. At the time of writing negotiations are continuing. It seems irrational to me that additional resources should be provided to police and prisons, while the capacity of agencies in the criminal justice system between those ends to process the resulting increase in workload is diminished.

The strong inference arises that little importance is placed upon the provision of fair trials in a timely manner with the least inconvenience to those innocently caught up in the criminal justice system. In other words, justice is being made an early casualty of economic irrationalism.

The provision of an effective and efficient justice system is a core business of Government. It is not an optional addition but the third arm of Government itself. If less money from the available pot is spent on sport, tourism or even transport the fundamental rights of individuals will not be infringed – but if insufficient money is allocated to the justice system, rights of individuals will suffer.

A fundamental aspect of the criminal justice system is the independence of the prosecutor. That encompasses independence of prosecution decision

making and flows on to administrative independence. Threats to that independence have been signalled by the Government. At the time of writing consultation is under way about the terms of employment for all State legal statutory officeholders to be appointed in the future – about 120 individuals at present staffing levels, around 90 of them in this Office. If changes are to be made (and I see no need for any), it is vital that they not adversely affect either the reality or the perception of independence in prosecution decision making.

Throughout the year ODPP officers (staff and Crown Prosecutors) have continued to deliver the highest professional service to the people of NSW. This Report describes the way in which that has been done. While attending to their day-to-day work, officers maintain an interest in improving their standards by borrowing from practices developed in other jurisdictions and refining our own. Regrettably the new Attorney General, so far, in contrast to his predecessors, has not seen any benefit to the Office in ODPP officers being sponsored to engage with colleagues at international conferences (as noted elsewhere in this Report). Nevertheless, committed officers who have the means continue to involve themselves in such events and to bring the benefits back to the Office. Without the volunteering of such service, we would risk becoming an insular, provincial and stagnant agency delivering service of an inferior kind.

In June some Crown Prosecutors and I attended the annual conference of the International Society for the Reform of Criminal Law in Canada and I went on to

a biennial Heads of Prosecution Agencies Conference (HOPAC). I have reported to the Attorney General the benefits to the Office from my attendance at these events. Events like HOPAC, which was begun in Australia in 1991, are of particular importance to Directors. At times of constant scrutiny and occasional attack (often unjustified), we cannot look above for support; nor is it fair to seek support from those we must lead. Support, encouragement, stimulation and the development of ideas must come from exchanges with colleagues at comparable levels. Principles of decision making and their practical application need to be discussed – to identify any flaws or weaknesses and to validate approaches already being taken. It is also important to identify and create relationships with those in a position to provide that support, guidance and assistance in the future and to do so in contexts that are related to prosecution practice.

Directors of Public Prosecutions have onerous duties and functions imposed upon them by law and they take them seriously. At times they must make independent and principled decisions in the face of opposition and provocation and that can be a lonely task. Each is responsible to his or her Attorney General and through that Minister to Parliament and the community. Directors and Attorneys should therefore pull together to provide the people with independent prosecution services that operate fairly, effectively and efficiently and demonstrate best prosecutorial practice.

Prosecution Guidelines

On 1 June amended Prosecution Guidelines were furnished. Consequently, the Prosecution Guidelines as in force at 30 June are published in full in this Report at page 124.

Independence and Accountability

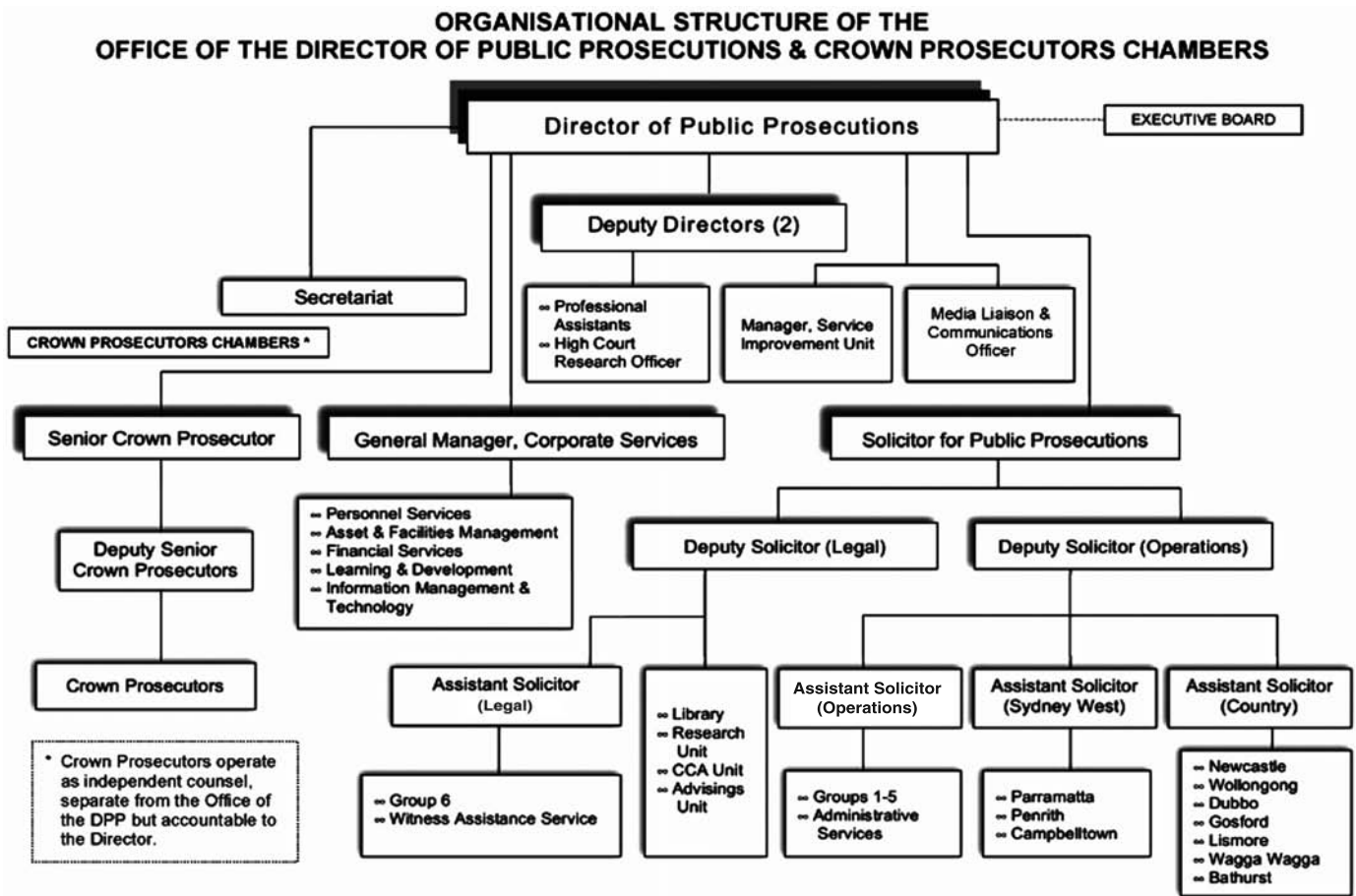
No guideline under section 26 of the Director of Public Prosecutions Act 1986 has been received from the Attorney General, nor has notice been received

from him of the exercise by him of any of the functions described in section 27. No request has been made to the Attorney General pursuant to section 29.

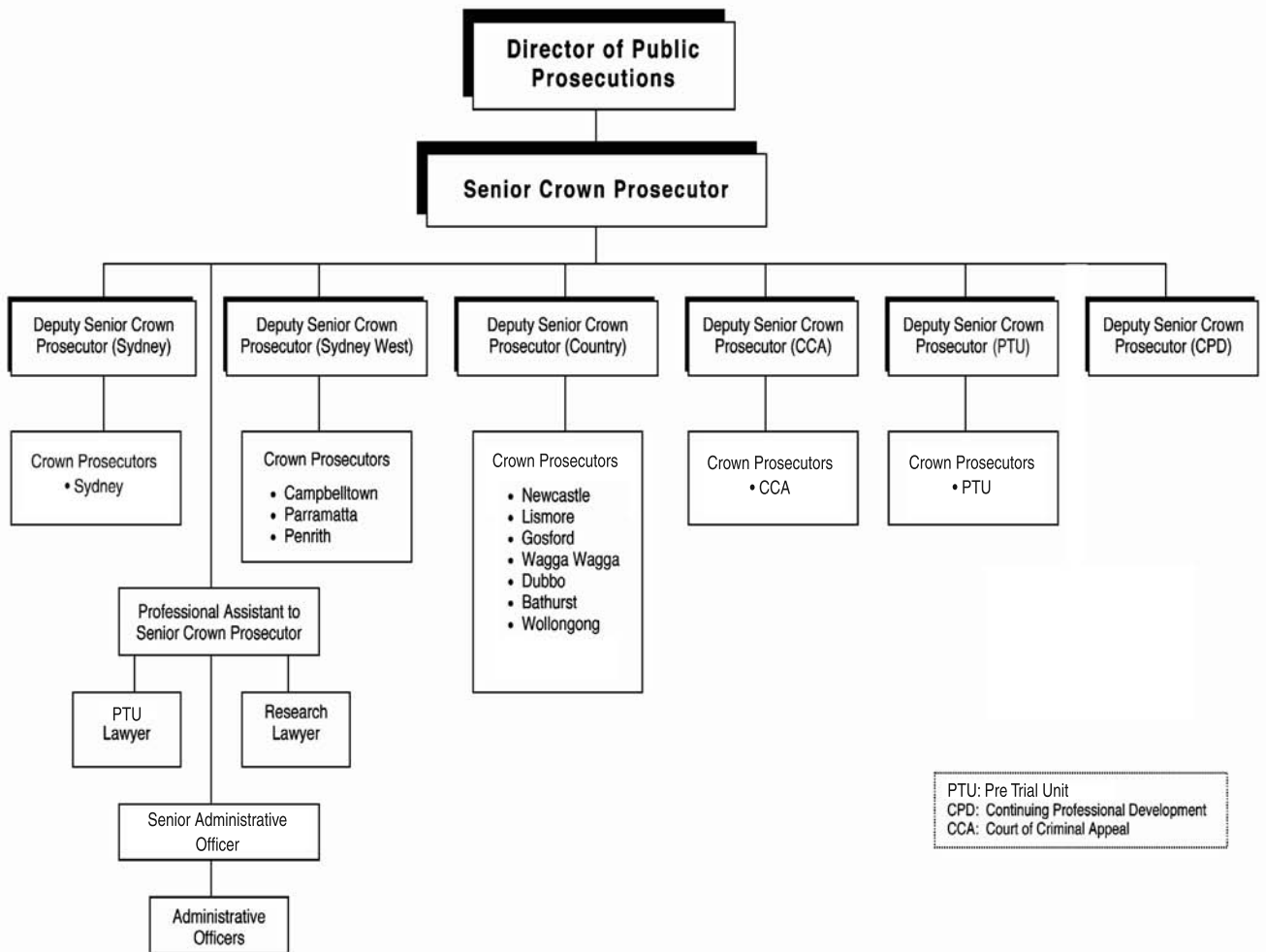
Management and Organisation



Organisational Structure



CROWN PROSECUTORS' CHAMBERS Organisational Chart



Management Structure

Nicholas Cowdery AM QC BA LLB

Director of Public Prosecutions

Appointed Director of Public Prosecutions in 1994. He was admitted as a barrister in NSW in 1971 and practised as a Public Defender in Papua New Guinea from 1971 to 1975 when he commenced private practice at the Sydney bar. He took silk in 1987 and practised in many

Australian jurisdictions. He was an Associate (Acting) Judge of the District Court of New South Wales for periods in 1988, 1989 and 1990. His term as President of the International Association of Prosecutors ended in September 2005.

Luigi Lamprati SC. LL.M

Deputy Director of Public Prosecutions

Admitted as Solicitor 1969. In private practice as a barrister from 1977 until 1988. Appointed Crown Prosecutor August 1988. In November 2000, appointed Acting Deputy Senior Crown Prosecutor and Deputy Senior Crown Prosecutor in April 2002. Appointed

Senior Counsel in October 2003 and Deputy Director of Public Prosecutions in December 2003.

Provides advice to the Director of Public Prosecutions; practices in appellate matters in the High Court and CCA; reviews recommendations by Crown Prosecutors on various matters; assists in the management of the Office and performs the Director's functions as delegated.

David Frearson SC.

Acting Deputy Director of Public Prosecutions

Worked in Local Courts before joining the Clerk of the Peace in 1977. Principal Solicitor, Office of the Clerk of the Peace, Sydney. Appointed as a Crown Prosecutor in 1985. Senior Prosecutor at Regional Centres in Sydney West. Appointed Deputy Senior Crown Prosecutor (Sydney West) in 2000

and Deputy Senior Crown Prosecutor (Appeals) 2002 – 2006.

Admitted to the Bar in 1984 and appointed Senior Counsel in 2004.

Appointed Acting Deputy Director in November 2006.

Provides advice to the Director of Public Prosecutions; practices in appellate matters in the High Court and the CCA; reviews recommendations by Crown Prosecutors on various matters; assists in the management of the office and performs the Director's functions as delegated.

Stephen Kavanagh LLB

Solicitor for Public Prosecutions

Practised as a Solicitor following admission in 1973 in a city firm and later at the State Crown Solicitor's Office from 1976 to 1988, primarily in the areas of civil, criminal and constitutional litigation. Following the establishment of the Office of the Director of Public Prosecutions

in 1987, appointed as Managing Lawyer (Advising Unit) in 1989 undertaking responsibility for a wide range of appellate litigation conducted by that Office in the Supreme Court and High Court. Appointed Solicitor for Public Prosecutions in June 2004.

The Solicitor for Public Prosecutions, in accordance with s23 of the DPP Act, acts as Solicitor for the Director in the exercise of the Director's statutory functions and instructs the Crown Prosecutors and other counsel on behalf of the Director in the conduct of trial and appellate litigation. The Solicitor also assists in the general management of the Office.

Patrick McMahon Grad Certif in Management, AFAIM

General Manager, Corporate Services

Employed in the NSW Public Service since 1966 in a variety of administrative and management positions. Joined NSW Fisheries as Director, Corporate Services in 1992 and commenced with the Office

of the Director of Public Prosecutions as Change and Improvement Manager in 1996. Appointed as General Manager, Corporate Services in February 1999.

Responsible for personnel, learning and development, financial management, information management and technology, and asset and facilities management.

Crown Prosecutors' Chambers

Crown Prosecutors are appointed under the Crown Prosecutors Act 1986. Their functions are set out in s5 of that Act and are:

- (a) to conduct, and appear as counsel in, proceedings on behalf of the Director;
- (b) to find a bill of indictment in respect of an indictable offence;
- (c) to advise the Director in respect of any matter referred for advice by the Director; and
- (d) to carry out such other functions of counsel as the Director approves.

The Crown Prosecutors of New South Wales comprise one of the largest "floors" of barristers in the State. They are counsel who, as statutory office holders under the Crown Prosecutors Act 1986, specialise in the conduct of criminal trials by jury or judge alone in the Supreme and District Courts, as well as in criminal appeals. The vast bulk of criminal jury trials in this State are prosecuted by Crown Prosecutors.

They also regularly provide advice to the Director of Public Prosecutions on the continuation or termination of criminal proceedings. Occasionally they appear at coronial inquests, inquiries under s.474B of the Crimes Act 1900 and in unusually complex committal proceedings.

A number of Crown Prosecutors are seconded from time to time as counsel to other organisations such as the ICAC, the Police Integrity Commission, the Legal Representation Office, the Public Defenders Office and the Criminal Law Review Division of the Attorney General's Department. There are also a significant number of former Crown Prosecutors who are Judges of the Supreme Court and District Court. The Crown Prosecutors are almost all members of the NSW Bar Association and participate in its Council, its Committees (including Professional Conduct Committees) and its collegiate life.

There are Crown Prosecutors located in Chambers in the City of Sydney, in Sydney

West at Parramatta, Campbelltown and Penrith, and also at regional locations in Newcastle, Wollongong, Lismore, Dubbo, Bathurst, Wagga Wagga and Gosford.

The Crown Prosecutors come under the administrative responsibility of the Senior Crown Prosecutor, who is responsible in turn to the Director of Public Prosecutions, also an independent statutory officer.

While the Director can furnish guidelines to the Crown Prosecutors with respect to the prosecution of offences, he may not issue guidelines in relation to particular cases. The independence of the Crown Prosecutors as Counsel is guaranteed by the Crown Prosecutors Act. The Crown Prosecutor is therefore in most respects an independent counsel with only one client, namely the Director of Public Prosecutions.

Administrative Support to the Crown Prosecutors is provided by the Office of the Director of Public Prosecutions.

Mark Tedeschi QC MA, LLB

Senior Crown Prosecutor

Mark Tedeschi has been a Crown Prosecutor since 1983. He was previously a private barrister. He has been a Queen's Counsel since 1988, and Senior Crown Prosecutor since 1997. He is the author of a book on international trade law and of numerous articles on environmental

law, social welfare law, business law, mental health law and criminal law.

He is the President of the Australian Association of Crown Prosecutors and a visiting Professor in the Centre for Transnational Crime Prevention at the University of Wollongong.

Prosecutes major trials in the Supreme and District Courts. Responsible for the leadership of the Crown Prosecutors Chambers and the briefing of private Barristers.

Significant Committees

The following committees are established to augment strategic and operational management of the Office:

Executive Board

The ODPP Executive Board consists of the Director (Chair), two Deputy Directors, Senior Crown Prosecutor, Solicitor for Public Prosecutions, General Manager, Corporate Services and two independent members. Current independent members are Associate Professor Sandra Egger of the Faculty of Law, University of NSW and Mr John Hunter, Principal, John Hunter Management Services.

The Board meets bi-monthly and its role is to:

- advise the Director on administrative and managerial aspects of the ODPP with a view to ensuring that it operates in a co-ordinated, effective, economic and efficient manner;
- advise the Director on issues relating to strategic planning, management improvement and monitoring performance against strategic plans;
- monitor the budgetary performance of the ODPP and advise the Director on improving cost effectiveness;
- identify and advise the Director on initiatives for change and improvement in the criminal justice system; and
- provide periodic reports on its operations to the Attorney General and report to the Attorney General upon request on any matter relating to the exercise of its functions, or, after consultation with the Attorney General, on any matters it considers appropriate.

Minutes of its proceedings are provided to the Attorney General and the Treasurer.

Management Committee

This Committee comprises the Director, two Deputy Directors, Senior Crown Prosecutor, Solicitor for Public Prosecutions, General Manager, Corporate Services, Deputy Solicitors (Legal and Operations) and Assistant Solicitors (Sydney, Sydney West and Country).

The Committee meets monthly. Its primary functions are as follows.

1. To report, discuss and resolve upon action on operational and management issues affecting the ODPP and Crown Prosecutors, including (but not limited to) workload and resource allocation.
2. To consider monthly financial reports and to initiate action where funding and expenditure issues are identified.
3. To discuss issues affecting major policy decisions and other matters requiring referral to the ODPP Executive Board.
4. To serve as a forum for discussion by senior management of any matter affecting the operations of the ODPP, including the activities, challenges and initiatives of the various areas within the Office.

The Committee publishes an agenda to its members prior to each meeting and minutes are kept of its proceedings.

Audit and Risk Management Committee

This Committee is chaired by a Deputy Director of Public Prosecutions with the Solicitor for Public Prosecutions, Senior Crown Prosecutor, General Manager, Corporate Services and Manager Service Improvement Unit as members.

Representatives of the Audit Office of NSW and of the internal audit provider attend meetings by invitation.

The Audit and Risk Management Committee monitors the internal audit,

risk management and anti-corruption functions across all areas of the Office's operations, ensuring that probity and accountability issues are addressed.

Information Management and Technology Steering Committee

The IM&T Steering Committee (IM&TSC) is the management body convened to ensure and promote effective use and management of information and technology; to guide the selection, development and implementation of information and technology projects and to assure the strategic and cost effective

use of information and systems to support ODPP activities. The Committee consists of the Chief Information Officer (currently the Deputy Solicitor (Operations)) as Chair; Solicitor for Public Prosecutions, General Manager, Corporate Services, Deputy Solicitor (Legal), Assistant Solicitor (Country), a Deputy

Senior Crown Prosecutor; Manager, Information Management & Technology Services, Managing Lawyer (Sydney) and the Assistant Manager (Information Management) as Executive Officer.

The Committee meets monthly and minutes of meetings are published on the Office's Intranet.

ODPP Internal Committees/Steering Groups

Committee/Steering Group	ODPP Representative	
Executive Board	Nicholas Cowdery AM QC (Chair) David Frearson SC Luigi Lamprati SC Mark Tedeschi QC	Stephen Kavanagh Patrick McMahon John Hunter (External representative) Sandra Egger (External representative)
Management Committee	Nicholas Cowdery AM QC (Chair) David Frearson SC Luigi Lamprati SC Mark Tedeschi QC Stephen Kavanagh Patrick McMahon	Claire Girotto Graham Bailey Jim Hughes Craig Hyland Johanna Pheils Janis Watson-Wood
Audit and Risk Management Committee	Luigi Lamprati SC (Chair) David Frearson SC Mark Tedeschi QC	Stephen Kavanagh Patrick McMahon Jeff Shaw
Information Management & Technology Steering Committee	Claire Girotto (Chair) Stephen Kavanagh Patrick McMahon David Arnott SC Graham Bailey	Craig Hyland Hop Nguyen Janis Watson-Wood Keith Wright
Crown Prosecutors Management Committee	Mark Tedeschi QC (Chair) Christopher Maxwell QC David Arnott SC Patrick Barrett Representatives: Level 9: Wendy Robinson QC (alt. John Bowers) Level 8, Castlereagh St: Virginia Lydiard (alt. Ken McKay) Pitt St: Mark Hobart (alt. Jennie Girdham)	Peter Barnett Mark Hobart Peter Miller Deborah Carney Sydney West: Keith Alder (alt. Siobhan Herbert) Country: Paul Cattini (alt. Julia Baly) Treasurer: Neil Adams
Occupational Health & Safety Committee	Sydney Office Helen Langley Jenny Wells Barbara Barnes (Proxy) Employer Representatives Tonia Adamson Peter Bridge Gary Corkill Jim Hughes (Proxy) Nigel Richardson (Proxy) Chris Clarke (Proxy)	Sydney West Fiona Horder Michael Frost Tracey Gray (Proxy) Country Malcolm Young Vicki Taylor Duncan Wallace (Proxy)
PSA/Management Joint Consultative Committee	Gary Corkill (Chair) David Frearson SC Patrick McMahon Stephen Kavanagh Claire Girotto Graham Bailey	Amanda Brady (PSA) Brent Ireland (PSA) Chris Murnane (PSA) Stephen Spencer (PSA) Jenny Wells (PSA)

Report Against Corporate Plan



Key Result Area 1: Just, independent and timely conduct of prosecutions

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
1.1 To provide a just and independent prosecution service	1.1.1 Continually review, evaluate and improve standards for criminal prosecutions 1.1.2 Improve the timelines and quality of briefs through liaison with investigative agencies	Achievement of justice

Performance Indicator

- 1.1(a) Percentage of cases where costs are awarded due to the conduct of the prosecution
- 1.1(b) Proportion of matters returning a finding of guilt

Report:

- 1.1(a) In this reporting period, costs were awarded in 0.17% of the 15,123 cases dealt with due to the conduct of the prosecution.
- 1.1(b) 73% of all matters concluded in the Supreme and District Courts resulted in findings of guilt, either by way of verdict following trial or by way of plea.

Key Result Area 1: Just, independent and timely conduct of prosecutions (cont)

Goal	Strategy	Outcome
1.2 To uphold ethical standards	1.2.1 Develop and implement processes and programs to enhance understanding of, and adherence to, ethical standards	Staff and Crown Prosecutors are aware that ethical behaviour is required in all aspects of ODPP operations

Performance Indicator

1.2.(a) Number of corporate activities or processes implemented or reviewed each year

Report:

1.2(a) Training sessions have been conducted in the management of unsatisfactory performance for the majority of managers and supervisors. Further workshops will be conducted in 2008. Foundation Legal Skills has been changed to "Intro to the ODPP" which is pitched at all new staff, not only legal. Therefore an increasing number of staff are exposed to Code of Conduct, Privacy and Ethical Practices through this program. 50 staff participated during 2004/2005. 33 staff participated during 2005/2006. All new appointees are given the Code of Conduct.

All new staff attend "Intro to the ODPP" incorporating a session on the ODPP Code of Conduct. 39 staff participated in 2007.

Management Development module "Management Roles & Responsibilities" is being developed. This contains sessions on EEO and appropriate behaviour, and case studies on ethical behaviour.

A Managing Lawyers conference was held 27-29 June 2007. Sessions dealing with 'Conduct & Performance' including ethical decision making.

The Audit & Risk Management Committee monitors the ODPP Fraud Risk Management Plan on a regular basis.

The ODPP Code of Conduct was revised and given prominence at staff meetings throughout the year.

Key Result Area 1: Just, independent and timely conduct of prosecutions (cont)

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
1.3 To provide timely prosecution services	1.3.1 Comply with relevant time standards	Speedy resolution of matters

Performance Indicator

- 1.3(a) Percentage of advisings completed in agreed time
- 1.3(b) Proportion of trials listed which were adjourned on the application of the Crown
- 1.3(c) Average number of days between arrest and committal for trial

Report:

- 1.3(a) 86% of advisings were completed within the agreed time.
- 1.3(b) The proportion of all trials listed in 2006-7 which were adjourned on the application of the Crown was 5.95%
- 1.3(c) The average number of days between arrest and committal for trial during 2006 - 07 was 216.

Key Result Area 2: Victim and witness services

Goal	Strategy	Outcome
2.1 To provide assistance and information to victims and witnessess	2.1.1 Deliver services to victims and witnesses, in accordance with ODPP Prosecution Guidelines.	Greater sense of inclusion in the prosecution process by victims and witnesses

Performance Indicator

2.1.(a) Level of victim and witness satisfaction (by survey)

Report:

2.1(a) The ODPP biennial survey of victims and witnesses was conducted in 2006-07 and revealed overall consistency in the levels of customer satisfaction. Details of the survey results have been included in the Customer Response report at Appendix 37 at page 92.

Key Result Area 3: Accountability and efficiency

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
3.1 To satisfy the accountability requirements of courts, Parliament and ODPP policies	3.1.1 Promote a stakeholder focus 3.1.2 Maintain appropriate records concerning all decisions made 3.1.3 Provide timely and accurate reports	Recognition of the Office's achievements

Performance Indicator

3.1(a) Level of compliance with statutory reporting requirements

3.1(b) Level of compliance with ODPP policies (by audit)

Report:

3.1.(a) All Statutory Reports have been provided within the prescribed timeframes.

- Energy: 2007 Government Energy Management Plan to be completed and submitted by 31 October 2007.
- EEO Annual Report: Submitted to ODEOPE on 12 October 2006 – advice received from Premier's Department commending the agency's achievement.
- Annual Financial Statements 2005-06: Completed and submitted to the Auditor General within the set deadline of 11 August 2006.
- FBT: Annual return for 2005/06 submitted on time on 22 May 2007 (as per the set deadline of 22 May 2007) and quarterly payment made up to June 2007.
- BAS: Monthly return submitted up to June 2007 before the set deadline of 20 July 2007.
- Waste Reduction and Purchasing Plan (WRAPP): The next biennial report is due in Aug 2007.
- Automatic lighting systems (Cbus) have been installed in the Criminal Case Processing areas at Campbelltown, Dubbo, Lismore and 130 Elizabeth St to comply with the Government's directive to decrease energy consumption and increase greenhouse rating levels. This inclusion added to the capital fit-out costs but will be recovered in future years in energy savings and subsequent recurrent costs. The principal function of the Cbus lighting systems is that areas where no movement is detected for a pre-determined time, e.g. 15 minutes, the lighting for that area is extinguished, until movement is detected again. It also has the benefit that lights cannot be forgotten to be switched off over-night and over weekends.

3.1(b) The Audit and Risk Management Committee monitors compliance with ODPP policies. The level of such compliance has been found to be extremely high. The Committee reviews all audit reports and, where a breach of Office policy is identified, corrective action is taken.

Key Result Area 3: Accountability and efficiency (continued)

Goal	Strategy	Outcome
3.2 To be efficient in the use of resources	3.2.1 Measure costs and time associated with prosecution functions undertaken 3.2.2. Continually review, evaluate and improve systems, policies and procedures 3.2.3 Distribute resources according to priorities 3.2.4. Increase efficiency through improved technology 3.2.5. Improve access to management information systems 3.2.6. Manage finances responsibly	Value for money

Performance Indicator

3.2(a) Cost per matter disposed of

3.2(b) Expenditure within budget.

Report:

3.2(a) This Office is unable to accurately report against this indicator at this stage. The Activity Based Costing system, implemented in April 2006, is designed to gather this information and is in use by all sections of the Office, as well as the Crown Prosecutors. Reporting requirements have been reviewed, with additional reports being defined. However, meaningful data is not yet available.

3.2(b) Monthly and bi-monthly finance report submitted to the Executive Board and Management Committee. The Office operated within the allowable Controlled Net Cost of Service Limits for the financial year:

- Corporate services functions and processes continue to be further reviewed and efficiencies identified. Our emphasis is on retaining the Internal Shared Services Unit model in accordance with the Government strategy for corporate services reform.
- Learning & Development Branch is conducting research into e-learning & performance support tools. These would enable 'just in time' access to knowledge and skills, and reduce reliance on classroom training which is currently difficult to attend due to stretched staff resources, increasing court commitments and the cost of intrastate travel for regional participants.
- The ODPP's IM&T operations at level 4 Castlereagh Street have received security certification under ISO 27001. Improved remote access facilities have been implemented, and the Office's Disaster Recovery site has been installed, and initial testing completed.
- Development work for the portal is completed, and user acceptance testing is about to commence.
- The Attorney General's Department implemented the Justicelink System in the Supreme Court on 2 Aug 2004 and has been developing an interim viewing platform for information currently obtained by the ODPP from the CourtNet (Supreme Court) System. That interim viewing platform is not yet available. The ODPP has not received the funds required to develop the Justicelink interface.
- Asset & Facilities Management has initiated an audit of the ODPP phone systems with a view to streamlining any waste and implementing new technology to reduce cost.

Key Result Area 4: Staff resourcing and development

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
4.1 To recruit and retain quality staff	4.1.1. Market career opportunities 4.1.2. Review, evaluate and improve recruitment practices 4.1.3. Recognise good performance 4.1.4. Integrate equity strategies into all management plans.	High quality, committed staff

Performance Indicator

- 4.1(a) Percentage of staff turnover
- 4.1(b) Percentage of salary increments deferred

Report:

- 4.1(a) Total terminations from 2006-2007 were 93.5 and total appointments for the same period were 80.5 – a decrease of 13 staff. This compares with the period 2005-2006 with total terminations of 104 and total appointments of 106.6 – an increase of 2.6 staff.
- 32 staff participated in Recruitment and Selection workshops during 2005/06, with 60 attending in 2004/2005. The Recruitment & Employment Policy requires retraining every three years. A two day introductory workshop was conducted in June 2007, with a refresher for experienced staff to follow early in 2007/08.
- 4.1(b) One salary increment was deferred during 2006-2007.

Key Result Area 4: Staff resourcing and development (continued)

Goal	Strategy	Outcome
4.2 To provide workplace support	4.2.1. Provide accommodation, equipment and facilities in accordance with Office and OH&S standards	A safe, supportive, equitable and ethical work environment
	4.2.2. Develop and implement OH&S and workplace relations policies	

Performance Indicator

4.2(a) Average sick leave absences per capita.

4.2(b) Percentage reduction in workplace injuries.

Report:

4.2(a) Average Sick Leave for the Office for 2006-2007 was 5.47 days. This compares with 2005-2006 of 5.97 days. Managers have been advised that flex time and excessive Recreation Leave is being monitored and reports issued to ensure compliance with policy and award provisions. Managers are being advised of staff who have a flex balance in excess of 50 hours at the end of each flex period. As at end of June 2007, 83 staff across the Office had a flex balance in excess of 50 hours.

4.2(b)

1. 40% reduction in workplace injuries by June 2012, with 20% achieved by June 2007 - **achieved;**
2. 10% reduction by June 2008 in the proportion of injured employees still off work at 8, 12 and 26 weeks from the date of injury - **on target;**
3. 15% reduction in the average cost of claims by June 2008 - **on target;**
4. 90% of managers will be provided with appropriate information, instruction and training in their roles and responsibilities under the OHS and injury management system by June 2007 - **Achieved.**
5. 10% improvement in the percentage of injured workers who are placed in suitable duties within one week of the date that they become fit for suitable duties as specified on the medical certificate, by June 2008 - **on target;**

Training for three new OH&S Consultative Committee members occurred externally.

Key Result Area 4: Staff resourcing and development (continued)

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
4.3 To enhance the skills and knowledge of our people	4.3.1 Implement training and development activities to address priority organisational and individual learning needs 4.3.2 Increase participation in learning and development activities 4.3.3 Increase use of the ODPP Performance Management system	Staff and Crown Prosecutors who are able to perform effectively in a changing and challenging environment
Performance Indicator		
4.3(a) Percentage of priority learning needs implemented		
4.3(b) Learning and development participation rate		
4.3(c) Percentage of performance management plans completed		

Report:

The 2006/2007 L&D plan has been developed in line with organisational priorities. Branch activities have been reduced due to reductions in Branch staff – to 2.6 people.

The following training has occurred between July 2006-June 2007:

- o Solicitors Conference – Dec 2006
- o Pre Conference Workshops – Committals, Witnesses with a Disability, Evidence Act, Time Management & Sentencing
- o 2 x Intermediate Short Matters (Campbelltown & Sydney)
- o 8 x MCLE sessions
- o WAS Statewide Conference
- o Welcome to the ODPP – Induction
- o 13 x Technology Induction
- o Understanding Criminal Law for Admin. Staff
- o Leadership & Managing Change for MSS/MC's
- o IDMS for WAS staff
- o Speed Reading
- o Intro to Recruitment & Selection
- o OHS Consultative Committee training
- o 2 x Sun 5 – Purchasing & Invoicing
- o Defensive Driver Training (Lismore)
- o Managing Clerks/Manager Support Services Conference
- o Digital ERISP pilot training
- o Digital ERISP rollout training
- o Managing Lawyers Conference
- o 2 x Introduction to Advocacy

Key Result Area 4: Staff resourcing and development (continued)

Updated Manuals: Flex User Instructions. The CASES training manual is currently being reviewed by Manager Support Services and Managing Clerks. This will be followed by the development of short training modules that MSS/MCC can deliver on site, providing more advanced training than currently available in Technical Induction.

Training for Digital ERISP implementation has commenced and will be completed by end Sept 07. Formal training is supplemented by onsite follow up visits and a training CD.

L&D Participation Rate i.e. number of staff, excluding Crown Prosecutors, that have attended two (2) L&D activities 2006/2007 to 30 June 2007) = 59%

Cumulative statistics – 1 Jul 2006-30 June 2007

Number of learning programs (internal & external):	175
Number of studies assistance participants:	38
Total days study leave accessed:	76 days
Total study reimbursements:	\$21,597.30

Key Result Area 5: Improvements in the criminal justice system

Goal	Strategy	Outcome
5.1 To improve the Criminal Justice system	5.1.1 Participate in inter-agency and external fora	A more effective and efficient criminal justice system
	5.1.2 Develop solutions, in partnership with stakeholders, to streamline and improve court listing systems	
	5.1.3 Initiate and contribute to law reform to improve the criminal justice process	

Performance Indicator

- 5.1(a) Average number of days from arrest to matter disposal
- 5.1(b) Number of submissions made on proposed and existing legislation

Report:

- 5.1(a) The average number of days from arrest to matter disposed of during 2006-7 was 516
- 5.1(b) During the past 12 months the Office has completed over 50 submissions on proposals for law reform in New South Wales on subjects which include the proposed legislation relating to Apprehended Violence Orders; comments on the draft Surveillance Devices Bill; the proposed expansion of the Drug Court; amendments to the Criminal Procedure Act 1986; amendments to the Coroners Act 1980 (giving the Court stronger investigative powers); the review of the Crimes (Appeal and Review) Act 2001; the review of Jury Directions; the review of the composition of Juries; the reform of s115(2) of the Evidence Act 1995 concerning the admissibility of picture identification evidence; the review of the Mental Health Criminal Procedure Act 1990; the review of the Evidence (Audio and Audio Visual Links) Act 1998 and reform of S32 of the Mental Health Criminal Procedure Act (relating to Local Court procedure).

In addition the Office has participated in numerous external committees and groups including court user groups, Bar Association and Law Society committees, Aboriginal Affairs Policy Justice Cluster Committee, Court Security Committee' Criminal Justice Sexual Offences Taskforce, Forensic Science Co-Ordinating Committee, Inter Agency Exhibit Management Committee, Victims Advisory Board and ODPP Sexual Assault Review Committee. For full details of all external committees in which the Office has participated see Appendix 37.

Director of Public Prosecutions Act 1986



Important Provisions

Section 4(3)

“The Director is responsible to the Attorney General for the due exercise of the Director’s functions, but nothing in this subsection affects or derogates from the authority of the Director in respect of the preparation, institution and conduct of any proceedings.”

Section 7(1)

The principal functions and responsibilities of the Director are:

- to institute and conduct prosecutions in the District and Supreme Courts;
- to institute and conduct appeals in any court;
- to conduct, as respondent, appeals in any court.

Section 7(2)

The Director has the same functions as the Attorney General in relation to:

- finding bills of indictment;
- determining that no bill be found;
- directing no further proceedings;
- finding ex officio indictments.

Section 8

Power is also given to the Director to institute and conduct proceedings of either a committal or summary nature in the Local Court.

Section 9

The Director can take over prosecutions commenced by any person (and see section 17).

Section 11

The power to give consent to various prosecutions has been delegated to the Director.

Section 13

The Director can furnish guidelines to Crown Prosecutors and officers within the ODP.

Section 14

Guidelines can also be issued to the Commissioner of Police with respect to the prosecution of offences.

Section 15

Guidelines furnished each year must be published in the Annual Report.

Section 15A

Police must disclose to the Director all relevant material obtained during an investigation that might reasonably be expected to assist the prosecution or defence case.

Section 18

The Director may request police assistance in investigating a matter that may be taken over by the Director.

Section 19

The Director may request the Attorney General to grant indemnities and give undertakings from time to time, but may not do so himself/herself.

Section 24

Appointment to prosecute Commonwealth offences is provided for by this section.

Section 25

Consultation with the Attorney General is provided for:

Section 26

The Attorney General may furnish guidelines to the Director:

Section 27

The Attorney General shall notify the Director whenever the Attorney General exercises any of the following functions:

- finding a bill of indictment;
- determining that no bill be found;
- directing no further proceedings;
- finding ex officio indictments;
- appealing under s5D of the Criminal Appeal Act 1912 to the Court of Criminal Appeal against a sentence.

The Director shall include in the Annual Report information as to the notifications received by the Director from the Attorney General under this section during the period to which the report relates.

Section 29

If the Director considers it desirable in the interests of justice that the Director should not exercise certain functions in relation to a particular case, the Director may request the Attorney General to exercise the Attorney General’s corresponding functions.

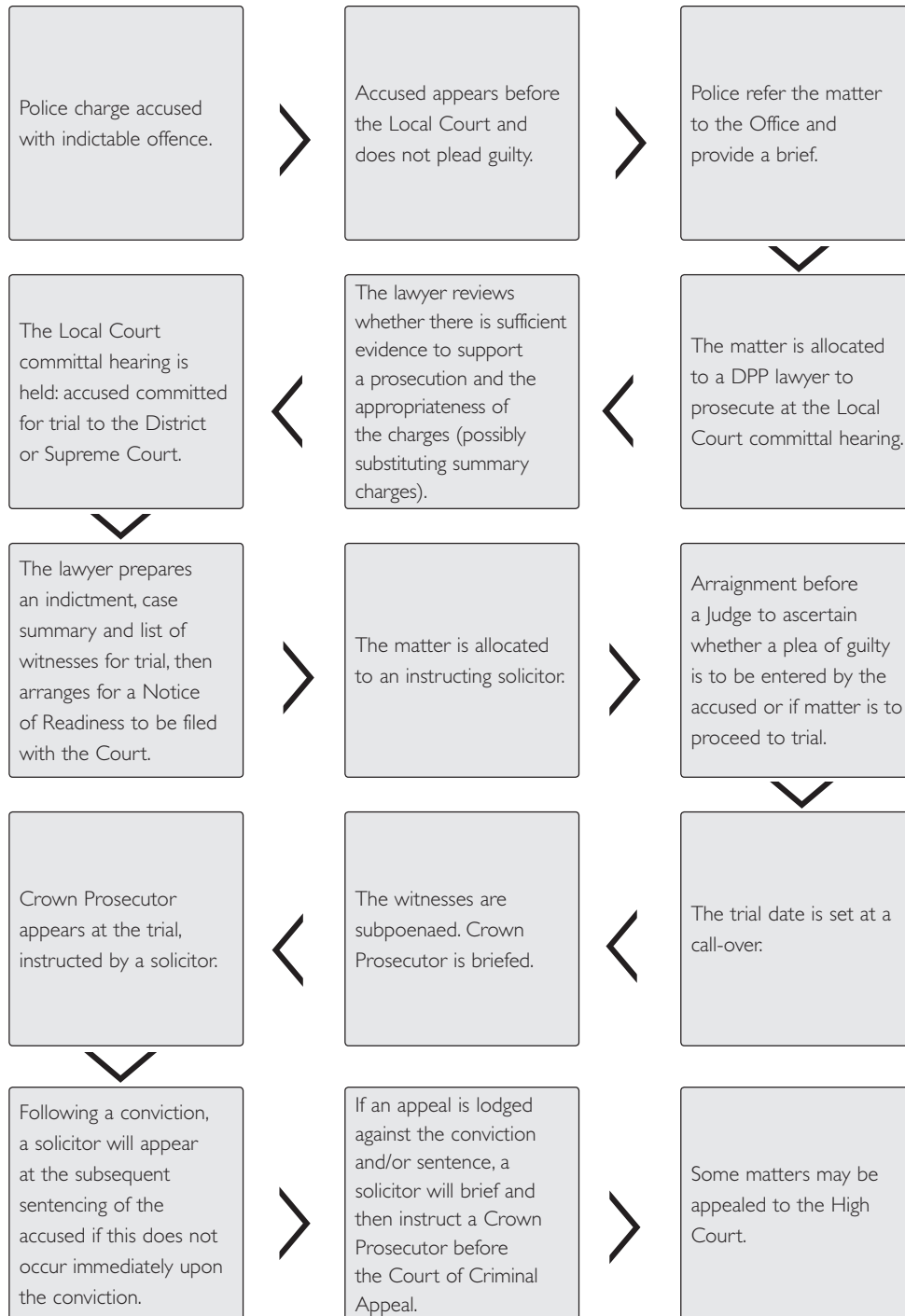
Section 33

The Director may delegate certain of his/her functions.

From Charge To Trial



An Outline of a Typical Defended Matter



Not all matters proceed all the way to trial:

- the accused may be discharged in the Local Court;
- the accused may, depending on the seriousness of the charge/s, be dealt with summarily in the Local Court;
- the accused may plead guilty in the Local Court to the indictable charge/s and, again, depending on their seriousness, be committed for sentence to the District or Supreme Court;
- after committal for trial the accused may enter a plea of guilty (at arraignment or at any time up to and including the trial); or
- the Director can, at any stage, discontinue proceedings.

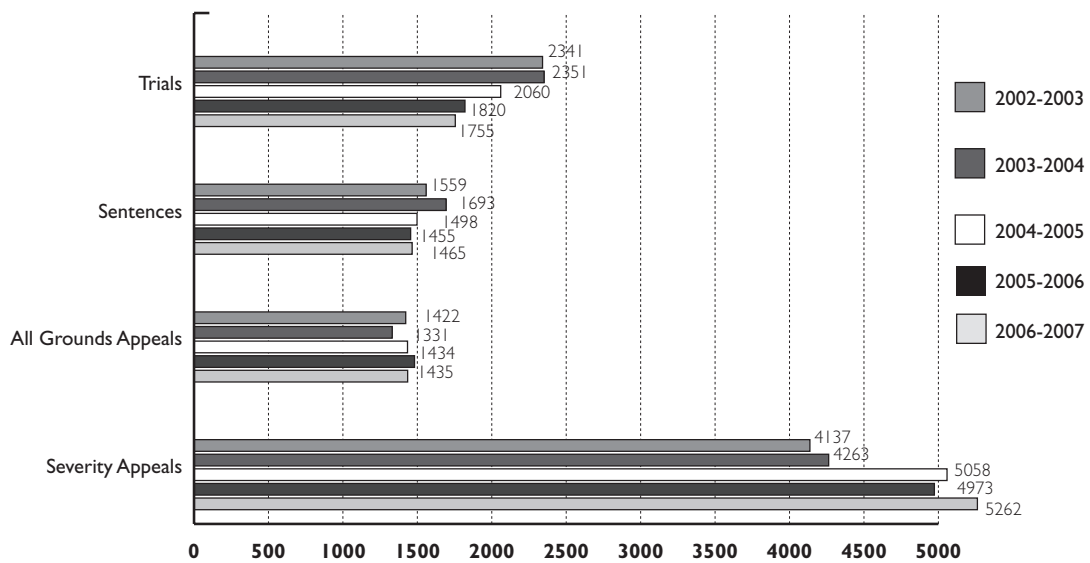
Appendices



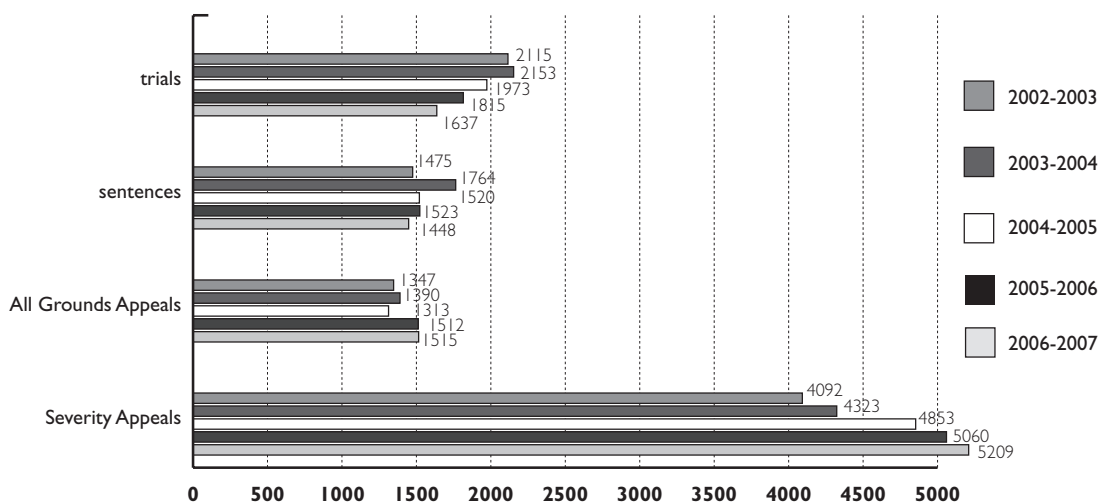
Appendix I

District Court – State Summary

District Court Matters Received – State



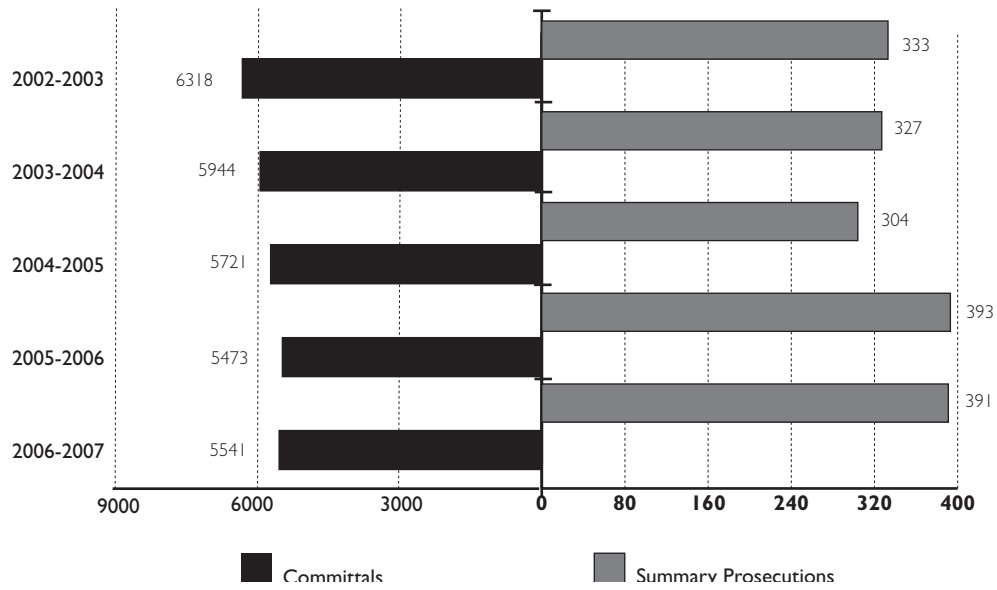
District Court Matters Completed – State



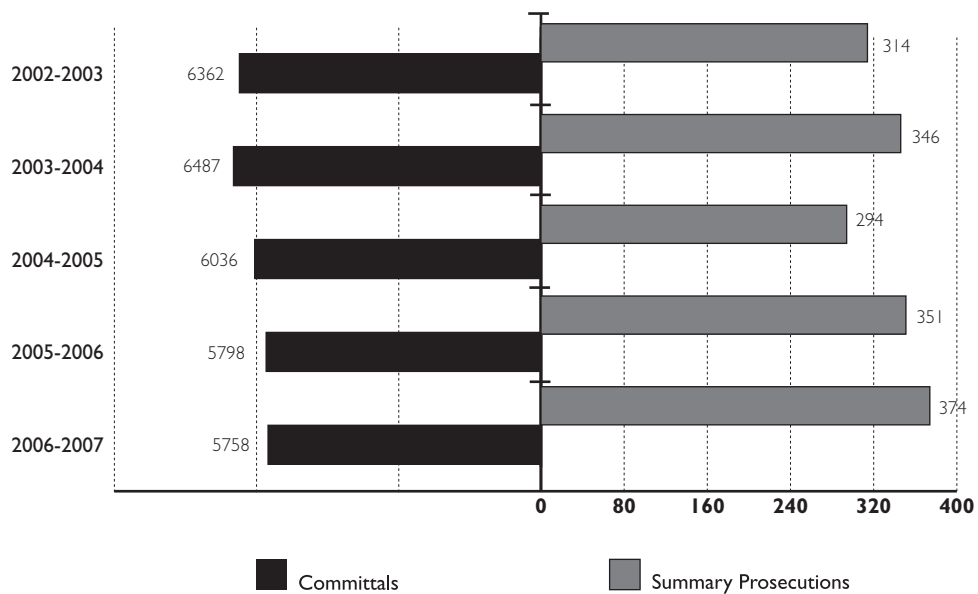
Appendix 2

Local Court – State Summary

Local Court Matters Received – State



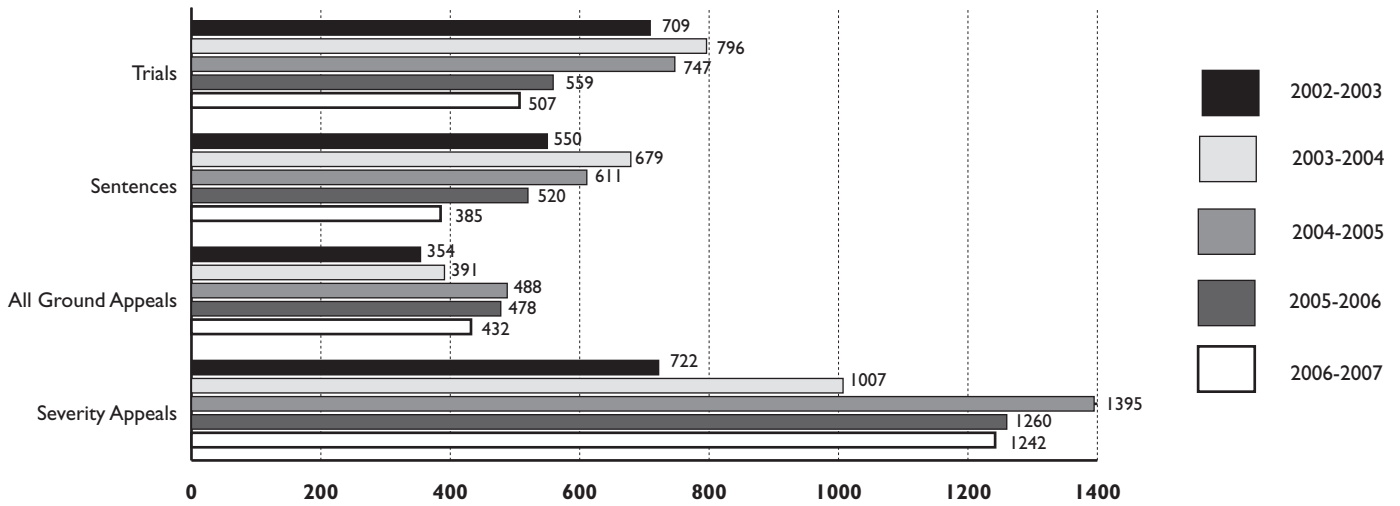
Local Court Matters Completed – State



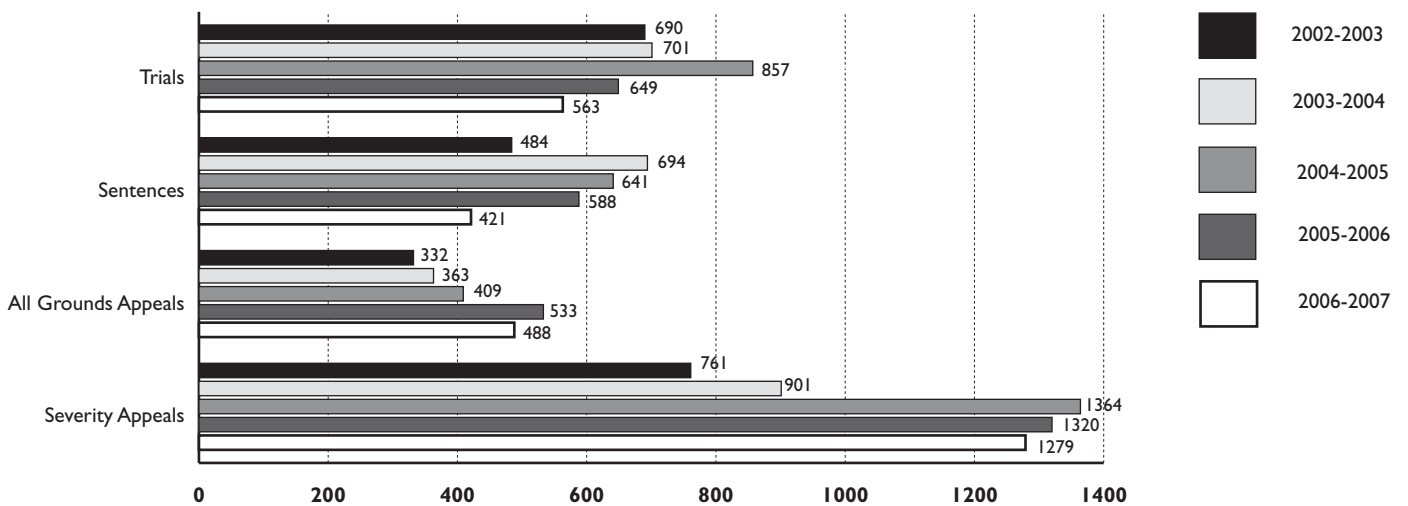
Appendix 3

District Court – Sydney Summary

District Court Matters Received – Sydney



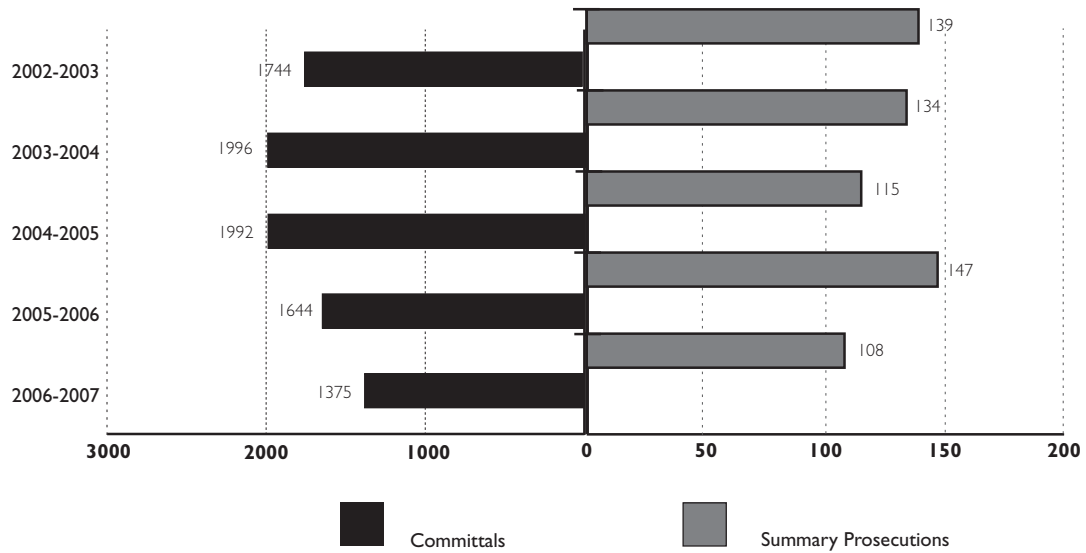
District Court Matters Completed – Sydney



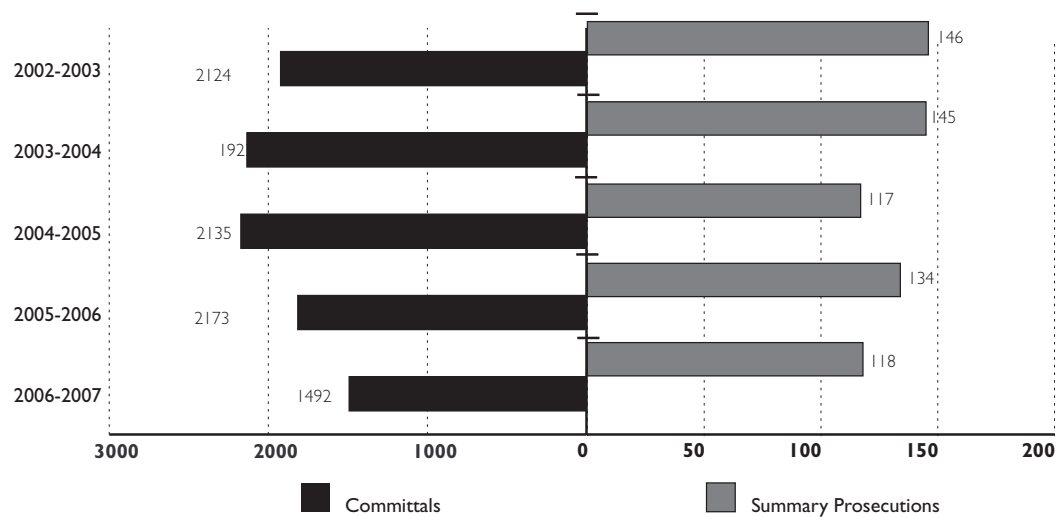
Appendix 4

Local Court – Sydney Summary

Local Court Matters Received – Sydney



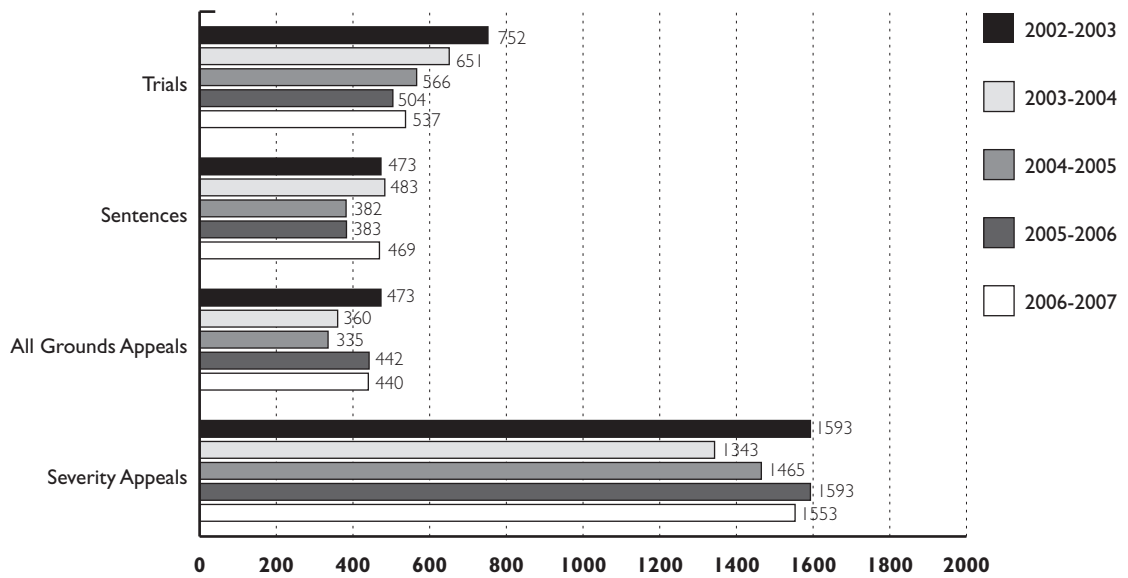
Local Court Matters Completed – Sydney



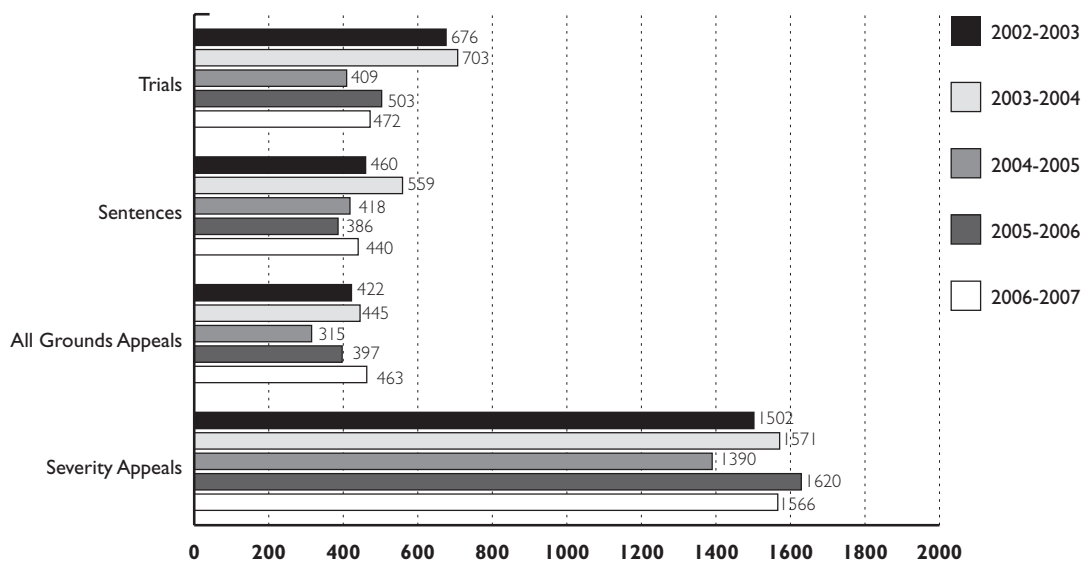
Appendix 5

District Court – Sydney West Summary

District Court Matters Received – Sydney West



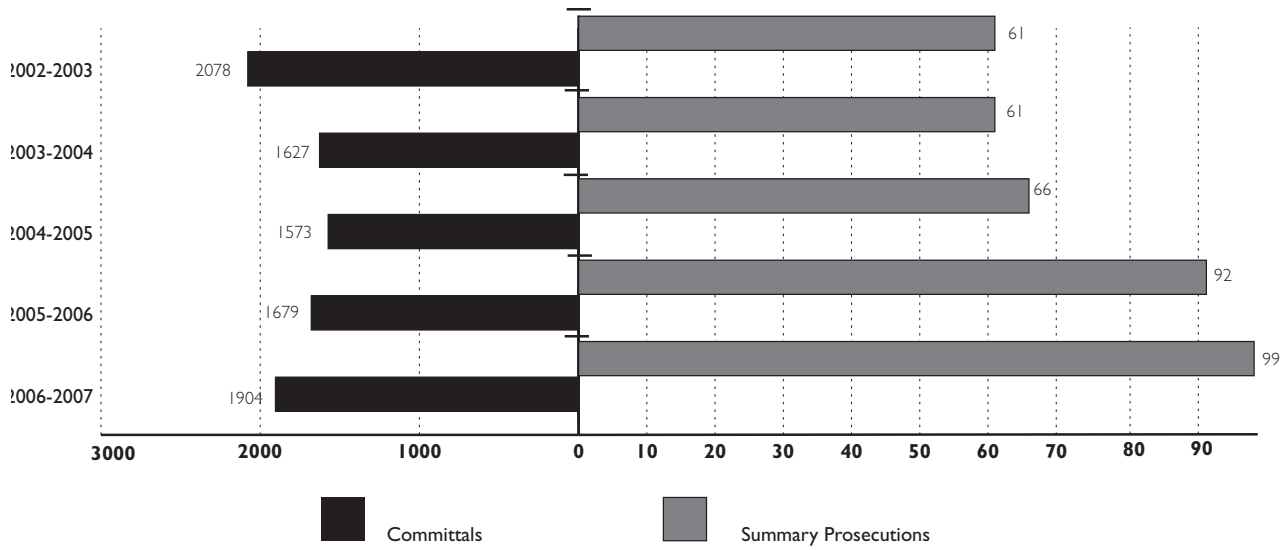
District Court Matters Completed – Sydney West



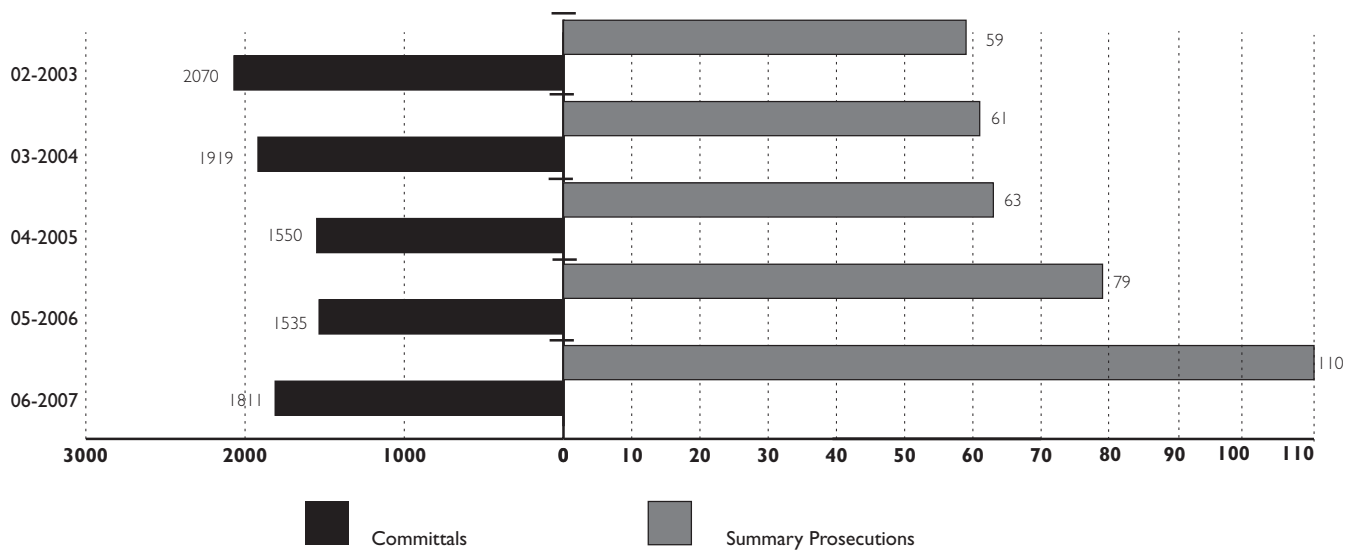
Appendix 6

Local Court – Sydney West Summary

Local Court Matters Received – Sydney West



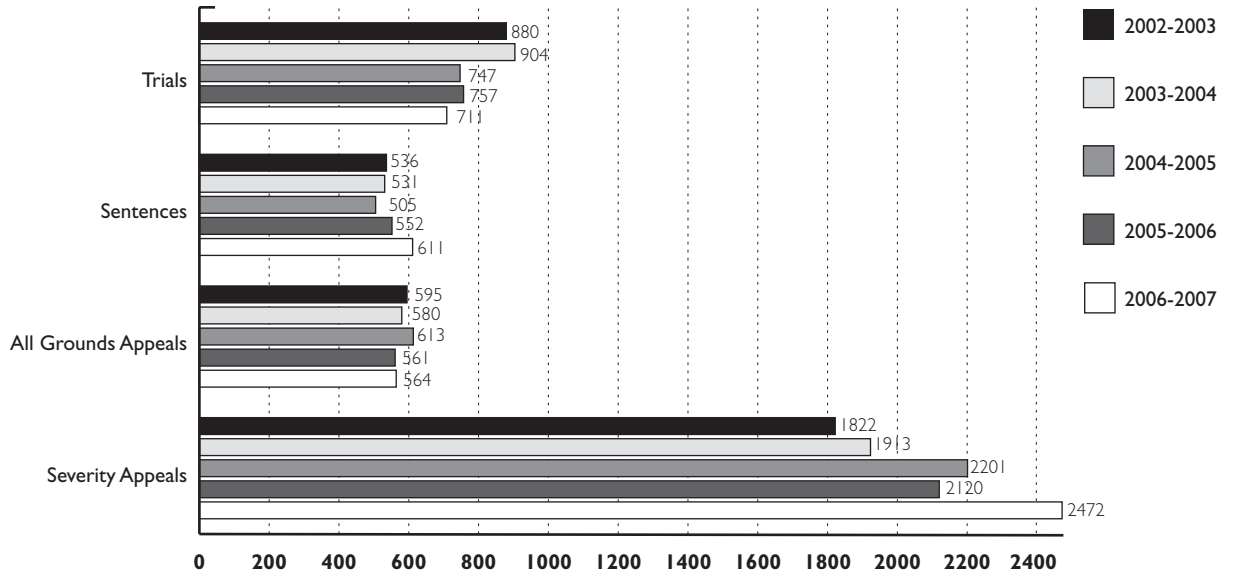
Local Court Matters Completed – Sydney West



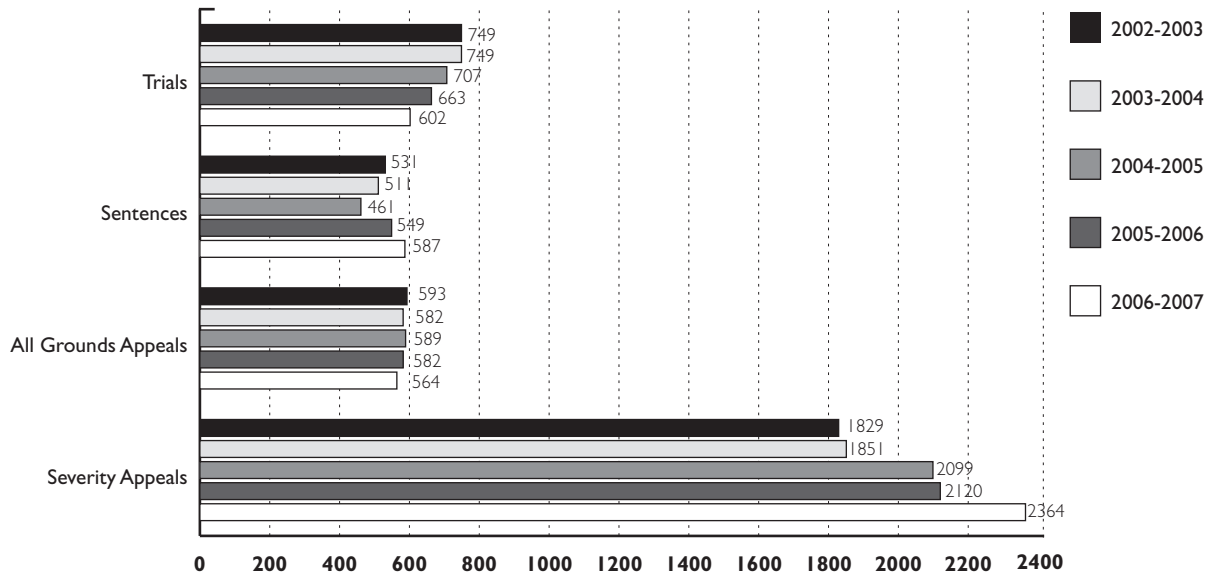
Appendix 7

District Court – Country Summary

District Court Matters Received – Country



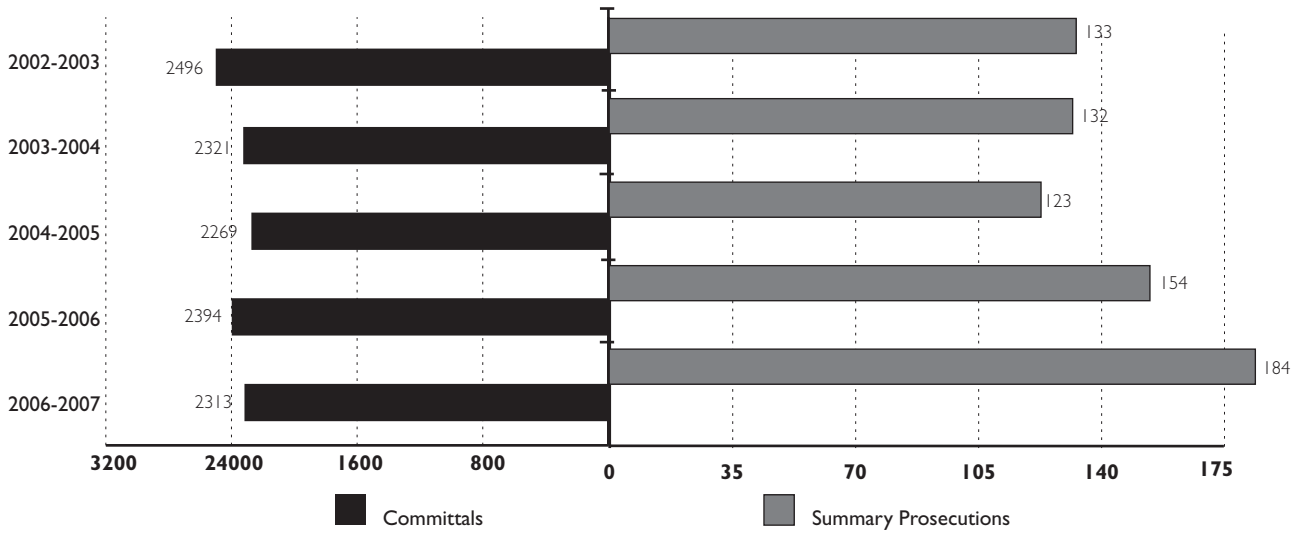
District Court Matters Completed – Country



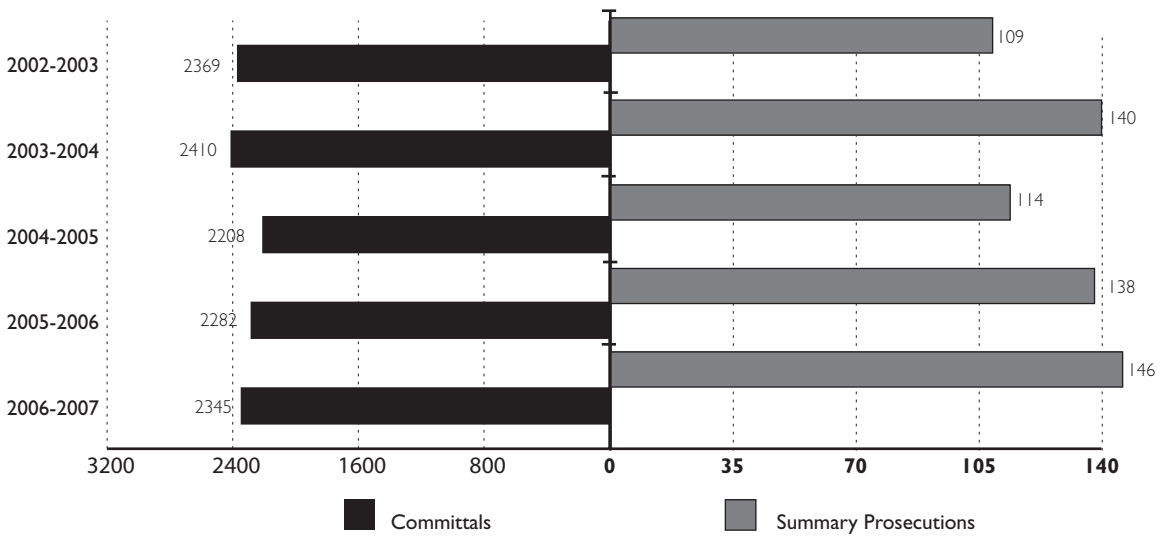
Appendix 8

Local Court – Country Summary

Local Court Matters Received – Country



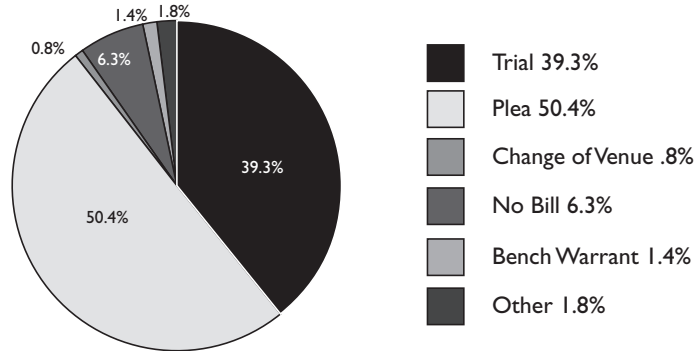
Local Court Matters Completed – Country



Appendix 9

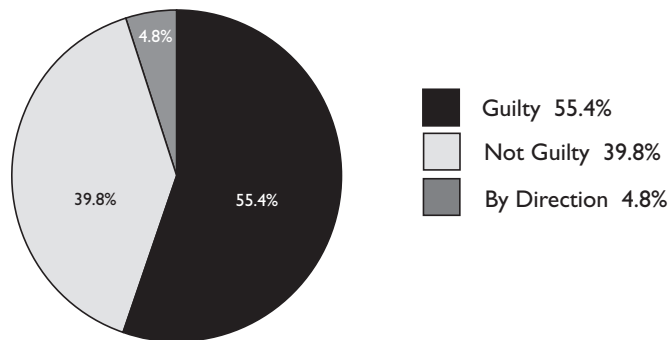
District Court – Trial Statistics

Disposal of Trials Listed

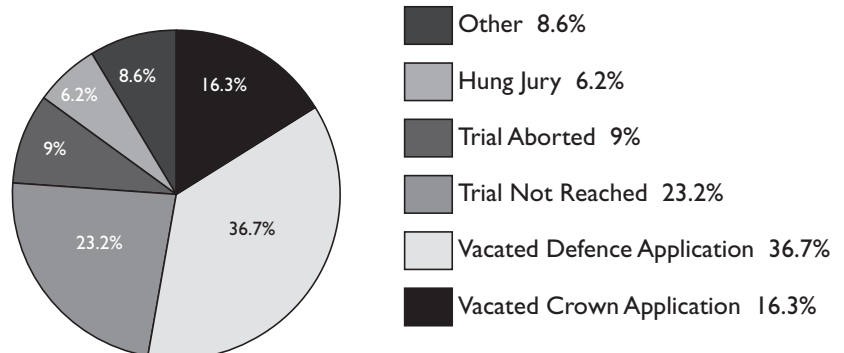


Trial Verdicts Comparison	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007
Guilty	53.2%	51.5%	47.3%	49.5%	55.4%
Not Guilty	41.4%	41.6%	48.1%	45.8%	39.8%
By Direction	5.4%	6.9%	4.6%	4.6%	4.8%

Trials Verdicts



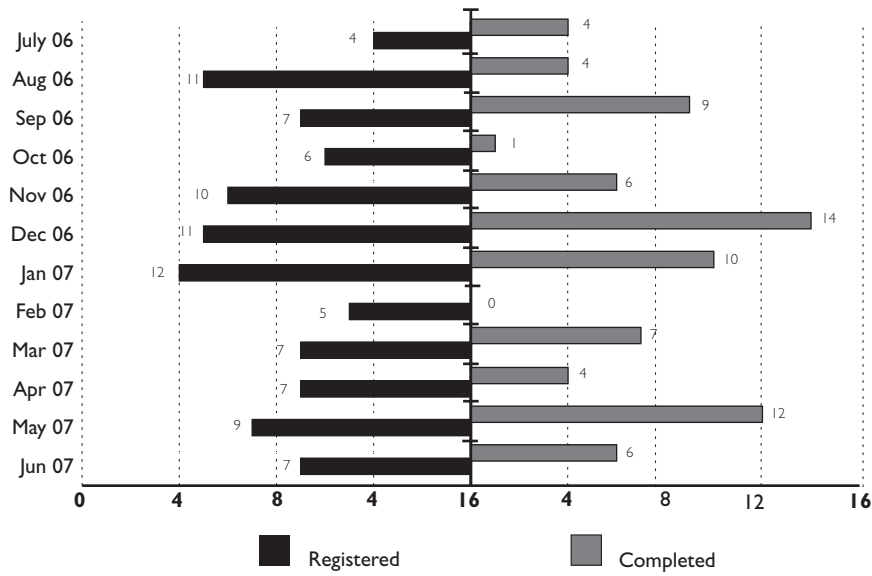
Trials Adjourned



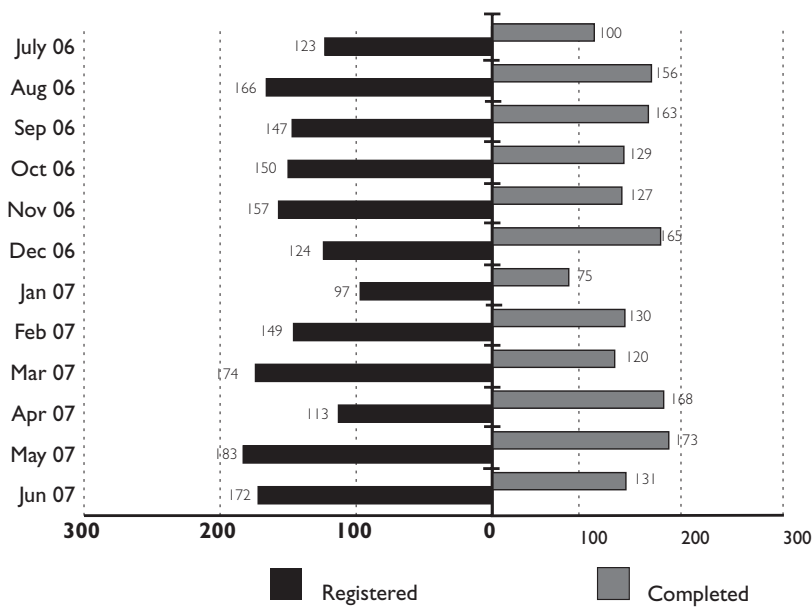
Appendix 10

Trials Registered and Completed

Supreme Court Trials Registered and Completed in 2006–2007



District Court Trials Registered and Completed in 2006–2007



Appendix II

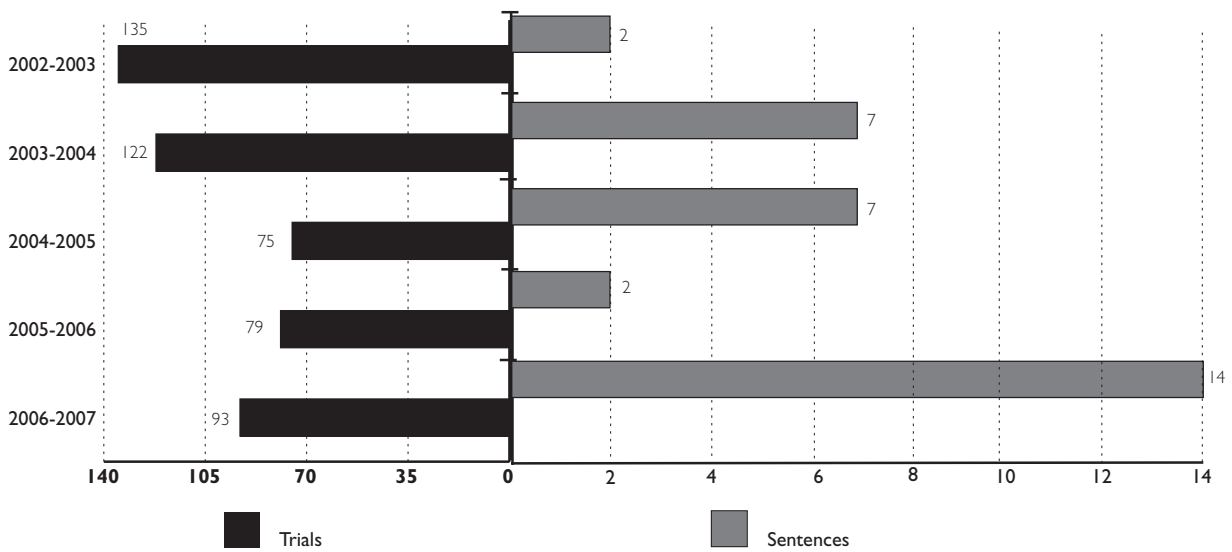
Local Court Committals – July 2006 to June 2007

Regional Office	Registrations	Disposals						Total	On hand at End of June 2007
		Committed for Trial	Committed for Sentence	Summarily Convicted	Discharged	Discont	Other		
Sydney Registrations	221								
Group 1		107	85	77	11	21	37	338	140
Group 2		84	91	63	18	0	64	320	136
Group 3		104	89	79	18	24	39	353	144
Group 4		105	69	41	10	10	23	258	122
Group 5		30	21	13	0	1	3	68	72
Group 6		34	11	58	10	18	10	141	74
Admin Services		0	0	2	1	0	29	32	19
Sydney Miscellaneous		68	43	52	10	12	59	244	167
Sydney	221	464	366	333	68	74	205	1510	874
Parramatta	711	234	195	126	29	28	122	734	314
Penrith	609	134	112	135	24	40	168	613	297
Campbelltown	559	155	143	70	5	65	103	541	258
Sydney West	1879	523	450	331	58	133	393	1888	869
Newcastle	645	188	141	171	15	25	79	619	288
Lismore	387	146	101	99	6	41	69	462	181
Dubbo	217	70	39	46	10	30	26	221	82
Gosford	204	66	64	46	22	24	26	248	87
Wagga	244	63	60	46	1	28	17	215	102
Wollongong	447	118	122	43	11	106	34	434	147
Bathurst	142	36	32	45	2	6	9	130	77
Country	2286	687	559	496	67	260	260	2329	964
State Totals	4386	1674	1375	1160	193	467	858	5727	2707

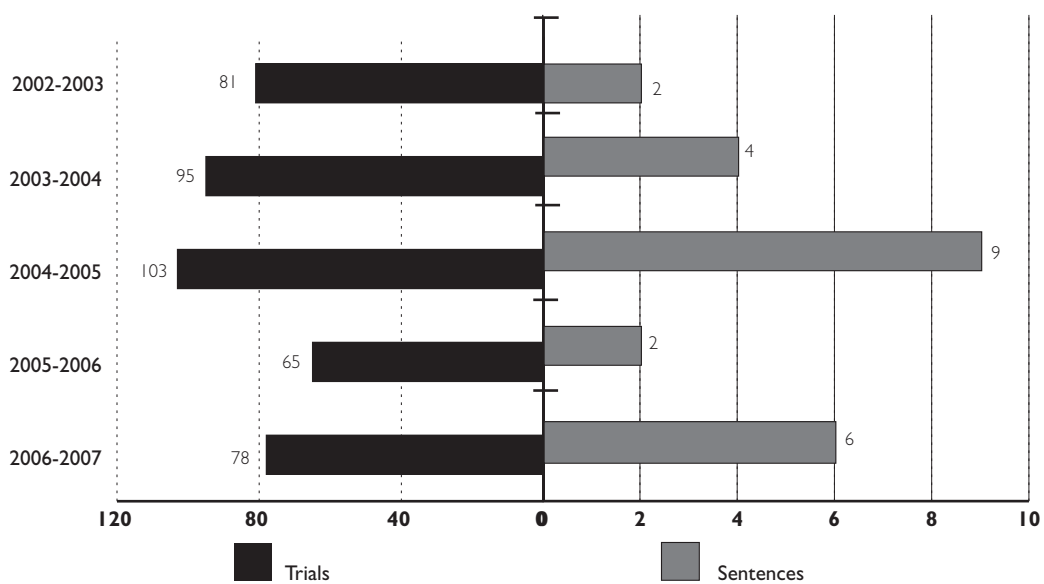
Appendix 12

Supreme Court – State Summary

Supreme Court Matters Received– State



Supreme Court Matters Completed – State

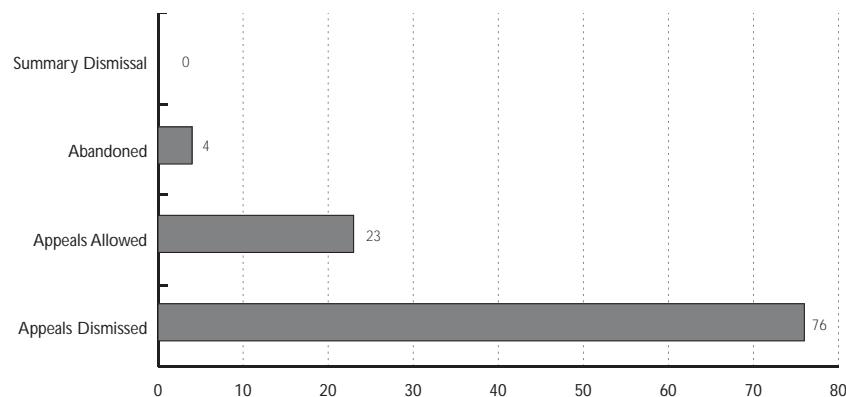


Appendix 13

Court of Criminal Appeal and High Court

Court of Criminal Appeal	2002–2003	2003–2004	2004–2005	2005–2006	2006–2007
A. Appeals by Offenders finalised					
Conviction and sentence appeals	154	105	119	107	99
Sentence appeals	185	217	259	211	199
Summary dismissals	71	11	0	2	2
Appeals abandoned	149	7	6	6	8
TOTAL	559	340	384	326	308
B. Crown Inadequacy Appeals finalised					
Abandoned	16	19	24	24	14
Allowed	32	29	37	35	37
Dismissed	36	50	26	21	22
TOTAL	84	98	87	80	73
C. Appeals against interlocutory judgments or orders (s.5F appeals)					
	35	25	20	25	20
D. Stated cases from the District Court					
	1	4	3	1	3
E. Total of all appeals finalised					
	679	467	494	432	404
High Court matters finalised					
Completed applications for special leave to appeal					
Applications by the offender	22	25	22	15	9
Applications by the Crown	0	1	1	0	1
Hearings conducted after grant of special leave to appeal					
Appeal by offenders	4	3	3	2	2
Appeal by the Crown	0	0	1	0	1

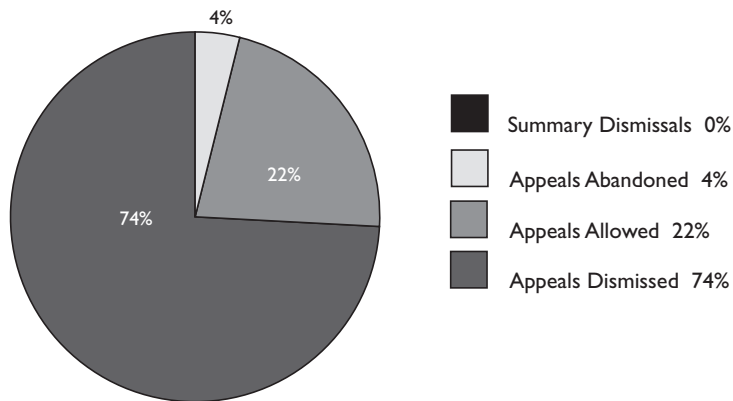
Conviction and Sentence appeals finalised in 2006–07 in Court of Criminal Appeal – Breakdown by numbers



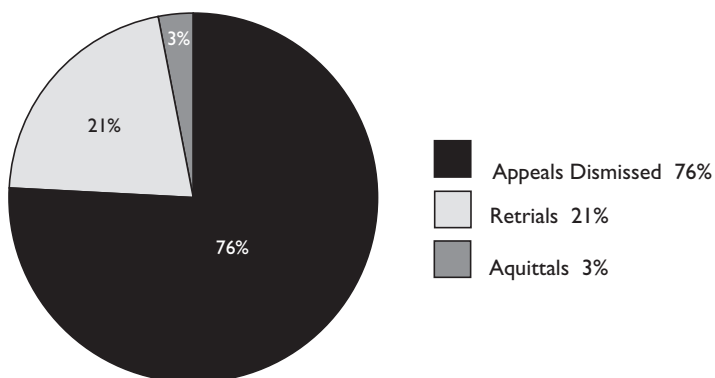
Appendix I3 Continued

Court of Criminal Appeal and High Court

Conviction and sentence appeals finalised in 2006-07 in Court of Criminal Appeal
– Breakdown by percentage



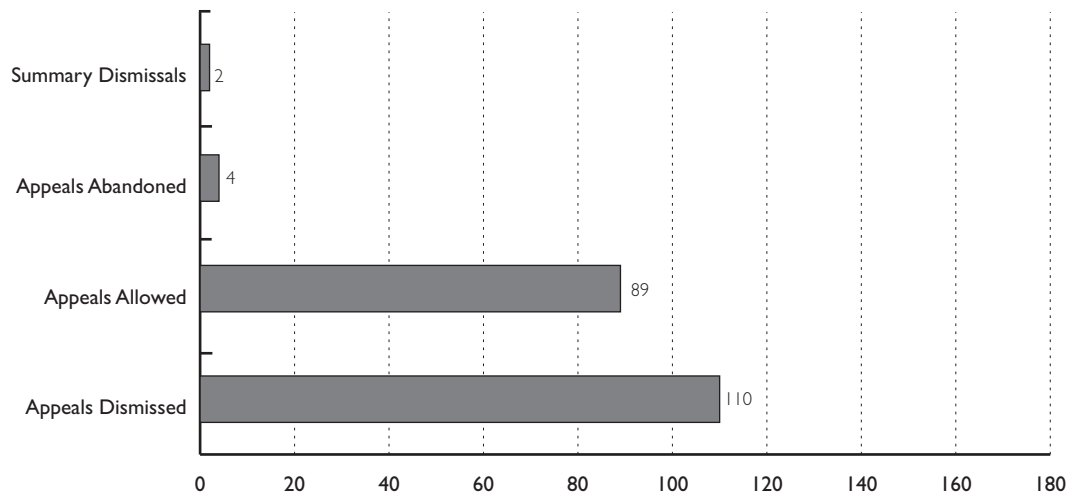
Results of finalised conviction and sentence appeals in 2006-07 in Court of Criminal Appeal
– Breakdown by percentage



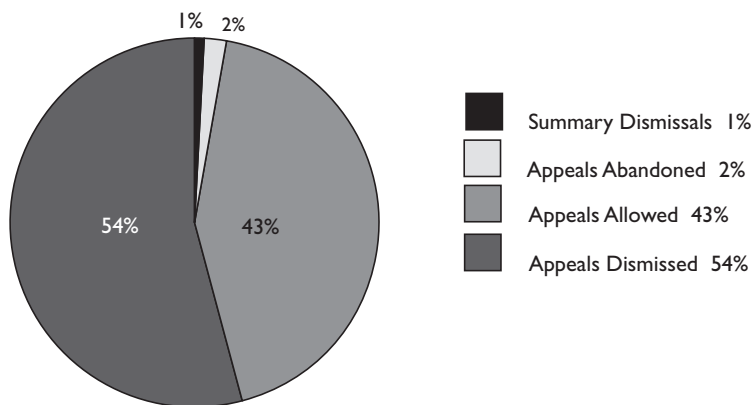
Appendix I3 Continued

Court of Criminal Appeal and High Court

Sentence appeals finalised in Court of Criminal Appeal in 2006–07
Breakdown by number



Sentence appeals finalised in 2006-07 in Court of Criminal Appeal –
Breakdown by percentage



Appendix 14

Significant Legislative Changes

Crimes (Appeal and Review) Amendment Act 2006 (No 70)

Assent 19/10/2006. Gaz 127, 27/10/2006, p 8904. Commencement 23/2/2007, Gaz 33, 23/2/2007, p 945.

The Crimes (Appeal and Review) Amendment Act 2006 amended the **Crimes (Local Courts Appeal and Review) Act 2001** (the Principal Act), to establish a DNA Review Panel whose role is to review criminal convictions. The legislation also imposes a duty on NSW police and other State authorities to retain evidence containing biological material. The amending Act transfers from the **Crimes Act 1900** some related provisions dealing with the review of convictions and amends the **Crimes (Forensic Procedures) Act 2000**.

A number of new definitions were inserted into s 74 of the principal Act. These include "biological material", "conviction", "DNA Review Panel" and "sentence". Under s 89, a convicted person is eligible to apply for a review of their conviction if their claim of innocence may be affected by DNA information obtained from biological material. The person needs to have been convicted before 19 September 2006 of an offence punishable by imprisonment for life or for 20 years, or punishable by a lesser period if the Panel considers that there are "special circumstances". The person must still be in custody, or on parole or subject to supervision or detention under the **Crimes (Serious Sex Offenders) Act 2006**.

Section 90 provides for the creation of a DNA Review Panel consisting of six members. These include a former judicial officer, a person nominated by the NSW Premier to represent the victims of crime and a former police officer. The following officers, or their delegates, also sit on the

panel; the Director of Public Prosecutions, the Director General of the Attorney General's Department and the Senior Public Defender.

The functions of the DNA Review Panel are; (a) to consider applications from eligible convicted persons whose claim of innocence may be affected by DNA information obtained from biological material; (b) to arrange searches for and the DNA testing of biological material specified in the application; and (c) to refer cases to the NSW Court of Criminal Appeal for a review of conviction following the receipt of DNA test results. In carrying out its functions, the panel is obliged to consider the interests of victims of the offence to which the application relates, the need to maintain public confidence in the administration of criminal justice in NSW, the public interest and any other relevant matters: s 91(2). The Panel may also engage other persons to provide expert assistance: s 91(3). The Panel may refuse to deal with an application, and is obliged to so refuse if the matter has already been dealt with or if the biological material specified in the application does not exist or cannot be found: s 93.

The Panel may refer a matter to the NSW Court of Criminal Appeal for that court to consider whether the conviction should be set aside. This may be done if it considers that there is a reasonable doubt concerning the convicted person's guilt.

Section 96 imposes a duty on NSW Police and other State authorities to retain physical evidence containing "biological material" obtained in connection with the investigation or prosecution of the offences for which the eligible convicted persons were convicted. Section 96 applies only to offences punishable by imprisonment for life or for 20 years or more. The duty under this section does

not apply to relevant biological material under the following circumstances; (a) if a court requires the material to be returned to the owner; (b) if the size and nature of the material make it impracticable to retain (a sample still needs to be taken); or (c) if the material has already been subject to DNA testing; or the eligible convicted person ceases to be an eligible convicted person: s 96(3). It is an offence to destroy or tamper with material that is required to be retained. The maximum penalty for this offence is ten years imprisonment: s 96(5).

Under sunset provisions in the legislation, the panel ceases operation after seven years. There is an option for the Panel's operation to be extended for a further three years following statutory review of its work. The statutory review process is to be conducted after the panel has been in operation for five years.

Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006 (No 69)

Assent 19/10/2006. Gaz 127, 27/10/2006, p 8904. Commencement 15/12/2006, Gaz 186, 15/12/2006, p 11524.

The Crimes (Appeal and Review) Amendment (Double Jeopardy) Act 2006 (the amending Act) amended the **Crimes (Local Courts Appeal and Review) Act 2001** to enable the retrial of acquitted persons for serious offences in certain cases. It also changed the name of the **Crimes (Local Courts Appeal and Review) Act 2001** to the **Crimes (Appeal and Review) Act 2001**. This change reflects the Act's broader application to appeals and reviews from both Local Courts and higher courts.

The amending Act modified the long standing rule of double jeopardy in NSW by providing that a person acquitted of an offence can be retried for "life sentence

Appendix I4 Continued

Significant Legislative Changes

offences" if there is "fresh and compelling evidence" of guilt.

It provides that a person acquitted of an offence which carries a maximum penalty of 15 years or more, can be retried if the acquittal was "tainted" by the commission of an "administration of justice offence". The latter includes bribery, perverting the course of justice, conspiracy to pervert the course of justice and perjury. In the definition section of the amending Act, a "life sentence offence" means an offence of murder under s 19A **Crimes Act**, aggravated sexual assault in company under s 61JA (1) **Crimes Act** or offences relating to a large commercial quantity of certain prohibited drugs under ss 23(2), 24(2), 25(2), 25(2A), 26, 27 or 28 Drug Misuse and Trafficking Act 1985.

Section 99 provides that Division 2 of the **Crimes (Appeal and Review) Act 2001** applies in the following circumstances; (a) where a person is acquitted of an offence and according to the rule of double jeopardy is precluded from being retried for the same offence; (b) to persons acquitted in proceedings outside NSW of an offence, but does not permit a retrial inconsistent with the Commonwealth of Australia Constitution Act or a Commonwealth law; and (c) to persons acquitted before the commencement of Division 2: ss 99.

Under s 100, the Court of Criminal Appeal has the power, on application by the Director of Public Prosecutions, to do the following:

- order an acquitted person to be retried for a life sentence offence if it is satisfied that there is "fresh and compelling evidence" against the acquitted person in relation to the offence, and in all the circumstances it is in the "interests of justice" for the order to be made: s 100(1);

- quash the person's acquittal or remove the "acquittal as a bar" to the person being retried if orders are found for a retrial: s 100(2); and
- order a retrial for a life sentence offence even where the person has been acquitted of manslaughter or for a less serious offence: s 100(3).

Section 100(4) does not allow the NSW Court of Criminal Appeal to order a person to be retried for a life sentence offence, if that person was acquitted of a life sentence offence and convicted instead of manslaughter or a lesser offence.

Section 101 allows the NSW Court of Criminal Appeal, on application by the Director of Public Prosecutions, to —

- order an acquitted person to be retried for an offence punishable by 15 years imprisonment or more if satisfied that the acquittal is a "tainted" acquittal and, in all the circumstances, it is in the "interests of justice" for the order to be made: s 101(1).
- quash the person's acquittal or remove the "acquittal as a bar" to the person being retried if orders are found for a retrial: s 101(2); and
- order a retrial for an offence of 15 years or more even where the person has been acquitted of a lesser offence: s 101(3).

"Fresh evidence" against an acquitted person in relation to an offence, is evidence that was not adduced in the proceedings that led to the person being acquitted and could not have been adduced exercising reasonable diligence: s 102(2). "Compelling evidence" is evidence that is reliable, substantial and in the context of disputed issues in the proceeding that lead to an acquittal, highly probative against the acquitted

person: s 102(3). "Evidence that would be admissible in a retrial is not prevented from being fresh and compelling evidence merely because it would have been inadmissible in the earlier proceedings against the acquitted persons": 102(4).

Under s 103, an acquittal is "tainted" when two conditions are met. First, the accused person has been convicted in NSW or elsewhere of an administration of justice offence (eg bribery, conspiracy to pervert the course of justice, perverting the course of justice or perjury) committed in connection with the proceedings in which the accused was acquitted. Secondly, it is more likely than not, that the accused person would have been convicted but for the commission of that offence. Section 103(3) provides that if the administration of justice offence is subject to an appeal right, then the acquittal is not a tainted acquittal.

The NSW Court of Criminal Appeal considers matters in determining whether it is in the interests of justice to order that an acquitted person be retried. These matters include whether it is likely the person will receive a fair retrial, the length of time since the acquittal and whether police or prosecutors have failed to act with reasonable diligence: s 104.

Section 107 enables the Crown (or the Attorney General) to appeal against an acquittal on a question of law, if the trial judge directed to acquit the accused person or if the proceedings were tried by a judge sitting without a jury. If the NSW Court of Criminal Appeal upholds the appeal, it may order a new trial. It cannot, however, proceed to a conviction or order the court which hears a new trial to enter a conviction.

A police investigation into the commission of an offence by an acquitted person, in connection with their possible retrial for

Appendix I4 Continued

Significant Legislative Changes

an offence under Part 8, Div 2 of the **Crimes (Appeal and Review) Act 2001** requires the advice of the Director of Public Prosecutions in relation to certain matters: s 109. The Director may not consent to an investigation unless he is satisfied that (a) there is, or is likely to be as a result of the investigation, sufficient new evidence to warrant the conduct of the investigation; and (b) it is in the public interest for the investigation to proceed. A presumption in favour of bail applies to an acquitted person arrested for the purposes of an application for retrial: s 110.

A review of the operation of Part 8 - Acquittals is to be carried out as soon as practicable, five years after the legislation commences. A report on the review is to be tabled in Parliament within 12 months of the expiry of that period "despite anything to the contrary" in s 81.

Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006 (No 57)

Assent 20/6/2006, Gaz 82, 23/06/2006 p 4562, commencement 14/7/2006.

The Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006 amends the **Drug Misuse and Trafficking Act 1985** (the **DMTA**) regarding the cultivation of prohibited plants by enhanced indoor means such as hydroponic cultivation methods.

A "prohibited plant" is now defined in s 3 of the **DMTA** to include a "cannabis plant cultivated by enhanced indoor means". Commercial and large commercial quantities of these prohibited plants are set at five times below that for cannabis grown outdoors. Cultivation by "enhanced indoor means" refers to cultivation of the plant inside a building or structure which involves one or more of the following: nurturing the plant in nutrient-enriched

water (with or without mechanical support); application of an artificial source of light or heat; suspending the plant's roots and spraying the plant with a nutrient solution.

Section 23 of the **DMTA** has been amended to create a number of new offences relating to the cultivation of prohibited plants. The section also allows a jury to acquit the accused if they are not satisfied that the number of plants involved equals or exceeds the quantity prescribed by the section. The jury can, instead, find the accused guilty of an alternative offence under one of the sub-sections under s 23.

An expanded definition of "cultivate a prohibited plant for a commercial purpose" was added to s 23 and 23A of the **DMTA**. It now includes cultivating the plant with the intention of selling it or any of its products, or cultivating the plant believing that another person intends to sell it or any of its products.

Section 23A creates a new aggravated offence of cultivating a prohibited plant by enhanced indoor means in the presence of children. A "child" is defined under s 23A(8) as a person under the age of 16 years. In prosecuting this offence, the Crown must prove that the accused exposed a child to the cultivation process, or to substances being stored for use in that cultivation process. Section 23A(6) provides a defence to the accused if he or she can establish that the child's exposure to the cultivation of prohibited plants, or the substances being used for its cultivation, did not endanger the child's health or safety. The new offence is a broad one and does not define the term "expose". Penalties for s 23A offences are set out in the new s 33AD. A new definition section (s 36TA) defines "commercial cultivation" and "drug premises".

Two other Acts were amended by the **Drug Misuse and Trafficking Amendment (Hydroponic Cultivation) Act 2006**. The **Electricity Supply Act 1995** (ss 64-70) was modified to increase the maximum penalty for the theft of electricity to 2000 penalty units for a corporation or, in any other case, 100 penalty units or imprisonment for two years or both. Under the **Law Enforcement (Powers and Responsibilities) Act 2002** (ss 139, 140, 141) a new definition of "cultivation by enhanced indoor means" was added and the definition of "drug premises" was replaced. The circumstances in which a search warrant may be issued for the search of suspected drug premises was expanded to include the unlawful cultivation of prohibited plants by enhanced indoor means.

Appendix 15

Significant Judicial Decisions

NSW Court of Appeal

Colosimo & Ors v Director of Public Prosecutions (NSW) [2006] NSWCA 293

Julius, Sergio and Vincenzo Colosimo (the appellants) and others were involved in a scuffle with security officers at Star City Casino. The Casino security guards thought one of the brothers was intoxicated and directed him to leave the premises. The two other brothers objected to this. They screamed at the security guards and racially abused one of them. A fight broke out in which a number of the security officers sustained significant injuries. The appellants did not sustain serious injuries. The appellants were originally charged with more serious offences including assault and maliciously inflict grievous bodily harm as well as the less serious offence of affray. The appellants did not give evidence at the hearing. In Local Court the magistrate was not satisfied beyond reasonable doubt that any of the accused were guilty of the more serious offences. The magistrate found each guilty of affray and fined each of them \$1500. The magistrate did not conclude that the appellants were acting in self-defence, because he was not satisfied beyond reasonable doubt as to which appellant committed the relevant acts against the security guards.

The appellants appealed to the Supreme Court. The appeal raised a number of issues including whether the magistrate erred in law in imposing an onus on the appellants regarding the partial defence of excessive self defence under s 418 **Crimes Act**. The Supreme Court judge found that the evidence in the case did not raise self defence and that in any event the appellants had not effectively raised the defence.

The brothers appealed unsuccessfully to the Court of Appeal. They argued first that the Supreme Court judge erred in finding that they did not raise self defence on the basis of the evidence. Secondly, they submitted His Honour erred in holding that the brothers were unable to raise self-defence. The **Crimes Act** requires that for self defence to be raised, there must be evidence capable of establishing the possibility that the accused believed the conduct constituting the offence was necessary to defend himself or herself in the circumstances as he or she perceived them to be. Secondly, the accused's response to the circumstances as he or she perceived them to be must be reasonable.

The court explained that it is not necessary that the accused give evidence of his or her own beliefs and perceptions regarding the circumstances. This is because evidence of circumstances from which inferences may be drawn about the accused's relevant beliefs and perceptions may be sufficient. Where the accused does not give evidence, and there is no other evidence to the contrary, inferences are drawn on the basis of the beliefs and perceptions a person in the position of the accused could reasonably hold in the circumstances.

The court went on to list the factors relevant to the matter before them. These included that the appellants were lawfully requested to leave the premises, after which the security officers could lawfully use reasonable force to effect their removal. There was no evidence that the security officers engaged in conduct which went beyond action directed at getting the appellants to leave the casino. Initial contact by a security officer before directions were given to the appellants to leave, may have constituted a "technical

assault." However, it was not such as to give rise to a reasonable belief that the person was in any risk of being harmed or that he needed to defend himself or others. The violent pushing and attempted striking of the guard by one appellant could not reasonably have been believed to be necessary by the appellant to defend himself or others. The appellant's belief that the security officers started the fracas "could not be inferred as something reasonably possible in the objective circumstances." In the absence of the appellants giving evidence, "there was no evidentiary basis for a view that such a belief was reasonably possible." The Court of Appeal dismissed the appeal, holding that the primary judge was correct in finding that the evidence did not raise self defence and also that the magistrate made no error in the Local Court.

Director of Public Prosecutions (NSW) v Cooke [2007] NSWCA 2

Mr Cooke was convicted in the Local Court of three offences of break, enter and commit a serious indictable offence under s 112(1) **Crimes Act** and two offences of malicious damage under s 195(a) **Crimes Act**. These offences were committed whilst he was intoxicated. They involved him damaging two shops and breaking into a TAFE building and stealing or damaging property. Mr Cooke was sentenced to imprisonment for a non-parole period of ten months with a balance of term of five months for each of the break, enter and steal offences and to six months imprisonment for the malicious damage offence. The sentences were suspended on the condition that he enter into a good behaviour bond under s 12 **Crimes (Sentencing Procedure) Act 1999**. A condition of the bond was that he receive drug and alcohol rehabilitation.

Appendix 15 Continued

Significant Judicial Decisions

Whilst still subject to the bond, Mr Cooke and another man became involved in an argument outside a railway station. During this incident the victim was kicked and punched and suffered facial injuries requiring stitches. Mr Cooke pleaded guilty in the Local Court to malicious wounding in company contrary to s 35(2) **Crimes Act 1900**. In doing so he breached the good behaviour bonds he had entered into.

In the District Court the sentencing judge dealt with the breach of the bonds at the same time as sentencing for the malicious wounding offence pursuant to s 98(1)(c) **Crimes (Sentencing Procedure) Act**. Mr Cooke received a sentence of imprisonment for 18 months, suspended on entering into a further bond for the malicious wounding offence. In relation to the breaches of the good behaviour bonds, the judge decided that there were good reasons for taking no action.

The Director of Public Prosecutions appealed to the Court of Appeal against this decision. On appeal the court had to decide whether the reasons given by the sentencing judge for taking no action about the breaches of the bonds were "good reasons" under s 98(3)(b) of the **Crimes (Sentencing Procedure) Act**. A second issue was whether a court can consider matters other than the behaviour which gives rise to the breach, when deciding whether to excuse the breach.

The court allowed the appeal, quashed the decision to excuse the breach of the bonds and remitted the matter to the District Court. Howie J found that the main consideration in determining whether there were "good reasons" for excusing a failure to comply with the bonds was the nature of the breaching conduct itself. The District Court sentencing judge was found to

have considered irrelevant matters in determining the breach proceedings by not resolving those proceedings before sentencing the offender for the offence which caused the breach. In addition, His Honour incorrectly referred to the range of sentencing options open to him and excused the breach to give effect to the sentence for malicious wounding and to assist with the offender's rehabilitation. A further error was made by the District Court judge in considering the offender's rehabilitation needs. Although these needs may be relevant to determining the type of custodial order made after the bond is revoked, rehabilitation is not relevant to deciding whether good reasons exist to excuse the breach of the bond.

Knaggs v Director of Public Prosecutions & Anor [2007] NSWCA 83

Mr Knaggs, a solicitor, was convicted of one count of assault occasioning actual bodily harm under s 59(1) **Crimes Act** and placed on a bond. He unsuccessfully appealed to the District Court against conviction. In the Supreme Court he filed a summons seeking various forms of relief. The basis of the relief sought was an argument that because the court attendance notice (CAN) served on him did not briefly state the particulars of the offence, it contravened s 175(3)(b) **Criminal Procedure Act**. As a result, he argued, the proceedings arising from its issue were invalid.

The summons was removed to the Court of Appeal where two issues arose to be considered. The first and main issue was whether the failure of a CAN to comply with s 175(3)(b) **Criminal Procedure Act** renders the CAN, and any resulting proceedings, invalid? The Court of Appeal dismissed the summons and ordered the claimant to pay costs. It held that a

CAN which does not "briefly state the particulars of the offence" and which breaches s 175(3)(b) **Criminal Procedure Act 1986** does not make the relevant proceedings invalid. Further, it does not invalidate any orders arising from those proceedings.

Campbell J, with whom Mason P and Tobias J agreed, took two different approaches to determining the validity of the CAN. Both led to the conclusion that a CAN which is defective as to particulars does not breach s 175(3)(b) **Criminal Procedure Act**. The first approach was based on direct construction of the relevant Acts and a consideration of the common law principle that a failure to comply with a prescribed mode of carrying out an action does not necessarily make that action a nullity. The provisions relevant to a direct statutory construction of the issue included s 7(2) of the **Local Courts Act 1982** and ss 175, 260(2) and Sch 1, Table 2, cl 1 of the **Criminal Procedure Act**. In taking this approach, Campbell J found nine separate legislative indications that an omission to comply with s 175(3)(b) **Criminal Procedure Act** does not make the CAN or resulting proceedings invalid. Although it is not possible to deal with each legislative indication here, they included the following:

- the power of the Local Court to decide whether any valid proceedings had been commenced by the document and, irrespective of the outcome, whether a costs order should be made against one or both parties
- the imprecise standard of conduct under s 175(3)(b) **Criminal Procedure Act** which militates against there being a statutory intention that a breach of the provision invalidates

Appendix 15 Continued

Significant Judicial Decisions

the proceedings commenced by a CAN;

- the existence in s 21 **Criminal Procedure Act** of an express power of amendment which can apply to a CAN that is defective for failure to comply with s 175(3)(b) **Criminal Procedure Act**; and
- the fact that s 183 **Criminal Procedure Act** makes it clear that a CAN does not provide the only information the accused receives about the offence alleged against him or her. The accused also receives, for example, a copy of the brief of evidence to enable a defence to be prepared.

The second approach to determining the main issue was based on an examination of the Acts which applied prior to s 175 **Criminal Procedure Act**. These included the **Criminal Procedure Amendment (Justices and Local Courts) Act 2001**, the **Summary Jurisdiction Act 1848** (Imp) (11 & 12 Vic c 43) (Jervis Act) and the **Justices Act 1902**. Campbell J examined the basis of a court's power to order that further particulars be given of an information, which was an earlier form of a CAN. His Honour concluded that in the absence of a specific statutory power, the basis for ordering further particulars is natural justice or put another way, procedural fairness. Campbell JA decided that the law set out by Jordan CJ in **Ex Parte Lovell; Re Buckley** (1938) 38 SR (NSW) 153 at 169-170 applied and that this law had not changed between 1938 and 2003 when the **Justices Act** was repealed. Under this statutory regime, a failure to supply particulars of an offence did not operate to make invalid, any proceedings commenced by that information.

The second issue on appeal was whether the District Court judge demonstrated

apprehended bias when he dealt with the matter? The principles which apply to setting aside a decision for apprehended bias are set out in **Ebner v Official Trustee in Bankruptcy** (2000) 205 CLR 337 at 344-345. Two main requirements need to be met. First, the matter which has allegedly led a judge or juror to decide a case other than on its legal and factual merits must be identified. Secondly, it is necessary to state the connection between the matter identified and the asserted deviation from deciding the case on its merits. The issue of apprehended bias is separate from whether an error of law has occurred in conducting an appeal. The fact that a judge does not accept certain submissions or takes a view of the evidence that is different from that taken by one of the parties is not sufficient to establish reasonable apprehension of bias. The Court of Appeal examined the arguments put forward in support of the claim of apprehended bias and held that it had not been made out.

NSW Court of Criminal Appeal

Lawler v Regina [2007] NSWCCA 85

Mr Lawler (the applicant) drove from Sydney to Newcastle one Friday afternoon in a semi-trailer laden with building supplies weighing about 18 tonne. On reaching the Mooney Mooney Bridge, he met heavy traffic which was moving slowly due to an earlier minor collision. He was unable to slow down as he approached a line of slow moving traffic. He moved into the break down lane and picked up speed, passing about a hundred vehicles before merging into another lane when the break down lane ended. The front of his prime mover collided with the back of a small sedan which burst into flames, incinerating the female driver (count 1). The truck continued

on for about 350 metres and collided with another 34 vehicles. As a result, two drivers sustained serious injuries (counts 2 and 3) and many other drivers and passengers sustained minor injuries.

Mr Lawler pleaded guilty to manslaughter (count 1); s 18(1)(b) **Crimes Act** and two counts of dangerous driving occasioning grievous bodily harm (counts 2 and 3); s 52A(3)(c) **Crimes Act**. A number of other charges were placed on a s 166 certificate. He was sentenced to imprisonment of 8 years (non-parole period) and a balance of term of 2 years 8 months for count 1; imprisonment for a fixed term of 2 years on count 2 (to be served concurrently with count 1); and imprisonment for a fixed term of 1 year 6 months for count 3, to be served concurrently with count 1.

The applicant appealed to the Court of Criminal Appeal against the severity of his sentences. The issue on appeal was whether the sentences imposed were excessive in the circumstances of the case? In dismissing the appeal, the NSWCCA made three main findings. First, it held that the District Court sentencing judge correctly assessed Mr Lawler's degree of moral culpability as being of a high degree. This finding was not based solely on his knowledge of his vehicle's mechanical defects. It included the applicant's complete disregard for public safety by knowingly driving a defective vehicle carrying a heavy load on a freeway with extensive gradients during a time of heavy traffic. The applicant owned the vehicle, knew it was unregistered, uninsured and that it carried a false number plate. He had admitted to police in a recorded interview that the vehicle's braking system was not good. When police asked the applicant whether the brakes were working he answered, "Sort of, not really. I need some liners in a few of them". The sentencing judge had said that Mr Lawler chose to drive the vehicle

Appendix 15 Continued

Significant Judicial Decisions

in "full knowledge" of its brake defects and the condition of the tyres. The words "full knowledge" in this context referred to the extent of the applicant's knowledge as admitted in his interview with police, rather than meaning that Mr Lawler had "total knowledge" of the defects.

The second finding made on appeal was that the original sentencing judge made no error in the sentence imposed for manslaughter. His Honour correctly applied the principles in **Pearce v The Queen** (1998) 194 CLR 610. These principles require first, that a sentencing judge fix an appropriate sentence for each offence and then consider whether to accumulate these sentences. The judge is then required to consider total sentence to be imposed.

The sentencing judge could have partially accumulated the sentences for counts 2 and 3 but chose not to. His Honour rejected a Crown submission that it was an aggravating factor that the offence involved multiple victims. The sentencing judge had correctly said that the offender was being sentenced on three separate counts, each of which had one victim. The sentencing judge's remarks did not reveal any basis for Mr Lawler to argue that the sentence for manslaughter was inflated by a consideration of the effects of the dangerous driving offences or because the judge only sentenced with totality in mind. It was open to the judge to impose concurrent sentences for counts 2 and 3.

The sentencing judge found that Mr Lawler had entered an early plea of guilty and was therefore entitled to a full discount. His Honour declined a Crown request to specify the percentage discount given. On appeal, the NSWCCA said that while a judge is not obliged to specify the precise sentence discount given, setting it out helps make the sentence a more transparent process. The NSWCCA

held that the sentence for manslaughter was not excessive given the applicant's premeditated conduct. Mr Lawler was aware of the dangers of driving a heavily laden and mechanically defective vehicle in freeway conditions. In spite of this, he deliberately disregarded the safety of other road users in circumstances which involved a high risk that death or really serious injury would follow.

R v Graham John Evans [2006] NSWCCA 277; 164 A Crim R 489

The Crown case against Mr Evans (the appellant) was that he entered Strathfield Municipal Council chambers wearing overalls and a balaclava, produced a gun and threatened staff and customers. He took cash belonging to the Council from an employee (count 1). He robbed a customer of his own cash (count 2). He then demanded cash from another customer. This was placed on the counter, but not ultimately stolen (count 3). Witnesses present during the robbery gave evidence that there were tissues and a baseball cap on the floor after the robbery which had not been there before. The Crown argued that these items belonged to the offender. DNA tests were conducted on the cap and the balaclava and later on a buccal (mouth) swab voluntarily provided by Mr Evans. The DNA profiles of the material from the cap and that of the buccal swab matched. A real issue at the trial was whether the Crown could prove that Mr Evans was the offender.

During the trial, the Crown Prosecutor asked Mr Evans to put on the overalls, balaclava and a pair of sunglasses. He was asked to walk up and down in front of the jury and repeat the words said to have been spoken by the robber. The overalls and balaclava had been taken by police from a search of the appellant's home and

were exhibits in the trial. The sunglasses were owned by the Crown Prosecutor.

He was convicted of two counts of robbery armed with an offensive weapon (gun) and one count of assault with intent to rob contrary to s 97(1) **Crimes Act**. He was sentenced to imprisonment for a non-parole period of 4 years and 6 months, with a balance of term of 2 years 6 months. These sentences were to run concurrently.

Mr Evans appealed against conviction to the NSWCCA. On appeal the court had to decide a number of issues. One issue was whether the appellant's actions in putting on the overalls, balaclava and glasses, and walking before the jury and repeating the robber's words in court, amounted to a "demonstration" under s 53 **Evidence Act 1995** (NSW). If they did, Mr Evans argued that the requirements of s 53 should have been complied with at his trial. The court held that Mr Evans' actions did not amount to a "demonstration" and that s 53 is limited to demonstrations, experiments or inspections which take place outside the courtroom. This is so despite the absence of specific words in s 53 to this effect. Section 53 deals with "Views" and while "views" are not defined in the Evidence Act, they have been interpreted in decided cases to mean a place or object outside the courtroom.

Although the NSWCCA held that s 53 **Evidence Act** did not apply to demonstrations, experiments or inspections in the courtroom, it said that if an objection was raised against a suggested "in court" demonstration, experiment or inspection, some of the matters listed in s 53(3) may be relevant to deciding whether the suggested demonstration etc should be allowed or rejected.

Appendix 15 Continued

Significant Judicial Decisions

The trial judge was found not to have made an error in allowing the appellant to put on the overalls and the balaclava. However, Mr Evans should not have been asked to wear the Crown Prosecutor's sunglasses because they had not been admitted into evidence or shown to any witness in the trial.

The appellant's counsel wished to adduce alibi evidence at trial, even though the normal notice concerning alibi evidence had not been issued as required under s 150 **Criminal Procedure Act**. The Crown Prosecutor had objected to any alibi evidence being given by the appellant's brother and father. On appeal, the court held that the trial judge made an error in refusing to waive the notice requirements concerning alibi evidence and in refusing to allow evidence of alibi at trial. An error occurred when the judge said that it was not within her power to grant leave unless the Crown agreed. In making this decision, and in not giving reasons for it, the trial judge's discretion under s 150 **Criminal Procedure Act** miscarried.

Another issue on appeal was whether it was necessary for the trial judge to have directed the jury about identification evidence in accordance with s 116 **Evidence Act** (Identification evidence) or s 165 **Evidence Act** (warnings about evidence that may be unreliable). The court decided that it was not necessary for the jury to be directed in this way. Although the trial judge used the term "identification evidence" in directing the jury, there was no evidence which came within the meaning of that term as defined in the Dictionary to the **Evidence Act**. That is, at the trial, none of the witnesses said that Mr Evans was the robber or that he looked like the person who committed the robbery.

During the trial the judge had omitted to give any or adequate reasons for some of

the rulings she made. On appeal it was held that Mr Evans was entitled to reasons for the significant rulings made by Her Honour. However, the omission to give reasons did not amount to a "fundamental procedural irregularity" that would justify the convictions being set aside.

High Court of Australia

The Queen v Taufahema [2007] HCA 11 21 March 2007

Constable McEnallay, a highway patrol officer, was informed that a Holden which had earlier been reported stolen had been seen driving in his vicinity at an excessive speed. Soon afterwards he saw the Holden. He called for assistance and commenced a pursuit. The Holden then had a collision and stopped. One of the four occupants, Penisini, alighted from the Holden with a loaded revolver in his hand and shot Constable McEnallay causing his death. The driver (the accused); Penisini and the two other occupants, who were all armed with loaded revolvers, ran from the scene but were later arrested. All four were on parole at the time. In the Holden and in the immediate vicinity of the scene, police found two pairs of gloves, a hockey mask, a pair of sunglasses and ammunition.

The accused was convicted of murder on the basis that he was party to a joint criminal enterprise to evade arrest, and had participated in that enterprise having foreseen the possibility that one of the participants might shoot a person with intent to kill or seriously injure them.

The CCA allowed an appeal against the accused's conviction because of errors in the directions on the elements of murder. The CCA decided not to order a retrial and to enter a verdict of acquittal because the specified "foundational crime" of "evading arrest", was not a crime. To overcome this problem in the CCA,

the prosecution relied on an alternative "foundational crime", namely "hindering a police officer in the execution of his duty". However, the CCA held that the evidence was incapable of supporting an inference of an agreement to commit that offence.

The Crown then sought special leave to appeal to the High Court against the CCA's entry of an acquittal. The Crown conceded that errors had occurred in the conduct of the trial, but contended that, for reasons not considered by the CCA, a new trial should have been ordered.

Those reasons were that the Crown should have the opportunity to contend in a new trial that the four men were engaged in a joint criminal enterprise to commit armed robbery and that the shooting of another person was foreseen as a possible incident of that enterprise.

By majority the High Court granted special leave to appeal, allowed the appeal and ordered a new trial. In doing so the majority held that one of the key factors in assessing whether a new trial was appropriate was the public interest in the due prosecution and conviction of offenders, noting that "it is in the interest of the public ... that those persons who are guilty of serious crimes should be brought to justice and not escape it merely because of some technical blunder by the judge in the conduct of the trial or in his summing up to the jury." While the Crown should not be given the opportunity to make a 'new case', the differences between the manner in which the first trial was run and that in which the second was proposed to be run were not sufficiently substantial to invoke that bar. In particular the Crown did not propose to advance any factual allegation inconsistent with the case advanced at the first trial, but instead proposed to rely on the same evidence, characterised in a different but not radically different way.

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Significant Judicial Decisions

The court did not have to be satisfied that it was probable that any new trial would result in a conviction.

Cornwell v The Queen [2007] HCA 12 22 March 2007

The accused was charged by the Commonwealth DPP with conspiring to import a commercial quantity of cocaine into Australia. At the trial listening device recordings of conversations between the accused and other persons concerning their supply of drugs to buyers in Australia were admitted into evidence.

Counsel for the accused foreshadowed to the trial judge (Howie J) that the accused would give evidence in his defence but would be seeking a certificate under s 128 of the **NSW Evidence Act** in relation to his proposed evidence about the recorded conversations, on the basis that that evidence may tend to prove that he had committed other offences. Pursuant to s 128(7) such a certificate would prevent the evidence he gave being used against him in any court proceeding. Pursuant to s 128(8) however, s 128 does not apply to evidence given by a defendant in criminal proceedings which is “evidence that the defendant (a) did an act the doing of which is a fact in issue or (b) had a state of mind the existence of which is a fact in issue.”

The DPP argued that s 128(8) applied to prevent the application of s 128 to the proposed evidence. Howie J rejected this argument, and indicated that he was prepared to grant a certificate. No form of certificate was however issued at that time. The accused gave evidence in his defence in relation to the conversations. At the conclusion of the trial the jury could not agree on a verdict against the accused.

At the second trial the new trial judge (Blackmore J) indicated that the issue of a s 128 certificate in relation to the accused's evidence at the previous trial

prevented the DPP from adducing the evidence the accused gave to which the certificate applied in the second trial. As no certificate had actually issued, the accused applied to Howie J for a certificate, and it was duly issued. However Blackmore J then ruled that s 128(8) applied to the evidence the accused gave at his first trial, and that accordingly the s 128 certificate did not operate to prevent the DPP from tendering that evidence in the second trial. That evidence was tendered, and the accused ultimately convicted.

On appeal the CCA held that Blackmore J had erred in admitting the accused's evidence the subject of the s 128 certificate, and directed a new trial. In addition the CCA dismissed an appeal by the DPP against the issue of the s 128 certificate by Howie J.

The DPP appealed to the High Court against these rulings. The accused sought to cross-appeal on the grounds that the CCA did not adequately address other grounds of appeal before it. By majority the High Court held:

- The evidence given by the accused in the first trial about his drug dealing in Australia was, within the meaning of s 128(8), “evidence that he did an act the doing of which was a fact in issue” or “evidence that he had a state of mind the existence of which was a fact in issue”. This is because that evidence tended to prove that the speakers were conspiring to import the drug into Australia – a fact in issue in the trial. S 128(8) applies to circumstantial as well as direct evidence. Accordingly s 128 did not apply to the accused's evidence, and did not operate to prevent the DPP from adducing that evidence at the second trial.
- In addition the second trial was not a “proceeding” to which s 128(7) applied, because the first and second trials were

each part of the one “proceeding”, that is the prosecution of the accused for the importation of the cocaine.

- Howie J's ruling granting a s 128 certificate did not prevent Blackmore J from coming to a different conclusion about the admissibility of the evidence to which it referred. Blackmore J was not bound either by Howie J's ruling, or by the certificate, any more than he was bound by any other evidentiary ruling made by Howie J.
- Blackmore J did not err in declining to exclude the evidence on discretionary grounds.
- There was a question as to whether the accused had ever ‘objected’ to giving the evidence in question as is required by s 128, however it was not necessary to decide that issue.
- If the s 128(8) issue had been the only controversy it would have been appropriate to reinstate the accused's conviction, however as some of the accused's grounds of appeal to the CCA had not been dealt with or not adequately dealt with, it was necessary to remit the matter to the CCA for consideration of those grounds.

Supreme Court of NSW

DPP v Linnett [2006] NSWSC 1086 18 October 2006

The defendant was charged before the Local Court with Driving with the High Range Prescribed Concentration of Alcohol. The offence was alleged to have occurred on a road within a caravan park, where the defendant had a permanent on-site van to which he had exclusive rights of occupation. At the time of the alleged offence the defendant was residing in the van on holiday. Police stopped the

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Significant Judicial Decisions

defendant's vehicle on that road at a point about 80 metres from his caravan and required him to undergo a breath test which proved positive. He was then arrested and subjected to breath analysis which revealed a reading in the high range.

Before the Local Court the charge was dismissed on the basis that the breath test had been carried out at the defendant's "place of abode", contrary to s 17(d) of the **Road Transport (Safety and Traffic Management) Act 1999**.

On appeal by the DPP the Supreme Court held that the Magistrate had erred in law in so finding, and remitted the matter to the Local Court. The Supreme Court held:

- The Magistrate found that the breath test was administered in an area used by members of the general public as well as by occupants of the caravan park, and that the defendant did not have an exclusive right to use that part of the road, nor any capacity to restrict access to it by members of the public. As exclusive right of access is a critical consideration in determining whether an area constitutes a person's "place of abode", the facts found by the Magistrate necessarily meant that the road was not part of the defendant's "place of abode".
- The defendant was driven to contend that his "place of abode" meant the whole of the caravan park, a submission which needed only to be stated in order to be rejected.
- In construing the phrase "place of abode" it is appropriate to have regard to the legislative intention. The statutory scheme is clearly designed to control the conduct of drivers upon roads which are available for use by members of the public.

DPP v Nakhla [2006] NSWSC 781 **4 August 2006**

The defendant attended the home of his ex wife in order to collect their child for a weekend access visit. The incident was recorded by a video recorder set up in another room of the house by the ex wife's new husband (Mr H). After the defendant had left, Mr H reviewed the video and noticed that it had recorded the defendant scratching an object along Mr H's car which was parked in the driveway. Also recorded was some irrelevant conversation between the defendant's ex wife and the child. The defendant was charged with malicious damage to the car.

Before the Local Court the prosecution sought to tender the video recording, but not the recorded conversation. The magistrate rejected the tender, holding that the conversation between the mother and child had been recorded in breach of s 5 of the **Listening Devices Act 1984** (the Act); that the visual images recorded simultaneously had been obtained as a direct consequence of that conversation coming to Mr H's knowledge; and that the images were therefore inadmissible in any proceedings pursuant to s 13 of the Act. The charge was dismissed.

On appeal by the DPP the Supreme Court held that the Magistrate had erred in law in his interpretation of the Act and remitted the matter to the Local Court.

The Supreme Court held:

- As the video recorder contained a microphone it was a "listening device" for the purposes of the Act. The recording of the conversation was therefore prima facie unlawful pursuant to s 5(1) of the Act.
- However the circumstances established by the evidence indicated that the

wife was aware that the camera had been set up, and that she impliedly consented to any conversation with her child being recorded by Mr H. The child's consent could also be implied, if that was required. In those circumstances Mr H became a 'party' to the conversation by virtue of the extended definition of that term in s 5(3) of the Act. The Magistrate erred in failing to have regard to the extended definition of a "party", and that error gave rise to a failure to properly consider whether the exceptions in s 5(3)(a) and (b) applied to render the recording of the conversation lawful. In particular the Magistrate failed to consider whether all of the principle parties had consented to the recording, and failed to consider whether the recording had been made to protect the lawful interests of a principle party.

- Even if the conversation had been unlawfully recorded, the Magistrate also erred in his application of s 13 of the Act to the video images sought to be tendered. S 13 renders evidence obtained as a consequence of an illegally recorded conversation coming to the knowledge of some person inadmissible. Contrary to the Magistrate's findings, the images in the present case could not be said to have been obtained as a consequence of the conversation coming to the knowledge of Mr H. The images were captured simultaneously with the recording of the conversation by the same device. Provided reliance is placed solely on recorded images, the Act has no part to play in the admissibility of such images.

Appendix 16

Publications of the ODPP (NSW)

Many ODPP (NSW) publications can be obtained from our web site at www.odpp.nsw.gov.au

Corporate Information

ODPP (NSW) Annual Reports

The Annual Report provides comprehensive information on the Office's major achievements and policy developments, in addition to statistical, financial and management information. The first Annual Report of the Office was prepared for the year ended 30 June 1988.

Access: Copies are available from the ODPP (NSW) Library by telephoning 9285 8912 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Library Services, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. The most recent Annual Report is on the ODPP (NSW) website.

Cost: No charge.

ODPP (NSW) Corporate Plan 2005–2008

The **Corporate Plan 2005–2008** contains information on the Office's goals, objectives and implementation strategies which will guide the operation of the ODPP until 2008.

Access: Copies are available from the ODPP (NSW) Library by telephoning 9285 8912 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Library Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

DPP (NSW) Prosecution Guidelines

The DPP (NSW) Prosecution Guidelines were revised and republished with significant amendments (to the original 2003 publication) on 1 June 2007. The Guidelines are applied by persons acting in

or representing the interests of the Crown or the Director under the **Director of Public Prosecutions Act 1986 (NSW)**.

Access: Copies are available from the ODPP (NSW) Library by telephoning 9285 8912 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Library Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Statement of Affairs and Summary of Affairs under the Freedom of Information Act 1989

The Statement of Affairs and the Summary of Affairs of the ODPP (NSW) under the **Freedom of Information Act 1989** provide information about the Office's compliance with the Act as at the reporting dates specified in the legislation.

Access: Copies of these documents can be obtained by telephoning the Executive Assistant to the Solicitors' Executive on (02) 9285 8733 between 9.00 am – 5.00 pm weekdays or by writing to the Executive Assistant, Solicitors' Executive, ODPP (NSW), Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Equal Employment Opportunity Annual Report

The ODPP (NSW) **Equal Employment Opportunity Annual Report** provides details of progress in the implementation of the previous financial years EEO Management Plan and details objectives and strategies that are being implemented in the current financial year.

Access: Copies are available by contacting the Manager, Personnel Services on (02) 9285 2584 between 9.00 am – 5.00 pm weekdays or by writing to the Manager,

Personnel Services, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232.

Cost: No charge.

Ethnic Affairs Priority Statement

The **Ethnic Affairs Priority Statement** describes the four principles of cultural diversity and the initiatives implemented by ODPP (NSW) to give effect to these principles.

Access: Copies available by contacting the Executive Assistant to the Solicitors' Executive on (02) 9285 8733 or by writing to the Executive Assistant Solicitors' Executive, ODPP (NSW), Locked Bag A8, Sydney South, NSW 1232.

Cost: No charge.

Disability Action Plan

The **Disability Action Plan** was developed in accordance with s 9 of the Disability Services Act 1993 (NSW) to ensure the needs of people with disabilities are met.

Access: Available from the ODPP (NSW) Service and Improvement Unit on telephone (02) 9285 8874 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Service and Improvement Unit, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Legal Research Publications

Advance Notes

Published 11 times per year by the Research Unit of ODPP (NSW), **Advance Notes** comprise summaries of judgments of the NSW Court of Criminal Appeal and NSW Court of Appeal and selected High Court decisions.

Access: Advance Notes are available through the Legal Information Access Centre at the State Library of NSW or

Appendix 16 Continued

Publications of the ODPP (NSW)

on an annual subscription basis in paper copy or electronic (Microsoft word) form. For subscription enquiries please contact the Publishing Officer; Research Unit, ODPP (NSW), Locked Bag A8, Sydney South NSW 1232 or telephone (02) 9285 8764.

Cost: \$300 incl GST per annual subscription.

Evidence Act Cases 1995–1999

Editor Hugh Donnelly. **Evidence Act Cases 1995–1999** comprises 195 summaries of almost all NSW Court of Criminal Appeal decisions, High Court cases and a selection of Supreme Court and Court of Appeal cases on the **Evidence Act 1995 (NSW)**. Table of Contents, Table of Legislation and Subject Index. Available in soft cover only.

Access: Available in the State Library of NSW. To purchase a copy please forward a cheque for \$75 (incl GST) payable to ODPP (NSW) to the Principal Research Lawyer, Research Unit, ODPP (NSW), Locked Bag A8, Sydney South, NSW, 1232. For sales enquiries telephone (02) 9285 8761 between 9.00 – 5.00 pm weekdays.

Cost: \$75 incl GST.

Evidence Act Cases 2000

Please note this publication is no longer available as from 30 June 2007.

Information to Assist Witnesses and Victims of Crime

Your Rights as a Victim

This pamphlet was prepared to inform victims of crime as to how the ODPP (NSW) addresses their statutory rights and to provide details of who to contact if these rights have not been observed. The pamphlet also informs victims about how to contact the Witness Assistance Service.

Access: Available to the public by

contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Being a Witness

This pamphlet provides prosecution witnesses with information about their role in the prosecution process, how to prepare for attending court, and what happens in the court room. It explains the role of the ODPP (NSW) and provides details of how witnesses can suggest ways to improve the service provided to them. This pamphlet also informs witnesses about the Witness Assistance Service.

Access: This pamphlet is issued to witnesses by ODPP (NSW). Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Information for Court Support Persons

This pamphlet was jointly prepared by NSW Health and ODPP (NSW) to advise persons providing court support for victims of crime. It offers information on the role of support persons and appropriate behaviour in court.

Access: This pamphlet is issued to court support persons by ODPP (NSW). Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534

between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

About the ODPP (NSW)

This document contains information about the role of the ODPP (NSW) in the prosecution process, the courts, victims and Crown witnesses and the Witness Assistance Service.

Access: This document is provided to victims of crime and prosecution witnesses. Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Victim Impact Statement Information Package

This package was prepared jointly by the ODPP (NSW) and the Victims of Crime Bureau. It contains information to assist in preparing any victim impact statement authorised by law to ensure that the full effect of the crime upon the victim is placed before the sentencing court.

Access: For copies of the package contact the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Appendix 16 Continued

Publications of the ODPP (NSW)

Supporting Your Child Though a Criminal Prosecution

This pamphlet provides some helpful hints for parents and carers who are supporting a child witness during a criminal prosecution. It also offers guidance for parents and carers in coping with their own concerns about the process.

Access: Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager,

Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South, NSW, 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Witness Assistance Service Information Sheet

This information sheet provides information for victims of crime and prosecution witnesses about the services available through the Witness Assistance Service.

Access: Available to the public by contacting the Witness Assistance Service on telephone (02) 9285 2502 or 1800 814 534 between 9.00 am – 5.00 pm weekdays or by writing to the Manager, Witness Assistance Service, ODPP (NSW) Locked Bag A8, Sydney South NSW 1232. Also available on the ODPP (NSW) website.

Cost: No charge.

Appendix 17

2006-2007 EEO Achievements

The EEO statistics are produced as part of the NSW Public Sector Workforce Profile. The number of women employed within the Office increased from 434 to 481. The number of women earning salaries over \$81,479 (non-SES) increased from 116 to 128. During the 2006/2007 year, 76% (52) new starters joining the Office were women.

The Office continued to permanently employ one of the cadets post completion of the Aboriginal and Torres Strait Islander Cadetship Program.

The Dignity and Respect in the Workplace Charter was launched within the Office.

Appendix 18

EEO Statistics

Table 1

Percentage of Total Staff by Level

LEVEL	Subgroup as Percent of Total Staff at each Level				Subgroup as Estimated Percent of Total Staff at each Level				
	TOTAL STAFF (Number)	Respondents	Men	Women	Aboriginal People & Torres Strait Islanders	People from Racial, Ethnic, Ethno-Religious Minority Groups	People Whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability Requiring Work-related Adjustment
< \$33,910	1			100.0%					
\$33,910 - \$44,537	18	61%	22%	78%	18.2%	9%		9%	
\$44,538 - \$49,791	81	91%	16%	84%		38%	28%	11%	5.4%
\$49,792 - \$63,006	124	74%	19%	81%	3.3%	30%	21%	3%	
\$63,007 - \$81,478	145	72%	20%	80%		22%	16%	6%	1.0%
\$81,479 - \$101,849	198	84%	57%	43%		19%	12%	5%	1.8%
> \$101,849 (non SES)	117	62%	74%	26%		14%	10%	3%	1.4%
> \$101,849 (SES)	4	100%	75%	25%		25%	25%	25%	25.0%
TOTAL	688	76%	40%	60%	1.1%	23%	16%	5%	1.7%
Estimate Range (95% confidence level)					0.7% to 1.6%	21.0% to 24.5%	14.3% to 17.3%	4.6% to 6.4%	1.5% to 2.2%

Table 2

Percentage of Total Staff by Employment Basis

LEVEL	Subgroup as Percent of Total Staff in each category				Subgroup as Estimated Percent of Total Staff in each employment category				
	TOTAL STAFF (Number)	Respondents	Men	Women	Aboriginal People & Torres Strait Islanders	People from Racial, Ethnic, Ethno-Religious Minority Groups	People Whose Language First Spoken as a Child was not English	People with a Disability	People with a Disability Requiring Work-related Adjustment
Permanent Full-time	426	81%	41%	59%	0.9%	25%	18%	6%	2.3%
Permanent Part-time	66	88%	5%	95%		22%	16%	3%	
Temporary Full-time	92	66%	29%	71%	1.6%	25%	13%	5%	
Temporary Part-time	10	60%		100%	16.7%				
Contract - SES	4	100%	75%	25%		25%	25%	25%	25.0%
Contract - Non SES									
Training Positions									
Retained Staff									
Casual									
TOTAL	598	79%	34%	66%	1.1%	25%	17%	6%	1.8%
Estimate Range (95% confidence level)					0.8% to 1.7%	22.7% to 26.3%	15.5% to 18.6%	4.9% to 6.8%	1.5% to 2.3%

Appendix 19

Government Energy Management Plan (GEMP)

The Office of the Director of Public Prosecution's (ODPP) GEMP Report 2006 was submitted to the Ministry of Energy and Utilities within the required timeframe.

The ODPP continues in its endeavours and commitment to reduce energy consumption. The ODPP remains contracted to Energy Australia for the supply of at least 5% Green Power under period contract 777.

Reduction of power usage and subsequent greenhouse emissions is something the ODPP endeavours to achieve although within limited scope:

We have already installed e-bus lighting systems wherever lengthy leases exist and some benefits can be realised. The ODPP understands the full capital costs will not be fully recovered within the period of the leases, but the principle of achieving energy savings is pleasing.

We purchase in-contract electricity (contract 777), including Green Power,

We purchase energy efficient star rated equipment wherever possible,

We engage the power-save facilities on equipment (where those facilities are available).

We lease energy efficient motor vehicles for the ODPP fleet.

The ODPP's General Manager, Corporate

Services, continues to have the overall responsibility for the energy management of the Office. The day-to-day GEMP-related tasks and follow-up action towards achieving the Office's energy goals are the responsibility of the Manager, Asset and Facilities Management Branch and the staff of the Office.

The ongoing goals of the ODPP under the GEMP include:

1. Assisting the Government to achieve a reduction of the statewide total energy consumption.
2. Upgrading to energy efficient facilities within Head Office and Regional Offices particularly those offices that have been refurbished and planning for the future offices that are to be refurbished.
3. Purchasing electricity within Government contracts to ensure the minimum 5% Green Power content is obtained.
4. Continuing to purchase equipment that complies with SEDA's energy star rating requirements.
5. Acquiring fuel-efficient vehicles where opportunities exist. The ODPP has removed 'D-category' energy inefficient vehicles from its fleet and is leasing 'A and B-category' vehicles where operational requirements permit. The

ODPP currently has two 'A- category' Prius vehicles in the fleet. The ODPP has also amended its motor vehicle fleet profile to include smaller vehicle which fall into the 'B-category' and are energy efficient.

6. Increasing staff awareness of energy management best practices.

The achievement of these goals directly relates to the Office's Corporate Plan Key Result Area 3, Goal 3.2, Accountability and Efficiency - to be efficient in the use of resources.

7. The ODPP engaged its ABGR Assessor and undertook its Greenhouse Rating assessment, which was completed in February this year. The rating achieved was only 2 stars. This was a predictable result considering the age of the ODPP's main 265 Castlereagh Street premises and the fact that a 10 year lease has not provided any avenues to negotiate 'energy' improvements with the owner as yet.

Future Direction

The ODPP is continuing its endeavours to be 'energy efficient'. We will take any opportunity that exists to negotiate the installation of energy saving facilities in new leases or new fitouts.

Appendix 20

Waste Reduction and Purchasing Plan and Recycling

The Office of the Director of Public Prosecutions (ODPP) has undertaken a sincere commitment to reduce waste and introduce wherever possible recycled products that will not have an affect on the operation of the Office's equipment or interfere with its operational goals. The key reporting areas from the Office's WRAPP 2007, which was submitted in August 2007 and describes the ODPP's progress towards waste reduction, purchasing and recycling for the period 1 July 2006 to 30 June 2007, are reproduced below.

Inclusion of WRAPP principles in the Corporate Plan and operational policies and practices

The Office's Corporate Plan 2005–2008, Key Result Area (KRA) 3, 3.2, 'To be efficient in the use of resources'. The strategies to achieve this KRA are 3.2.4 'Increase efficiency through improved technology' and 3.2.6 'Manage finances responsibly'. The Office continues to achieve this KRA by upgrading equipment facilities in the form of Multi Functional Devices that will provide efficiencies in high-speed double-sided printing. Efficiencies have been realised in printing time. Paper and consumables consumption and subsequent costs are areas which are under continual scrutiny and methods of realising savings are continually being investigated.

It has been reported in previous Annual Reports that, because of the amount of copies that are made of emails and other information sent electronically, it is difficult to make significant savings or lower consumption in paper use.

Ensuring contract specifications requiring the purchase of recycled content products where appropriate

The ODPP's purchasing policy complies with government direction and requires purchases to be made under Government contract wherever possible. This ensures the ODPP complies with this key reporting area.

The Office has not vigorously pursued the use of recycled paper in copiers and printers. As reported in previous years, tests conducted on the use of recycled content paper in ODPP copiers has had a disappointing result. 100% recycled paper caused major problems, in respect to jamming in the operation of the Office's multi-functional copiers/printers/scanners.

The ODPP does use other recycled products in the course of its operations, including envelopes, post-it notes and writing pads. Modular furniture is recycled where appropriate and suitable. Where the opportunity exists and where furniture needs change or accommodation use changes, existing modular furniture is dismantled carefully and reused throughout the Office. The Penrith Office was the latest example of this furniture recycling action.

Improving waste avoidance and recycling systems across the agency

The ODPP has implemented recycling measures and provided the facilities to make recycling easy throughout the Office. Receptacles are currently provided for paper, cardboard and toner cartridges. Action has been taken in some offices to implement glass and plastic bottle

and aluminium can recycling. Equipment enhancements have been put in place in an effort to reduce paper usage and furniture is recycled.

Establishing data collection systems to report agency progress

Purchasing records, statistics recorded by equipment (number of copies), surveys and physical checks, provides the data required by the ODPP to prepare its WRAPP.

Increasing the range and quantity of recycled content materials being purchased

Despite the 100% copier and printing paper failure, the ODPP continues to use other recycled products such as envelopes, post-it-notes, writing pads etc.

Raising staff awareness about the WRAPP and best-practice management of waste and purchasing of recycled content materials

The Office's WRAPP is published on the ODPP's Internet. Recycling advertising has been placed on every floor of the Office. The Office has issued instructions to staff as to best practice methods for the operation of Office equipment to ensure copying and printing is double-sided with the additional option of multiple page printing. The contract cleaners engaged are co-operating with the ODPP to achieve our recycling efforts. Waste paper and toner cartridges are collected by the cleaners and stored for collection. The cleaners assist with the supervision of the collection of the recycled items.

Appendix 2I

Chief Executive Service and Senior Executive Service

Number of CES/SES positions	Total CES/SES	Total CES/SES	Total CES/SES	Total CES/SES	Total CES/SES
Level:	30 June 2003	30 June 2004	30 June 2005	30 June 2006	30 June 2007
SES Level 1	3	3	3	3	2
SES Level 2	3	3	3	3	2
SES Level 3	—	—	—	—	—
SES Level 4	—	—	—	—	—
SES Level 5	—	—	—	—	—
SES Level 6	—	—	—	—	—
Statutory Appointments					
Under the DPP Act	4	4	4	4	3
Number of positions filled by women	2	2	2	2	1

*The Director of Public Prosecutions, Deputy Directors of Public Prosecutions and Solicitor for Public Prosecutions are statutory appointees, appointed under the Director of Public Prosecutions Act 1986.

CEO Statement of Performance

Name:	Nicholas Cowdery AM QC
Position and level:	Director of Public Prosecutions The Director of Public Prosecutions is a statutory appointment under Section 4 of the Director of Public Prosecutions Act 1986
Period in position:	Full year
Comment:	The Director is not appointed under the Public Sector Employment and Management Act 2002. The Director is responsible to Parliament and there is no annual performance review under the Public Sector Employment and Management Act 2002.

Staff Numbers	30 June 2003	30 June 2004	30 June 2005	30 June 2006	30 June 2007
Statutorily Appointed and SES	104	100	105	105	100
Lawyers	282	303	315	324	311
Administration and Clerical Staff	199	221	233	225	219
Total	585	624	653	654	630

Recruitment Statistics	2002/03	2003/04	2004/05	2005/06	2006/2007
Senior Executive Service	0	0	0	0	0
Statutory Appointments	0	2	0	0	0
Crown Prosecutors	14	1	5	2	2
Prosecution Officer (Lawyers)	33	27	44	17	25
Prosecution Officer (Administrative)	70	76	70	73	41
Total	117	106	119	92	68

Appendix 22

Report of the Chief Information Officer on Major IM&T Projects During 2006-07

Integrated Document Management System (IDMS)

The Integrated Document Management System was implemented in the 04/05 financial year. It allows for the automated management of electronic records created and received by the Office, allowing improved storage and retrieval of those documents and full integration with existing workflow applications. It also delivers significantly improved document control and information sharing within the Office and other criminal justice agencies.

The system has been rolled out to the Solicitor's office. Review of roll-out to Crown Prosecutors is underway and will continue during the next reporting period.

Activity Based Costing (ABC)/ Operational Performance Management System (OPSM)

These systems have been designed to capitalise on the improved reporting capacity of the Office's case tracking system to deliver better ways for the collection, analysis and reporting on the Office's performance against the Performance Indicators in the Corporate Plan.

ABC was implemented across the Office in April 2006 with the automatic selection of 15% of matters. Given the average length of matters it was expected that accurate and useful data would be obtained in 12 months; it was also anticipated that data collected during the transitional period might be questionable while technical and work-related issues were addressed. The Office is now examining all available options to improve and streamline data collection and it is expected that useful and reliable data will be available for the next reporting period.

ICT Infrastructure Upgrade

Several sub projects form part of this upgrade.

1. Upgrade of Microsoft Software Licensing

All Microsoft software has been upgraded to current supported versions: the network environment has been upgraded to Windows 2003 Active Directory Services; the email server software is now Exchange Server 2003 and desktop software has been upgraded to MS Office 2003.
2. Remote Access Project

The operating system on all laptops used for remote access has been upgraded to Windows XP, with the latest Telstra technology, Telstra 3G. This system has enabled greatly improved access to ODPP information and e-mail for staff working away from their office, particularly when on circuit and at remote courts.
3. Security Certification – AS/NZS 7799:2 Standard

The Information Security Management System (ISMS) has been implemented and IM&T operations and infrastructure at ODPP Head Office. Security certification to the Australian Security Standard has been achieved.
4. Warm Site for Disaster Recovery

In order to comply with Premier's Department Circular 2003-02, the project has installed a 'warm site' for disaster recovery as proposed in the ODPP Disaster Recovery Plan. The site will hold equipment and network facilities to act as a backup in case of failure of the Head Office infrastructure. Initial testing has been completed.

5. ODPP Portal

This project will enable disparate ODPP information resources to be managed in a consistent and integrated manner and will simplify access to that information for ODPP personnel. This also includes upgrading of the DPPNet, the Research System and the ODPP web site. Development of the Portal has been completed. A Business Agent has been employed to assist with the user requirements and acceptance testing.

Digital ERISP Project (Electronic Record of Interview with Suspected Person)

This project is a multi-agency, led by NSW Police. The project involves the replacement of outdated video equipment used to record and play back interviews with suspected persons. The current combination of audio tape and videocassettes will move to a single standard format Digital Versatile Disc. Editing of interviews for use during trial by ODPP staff will be simplified particularly when on circuit. Equipment including editing software licences has been purchased and installed. A training consultant has been engaged and training is underway. Installation of digital recording equipment at police stations is being rolled out.

JusticeLink

The Attorney General's Department implemented the Justicelink System in the Supreme Court on 2 Aug 2004 and has been developing an interim viewing platform for information currently obtained by the ODPP from the CourtNet (Supreme Court) System. That interim viewing platform is not yet available. The ODPP has not received the funds required to develop the Justicelink interface.

Appendix 23

Freedom of Information Act 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP).

Period

1 July 2006 to 30 June 2007

Contact

Freedom of Information Coordinator
Deputy Solicitor (Legal)
Telephone (02) 9285 8733

Summary

The ODPP is an agency under the Freedom of Information Act 1989 (FOI Act). Pursuant to section 9 and Schedule 2 of the FOI Act, the ODPP is exempt from the Act in relation to its prosecuting function. A copy of the ODPP Summary of Affairs as at 30 June 2007 under the FOI Act is included at the end of this Appendix.

In the period 1 July 2006 to 30 June 2007 the ODPP received 5 applications under the FOI Act for access to documents. Two were refused as the documents sought were exempt because they related to the prosecuting function of the ODPP. The remaining three were granted in part; the balance of the documents sought were determined to be exempt under certain clauses of Schedule 1. The ODPP extended the twenty one day period for dealing with two applications pursuant to s59B. The ODPP was consulted on one occasion by an Agency pursuant to s31 of the Act.

During the reporting period:

- No Ministerial Certificates were issued
- Five applications for access to documents were processed within

21 days, or within the 14 day period allowed by s59B(2) of the Act.

- One application for internal review was received and determined.
- No request for the amendment or notation of records was received.
- The administration of the FOI Act has had no significant impact on the ODPP's activities, policies or procedures.
- No significant issues or problems have arisen in relation to the administration of the FOI Act within the ODPP.
- The cost of processing FOI requests was not significant.
- No matters concerning the administration of the FOI Act by the ODPP have been referred to the ADT.

	Personal		Other		Total	
	2005-06	2006-07	2005-06	2006-07	2005-06	2006-07
Number Received	3	3	2	2	5	5
Number Completed	3	3	2	2	5	5
Total Processed	3	3	2	2	5	5
Results*						
Granted in Full	2	0	1	0	3	0
Granted in Part	1	2	0	1	1	3
Refused	0	1	1	1	1	2
Completed	3	3	2	2	5	5

* Note – See “Summary” section for explanation of results.

Appendix 23 Continued

Summary of Affairs as at 30 June 2007

Freedom of Information Act 1989 section 14

This Summary of Affairs was prepared pursuant to section 14(1)(b) and 14(3) of the Freedom of Information Act 1989 (the Act).

The prosecution policy of the Director of Public Prosecutions (DPP) is set out in the "Prosecution Guidelines of the Director of Public Prosecutions", which were last furnished in their entirety on 1 June 2007. A copy of the Guidelines (which shows the current guidelines and the changes made since they were initially published on 20 October 2003) can be obtained from the ODPP web site, <http://www.odpp.nsw.gov.au> or from the ODPP Head Office Library at 265 Castlereagh Street, Sydney, by telephoning any member of the Library staff on (02) 9285 8912 between 9am and 5pm on weekdays. The publication is available at no charge. The publication may be inspected by arrangement with a member of the Library staff at the ODPP Head Office at 265 Castlereagh Street, Sydney.

The Office of the Director of Public Prosecutions (ODPP) has published to its officers four internal procedural manuals relating to the performance of its prosecuting functions, namely the Sentencing Manual, the Child Sexual Assault Manual, the Court of Criminal Appeal Guide and the Solicitors Manual, and a number of Research Flyers on significant aspects of the ODPP's practice. The Director of Public Prosecutions, the Deputy Directors and the Solicitor for Public Prosecutions also publish memoranda to ODPP officers and Crown Prosecutors in relation to procedural matters relating to the performance of the ODPP's prosecuting functions. These documents are for internal use only (for training, operational and reference purposes), and are not available to members of the public, in the normal course, for inspection or for

purchase. There are exemptions in the Act applicable to operational documents of this type.

The most recent Statement of Affairs of the ODPP published under section 14(1)(a) of the Freedom of Information Act was published as at 30 June 2007.

A copy of the Statement of Affairs and/or a copy of the Summary of Affairs can be obtained from the ODPP website (<http://www.odpp.nsw.gov.au>) or by telephoning the Executive Assistant to the Solicitor's Executive at the ODPP Head Office at 265 Castlereagh Street, Sydney on (02) 9285 8733 between 9am and 5pm on weekdays. In her absence a copy of the Statement and/or the Summary can be obtained by telephoning the Library on (02) 9285 8912 between 9am and 5pm on weekdays. The Statement and the Summary are available at no charge.

A copy of the Statement of Affairs and/or the Summary of Affairs may be inspected by arrangement with the Executive Assistant, or, in her absence, by arrangement with a member of the Library staff, at the ODPP Head Office at 265 Castlereagh Street, Sydney.

Deputy Solicitor for Public Prosecutions
(Legal)

Office of the Director of Public
Prosecutions

30 June 2007.

Appendix 24

Risk Management and Insurance

The General Manager, Corporate Services has overall responsibility for risk management. The Manager, Personnel Services and Manager, Asset and Facilities Management are responsible for the day to day functions of risk management for Workers' Compensation and Motor Vehicles respectively.

In the 2006-2007 reporting period the Office's motor vehicle claims as at 31

March 2007 numbered twenty-two, representing an average cost per vehicle of \$1,409.00. This compares with twenty-three claims processed during 2005-2006 (as at 31 March 2006), at an average cost per vehicle of \$1,913.00, representing a significant improvement in the overall cost of claims of \$13,000.

In the 2006-2007 reporting period, the Office's Worker Compensation

Claims numbered twenty three (23), representing a total gross payment cost of \$60,313. Of these, thirteen (13) claims (totalling \$34,889) represented injuries which occurred outside the immediate workplace eg travelling to and from work.

This compares with eighteen (18) claims received during 2005-2006 representing a total gross payment cost of \$93,815.

Appendix 25

Occupational Health and Safety

The Office continues to work within the framework of the current Occupational Health and Safety Policy and Action Plan that sets targets to be achieved in all significant OH & S areas.

Examples of issues actioned in 2006/07 include but not limited to :

- Ongoing research into and introduction of appropriate OHS equipment (eg. new document holders)
- Regular workplace assessments both one on one, group settings and with managers
- Ongoing involvement in workplace safety training sessions and Manager's Conferences - focussing on office ergonomics, manual handling, personal security, vicarious trauma or current issues raised)
- Court access and security of ODPP Officers on court premises continues to be of concern. Some issues have been addressed (eg bails court). However, work is ongoing and further meetings with Attorney General's Department OHS representatives are planned for 07/08
- Ongoing project work with ODPP EAP Counsellor and ODPP staff working party to identify and implement strategies for issues specific to the ODPP
- Regular liaison with external Rehabilitation Providers and Insurer to discuss further prevention strategies in order to meet set Benchmarks.
- Review of workplace inspections and general ODPP OHS Committee process
- Ongoing monitoring of OHS issues and strategies through assessment of ODPP Accident/Incident Reports, workplace rehabilitation programs and development of effective worker's compensation statistics
- Ongoing research into safer manual handling procedures in order to minimize the danger of injury when transporting material to and from court.
- Successful workplace rehabilitation for injured staff in accordance with the 'Working Together Public Sector OHS and Injury Management Strategy'.

Appendix 26

Witness Assistance Service Report

Overview of the Witness Assistance Service 2006-2007

During 2006-2007 WAS continued to work to improve the service delivery for victims and witnesses who come into contact with the criminal justice system. WAS remains committed to maintaining and strengthening the working relationships with the legal professionals within the ODPP and with the external agencies WAS liaises with on a regular basis. These include the police, victims' groups, Victims Services, and government and non government sexual assault and child protection services.

The ODPP is to adopt the recommendations of a WAS review undertaken during the reporting period. The recommendations include restructuring the service by changing the reporting relationships and integrating the Sydney WAS Officers into the legal groups. The integration will be implemented when the requirements of WAS can be included in accommodation plans. Integration without co-location in legal groups was considered not workable. The regional Senior WAS positions were retained.

Throughout 2006-2007 the permanent WAS Manager was on secondment to the Attorney-General's Department and the Senior WAS Officer for Sydney West acted up in the Manager's role. At the end of June 2006, there was one permanent vacancy in WAS - The ATSI identified position, which is based in Sydney and covers the Sydney, Sydney West, Wollongong and Wagga offices.

Main initiatives to enhance the service delivery to victims and witnesses

During 2006-2007 a number of projects commenced to enhance the WAS service delivery to victims and witnesses.

WAS Manual: a working group of WAS Officers around the state has been updating the WAS Manual. The WAS Manual was written in 1997 and there have been many policy and procedural documents written since that time that need to be included. The service was also enhanced considerably in March 2004 as a result of the Samuels Report and the structure changed with the introduction of the Senior positions. The WAS Manual project is consolidating and updating the policies and procedures using a "life events" model to assist both new and established WAS Officers in their work. The new Manual will be available electronically to enable easy access and future updating.

Updating the ODPP pamphlets

Development of the ODPP booklet: in conjunction with the Media Officer, this project has consolidated the number of ODPP pamphlets available into a tabbed booklet that will be available for victims of crime whose matters are being prosecuted by the Office. The separate "Being a Witness" pamphlet will continue to be sent out with each subpoena issued by the Office.

As referred to below, separate pamphlets are also being developed for children and young people and for Aboriginal victims and witnesses.

Relocation of resources: During 2006-2007 20-25 hours of one of the full-time Sydney WAS positions was relocated to the Campbelltown Office to assist the Sydney West WAS Officers with their workloads.

Aims, role and functions of WAS

The aims of the WAS remain the same, to assist the ODPP in meeting the rights of victims of crime under the

Charter of Victims Rights (Victims Rights Act 1996), to minimise the stress and anxiety that can occur for victims of crime when matters progress through the criminal justice system and to assist the prosecution process by enabling vulnerable witnesses to give their evidence to the best of their ability.

The role and functions of WAS remain unchanged from the previous year.

WAS is aware of recent research that highlights the importance for adult and child victims of sexual assault to have early and ongoing contact with the relevant criminal justice agencies and to be provided with information about the case at all stages of the process. The research also emphasises that the way people are treated and the gains they can identify from participation in the process can be as important as the eventual outcomes of verdict and sentence.

The research referred to includes:

Cashmore, J. & Trimboli, L. 2005 *An Evaluation of the NSW Child Sexual Assault Specialist Jurisdiction Pilot*, NSW Bureau of Crime Statistics and Research

Lievore, Dr Denise 2005 *No Longer Silent: A study of women's help-seeking decisions and service responses to sexual assault*. A report prepared by the Australian Institute of Criminology for the Australian Government's Office for Women

Violence Against Women Specialist Unit 2005 *Improving service and justice responses to victims of sexual assault*

For WAS, the research findings reinforce the current service delivery model of early referral, establishing early contact, making early assessments of people's needs, referring to appropriate services and agencies and maintaining contact throughout the process

Appendix 26 Continued

Witness Assistance Service Report

Service Delivery 2006-2007

The number of WAS registrations in 2006-2007 was slightly lower than the last year, with a total of 2454 new registrations.

WAS priority matters accounted for 67% of the new registrations, that is, matters involving child sexual assault, adult sexual assault, other child abuse matters and matters involving death.

Victims or witnesses with special needs were identified as follows

- 156 with an acquired brain injury, an intellectual or physical disability or mental health issues
- 474 children under 16 years of age
- 172 people from a culturally or linguistically diverse background

In response to the recommendations of the Criminal Justice Sexual Offences Taskforce the ODPP is developing a Best Practice Policy in sexual assault matters for the Office as whole. The Best Practice Flowchart for WAS and the service delivery model of early and ongoing contact with victims is reflected in the best practice principles for lawyers. WAS will actively participate in the promotion of these principles.

It is hoped that an integrated response from the Office that includes a case management approach will assist in the provision of information to victims, improve communication and, along with the introduction of the District Court Practice Note 6, help reduce delays in matters coming to court.

Child Sexual Assault

Child sexual assault matters are a priority for WAS. Child witnesses and victims remain a high proportion of WAS referrals. The ODPP is also involved in

a number of initiatives to enhance the service delivery to children and their families.

These include:

- **The Courtwise project.** The ODPP has continued to participate in the Courtwise project, led by Victims Services. This is an ongoing project to develop a website for people going to court aimed primarily at young people and their supports. Victims Services intend to launch the website at the Victims of Crime Conference in October 2007 in Sydney.
- Feedback was provided to the Education against Violence on updating the "Helping to make it better" resource for families following disclosures of child sexual assault.
- Feedback was provided to the CASAC service provided by Centrecare on an updated version of the "Caring for yourself" booklet, for young people going to court.
- Along with the Media Officer, WAS has produced a draft pamphlet for children and young people about contact with the ODPP
- At the end of the financial year, resources were purchased for WAS Statewide aimed at enhancing the services provided to child victims and witnesses. These included the book "A Hand to Hold" produced by Rosie's Place, "Outrageous Adventurers" produced by Rosebank Cottage, "Helping to make it better" produced by the Education Centre Against Violence, and the sets of Strengths cards produced by St Lukes.

Adult Sexual Assault

WAS continues to be aware of and respond to the legislative changes that have flowed from the Criminal Justice Sexual Offences Taskforce Report.

Feedback was provided to the Education Centre against Violence on the "Women and Sexual Assault" booklet previously published by the Department for Women.

WAS attended the information sessions on the updated "Guidelines for responding to adult victims of sexual assault" The sessions were run by the Sexual Assault Liaison Officer from the ODPP, Department of Health and NSW Police. There were 9 information sessions run around the state.

At the end of the financial year, resources were purchased for WAS Statewide that included the booklets "Who can a man tell?" and "When a man is raped" for adult male victims of recent and historical sexual assault.

Aboriginal Victims and Witnesses

The number of Aboriginal victims and witnesses registered in 2006-2007 was 179. This is higher than in previous years and almost certainly reflects the work of the ATSI identified WAS Officers and the emphasis on identifying Aboriginal victims and witnesses as early in the process as possible. Until close to the end of June 2007, the three ATSI identified positions were filled on a permanent basis.

The Aboriginal Child Sexual Assault Taskforce (ACSAT) Report was released in July 2006. The early identification of Aboriginal victims and witnesses is one of the recommendations of the Aboriginal Child Sexual Assault Taskforce report to the police.

WAS is aware of the need for the early

Appendix 26 Continued

Witness Assistance Service Report

identification of indigenous victims and witnesses and the policy of automatic referral to the ATSI identified WAS Officers for assessment.

The ACSAT Report recommended that an Aboriginal WAS Officer is appointed in each ODPP office with 2 Senior ATSI positions. No funding has been received for these recommendations.

The ATSI identified positions continue to have large caseloads with a high travel component, particularly those based in the regional areas of Dubbo and Newcastle - these two offices cover the Bourke, Broken Hill and Moree circuits. The ATSI officers in these districts face the additional challenges of working with often remote communities, and with victims and witnesses with communication and literacy issues.

At the February 2007 WAS Statewide meeting, workers from the Norimbah Unit at the Attorney-General's Department provided a workshop on cultural awareness.

At the end of 2006, the three ATSI-identified WAS Officers began to meet on a regular basis to have peer supervision and support, to work on projects such as contributing to the WAS manual and the development of a culturally appropriate pamphlet on the WAS service for indigenous victims and witnesses and to have culturally appropriate supervision provided by a worker from Attorney-General's Department. An indigenous solicitor working at Head Office also attends these meetings.

At the end of the financial year the DVD "Big Shame" about family violence within an Aboriginal family was purchased for the Dubbo, Newcastle and Sydney West areas.

WAS Statewide Operations and Standards

A WAS Statewide meeting was held on 15 and 16 February 2007. This provided the opportunity for WAS Officers from around the state to come together, for formal education sessions from internal and external presenters. The meeting also provided invaluable opportunities for informal networking.

Regional area meetings. These meetings take place at regular intervals throughout the year. The Sydney West regional area meets approximately every two months, the Southern Central and Northern areas twice a year. The WAS Manager and the Sexual Assault Liaison Officer usually attend these meetings.

Students

WAS Officers continued to offer student placements

Professional development

The WAS Statewide meeting offered an opportunity for professional development through a series of education sessions and two workshops - one on raising cultural awareness in working with indigenous victims and witnesses and another on acquired brain injury.

Other training attended by WAS Officers included

- "Working with Grief and Loss in Disability"
- "Cognitive Behavioural Therapy with Children"
- "Positive Psychology"
- "Strengths based practice in supervision"

- "Coaching colleagues"
- ACSAT forum at Parliament House
- "Changing your thinking"

Interagency Committees

The WAS Manager attends the Victims of Crime Interagency meetings, the Sexual Assault Review Committee and the Justice Sector Disability Group.

WAS Officers attend their local JIRT Interagency Committee meetings and meet with their local services, including government and non government sexual assault services, the courts, police, mental health and court support services. A WAS Officer based in Sydney West attends the Arabic Workers Network meetings.

WAS sat on an interagency committee set up by Victims Services to produce a youth friendly version of the Victims of Crime information booklet "What now?"

Education, Training and Consultation

The (Acting) WAS Manager presented and was part of a panel at the District Court Annual Conference on 11 April 2007 on the topic "Perspectives on the treatment of sexual assault complainants". The Sexual Assault Liaison Officer substituted for the Director at this conference and presented the Director's paper.

The ODPP provided training for the NSW Sexual Assault Services New Worker Training programme run by the Education Centre against Violence in August 2006 and March 2007. This was by WAS and the Sexual Assault Liaison Officer.

WAS and by the Sexual Assault Liaison Officer provided training to Mission

Appendix 26 Continued

Witness Assistance Service Report

Australia Court Support Service volunteers as requested throughout the year:

WAS and the Sexual Assault Liaison Officer present at the regular internal ODPP "Foundation skills for lawyers" education sessions.

A Sexual Assault forum was run in September 2006 in Sydney and was attended by representatives from local government and non-government sexual assault services.

National and International Liaison and Networking

There were a number of opportunities during the year for national and international networking and liaison. These included

- Meeting with the ACT WAS, 23 November 2006
- Visit from Japanese prosecutors, 20 April 2007
- Visit from the Chinese prosecutors 12 July 2006
- Liaison with the newly appointed coordinator of the Victorian child witness service, 17 and 18 October 2006
- "Positive Ways: An Indigenous Say" Conference, held in Darwin in September 2006. This was attended by two of the ATSI WAS Officers and the Sexual Assault Liaison Officer.
- The National WAS Conference, Darwin, 23-25 May 2007. The (Acting) WAS Manager and one of the indigenous WAS Officers presented at the conference. Two other WAS Officers attended the conference.

Appendix 27

Overseas Travel Information

1 JULY 2006 – 30 JUNE 2007

Name	Country	Purpose	Funding
Nicholas Cowdery AM QC	Belgium	UNODC and OSCE Expert Review Meeting on the Criminal Justice Assessment Toolkit	UNODC and OSCE
Nicholas Cowdery AM QC	France USA	International Association of Prosecutors Executive Committee Meeting and Annual Conference and General Meeting, Paris European Court of Human Rights, Strasbourg, France International Bar Association Seminar on the Rule of Law and Annual Conference, Chicago	ODPP (Attorney General) and self
Kara Shead Kate Thompson	France	International Association of Prosecutors Annual Conference and General Meeting, Paris	ODPP (Attorney General) part sponsorship
Nicholas Cowdery AM QC	Chile	International Association of Prosecutors Executive Committee Meeting, Santiago	Paid for self – on leave
Nicholas Cowdery AM QC	Canada	International Society for the Reform of Criminal Law 20th Anniversary Conference, Vancouver Heads of Prosecution Agencies Conference, Montreal and Quebec City	Paid for self – on leave

Appendix 28

Internal Audit, System Reviews and Program Evaluations

- The Audit and Risk Management Committee commissioned a Review of ODPP staff safety and security in Court Houses designated as “high risk”. This review is still in progress with Tamworth, Taree, Forster, Wyong, Goulburn, Albury, Broken Hill, Wagga Wagga and Orange completed to date. A progress report is provided at each Audit and Risk Management Committee meeting.
- The Fraud and Corruption Risk Management Action Plan is the subject of continual review and evaluation for effectiveness. Updates/changes are made to the Plan where a deficiency is identified or a policy change impacts upon the work processes of the Office.
- The ODPP Risk Management Action Plan is the subject of bi-annual review and evaluation for effectiveness. Updates/changes are made to the Plan where a deficiency is identified or a policy change impacts upon the work processes of the Office.

Appendix 29

Consultants 2006-2007

PAYEE	CATEGORIES	AMOUNT Excl. GST
PONT ZERO	IT STRATEGIC PLAN	\$37,998
KPMG	TRANSITION OF AUSTRALIAN EQUIVALENT INTERNATIONAL FINANCIAL REPORTING STANDARD	\$6,000
TOTAL		\$43,998

Appendix 30

Ethnic Affairs Priority Statement

Through the commitment of the Office of the Director of Public Prosecutions (ODPP) to the Community and Ethnic Affairs Priority Statement, the ODPP continues to strive to increase satisfaction among our stakeholders and to ensure access to the criminal justice system for those from non-English speaking backgrounds.

The ODPP has this year participated in an inter-agency working party chaired by an officer of the Attorney General's Department, which is reviewing the serious vilification provisions of the Anti-Discrimination Act. The Discussion Paper prepared by the working party will be considered by Cabinet next financial year.

In 2004 the ODPP entered a Memorandum of Understanding with the Community Relations Commission and the NSW Attorney General's Department. The objectives of the MOU are to ensure that the principles outlined in the NSW Government's *Charter of Principles for a Culturally Diverse Society* are reflected in service delivery practices; that persons appearing at the Local, District and Supreme Courts in NSW are not disadvantaged in any proceedings as a result of language difficulties, and that witnesses and accused are aware of their right to an interpreter and the procedures for requesting one. Pursuant to the MOU the following categories of persons from a non-English background have access to interpreter services on a fee-exempt basis:

- The accused in all criminal matters (adults and juveniles) including appellants in appeal courts.
- Prosecution witnesses for the ODPP when appearing as witnesses at court.
- Defence witnesses in all criminal matters.
- The parents, guardians or primary carers of juvenile accused.

- The immediate family members of deceased persons (and/or persons able to demonstrate a direct interest) giving evidence or providing information at coronial hearings.
- Persons attending interviews conducted by court staff in relation to criminal, apprehended and personal violence, family law and care matters.

The ODPP will continue to offer interpreter services provided by the Community Relations Commission to prosecution witnesses and the families of deceased victims when they are involved in conferences with ODPP lawyers and Crown Prosecutors.

Witness Assistance Service

The ODPP Witness Assistance Service (WAS) gives priority to certain vulnerable witnesses and special needs groups, including people who experience cultural or language barriers. There are now 34.6 positions in WAS, including 4 senior WAS officers and 3 Aboriginal WAS officers. WAS provides information, referral and support for victims of violent crimes and vulnerable witnesses giving evidence in matters prosecuted by the ODPP.

WAS operates in all ODPP offices across the State. It aims to assist these people through the legal process so that victims have an opportunity to participate in the criminal justice system fully and to give evidence as a witness to the best of their ability. WAS is staffed by professionals who are qualified in social work, psychology, counselling or related areas, and who have a working knowledge of the criminal justice system. It liaises and consults directly and regularly with ODPP solicitors and Crown Prosecutors in relation to the special needs and support issues for victims and witnesses when attending conferences with a lawyer; and when required to give evidence at court.

In conjunction with legal staff in the ODPP, WAS provides information to victims, their families and counsellors about the court process and their role in it. WAS Officers utilise interpreter services for both face-to-face and telephone contacts with victims and witnesses who are more comfortable communicating in the primary language spoken.

Pamphlets and brochures published by WAS provide information to victims and witnesses about the criminal process. These publications are being currently being combined to form one easy to read booklet which will be printed in late 2007. A separate pamphlet designed to meet the needs of indigenous victims and witnesses will also be published later in 2007. The interpreter service number is prominently displayed on all WAS brochures published by the ODPP and all brochures are published on the ODPP website. WAS also has acquired a large number of brochures on sexual assault and domestic violence which are printed in a range of languages and these are provided to victims of crime where appropriate.

WAS provides services for victims and witnesses where other services are not available, particularly in rural and remote locations. WAS is able to liaise with the NSW Police and advocate special arrangements for witnesses in relation to travel and expenses where necessary. It also assists the ODPP Learning and Development Branch in planning and implementing education programs for prosecutors in relation to victims and witness issues.

WAS also assists in interagency liaison, and in identifying areas for legislative reform and improvement in the criminal justice system.

Appendix 30 Continued

Ethnic Affairs Priority Statement

Interagency groups

The ODPP is involved in a number of interagency boards and committees which address issues for victims of crime and vulnerable witnesses. These include:

- The Victims Advisory Board
- The Victims of Crime Interagency Forum
- The Sexual Assault Review Committee
- The NSW Police Adult Sexual Assault Interagency Committee
- Child Protection Senior Officers Group
- The JJRT State Management Group

The ODPP participates in a number of committees and consultation processes in which ethnic communities are also involved, including User group forums in NSW courts and the Forum referred to above. One of the WAS Officers at the ODPP attends the Arabic Workers Network meetings.

Training Program

The ODPP Induction course includes an anti-discrimination component. Components addressing cultural awareness are included in training courses relating to prosecution of sexual assault and matters involving indigenous victims. In response to the Aboriginal Child Sexual assault task force a program for ODPP lawyers and WAS officers addressing issues for aboriginal victims is being planned for 2007/8. All training programs conducted by the ODPP for its staff include training in cultural diversity and all training providers are required to adhere to the ODPP Code of Conduct, which requires respect for individual differences and non-discriminatory behaviour. Training courses addressing methods of dealing sensitively with victims and witnesses continue to be run regularly.

International Delegations

Every year the ODPP receives requests for meetings and consultations from jurisdictions around the world. As far as practicable, the Office endeavours to accommodate these groups with presentations from senior solicitors, crown prosecutors, Deputy Directors and the Director. In 2006 -7, senior police, legal and judicial officers from Borneo, Indonesia, East Timor, China and Vietnam took part in presentations that were prepared especially to inform their particular area of interest.

Crown Prosecutors and a Deputy Director appeared in important criminal trials in Fiji at the invitation of Fijian authorities.

The ODPP hosted 4 prosecutors from Beijing for 3 months in the second half 2006. The prosecutors had the opportunity to integrate with ODPP lawyers in the Sydney Office and learn about aspects of the NSW Criminal Justice System, and the ODPP lawyers learnt a lot about how Chinese system works in comparison. Each visitor was given a "buddy" from the Sydney Office to assist them during their stay.

In the course of each matter it handles, it is ODPP policy to treat all witnesses, accused and other persons with proper regard to, and respect for, their different linguistic, religious, racial and ethnic backgrounds. In accordance with the Director's Prosecution Guidelines (which were revised this year and are republished in this report) the ODPP sought to conduct criminal proceedings throughout the year in a way which did not discriminate against any group or individual on the basis of race, gender, culture, religion, language or ethnic origin.

Appendix 3I

Staff Awards

The Director's Service Excellence Awards were approved on 1 February 2000 and are presented annually. The awards were implemented to allow the Director to formally endorse the efforts and commitment of individuals and teams in striving for excellence in professional service. These awards are designed to recognise excellence in both individual and team performance by all staff and Crown Prosecutors.

Individuals

Stacey Romeo
Monika Knowles
Bree Chisholm

Team Awards

1. Library Services Support Staff
Rosanne Shepherd
Kaye Sutton
Shauna Harrison

2. Campbelltown Local Court Solicitor
Advocates

Wendy Carr
Yon Astar
Brian Costello
Kate Ellson
Jamie McLachlan
David Muddle
Daniel Brown
Cecilia Curtis
Jessica Glancey
Jessica Rofe
Amanda Brady
Yenda Clifton
Joanna Croker
Rossi Kotsis

Corporate Services Staff Recognition Awards

Two Corporate Services' staff were acknowledged with awards for outstanding service this reporting year:

The following awards have been made following nominations from staff of the Office.

Stephen Davies and Tony Tadrous (Information Management Services).
Congratulations to Stephen and Tony.

Appendix 32

Some Cases Dealt With During The Year

R v Van Leeuwen - Larceny

In 1996 the Australian Museum employed Hendrikus van Leeuwen as the Assistant Conservator (pest control). In late 1997, the Museum management noticed thefts of various specimens.

Van Leeuwen's position involved controlling insect pests in the Museum's collections and allowed him wide access to those collections. In October 1999 van Leeuwen was appointed to the position of moulder and caster. This position greatly reduced his access to the collections. Whilst the number of thefts then declined they continued, despite an increase in the Museum's security during 1998 and 1999.

In March, 2003, a number of search warrants were executed on various premises by the Independent Commission Against Corruption and later by officers of Windsor (NSW) Police, including the premises of van Leeuwen. More than 2300 items were seized. Many of the seized items were immediately identifiable by the Museum scientists as Museum property. Many other items seized had identifying markings removed or obscured. These seized items were examined by Australian Museum scientists and compared to catalogued descriptions, an exercise that took several weeks.

In addition to 2300 specimens; tools, books and equipment were recovered by searching officers. The items were found either at van Leewen's house, his daughter's house or the houses of his associates.

Van Leeuwen was subsequently interviewed and admitted that he had stolen a large number of specimens from the Museum during the period he worked there, from December 1996 to March 2003.

Van Leeuwen admitted to having walked out of the Museum unchallenged with

the stolen items throughout his seven years. He admitted to having stolen more than 2000 specimens. Van Leeuwen on occasion used an official Museum vehicle to transport the stolen specimens to his home.

On 11 March 2003, the day before van Leeuwen's premises were searched, he was observed by ICAC operatives to move a large number of specimens (described as "hundreds") stolen from the Australian Museum from his house to his daughter's house "to hide them" (as he later admitted during an ICAC interview).

During one interview with investigators, van Leeuwen admitted that he started taking items from the Museum a few months after he started working as a pest controller. In a second interview, van Leeuwen was taken through an inventory of seized items and admitted to taking a number of items. He also made a general admission that the items ICAC seized from his daughter's place came from the Australian Museum.

Van Leewen was dismissed from the Museum in March 2003, soon after his arrest.

Given the large number of specimens, van Leeuwen was charged with representative counts for practical reasons and was arraigned at the District Court at Sydney and listed for trial on 19 February 2007. On 11 August 2006 however he pleaded guilty to 15 counts on an indictment and acknowledged a further 179 counts on five Forms 1. Of those Form 1 matters, 23 relate to the disposal of stolen property of the Australian Museum. The remainder of charges were in relation to Larceny as a servant (s.156 Crimes Act, 1900).

Ultimately the facts could not be agreed and the matter proceeded in the District Court as a disputed facts hearing on sentence before Berman SC, J.

Evidence was called over seven days, written submissions were later filed followed by oral submissions. Judgement was reserved and delivered seven days after the finalisation of submissions by both parties. Van Leeuwen was sentenced to an overall term of imprisonment of seven years with a non-parole period of five years.

R v Gareth John BUNCE - Murder

Gareth Bunce pleaded guilty to the murder of Margaret Elizabeth Wagner on 11 May 2007 before Justice Price in the Supreme Court at Sydney.

Margaret Wagner was last seen alive by her husband on the morning of 18 March 1997. Later that day she was found dead, the time of death was fixed at around 2 or 3pm. Margaret Wagner had earlier told a friend that she had a meeting that afternoon that concerned a large sum of money she believed might be coming her way. A large sum was mentioned in a letter sent to her years earlier by Bunce, who was at that time married to her sister. A fingerprint matching Bunce was found on a newspaper dated the 18 March 1997 which was located at the home of Margaret Wagner, and DNA analysis connected Bunce with Margaret Wagner.

An investigation conducted by the Coroner returned an open finding as to the exact cause of death. As a result proceedings were terminated against Bunce in 2000.

Some five years later, on 31 August 2005, Bunce contacted the television program *A Current Affair* and was interviewed. This interview was broadcast nationally and in it Bunce admitted to the strangulation murder of Margaret Wagner, and further admitted that he had used undetectable techniques he had learnt while in prison for armed robbery in the early 1990s.

Appendix 32 Continued

Some Cases Dealt With During The Year

Police re-arrested Bunce in February 2006 at his home. An additional Coroner's report was prepared which analysed the methodology of strangulation described in detail by Bunce on national television during his admissions to A Current Affair. This resulted in a finding of murder. Strangulation had been one of the initial causes of death originally canvassed by the Coroner but it was not until Bunce's admissions as to the exact method used that there was enough evidence to recommence proceedings.

BUNCE was sentenced by HH Justice Derek PRICE to a term of 24 years with a non parole period of 18 years.

R v David Graeme FLEMING – Murder

Twenty four year old Johanne Coral Hatty was murdered in the early hours of 18 February 1984 at Spain's Lookout at Neutral Bay. She had driven home from a nightshift at the Regent Hotel and her vehicle was later located parked in the street outside her flat in Neutral Bay. Her body was discovered nearby on a narrow rock ledge on the harbour-side of the lookout. Bruising and marks on her neck indicted that she had been strangled with some type of ligature, her clothes were dishevelled, and her belongings, such as her handbag and umbrella, had been placed beside her on the ledge.

At the time, the offender was living in a boarding house some seven hundred metres from the lookout. He had recently moved to Sydney after being released from gaol in Queensland, after serving a sentence for sexual assault. He was considered a suspect by police at the time of the murder and was questioned but never charged.

The post mortem revealed that the victim had been sexually assaulted most likely after her death. The cause of death given was asphyxiation caused by strangulation.

Forensic samples were taken from the deceased and tested to the limited extent that was available in 1984. Analysts were unable to obtain a blood grouping from the semen sample and D.N.A. testing was not available. The samples then remained at the Division of Analytical Laboratories (DAL) for twenty years. Initial D.N.A. testing in 1989 was unsuccessful as large amounts of a sample were necessary to obtain a profile.

In 2004, the newly formed "Cold-Case" branch of the N.S.W. Homicide Squad selected the murder of Johanne Hatty as an unsolved homicide that might be suitable for re-investigation, given the growing advances in D.N.A. technology.

Re-testing of the samples resulted in a male D.N.A. profile being obtained. Police recommenced the investigation and the profile was compared to a number of males who had been suspects at the time of the murder.

At this time the offender was living in rural Victoria, and a covert D.N.A. sample was taken from him. It provided a partial match to the male D.N.A. profile taken from the samples. The offender was then extradited to NSW and charged with murder.

After the offender was found fit he was tried in the Supreme Court at Sydney on 12 April 2007. Evidence was given from the investigating police, the Crime Scene Officer and the retired Homicide Detective who had led the investigation, the Forensic Pathologist, and significantly the analysts from D.A.L. Proving the continuity of the samples taken from the deceased was the critical issue at trial given the twenty years spanning the investigation.

The jury returned a verdict of guilty and the offender was sentenced on 29 June 2007. One of the difficult issues for the

court at sentence was balancing the sentencing practices at 2007 with those at the time of the offence.

His Honour Justice Studdert sentenced the offender to 21 years imprisonment with a non-parole period of 16 years.

R v Thomas Carroll & Frederick Owens – Manslaughter, Detain for Advantage

As a result of an incident involving the victim at a Housing Commission unit at Surry Hills on 17 January 2005, Carroll and Owens were charged with one count of specially aggravated detain for advantage and one count of manslaughter.

The victim had been living with the two accused in a Housing Commission unit at Surry Hills. All three were drug users and while the victim lived at the unit, Owens supplied her with heroin and other substances. On the evening of 16 January 2005, the victim and Owens went to a hotel in Surry Hills. Owens placed his wallet containing about \$450-\$500 into her bag while they played a poker machine. She left the hotel without telling Owens, who believed she had taken his wallet and he unsuccessfully tried to locate her. During the night she visited various friends.

In the early hours of 17 January the victim started to have mild contractions. That morning she contacted Owens by phone and told him she was having contractions and was returning to the unit before going to hospital. When she returned to the unit both Owens and Carroll were present. At that stage, her contractions were mild and she knew there was time to get ready.

Upon her arrival, Owens confronted her about his wallet and money. She didn't have either. Owens became angry and threatening, telling her that she would be kept at the unit until the missing money was replaced. Owens then assaulted her

Appendix 32 Continued

Some Cases Dealt With During The Year

by punching her about 5 times to the body and head. Owens tried to withdraw money from the victim's keycard that had been removed from her handbag by Carroll. The victim offered to ring her mother in an attempt to obtain the money. She was allowed to speak to her mother. The mother could hear two men in the background, one yelling and screaming. Carroll told her to ask her mother to have the money sent by money order express post to his address in Moorehead Street, Redfern. The victim told her mother that she was having contractions and was able to convey that she was being detained until she paid the money. The mother phoned '000' but was only able to provide the operator with the Moorehead Street address.

Later that morning, a female attended the unit. The two accused and the victim were present. Another man attended briefly and said that the police had been to the Moorehead Street address looking for a distressed pregnant lady. The victim's contractions had increased and become much more painful. The female left the premises and phoned '000' reporting the matter. A caller, believed to be Owens, subsequently rang '000' and requested an ambulance.

Police arrived very soon after the call. Owens initially refused to allow police entry to the unit. Officers observed the victim inside the unit. She began to scream loudly and appeared to be in extreme pain. The victim was immediately conveyed by ambulance to RPA Hospital. Soon after her arrival she gave birth to a premature baby by emergency caesarean section. The child died the following day. An autopsy was performed by Dr Dufrou. In his autopsy report, he expressed the opinion that the cause of death was 'hypoxic encephalopathy' following 'maternal uterine rupture'.

The Crown proceeded on three alternate bases to establish the manslaughter of the child, that the accused:

1. committed an unlawful and dangerous act; the assault that caused the ruptured uterus of the victim which subsequently caused death of the child, or
2. committed an unlawful and dangerous act; the detention that caused the ruptured uterus of the victim which subsequently caused death of the child, or
3. were negligent; they had a duty of care to both the victim and the child and that their omission to call timely and appropriate assistance, caused the death of the child.

The Crown called medical experts involved in the treatment of the victim and the child as well as medical experts who provided opinions based upon their medical records. The medical opinion was to some extent divided as to whether the rupture of the victim's uterus was more likely to have been a spontaneous uterine rupture associated with labour in the context of three previous caesarean sections or that the rupture was associated with trauma and as to the timing of the actual rupture.

The jury found both Carroll and Owens guilty of aggravated detain for advantage, and not guilty of manslaughter.

Carroll and Owens were both sentenced to 6 years imprisonment with a non-parole period of 4 years.

R v Yonky Irvin TAN, Richard Burton NIMMO, Maua SUA, Dax SATORRE and Harold AMURAO - Murder

At about 7.30 am on Friday 13 December 2002, while the deceased, Dominic LI ("LI") was getting ready for work two men, who the Crown alleged to be Nimmo and Sua, came to the door dressed as

couriers. One of them carried an envelope with the name of the victim written on it and asked for LI by name. LI came to the door. He was forced onto the veranda and pistol-whipped and then held down by one offender whilst the other poured strong hydrochloric acid on his face. The men left. All this was witnessed by LI's wife and his 14 year-old son. LI died on 2 January 2003 due to multiple organ failure from ingestion of hydrochloric acid.

After an 18 month investigation by police charges were laid against all offenders for the murder. The investigation revealed that the deceased was the accountant to Tan and his wife. The deceased had introduced Tan to his brother in law, M. Some time after this Tan approached M to launder money for him. The money was the joint property of Tan and another person, Emil Chang, and was suspected to be derived from the manufacture of prohibited drugs. Unknown to Tan, M was a chronic gambler and lost the bulk of the funds (at least \$650,000). Tan wanted the funds returned and formulated a plan with Chang. Meetings were held with M in an effort to intimidate him. One such meeting was attended by an undercover operative from the New South Wales Police Service. Numerous telephone intercepts, SMS messages and emails were lawfully intercepted which showed the efforts made to intimidate M. When M went into hiding these intercepts revealed that Tan and Chang's efforts were then channelled in a plan to flush him out by attacking the deceased.

Tan approached Amurao to throw acid on the deceased. Amurao initially refused but after a second approach he agreed to find someone to do it for Tan. The Crown alleged that Sua and Nimmo were recruited. Satorre was then recruited to drive the vehicle to LI's home on the morning of the attack. \$10,000 was given

Appendix 32 Continued

Some Cases Dealt With During The Year

to Amurao to give to Sua and Nimmo when the attack had been carried out. He did this.

Amurao pleaded guilty to murder. On 17 February 2006 he was sentenced to imprisonment for 18 years with a non parole period of 13 ½ years. Satorre pleaded guilty to murder and was sentenced to imprisonment for 16 years with a non parole period of 12 years. Both were given discounts on sentencing of 50% and gave evidence in the trial of Tan, Sua and Nimmo.

Emil Chang was arrested in Thailand and held in a Thai prison awaiting extradition for the charge of murder. During this imprisonment he committed suicide.

Nimmo, Sua and Tan were tried in the Supreme Court upon a joint indictment for the murder of the deceased. The trial commenced on 27 September 2007. On 1 December 2007 the jury returned verdicts of not guilty for Nimmo and Sua and guilty for Tan. On 29 June 2007 Tan was sentenced to imprisonment for life.

Regina v Paul Douglas Jacques – Dangerous driving occasioning Death

The Offender was driving a prime mover truck and trailer on the Pacific Highway near Berowra on 3 October 2005. He diverted his attention from the road and reached down to retrieve a drink from a portable mini fridge located inside the truck's cabin. This diversion of interest lasted a few seconds.

The Offender looked up and saw a van immediately in front of him. He attempted to swerve but struck the van, causing it to strike a rock wall, flip on its roof and come to a halt in an inverted position some metres down the roadway.

One of the victims was driving the van, his partner was in the front passenger seat and their 5 year old child was in the back. The two front seat occupants managed to escape the vehicle, though the driver suffered significant injuries to his neck. Both parents observed the child to be deceased in the back seat.

The Offender was arrested and interviewed by Police immediately after the incident. He told Police that he had experienced other, similar 'close calls' in a short period preceding this incident. He was charged with Dangerous Driving Occasioning Death and Dangerous Driving Occasioning Grievous Bodily Harm.

The Offender initially pleaded guilty and was committed for sentence to the Sydney District Court. He then reversed his plea and the matter was listed for trial but pleaded guilty to both charges before the trial started.

The Offender was sentenced at the Sydney District Court on 30 March 2007. He received a non-parole period of 3 years imprisonment with an additional term of 1 year and 6 months. His licence was suspended until 2012.

Appendix 33

Code of Conduct

1. THE NEED FOR A CODE

The role of the Office of the Director of Public Prosecutions (ODPP) in the criminal justice system requires an ongoing commitment by its officers to the following goals:

Professionalism

Independence

Fairness

The maintenance of public confidence in the prosecution process

Professionalism demands competent and efficient discharge of duties, promotion of justice, fairness and ethical conduct and a commitment to professional self-development.

Independence demands that there be no restriction by inappropriate individual or sectional influences in the way the ODPP operates and makes its decisions. Public functions must be performed competently, consistently, honestly and free from improper influences.

Fairness demands that public functions be performed with manifest integrity and objectivity, without giving special consideration to any interests (including private interests) that might diverge from the public interest. If improper factors are considered (or appear to have been considered) the legitimacy of what is done is compromised, even where the particular outcome is not affected.

The maintenance of public confidence in the prosecution process requires that public officials consider not only the objective propriety of their conduct, but also the appearance of that conduct to the public. An appearance of impropriety by an individual has the potential to harm

the reputation of that individual and the reputation of the ODPP.

2. THE CODE'S PRINCIPLES

Ethical behaviour requires more than a mere compliance with rules. This Code seeks to outline the ethical standards and principles that apply to officers, and to sketch the spirit rather than the letter of the requirements to be observed.

The Code is an evolving document that will be modified periodically according to our experience. In order to assist in understanding the standards of conduct expected, the Code includes illustrations of circumstances that might be confronted. The examples should not be regarded as exhaustive or prescriptive.

The following principles will guide the work of ODPP officers.

3. ACCOUNTABILITY

In general terms officers are accountable to the Director and, through the Attorney General, to the Parliament and people of New South Wales. When acting in the course of their employment officers must comply with all applicable legislative, professional, administrative and industrial requirements. The sources of the main requirements, duties and obligations are listed in Appendix A. Officers should be aware of them insofar as they apply to their professional status and to their particular role and duties within the ODPP.

4. INTEGRITY AND PUBLIC INTEREST

Officers will promote confidence in the integrity of the ODPP's operations and processes. They will act officially

in the public interest and not in their private interests. A sense of loyalty to colleagues, stakeholders, family, friends or acquaintances is admirable; however, that sense of loyalty cannot diverge from, or conflict with, public duty. Officers will behave in a way that does not conflict with their duties as public officials.

5. EFFECTIVENESS AND EFFICIENCY

Officers will keep up to date with advances and changes in their areas of expertise and look for ways to improve performance and achieve high standards in a cost effective manner.

6. DECISION MAKING

Decisions must be impartial, reasonable, fair and consistently appropriate to the circumstances, based on a consideration of all the relevant facts, law and policy and supported by documentation that clearly reflects this.

7. RESPONSIVE SERVICE

Officers will deliver services fairly, impartially and courteously to the public and stakeholders. In delivering services they will be sensitive to the diversity in the community.

They will seek to provide relevant information to stakeholders promptly and in a way that is clear, complete and accurate.

8. RESPECT FOR PEOPLE

Officers will treat members of the public, stakeholders and colleagues fairly and consistently, in a non-discriminatory manner with proper regard for their rights, special needs, obligations and legitimate expectations.

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Code of Conduct

9. TO WHOM DOES THE CODE APPLY?

The Code applies to:

- The Director
- Deputy Directors
- Crown Prosecutors
- The Solicitor for Public Prosecutions.
- All staff within the ODPP whether or not they are permanent or temporary employees.
- Persons on secondment, work experience, volunteer employment and work training schemes in the ODPP.

In their work, officers are individually accountable for their acts and omissions. In addition, managers of staff employed under the Public Sector Management Act 1988 are accountable for the acts and omissions of their subordinate staff. This does not mean that managers will be held responsible for every minor fault of subordinate staff. It means that managers will be called to account for unsatisfactory acts or omissions of their subordinate staff if these are so serious, repeated or widespread that managers should know of them and address them, if they are exercising the level of leadership, management and supervision appropriate to their managerial position.

Throughout this Code, the terms “officer” and “officers” include Crown Prosecutors, Deputy Senior Crown Prosecutors, the Senior Crown Prosecutor, the Solicitor for Public Prosecutions, all members of the Solicitor’s Executive, the Deputy Directors of Public Prosecutions and the Director of Public Prosecutions.

10. HOW ARE ETHICAL ISSUES RESOLVED?

If there is an ethical issue or problem, it should be addressed. Our professional

colleagues should be encouraged likewise. For staff employed under the Public Sector Management Act, the first point of contact should be the appropriate line manager. For Crown Prosecutors, the first point of contact should be the Senior Crown Prosecutor. If the matter cannot be resolved or if it is inappropriate to raise it with such a person, then a more senior person within the ODPP or a member of an appropriate professional ethics committee or a member of the PSA/ODPP Committee or a union official or delegate should be approached.

11. BREACH OF THE CODE

Serious breaches of the Code of Conduct must be reported. The reports may be made orally or in writing to (as appropriate):

- The Director
- Senior Crown Prosecutor
- The Solicitor
- General Manager, Corporate Services
- The appropriate Line Manager

Failure to comply with the Code’s requirements, ODPP policies or any other legal requirement or lawful directive, may, in the case of staff employed under the Public Sector Management Act, render an officer subject to a range of administrative and legal sanctions. These sanctions may include a caution, counselling (including retraining), deferral of a pay increment, a record made on a personal file, suspension, or preferment of criminal or disciplinary charges (including external disciplinary action in the case of legal practitioners) with the imposition of a range of penalties, including dismissal.

Sanctions against a Director, a Deputy Director or a Crown Prosecutor are subject to the Director of Public Prosecutions Act, the Crown Prosecutors

Act and the Legal Profession Act. A breach of the Code may also be reported to the ICAC, Law Society, Bar Association, Legal Services Commissioner or other relevant professional body.

12. GUIDELINES

While there is no set of rules capable of providing answers to all ethical questions in all contexts, the following will assist in identifying and determining responses. The guidelines are not meant to be exhaustive; rather they alert officers to the contexts in which problems may arise.

13. PERSONAL BEHAVIOUR

Officers are obliged:

- not to harass or discriminate against colleagues, stakeholders or members of the public on the grounds of sex, race, social status, age, religion, sexual preference or physical or intellectual impairment;
- to report harassment or discrimination to a manager or other senior officer;
- to be courteous and not use offensive language or behave in an offensive manner;
- to respect the privacy, confidence and values of colleagues, stakeholders and members of the public, unless obliged by this Code or other lawful directive or requirement to disclose or report.

14. PROFESSIONAL BEHAVIOUR

Officers must:

- comply with the Director’s Prosecution Policy and Guidelines;
- work diligently and expeditiously, following approved procedures;
- maintain adequate documentation to support decisions made by them. In the case of prosecutors this should

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Code of Conduct

- include decisions in relation to plea negotiations, elections and Form 1's;
- give dispassionate advice;
 - be politically and personally impartial in their professional conduct
 - take all reasonable steps to avoid and report any conflicts of interest: personal, pecuniary or otherwise;
 - report any professional misconduct or serious unprofessional conduct by a legal practitioner, whether or not employed by the ODPP;
 - notify to the Director, as soon as practicable, the fact and substance of any complaint made against the officer to the Legal Services Commissioner; NSW Bar Association or NSW Law Society, pursuant to part 10 of the Legal Profession Act 1987;
 - comply with the professional conduct and practice rules of those professional associations that apply;
 - comply with all reasonable instructions and directions issued to them by their line management, or, in the case of Crown Prosecutors (for administrative matters), the Senior Crown Prosecutor.
- 15. PUBLIC COMMENT/
CONFIDENTIALITY**
-
- Officers will:
- not publish or disseminate outside the ODPP any internal email, memorandum, instruction, letter or other document, information or thing without the author's or owner's consent, unless this is necessary for the performance of official duties or for the performance of union duties or is otherwise authorised by law (for example, pursuant to a legislative provision or court order);
 - within the constraints of available facilities, securely retain all official information, especially information taken outside the ODPP. Information should not be left unattended in public locations, including unattended in motor vehicles or unsecured courtrooms, unless there is no reasonable alternative course available in the circumstances. The degree of security required will depend upon the sensitivity of the material concerned and the consequences of unauthorised disclosure;
 - use official information gained in the course of work only for the performance of official duties or for the performance of official union duties;
 - comply with the requirements of the Privacy and Personal Information Protection Act 1998 relating to the use and disclosure of personal information, and take reasonable steps to ensure that private contractors engaged by the ODPP are aware of these requirements;
 - not access or seek to access official information that they do not require to fulfil their duties;
 - not make any official comment on matters relating to the ODPP unless authorised;
 - comply with the Director's Media Contact Guidelines.
- 16. USE OF OFFICIAL RESOURCES,
FACILITIES AND EQUIPMENT/
FINANCIAL MANAGEMENT**
-
- Officers will:
- follow correct procedures as handed down by Treasury and in ODPP instructions;
 - observe the highest standards of probity with public moneys, property and facilities;
 - be efficient and economic in the use of public resources and not utilise them for private purposes unless official permission is first obtained;
 - not permit the misuse of public resources by others;
 - be aware of and adhere to the ODPP Information Security Policies and Guidelines;
 - be aware of and adhere to the ODPP Policy and Guidelines on the Use of Email;
 - not create, knowingly access, download or transmit pornographic, sexually explicit, offensive or other inappropriate material, using email, or the internet (examples of such material include offensive jokes or cartoons (sexist/racist/smutfy), offensive comments about other staff members and material which is racist, sexist, harassing, threatening or defamatory). If such material is received, immediately delete it and advise the line manager or the Senior Crown Prosecutor, as appropriate;
 - use official facilities and equipment for private purposes only when official permission has been given. Officers must ensure that the equipment is properly cared for and that their ability and that of others to fulfil their duties is not impeded by the use of the equipment. Occasional brief private use of email or the internet is permissible, provided that this does not interfere with the satisfactory performance of the user's duties. Telephones at work may be used for personal calls only if they are local, short, infrequent and do not interfere with work;

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Code of Conduct

- comply with the copyright and licensing conditions of documentation, services and equipment provided to or by the ODPP.

17. OFFICE MOTOR VEHICLES

Do not under any circumstances drive an office vehicle while under the influence of alcohol or of any drug which impairs your ability to drive.

18. SECONDARY EMPLOYMENT

For staff employed under the Public Sector Management Act, prior written approval of the Director is required before engaging in any paid employment, service or undertaking outside official duties.

For Crown Prosecutors the consent of the Attorney General or the Director must be obtained before engaging in the practice of law (whether within or outside New South Wales) outside the duties of his/her office, or before engaging in paid employment outside the duties of his/her office. In relation to a Director, a Deputy Director and the Solicitor for Public Prosecutions, the consent of the Attorney General must be obtained in similar circumstances.

Officers will not seek, undertake or continue with secondary employment or pursue other financial interests if they may adversely affect official duties or give rise to a conflict of interest or to the appearance of a conflict of interest.

19. POST SEPARATION EMPLOYMENT

Officers must not misuse their position to obtain opportunities for future employment. Officers should not allow themselves or their work to be influenced by plans for, or offers of, employment

outside the ODPP. If they do, there is a conflict of interest and their integrity as well as that of the ODPP is at risk. Officers should be careful in dealings with former employees and ensure that they do not give them, or appear to give them, favourable treatment or access to any information (particularly privileged or confidential information). Where officers are no longer employed, attached to or appointed to the ODPP, they must not use or take advantage of confidential information obtained in the course of their duties unless and until it has become publicly available.

20. ACCEPTANCE OF GIFTS OR BENEFITS

An officer will not accept a gift or benefit if it could be seen by the public as intended, or likely, to cause him/her to perform an official duty in a particular way, or to conflict with his/her public duty. Under no circumstances will officers solicit or encourage any gift or benefit from those with whom they have professional contact.

If the gift is clearly of nominal value (cheap pens etc), there is no need to report it. Where the value of the gift is unknown, but is likely to exceed \$50, or where the value clearly exceeds \$50, it should be reported, in writing (email is acceptable) to:

- The Solicitor for Public Prosecutions (for Solicitors Office staff)
- The General Manager Corporate Services (for Corporate Services staff)
- The Senior Crown Prosecutor (for Crown Prosecutors and Crown Chambers staff)
- The Director (for the Director's Chambers, Secretariat and Service Improvement staff)

seeking an approval to retain the item. The report should include:

- date, time and place of the offer
- a description of the gift
- to whom the gift or benefit was offered
- who offered the gift or benefit and contact details (if known)
- the response to the offer
- any other relevant details of the offer
- the name of the reporting officer and date (signed if a memorandum).

A written response will be provided, via email or memorandum, whether an approval to retain or otherwise has been given. A copy of the response should be retained by the member of the executive referred to above and the officer concerned.

Any such gifts should only be accepted where refusal may offend and there is no possibility that the officer might be, or might appear to be, compromised in the process. This concession only applies to infrequent situations and not to regular acceptance of such gifts or benefits. No gifts or benefits exceeding \$50 may be accepted without the prior approval of the appropriate senior executive officer.

As a general rule, no gifts regarded as tokens of 'gratitude' should be accepted by prosecutors from victims or witnesses until the matter in which they are involved is concluded, when the procedures outlined above are to be followed.

Acceptance of bribes and the offering of bribes are offences. The solicitation of money, gifts or benefits in connection with official duties is an offence. If an officer believes that he/she has been offered a bribe or that a colleague has been offered or accepted a bribe, that

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Code of Conduct

must be reported in accordance with the procedures for notification of corrupt conduct

21. CONFLICTS OF INTEREST

In order to ensure that the ODPP's work is impartial, and is seen to be so, officers' personal interests, associations and activities (financial, political or otherwise) must not conflict with the proper exercise of their duties.

In many cases only the officer will be aware of the potential for conflict. The primary responsibility is to disclose the potential or actual conflict to a manager or other senior officer, so that an informed decision can be made as to whether the officer should continue with the matter.

Officers should assess conflicts of interest in terms of perception as well as result. With conflicts of interest, it is generally the processes or relationships that are important, rather than the actual decision or result. If there has been a potential or actual conflict then the decision or action becomes compromised, even if the decision or action has not been altered by the compromising circumstances.

Conflicts of interest may arise for example where (but this list is not to be regarded as exhaustive):

- an officer has a personal relationship with a person who is involved in a matter that he/she is conducting (e.g. the victim, a witness, a police officer, the defendant or defendant's legal representative). This has the potential to compromise an officer's ability to make objective professional judgments; for example as to the extent of prosecution disclosure to the defence;
- secondary employment or financial interests that could compromise an officer's integrity or that of the ODPP;

- party political, social or community membership or activities may conflict with an officer's public duty (e.g. prosecuting someone known to be a member or participant of the same or a rival political party, social or community organisation);
- personal beliefs or those of others are put ahead of prosecutorial and ODPP obligations;
- an officer or friend or relative has a financial interest in a matter (including goods and services) that the ODPP is dealing with.

Conflicts may also arise in those contexts covered by professional practice and conduct rules of the Law Society and Bar Association, and the conduct rules of other relevant professional bodies.

If in any doubt as to whether there is a conflict, or the appearance of a conflict, an officer should make a confidential disclosure and seek advice.

Additional information is available in a Fact Sheet titled Public Sector Agencies Fact Sheet No 3 Conflict of Interests dated June 2003. The direct link follows:

http://www.ombo.nsw.gov.au/publications/Publist_pdfs/fact%20sheets/PSA_FS3_Conflict.pdf

22. REFERENCES

The conditions governing the provision of 'General' and 'Court Character' references are set out in the 'ODPP Policy on the Provision of References' published on DPPNet under 'Policies and Guidelines'.

23. NOTIFICATION OF BANKRUPTCY, CORRUPT OR UNETHICAL CONDUCT AND PROTECTED DISCLOSURES

If an officer becomes bankrupt, or makes a composition, arrangement or assignment

for the benefit of creditors, the officer must promptly notify the Director, and provide the Director, within a reasonable time, with such further information with respect to the cause of the bankruptcy, or the making of the composition, arrangement or assignment, as the Director requires.

All officers have a responsibility to report conduct that is suspected to be corrupt. Corrupt conduct is defined in sections 7 and 9 of the Independent Commission Against Corruption (ICAC) Act 1988. The definition is intentionally very broad but the key principle is misuse of public office, or breach of public duty. Corrupt conduct occurs when:

- a public official carries out public duties dishonestly or unfairly
- anyone does something that could result in a public official carrying out public duties dishonestly or unfairly
- anyone does something that has a detrimental effect on official functions, and which involves any of a wide range of matters, including fraud, bribery, official misconduct and violence.
- a public official misuses his/her position to gain favours or preferential treatment or misuses information or material obtained in the course of duty.

Conduct is not corrupt in terms of the ICAC Act unless it involves (or could involve) a criminal offence, a disciplinary offence or reasonable grounds to dismiss a public official.

The Director has a duty under the Act to report to the ICAC any matter which, on reasonable grounds, concerns, or may concern, corrupt conduct. The ODPP also has an established procedure with the Police Service pursuant to which allegations of suspicious or corrupt

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Code of Conduct

conduct by police officers are reported directly to the appropriate agency.

In appropriate circumstances the ODPP will report unethical behaviour by professionals to the relevant professional association (e.g. the Law Society, Bar Association or Legal Services Commissioner).

The Protected Disclosures Act encourages and facilitates the disclosure of corruption, maladministration and waste in the public sector. Procedures for the making of protected disclosures about these matters can be found in the Protected Disclosures Procedures.

24. CRIMINAL CONDUCT

In this section of the Code "criminal conduct" means conduct which is suspected of constituting, in whole or in part, the commission of a criminal offence of more than a trivial or merely technical nature.

Suspected or alleged criminal conduct by an officer in the workplace is to be reported as soon as possible to the officer's manager or supervisor and, if appropriate grounds are considered to exist, by him or her to the Director (or, in his or her absence, a Deputy Director). If the Director or Deputy Director, after considering all relevant information and making any proper inquiry, reasonably suspects that criminal conduct has occurred and that it is otherwise an appropriate course, then he or she is to report it immediately to police without notification to the officer concerned and is to be guided by police advice on the future conduct of the matter. Managerial action may also be taken by the Director or Deputy Director at his or her discretion and in accordance with any laws, guidelines and procedures in force.

Any officer directly witnessing criminal

conduct by another officer must report it immediately to police if outside the workplace and, if inside the workplace, to his or her manager or supervisor to be dealt with as above.

Generally, in circumstances where, for example, the safety of a person or the integrity of property may be at risk, or a crime scene should be preserved, or immediate action should be taken to ensure the preservation of evidence, police should be notified. Police should only be notified with the approval of the Director or a Deputy Director unless the urgency of the situation requires otherwise.

Appendix A.

Relevant legislative, professional, administrative and industrial requirements and obligations

The main requirements, obligations and duties to which we must adhere are found in:

- Director of Public Prosecutions Act 1986
 - Public Sector Employment and Management Act 2002 No 43
 - Crown Prosecutors Act 1986
 - Legal Profession Act 2004
 - Victims Rights Act 1996
 - Independent Commission Against Corruption Act 1988
 - Protected Disclosures Act 1994
 - Anti Discrimination Act 1977
 - Occupational Health and Safety Act 2000
 - Public Finance and Audit Act 1983
 - State Records Act 1998
 - Freedom of Information Act 1989
 - Privacy and Personal Information Protection Act 1998
 - (Cth) Racial Discrimination Act 1975
 - (Cth) Sex Discrimination Act 1984
- The main requirements, obligations and duties are given effect to, explained or contained in the following policies, rules, guidelines and manuals:
- Director's Prosecution Policy and Guidelines
 - Professional Conduct and Practice Rules, Law Society of NSW
 - NSW Bar Rules
 - AASW Code of Ethics and NSW Psychologists Board Code of Ethical Conduct
 - Solicitors Manual
 - Sentencing Manual
 - Child Sexual Assault Manual
 - Witness Assistance Service Manual
 - NSW Solicitors Manual (Riley)
 - Personnel Handbook
 - ODPP Policies (refer to DPPNet)
 - Protected Disclosures Procedures
 - Guarantee of Service
 - Corporate Plan
 - Charter of Principles for a Culturally Diverse Society
 - Conflicts of Interest Guidelines

Appendix 34

Disability Action Plan

The Office of the Director of Public Prosecutions NSW remains committed to implementing the Disability Policy Framework and ensuring that any difficulties experienced by people with disabilities in gaining access to its services are identified and eliminated wherever possible.

The Office continues to contribute in the development of a Justice Sector

Disability Action Plan, which provides key interagency strategies and activities planned by the justice sector over the next three years to improve the delivery of services to people with disabilities. The Justice Sector Disability Action Plan includes ensuring people with disabilities have access to the NSW justice system fairly and easily while their legal rights and individual needs are respected and addressed.

The ODPP DAP is in the consultation phase but the Office has continued to provide relevant training and employment opportunities during the 2006/07 period. This period was also useful in identifying practical workplace modification requirements that were subsequently actioned.

Appendix 35

Director of Public Prosecutions' Prosecution Guidelines

Amendments to Guidelines were effected during the reporting period. Due to these amendments, the Guidelines have been reproduced in full in this Annual Report, commencing at page 124.

Appendix 36

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Aboriginal Affairs Policy Justice Cluster Committee	Philip Dart Johanna Pheils
Advisory Committee for the NSW Sexual Assault Conference 2008	Amy Watts
Advisory Committee to the DNA Laboratory	Nicholas Cowdery AM QC
APEC Working Group	Craig Hyland
Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders)	Philip Dart Johanna Pheils
Attorney General's Criminal Justice Forum	Nicholas Cowdery AM QC
Australian Law Reform Commission Advisory Committee re: Evidence Act 1985	Wayne Roser
Bar Association: Criminal Law Committee	Dan Howard SC Elizabeth Wilkins SC Patrick Barrett Margaret Cunneen Maria Cinque Sally Dowling Frank Veltro
Bar Association: Human Rights Committee	Nicholas Cowdery AM QC Elizabeth Wilkins SC
Bar Association: Professional Conduct Committees	Margaret Cunneen Virginia Lydiard
Bar Association: Voluntary Membership Committee	Mark Hobart Ana Seeto
Bar Association: Various other Committees	David Frearson SC (Indigenous Barristers Strategy Working Party) Peter Miller (Indigenous Barristers Strategy Working Party)
Bar Council	Margaret Cunneen
Child Protection Senior Officers Group (progressing recommendations in Child Death Review Team reports)	Amy Watts
Conference of Australian Directors of Public Prosecutions	Nicholas Cowdery AM QC
Justicelink Inter-agency Group	Colette Dash Claire Girotto Craig Hyland
Court of Criminal Appeal/Supreme Court Crime Users Group	David Frearson SC Dominique Kelly Michael Day

Appendix 36 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Court Security Committee	John Kiely SC
Criminal Case Processing Committee	Claire Giroto Craig Hyland
Criminal Justice Research Network Committee	Helen Cunningham
Criminal Justice System Chief Executive Officers' Standing Committee	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers – Senior Officers' Group	Philip Dart Johanna Pheils
Criminal Law Committee of the Law Society of NSW	Robyn Gray Janis Watson-Wood
Criminal Law Specialist Accreditation Board	Wayne Roser
Criminal Listing Review Committee (reviewing listings in the District Court)	Claire Giroto
Delays in Committal Proceedings Working Party	Nicholas Cowdery AM QC
Digital ERISP Steering Committee	Craig Hyland
DNA Review Panel	Nicholas Cowdery AM QC
Electronic Evidence Sub-Group	Craig Hyland
Government Chief Executive Officers Network	Nicholas Cowdery AM QC
Government Lawyers Committee of the Law Society of NSW	Peter Michie
Heads of Prosecuting Agencies Conference	Nicholas Cowdery AM QC
Homicide Squad Advisory Council	Patrick Barrett
Inter-agency Exhibit Management Committee	Claire Giroto Johanna Pheils
Inter-departmental Committee to review the Mental Health (Criminal Procedure) Act 1990	Craig Williams
Professional Standards Liaison Group	Janis Watson-Wood Marianne Carey
International Association of Prosecutors	Nicholas Cowdery AM QC
Joint Investigation Response Teams State Management Group	Amy Watts

Appendix 36 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Justice Sector Disability Action Plan Senior Officers Group	Deborah Scott
Law Council of Australia Human Rights Panel	Nicholas Cowdery AM QC
Local Court Rules Committee	Robyn Gray Janis Watson-Wood
Magistrates Early Referral Into Treatment (MERIT) – Regional Planning Group for South Western Sydney	Jim Hughes
Magistrates Early Referral Into Treatment (MERIT) – Statewide Steering Group	Jim Hughes
National Advisory Committee for the Centre for Transnational Crime Prevention (University of Wollongong)	Nicholas Cowdery AM QC
National DPP Executives Conference	Patrick McMahon Claire Girotto
National Child Sexual Assault Law Reform Committee	Nicholas Cowdery AM QC
NSW Public Sector Legal Manager's Forum	Stephen Kavanagh Claire Girotto
NSW Sentencing Council	Nicholas Cowdery AM QC
Police Adult Sexual Assault Interagency Committee	Amy Watts
Police Forensic Services/DAL/ODPP Liaison Committee	Craig Hyland
Police Integrity Commission Liaison Group	Janis Watson-Wood Marianne Carey
Police–ODPP Prosecution Liaison Standing Committee	Graham Bailey Claire Girotto Jim Hughes Craig Hyland Stephen Kavanagh Peter Miller Janis Watson-Wood
Senior Officers Working Group for Reviewing Court Preparation Resources for Child Victims of Sexual Assault	Deborah Scott
Serious Vilification Working Group	Beatrice Scheepers

Appendix 36 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Sexual Assault Review Committee	Julie Lannen Johanna Pheils Deborah Scott Samantha Smith Amy Watts
Standing Inter-agency Advisory Committee on Court Security	Stephen Kavanagh Claire Girotto
University of Sydney Institute of Criminology Advisory Committee	Nicholas Cowdery AM QC
Victims Advisory Board under the Victims Rights Act	Philip Dart Johanna Pheils
Victims of Crime Inter-agency Committee	Deborah Scott Amy Watts
Victims of Crime Inter-agency Sub-committee on Victim Information Needs	Deborah Scott
Video Conferencing Steering Committee	Johanna Pheils
Working Party on the Merger and Reform of the Childrens (Criminal Proceedings) Act and the Young Offenders Act	Craig Hyland

Appendix 36 Continued

State-Wide Prosecution Liaison Groups

Prosecution Liaison Group	ODPP Representative
North Region	Graham Bailey Colin Cupitt Julie Lannen Janet Little Matthew Coates Malcolm Young Brendan Queenan
Southern	Graham Bailey Peter Burns Alison Dunn
South-West	Tonia Adamson Graham Bailey Susan Ayre
Sydney East	Michael Day
Sydney North	Craig Hyland
Sydney South West	Judith Nelson Philippa Smith
Sydney West	Wendy Carr Claire Giroto Sashi Govind Sharon Holdsworth Jim Hughes Clare Partington
Western	Graham Bailey Jonathan May Ron England Roger Hyman

Appendix 37

Consumer Response

This Office undertakes a comprehensive victim and witness satisfaction survey biennially, as the main qualitative measure of our service. The following table shows

the percentage of respondents who rated the overall level of service provided by the ODPP as “good” or “very good” in surveys conducted since 1994.

A survey was undertaken for 2006 and results are shown hereunder.

Region	1994	1996	1998	2000	2002	2004	2006
Sydney	42%	53%	39%	50%	60%	51%	62%
Sydney West	50%	40%	47%	57.5%	88.8%	62%	68%
Country	32%	52%	45%	56.9%	58.9%	65%	69%
State Average	41%	48%	44%	55.2%	60.8%	59.1%	66%

It has been clear from comments made by respondents in surveys that the defining issue in relation to satisfaction with the service provided by this Office is the level of communication received from the Office. Positive comments refer to our staff as “courteous”, “polite”,

“professional”, “informative”, “supportive” and “helpful”. Negative comments included “communication could be improved”, “overall lack of communication and information”, “no contact”, “uncommunicative” and “unintelligible correspondence”.

The past four survey results indicate case outcomes have no significant impact on service satisfaction levels.

Acronyms

Acronym	Definition
•ABC	Activity Based Costing
•AIJA	Australian Institute of Judicial Administration
•BOCSAR	Bureau of Crime Statistics and Research
•CASES	Computerised Case Tracking System
•CCA	Court of Criminal Appeal
•COCOG	Council on the Cost of Government
•COPS	Computerised Operating Policing System
•CSA	Child Sexual Assault
•DAL	Division of Analytical Laboratories
•EAP	Employee Assistance Program
•ERIC	Electronic Referral of Indictable Cases
•FIRST	Future Information Retrieval & Storage Technology Library Management System
•GSA	Guided Self Assessment
•ICAC	Independent Commission Against Corruption
•IDITC	Interdepartmental Information Technology Committee
•JIR	Joint Investigation Responses
•JIRT	Joint Police/Department of Community Services Child Abuse Investigation and Response Teams
•MCLE	Mandatory Criminal Law Education
•ODPP	Office of the Director of Public Prosecutions (NSW)
•SALO	Sexual Assault Liaison Officer
•WAS	Witness Assistance Service

Audited Financial Statements 2006–2007



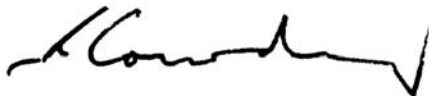
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Financial Statements for the Year Ended 30 June 2007

Statement by the Director

Pursuant to Section 45F of the *Public Finance and Audit Act*, I state that:

- (a) the accompanying financial statements have been prepared in accordance with the provisions of the *Public Finance and Audit Act 1983*, the Financial Reporting Code for Budget Dependent General Government Sector Agencies, the applicable clauses of the *Public Finance and Audit Regulation 2005* and the Treasurer's Directions;
- (b) the financial statements exhibit a true and fair view of the financial position and transactions of the Office; and
- (c) there are no circumstances, which would render any particulars included in the financial statements to be misleading or inaccurate.



N R Cowdery AM QC
Director of Public Prosecutions

19 October 2007



GPO BOX 12
Sydney NSW 2001

INDEPENDENT AUDITOR'S REPORT
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

To Members of the New South Wales Parliament

I have audited the accompanying financial report of the Office of the Director of Public Prosecutions (the Office), which comprises the balance sheet as at 30 June 2007, the operating statement, statement of recognised income and expense, cash flow statement, summary of compliance with financial directives for the year then ended, and a summary of significant accounting policies and other explanatory notes.

Auditor's Opinion

In my opinion, the financial report:

- presents fairly, in all material respects, the financial position of the Office as of 30 June 2007, and of its financial performance and its cash flows for the year then ended in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations)
- is in accordance with section 45E of the *Public Finance and Audit Act 1983* (the PF&A Act) and the Public Finance and Audit Regulation 2005.

Director's Responsibility for the Financial Report

The Director is responsible for the preparation and fair presentation of the financial report in accordance with Australian Accounting Standards (including the Australian Accounting Interpretations) and the PF&A Act. This responsibility includes establishing and maintaining internal control relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

Auditor's Responsibility

My responsibility is to express an opinion on the financial report based on my audit. I conducted my audit in accordance with Australian Auditing Standards. These Auditing Standards require that I comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Office's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Office's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Director, as well as evaluating the overall presentation of the financial report.

I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

My opinion does *not* provide assurance:

- about the future viability of the Office,
- that it has carried out its activities effectively, efficiently and economically,
- about the effectiveness of its internal controls, or
- on the assumptions used in formulating the budget figures disclosed in the financial report.

Independence

In conducting this audit, the Audit Office has complied with the independence requirements of the Australian Auditing Standards and other relevant ethical requirements. The PF&A Act further promotes independence by:

- providing that only Parliament, and not the executive government, can remove an Auditor-General, and
- mandating the Auditor-General as auditor of public sector agencies but precluding the provision of non-audit services, thus ensuring the Auditor-General and the Audit Office are not compromised in their role by the possibility of losing clients or income.



Peter Carr
Director, Financial Audit Services

19 October 2007
SYDNEY

Operating Statement

for the Year Ended 30 June 2007

	Notes	Actual 2007 \$'000	Budget 2007 \$'000	Actual 2006 \$'000
Expenses excluding losses				
Operating expenses				
Employee related	2(a)	74,886	76,181	73,587
Other operating expenses	2(b)	13,234	13,965	12,793
Depreciation and amortisation	2(c)	4,426	4,259	4,123
Other expenses	2(d)	2,911	3,323	2,967
Total Expenses excluding losses		95,457	97,728	93,470
Less:				
Revenue				
Sale of goods and services	3(a)	139	34	87
Investment revenue	3(b)	253	103	163
Grants and contributions	3(c)	107	-	130
Other revenue	3(d)	288	235	262
Total Revenue		787	372	642
Gain/(Loss) on disposal	4	20	5	-
Net Cost of Services	19	94,650	97,351	92,828
Government Contributions				
Recurrent appropriation	5	85,580	86,537	82,785
Capital appropriation	5	1,258	1,258	5,532
Acceptance by the Crown Entity of employee benefits and other liabilities	6	6,037	7,107	6,153
Total Government Contributions		92,875	94,902	94,470
SURPLUS/(DEFICIT) FOR THE YEAR		(1,775)	(2,449)	1,642

The accompanying notes form part of these financial statements.

Statement of Recognised Income and Expense

for the Year Ended 30 June 2007

	Notes	Actual 2007 \$'000	Budget 2007 \$'000	Actual 2006 \$'000
TOTAL INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY		-	-	-
Surplus / (Deficit) for the Year		(1,775)	(2,449)	1,642
TOTAL INCOME AND EXPENSE RECOGNISED FOR THE YEAR		(1,775)	(2,449)	1,642

The accompanying notes form part of these financial statements.

Balance Sheet

as at 30 June 2007

	Notes	Actual 2007 \$'000	Budget 2007 \$'000	Actual 2006 \$'000
ASSETS				
Current Assets				
Cash and cash equivalents	8	2,949	2,779	2,421
Receivables	9	2,559	1,747	1,543
Total Current Assets		5,508	4,526	3,964
Non-Current Assets				
Plant and Equipment	10	10,811	9,980	12,465
Intangible assets	11	2,114	3,106	3,622
Total Non-Current Assets		12,925	13,086	16,087
Total Assets		18,433	17,612	20,051
LIABILITIES				
Current Liabilities				
Payables	12	1,345	1,597	1,378
Provisions	13	6,971	6,706	6,800
Other	14	484	203	203
Total Current Liabilities		8,800	8,506	8,381
Non-Current Liabilities				
Provisions	13	409	479	407
Other	14	315	392	579
Total Non-Current Liabilities		724	871	986
Total Liabilities		9,524	9,377	9,367
Net Assets		8,909	8,235	10,684
EQUITY				
Reserves	15	356	356	356
Accumulated funds		8,553	7,879	10,328
Total Equity		8,909	8,235	10,684

The accompanying notes form part of these financial statements.

Cash Flows Statement

for the Year Ended 30 June 2007

	Notes	Actual 2007 \$'000	Budget 2007 \$'000	Actual 2006 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(68,671)	(68,876)	(67,014)
Other		(18,721)	(19,217)	(17,711)
Total Payments		(87,392)	(88,093)	(84,725)
Receipts				
Sale of goods and services		139	34	88
Interest Received		199	91	121
Other		1,746	1,784	2,173
Total Receipts		2,084	1,909	2,382
Cash Flows from Government				
Recurrent appropriation		85,837	86,537	82,785
Capital appropriation		1,258	1,258	5,532
Net Cash Flows from Government		87,095	87,795	88,317
NET CASH FLOWS FROM OPERATING ACTIVITIES	19	1,787	1,611	5,974
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of plant and equipment		303	5	-
Purchases of plant and equipment		(1,562)	(1,258)	(5,665)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(1,259)	(1,253)	(5,665)
NET INCREASE/(DECREASE) IN CASH				
Opening cash and cash equivalents		2,421	2,421	2,112
CLOSING CASH AND CASH EQUIVALENTS	8	2,949	2,779	2,421

The accompanying notes form part of these financial statements.

Supplementary Financial Statements

Summary of Compliance with Financial Directives

for the Year Ended 30 June 2007

	2007				2006			
	Recurrent Appropriation \$'000	Expenditure/ Net Claim on Consolidated Fund \$'000	Capital Appropriation \$'000	Expenditure/ Net Claim on Consolidated Fund \$'000	Recurrent Appropriation \$'000	Expenditure/ Net Claim on Consolidated Fund \$'000	Capital Appropriation \$'000	Expenditure/ Net Claim on Consolidated Fund \$'000
ORIGINAL BUDGET APPROPRIATION/EXPENDITURE								
• Appropriation Act	86,537	85,580	1,258	1,258	82,860	82,763	4,472	4,472
	86,537	85,580	1,258	1,258	82,860	82,763	4,472	4,472
OTHER APPROPRIATIONS/ EXPENDITURE								
• Treasurer's Advance	-	-	-	-	225	22	1,060	1,060
	-	-	-	-	225	22	1,060	1,060
Total Appropriations/Expenditure/ Net Claim on Consolidated Fund (includes transfer payments)	86,537	85,580	1,258	1,258	83,085	82,785	5,532	5,532
Amount drawn down against Appropriation		85,837		1,258		82,785		5,532
Liability to Consolidated Fund*		257		-		-		-

The Summary of Compliance is based on the assumption that Consolidated Fund moneys are spent first (except where otherwise identified or prescribed).

* The "Liability to Consolidated Fund" represents the difference between the "Amount Drawn down against Appropriation" and the "Total Expenditure / Net Claim on Consolidated Fund"

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Notes to the Financial Statements

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**(a) Reporting Entity**

The Office of the Director of Public Prosecutions (the Office) is a reporting entity.

The Office is a NSW government department. The Office is a not-for-profit entity (as profit is not its principal objective) and it has no cash generating units. The reporting entity is consolidated as part of the NSW Total State Sector Accounts.

The financial report for the year ended 30 June 2007 has been authorised for issue by the Director on 19 October 2007.

(b) Basis of Preparation

The Office's financial report is a general-purpose financial report, which has been prepared in accordance with:

- Applicable Australian Accounting Standards (which include Australian Equivalents to International Financial Reporting Standards (AEIFRS)) and interpretations;
- the requirements of the Public Finance and Audit Act (1983) and Regulation (2005); and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer.

Plant and equipment are measured at fair value. Other financial report items are prepared in accordance with the historical cost convention.

Judgements, key assumptions and estimations management has made are disclosed in the relevant notes to the financial report.

All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

(c) Statement of Compliance

The Office has adopted all of the new and revised standards and interpretations issued by the Australian Accounting Standards Board (AASB) that all relevant to its operations and effective from the current annual reporting period.

(d) Income Recognition

Income is measured at the fair value of the consideration or contribution received or receivable. Additional comments regarding the accounting policies for the recognition of income are discussed below.

(i) Parliamentary Appropriations and Contributions

Parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as income when the Office obtains control over the assets comprising the appropriations / contributions. Control over appropriations and contributions are normally obtained upon the receipt of cash.

An exception to the above is when appropriations are unspent at year-end. In this case, the authority to spend the money lapses and generally the unspent amount must be repaid to the Consolidated Fund in the following financial year. As a result, unspent appropriations are accounted for as liabilities rather than revenue. The Liability is disclosed in Note 14 as part of 'Current liabilities - Other'. The amount will be repaid and the liability will be extinguished next financial year.

(ii) Rendering of Services

Revenue is recognised when the service is provided or by reference to the stage of completion (based on labour hours incurred to date).

Notes to the Financial Statements

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**(iii) Investment Revenue**

Interest revenue is recognised using the effective interest method as set out in AASB 139 *Financial Instruments: Recognition and Measurement*.

(e) Employee Benefits and other provisions**(i) Salaries and Wages, Recreation Leave, Sick Leave and On-Costs**

Liabilities for salaries and wages (including non-monetary benefits), recreation leave and paid sick leave that fall due wholly within 12 months of the reporting date are recognised and measured in respect of employees' services up to the reporting date at undiscounted amounts based on the amounts expected to be paid when the liabilities are settled.

Unused non-vesting sick leave does not give rise to a liability, as it is not considered probable that sick leave taken in the future will be greater than the benefits accrued in the future.

Crown Prosecutors are entitled to compensatory leave when they perform duties during their vacation. Unused compensatory leave gives rise to a liability and is disclosed as part of recreation leave.

The outstanding amount of payroll tax, workers' compensation insurance premiums and fringe benefits tax, which are consequential to employment, are recognised as liabilities and expenses where the employee benefits to which they relate have been recognised.

(ii) Long Service Leave and Superannuation

The Office's liabilities for long service leave and defined benefit superannuation are assumed by the Crown Entity. The Office accounts for the liability as having been extinguished, resulting in the amount assumed being shown as part of the non-monetary revenue item described as "Acceptance by the Crown Entity of employee benefits and other liabilities".

Long service leave is measured at present value in accordance with AASB 119 *Employee Benefits*. This is based on the application of certain factors (specified in NSWTC 07/04) to employee with five or more years of service, using current rates of pay. These factors were determined based on an actuarial review to approximate present value.

The superannuation expense for the financial year is determined by using the formulae specified in the Treasurer's Directions. The expense for certain superannuation schemes (i.e. Basic Benefit and First State Super) is calculated as a percentage of the employees' salary. For other superannuation schemes (i.e. State Superannuation Scheme and State Authorities Superannuation Scheme), the expense is calculated as a multiple of the employees' superannuation contributions.

(f) Insurance

The Office's insurance activities are conducted through the NSW Treasury Managed Fund Scheme of self-insurance for Government agencies. The expense (premium) is determined by the Fund Manager based on past claim experience.

(g) Accounting for the Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where:

- The amount of GST incurred by the Office as a purchaser that is not recoverable from the Australian Taxation Office is recognised as part of the cost of acquisition of an asset or as part of an item of expense.
- Receivables and payables are stated with the amount of GST included.

Notes to the Financial Statements

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**(h) Acquisitions of Assets**

The cost method of accounting is used for the initial recording of all acquisitions of assets controlled by the Office. Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire the asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the requirements of other Australian Accounting Standards.

Assets acquired at no cost, or for nominal consideration, are initially recognised at their fair value at the date of acquisition.

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.

(i) Capitalisation Thresholds

Plant and equipment and intangible assets costing \$5,000 and above are individually (or forming part of an overall unit costing more than \$5,000) capitalised.

(j) Revaluation of Plant and Equipment

Physical non-current assets are valued in accordance with the 'Valuation of Physical Non-Current Assets at Fair Value' Policy and Guidelines Paper (TPP 07-01). This policy adopts fair value in accordance with AASB 116 *Property, Plant and Equipment*.

Plant and equipment is measured on an existing use basis, where there are no feasible alternative uses in the existing natural, legal, financial and socio-political environment. However, in the limited circumstances where there are feasible alternative users, assets are valued at their highest and best use.

Fair value of plant and equipment is determined based on the best available market evidence, including current market selling prices for the same or similar assets. Where there is no available market evidence, the asset's fair value is measured at its market-buying price, the best indicator of which is depreciated replacement cost.

The Office revalues each class of plant and equipment at least every five years or with sufficient regularity to ensure that the carrying amount of each asset in the class does not differ materially from its fair value at reporting date. The last revaluation of the Office's library books was completed on 30 June 2006 and was based on an independent assessment.

Non-specialised assets with short useful lives are measured at depreciated historical cost, as a surrogate for fair value.

When revaluing non-current assets by reference to current prices for assets newer than those being revalued (adjusted to reflect the present condition of the assets), the gross amount and the related accumulated depreciation are separately restated.

For other assets, any balances of accumulated depreciation at the revaluation date in respect of those assets are credited to the asset accounts to which they relate. The net asset accounts are then increased or decreased by the revaluation increments or decrements.

Revaluation increments are credited directly to the asset revaluation reserve, except that, to the extent that an increment reverses a revaluation decrement in respect of that class of asset previously recognised as an expense in the surplus / deficit, the increment is recognised immediately as revenue in the surplus / deficit.

Revaluation decrements are recognised immediately as expenses in the surplus / deficit, except that, to the extent that a credit balance exists in the asset revaluation reserve in respect of the same class of assets, they are debited directly to the asset revaluation reserve.

As a not-for-profit entity, revaluation increments and decrements are offset against one another within a class of non-current assets, but not otherwise.

Notes to the Financial Statements

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

Where an asset that has previously been revalued is disposed of, any balance remaining in the assets revaluation reserve in respect of that asset is transferred to accumulated funds.

(k) Impairment of Plant & Equipment

As a not-for profit entity with no cash generating units, the Office is effectively exempted from AASB 136 *Impairment of Assets and impairment testing*. This is because AASB 136 modifies the recoverable amount test to the higher of fair value less costs to sell and depreciated replacement cost. This means that, for an asset already measured at fair value, impairment can only arise if selling costs are material. Selling costs are regarded as immaterial.

(l) Depreciation of Plant and Equipment

Depreciation is provided for on a straight-line basis for all depreciable assets so as to write off the depreciable amount of each asset as it is consumed over its useful life to the Office.

All material separately identifiable components of assets are depreciated over their shorter useful lives.

The estimated useful life to the Office for each class of asset is:

Office equipments	5 years
Computer equipments	4 years
Library books	15 years
Furniture and fittings	10 years
Photocopiers	5 years
PABX equipments	5 years
Laptop computers	3 years
Servers	3 years

(m) Restoration Costs

The estimated cost of dismantling and removing an asset and restoring the site is included in the cost of an asset, to the extent it is recognised as a liability.

(n) Maintenance

Day-to-day servicing costs or maintenance are charged as expenses as incurred, except where they relate to the replacement of a part or component of an asset, in which case the costs are capitalised and depreciated.

(o) Leased Assets

A distinction is made between finance leases, which effectively transfer from the lessor to the lessee substantially all the risks and benefits incidental to ownership of the leased assets, and operating leases under which the lessor effectively retains all such risks and benefits.

Operating lease payments are charged to the Operating Statement in the periods in which they are incurred. Property lease fixed escalation are spread equally over the period of the lease term.

Notes to the Financial Statements

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**(p) Intangible Assets**

The Office recognises intangible assets only if it is probable that future economic benefits will flow to the Office and the cost of the asset can be measured reliably. Intangible assets are measured initially at cost. Where an asset is acquired at no or nominal cost, the cost is its fair value as at the date of acquisition. Software is classified as intangible assets.

Development costs are only capitalised when certain criteria are met.

The useful lives of intangible assets are assessed to be finite. Intangible assets are subsequently measured at fair value only if there is an active market. As there is no active market for the Office's intangible assets, the assets are carried at cost less any accumulated amortisation.

The Office's intangible assets are amortised using the straight-line method over a period of 4 years.

In general, intangible assets are tested for impairment where an indicator of impairment exists. However, as a not-for-profit entity with no cash generating units, the Office is effectively exempted from impairment testing (refer Note I (k)).

(q) Receivables

Short-term receivables with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

(r) Impairment of financial assets

All financial assets, except those measured at fair value through profit and loss, are subject to an annual review for impairment. An allowance for impairment is established when there is objective evidence that the Office will not be able to collect all amounts due.

For financial assets carried at amortised cost, the amount of the allowance is the difference between the asset's carrying amount and the present value of estimated future cash flows, discounted at the effective interest rate. The amount of the impairment loss is recognised in the Operating Statement.

When an available for sale financial asset is impaired, the amount of the cumulative loss is removed from equity and recognised in the Operating Statement, based on the difference between the acquisition cost (net of any principal repayment and amortisation) and current fair value, less any impairment loss previously recognised in the Operating Statement.

Any reversals of impairment losses are reversed through the Operating Statement, where there is objective evidence, except reversals of impairment losses on an investment in an equity instrument classified as "available for sale" must be made through the reserve. Reversals of impairment losses of financial assets carried at amortised cost cannot result in a carrying amount that exceeds what the carrying amount would have been had there not been an impairment loss.

(s) Other Assets

Other assets are recognised on a cost basis.

(t) Payables

These amounts represent liabilities for goods and services provided to the Office and other amounts. Payables are recognised initially at fair value, usually based on transaction cost or face value. Subsequent measurement is at amortised cost using the effective interest method. Short-term payable with no stated interest rate are measured at the original invoice amount where the effect of discounting is immaterial.

I. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

(u) Budgeted Amounts

The budgeted amounts are drawn from the budgets as formulated at the beginning of the financial year and with any adjustments for the effects of additional appropriations, s 21A, s 24 and / or s 26 of the Public Finance and Audit Act 1983.

The budgeted amounts in the Operating Statement and the Cash Flow Statement are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Balance Sheet, the amounts vary from the Budget Papers, as the opening balances of the budgeted amounts are based on carried forward actual amounts; i.e. per the audited financial report (rather than carried forward estimates).

(v) Lease Incentives

Lease incentives are recognised initially as liabilities and then reduced progressively over the term of the leases. The amount by which the liability is reduced on a pro-rata basis is credited to other revenue. Lease incentives include, but are not limited to, up-front cash payments to lessees, rent-free periods or contributions to certain lessee costs such as the costs of relocating to the premises.

(w) Witness Expenses

Witness expenses are paid to witnesses who attend conferences with Office and court to give evidence for the prosecution. Witness expenses are designed to minimise financial hardship and are paid towards lost income and direct out of pocket expenses such as travel expenses incurred in attending court.

(x) New Australian Accounting Standards issued but not effective

The following new Accounting Standards have not been applied and are not yet effective:

AASB 101 *Presentation of Financial Statements*, that is operative for 31 December 2007 and 30 June 2008 year-ends

AASB 2007-4 *Amendments to Australian Accounting Standards arising from ED151 and other Amendments* applicable to annual reporting periods beginning on or after 1 July 2007

AASB 7 *Financial Instruments: Disclosure* that is operative for 31 December 2007 and 30 June 2008 year ends

AASB 8 *Operating Segments* that is operative for 31 December 2009 and 30 June 2010 year ends, and

AASB 123 *Borrowing Costs* that is operative for 31 December 2009 and 30 June 2010 year ends.

The Office has assessed the impact of these new standards and interpretations and considers the impact to be insignificant.

Notes to the Financial Statements

2. EXPENSES EXCLUDING LOSSES

	2007 \$'000	2006 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)	60,721	59,455
Superannuation – defined benefit plans	3,394	3,321
Superannuation – defined contribution plans	3,165	3,028
Long service leave	2,439	2,633
Workers' compensation insurance	575	498
Payroll tax and fringe benefit tax	4,427	4,448
On-cost on long service leave	27	66
Temporary staff	138	138
	74,886	73,587

	2007 \$'000	2006 \$'000
(b) Other operating expenses including the following:		
Auditor's remuneration – audit of financial reports	33	33
Operating lease rental expense – minimum lease payments	5,365	5,487
Outgoing	255	237
Insurance	191	198
Books	49	434
Cleaning	254	238
Consultants	44	5
Fees – Private Barristers	750	458
Fees – Practising Certificates	240	233
Fees – Security	147	139
Gas and Electricity	229	197
Motor Vehicles	336	346
Postal	99	94
Courier	23	28
Printing	126	93
Maintenance *	1,492	939
Stores and equipment	552	476
Telephone	1,240	1,139
Training	137	116
Travel **	934	1,079
Other	738	824
	13,234	12,793

*** Reconciliation- Total maintenance**

Maintenance expenses – contracted labour and other (non-employee related), as above	1,492	939
Maintenance expense – employee related included in Note 2 (a)	13	120
Total maintenance expenses included in Note 2 (a) + 2 (b)	1,505	1,059

** Travel expenses represent expenditure incurred by all staff of the Office for 2006/2007.

Notes to the Financial Statements

2. EXPENSES EXCLUDING LOSSES (continued)

	2007 \$'000	2006 \$'000
(c) Depreciation and amortisation expense		
Depreciation		
Computer equipment	818	452
Plant and equipment	1,924	1,794
Library collection	91	140
	2,833	2,386
Amortisation		
Software	1,593	1,737
	4,426	4,123
	2007 \$'000	2006 \$'000
(d) Other expenses		
Allowances to witness	2,898	2,942
Maintenance costs of non Australian citizens	13	25
	2,911	2,967

3. REVENUES

	2007 \$'000	2006 \$'000
(a) Sale of goods and services		
Commissions – miscellaneous deductions	4	5
Cost awarded	41	49
On-cost-officers on loan	1	-
Appearance fees	93	31
Training fees	-	2
	139	87
	2007 \$'000	2006 \$'000
(b) Investment revenue		
Interest	253	163
	253	163

Notes to the Financial Statements

3. REVENUES (continued)

	2007 \$'000	2006 \$'000
(c) Grants and contributions		
Grants	107	130
	107	130
(d) Other revenue		
Lease incentive	240	239
Other revenue	48	23
	288	262

4. GAIN / (LOSS) ON DISPOSAL

	2007 \$'000	2006 \$'000
Gain / (loss) on disposal of computer equipments		
Proceeds from disposal	6	-
Written down value of assets disposed	-	-
	6	-
Gain / (loss) on disposal of office equipments		
Proceeds from disposal	15	-
Written down value of assets disposed	1	-
	14	-
	20	-

Notes to the Financial Statements

5. APPROPRIATIONS

	2007	2006
	\$'000	\$'000
Recurrent appropriations		
Total recurrent draw-down from NSW Treasury (per Summary of Compliance)	85,837	82,785
Less: Liability to Consolidated Fund (per Summary of Compliance)	257	-
	85,580	82,785

Comprising:

Recurrent appropriations (per Operating Statement)	85,580	82,785
	85,580	82,785

	2007	2006
	\$'000	\$'000
Capital appropriations		
Total capital draw-down from NSW Treasury (per Summary of Compliance)	1,258	5,532
Less: Liability to Consolidated Fund (per Summary of Compliance)	-	-
	1,258	5,532

Comprising:

Capital appropriations (per Operating Statement)	1,258	5,532
	1,258	5,532

**6. ACCEPTANCE BY THE CROWN ENTITY
OF EMPLOYEE BENEFITS AND OTHER LIABILITIES**

The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:

	2007	2006
	\$'000	\$'000
Superannuation	3,394	3,321
Long service leave	2,439	2,633
Payroll tax	204	199
	6,037	6,153

Notes to the Financial Statements

7. PROGRAMS / ACTIVITIES OF THE OFFICE

The Office operates on one program " 14.1.1 Crown Representation in Criminal Prosecutions ". The objective of the program is to provide the people of New South Wales with an independent, fair and just prosecution service.

8. CURRENT ASSETS – CASH AND CASH EQUIVALENTS

	2007 \$'000	2006 \$'000
Cash at bank and on hand	2,769	2,241
Permanent witness advance	180	180
	2,949	2,421

For the purposes of the Cash Flow Statement, cash and cash equivalents include cash at bank, cash on hand and witness advances float given to courthouses.

The Office has a Liability to Consolidated Fund of \$257,000 at the end of 2007 financial year as disclosed in Note 14.

The Office has the following banking facilities as at 30 June 2007:

- Cheque cashing authority of \$45,000, which is the total encashment facility provided to enable recoupment of petty cash and witness expenditure floats.
- Tape negotiation authority of \$2,500,000. This facility authorised the bank to debit the Office's operating bank up to the above limit when processing the electronic payroll and vendor files.
- Master card facility of \$158,600, which is the total credit limit for all credit cards issued.

Cash and cash equivalent assets recognised in the Balance Sheet are reconciled at the end of the financial year to the Cash Flow Statement as follows:

	2007 \$'000	2006 \$'000
Cash and cash equivalent (per Balance Sheet)	2,949	2,421
Closing cash and cash equivalents (per Cash Flow Statement)	2,949	2,421

9. CURRENT ASSETS – RECEIVABLES

	2007 \$'000	2006 \$'000
Rendering of services	25	18
Prepayments	1,978	1,124
Interest	144	91
Advances	63	68
GST recoverable from ATO	349	242
	2,559	1,543

Notes to the Financial Statements

10. NON-CURRENT ASSETS – PLANT AND EQUIPMENT

	Plant and Equipment \$'000
At 1 July 2006	
At fair value	30,138
Accumulated depreciation	17,673
Net carrying amount	12,465
At 30 June 2007	
At fair value	31,004
Accumulated depreciation	20,193
Net carrying amount	10,811
Reconciliation	
A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the current reporting period is set out below.	
Year ended 30 June 2007	
At fair value	12,465
Additions	1,180
Disposals	(1)
Depreciation expenses	(2,833)
Net carrying amount at the end of year	10,811
At 1 July 2005	
At fair value	25,772
Accumulated depreciation	15,287
Net carrying amount	10,485
At 30 June 2006	
At fair value	30,138
Accumulated depreciation	17,673
Net carrying amount	12,465
Reconciliation	
A reconciliation of the carrying amount of each class of plant and equipment at the beginning and end of the previous reporting period is set out below.	
Year ended 30 June 2006	
At fair value	10,485
Additions	4,561
Revaluation decrement	(195)
Depreciation expenses	(2,386)
Net carrying amount at the end of year	12,465

Notes to the Financial Statements

II. INTANGIBLE ASSETS

Software and Others
\$'000**At 1 July 2006**

Cost (gross carrying amount)	9,294
Accumulated amortisation and impairment	5,672
Net carrying amount	3,622

At 30 June 2007

Cost (gross carrying amount)	9,380
Accumulated amortisation and impairment	7,266
Net carrying amount	2,114

Reconciliation

A reconciliation of the carrying amount of intangible assets at the beginning and end of the current reporting period is set out below:

Year ended 30 June 2007

Net carrying amount at start of the year	3,622
Additions	368
Disposals	(283)
Amortisation (recognised in "depreciation and amortisation")	(1,593)
Net carrying amount at the end of year	2,114

At 1 July 2005

Cost (gross carrying amount)	8,094
Accumulated amortisation and impairment	3,935
Net carrying amount	4,159

At 30 June 2006

Cost (gross carrying amount)	9,294
Accumulated amortisation and impairment	5,672
Net carrying amount	3,622

Reconciliation

A reconciliation of the carrying amount of intangible assets at the beginning and end of the previous reporting period is set out below:

Year ended 30 June 2006

Net carrying amount at start of the year	4,159
Additions	1,200
Amortisation (recognised in "depreciation and amortisation")	(1,737)
Net carrying amount at the end of year	3,622

Notes to the Financial Statements

12. CURRENT LIABILITIES – PAYABLES

	2007 \$'000	2006 \$'000
Accrued salaries and wages and on-costs	635	650
Creditors	273	321
Accruals	437	407
	1,345	1,378

13. CURRENT/NON-CURRENT LIABILITIES – PROVISIONS

	2007 \$'000	2006 \$'000
CURRENT		
Employee benefits and related on - costs		
Recreation leave*	5,270	5,125
On cost on long service leave	571	562
Payroll Tax on-cost for recreation leave and long service leave	1,130	1,113
Total Provisions - Current	6,971	6,800
* Expected to be settled within 12 months		
NON - CURRENT		
Employee benefits and related on - costs		
On cost on long service leave	30	30
Deferred retention allowance	46	31
Payroll tax oncost for long service leave	59	59
	135	120
Other Provisions		
Restoration costs	252	266
Rent adjustment	22	21
	274	287
Total Provision - Non Current	409	407
Aggregate employee benefits and related on-costs		
Provisions - current	6,971	6,800
Provisions - non-current	135	120
Accrued salaries, wages and on-cost (Note12)	635	650
	7,741	7,570

Notes to the Financial Statements

13. CURRENT/NON-CURRENT LIABILITIES – PROVISIONS (continued)**Movements in provisions (other than employee benefits)**

Movements in each class of provision during the financial year, other than employee benefits, are set out below:

2007	Restoration costs \$'000	Rent adjustments \$'000	Total \$'000
Carrying amount at the beginning of financial year	266	21	287
Additional provisions recognised	-	1	1
Amount used	(14)	-	(14)
Carrying amount at end of financial year	252	22	274

14. CURRENT/NON-CURRENT LIABILITIES – OTHER

	2007 \$'000	2006 \$'000
CURRENT		
Deferred income	227	203
Liability to Consolidated Fund	257	-
	484	203
NON - CURRENT		
Deferred income	315	579
	315	579

15. CHANGES IN EQUITY

	Accumulated Funds		Asset Revaluation Reserve		Total Equity	
	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000	2007 \$'000	2006 \$'000
Balance at the beginning of the financial year	10,328	8,686	356	551	10,684	9,237
Surplus/(deficit) for the year	(1,775)	1,642	-	(195)	(1,775)	1,447
Total	(1,775)	1,642	-	(195)	(1,775)	1,447
Balance at the end of the financial year	8,553	10,328	356	356	8,909	10,684

Asset revaluation reserve

The asset revaluation reserve is used to record increments and decrements on the revaluation of non-current assets. This accords with the Office's policy on the 'Revaluation of Plant and Equipment', as discussed in Note 1.

Notes to the Financial Statements

16. COMMITMENTS FOR EXPENDITURE

Operating Lease Commitments

	2007 \$'000	2006 \$'000
Future non-cancellable operating lease rentals not provided for and payable		
Not later than one year	5,121	5,579
Later than one year and not later than five years	6,110	10,081
Later than five years	149	201
Total (including GST)	11,380	15,861

Non-cancellable leases relate to commitments for accommodation for Head Office and the ten regional offices throughout the State and lease of motor vehicles. Commitments for accommodation are based on current costs and are subject to future rent reviews.

The total "operating lease commitments" above includes input tax credit of \$1.035M (30 June 2006: \$1.442M) expected to be recoverable from Australian Taxation Office.

The Office has no significant capital commitments or other expenditure commitments as at 30 June 2007 (nil in 2006).

17. BUDGET REVIEW

Net Cost of Services

The net cost of services was lower than budget by \$2.701M. This was mainly due to:

- Crown Entity converting the long service leave liability to present value as per AASBI 19, resulting in \$1.061M lower than budget expenditure outcome
- Under expenditure of \$0.965M as a result of expenditure saving mainly from Criminals Case Processing Reform initiatives
- Under expenditure in witness expenses amounting to \$0.412M as a result of reduced number of witness claims made
- Over expenditure in depreciation expenses of \$0.167M as a result of increase in the rate of depreciation applied from last financial year
- Total revenue increased by \$0.430M as a result of \$0.107M contribution received from Attorney General Department for undertaking criminal prosecution work at Adult Drug Court and increased interest income of \$0.150M earned from surplus cash.

Assets and Liabilities

The current assets were higher than budget by \$0.982M mainly due to increased prepayments made in order to make use of surplus cash available to meet the requirement of the creditors.

The non-current liabilities were lower than budget by \$0.147M mainly due to on cost on long service leave liability was lower as a result of Crown Entity converted the long service leave liability at lower than projected.

The current liabilities were higher than budget by \$0.294M mainly due to increased provisions for employee benefits of \$0.202M as a result of 4% award increase and increase in the accumulated leave balance.

Notes to the Financial Statements

17. BUDGET REVIEW (continued)**Cash Flows**

Net cash flow from operating activities was \$0.176M higher than budget mainly due to additional \$0.107M received from Attorney General Department for undertaking criminal prosecution work at Adult Drug Court.

Net cash flow from investing activities was \$0.006M higher than budget mainly due to increased proceeds from sale of plant and equipments.

18. CONTINGENT LIABILITIES

The Office was not aware of any contingent asset or liability as at 30 June 2007 (nil in 2006).

19. RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET COST OF SERVICES

	2007 \$'000	2006 \$'000
Net cash used on operating activities	1,787	5,974
Cash Flows from Government / Appropriations	(86,838)	(88,317)
Acceptance by the Crown Entity of employee benefits and other liabilities	(6,037)	(6,153)
Depreciation and amortisation	(4,426)	(4,123)
Decrease / (increase) in provisions	(173)	(710)
Increase / (decrease) in prepayments and other assets	1,016	(7)
Decrease / (increase) in creditors	33	166
Decrease / (increase) in deferred income	(17)	246
Increase / (decrease) in assets	5	96
Net cost of services	(94,650)	(92,828)

20. FINANCIAL INSTRUMENTS

The Office's principal financial instruments are outlined below. These financial instruments arise directly from the Office's operations or are required to finance the Office's operations. The Office does not enter into or trade financial instruments for speculative purposes. The Office does not use financial derivatives.

Cash

Cash comprises cash on hand and bank balances within the NSW Treasury Banking System. Interest is earned on daily bank balances at the monthly average NSW Treasury Corporation (Tcorp) 11 am unofficial cash rate, adjusted for a management fee to NSW Treasury.

Receivables

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts, which are known to be uncollectible, are written off. An allowance for impairment is raised when there is objective evidence that the entity will not be able to collect all amounts due. The credit risk is the carrying amount (net of any allowance for impairment). No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 30-day terms.

Notes to the Financial Statements

20. FINANCIAL INSTRUMENTS (continued)

Bank Overdraft

The Office does not have any bank overdraft facility.

Trade Creditors and Accruals

The liabilities are recognised for amounts due to be paid in the future for goods or services received, whether or not invoiced. Amounts owing to suppliers (which are unsecured) are settled in accordance with the policy set out in Treasurer's Direction 219.01. If trade terms are not specified, payment is made no later than the end of the month following the month in which an invoice or a statement is received. Treasurer's Direction 219.01 allows the Minister to award interest for late payment. No interest was paid during the year (30 June 2006: \$nil).

21. AFTER BALANCE DATE EVENTS

The Office is not aware of any circumstances that occurred after balance date, which would render particulars included in the financial statements to be misleading.

END OF AUDITED FINANCIAL STATEMENTS

Account Payment Performance

1 July 2006 to 30 June 2007

Aged analysis at the end of each quarter

Quarter	Current (ie within due date) \$	Less than 30 days overdue \$	Between 30 and 60 days overdue \$	Between 60 and 90 days overdue \$	More than 90 days overdue \$
September	137,645	1,443	589	2,442	1,035
December	108,242	181	1,816	1,195	1,421
March	87,273	62,576	17	-	43
June	272,848	-	-	-	-

Accounts paid on time within each quarter

Quarter	Total Accounts Paid on Time			Total Amount paid
	Target %	Actual %	\$	\$
September	98%	97%	11,175,411	11,551,506
December	98%	94%	12,789,548	13,571,958
March	98%	96%	11,904,940	12,437,868
June	98%	95%	21,086,180	22,243,377

There were no instances where interest was payable under Clause 2AB of the Public Finance and Audit Regulations resulting from the late payment of accounts.

Reasons for Accounts Not Paid on Time

Suppliers invoices were not received on time for payment.

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Director of Public Prosecutions' Guidelines



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INTRODUCTION

This edition of the Prosecution Guidelines of the Office of the Director of Public Prosecutions for New South Wales incorporates some minor amendments and a few substantial alterations required to meet new legislation and changing circumstances in the prosecution of crime.

The guidelines are re-issued as one document and again are being published only electronically, on the ODPP website and intranet. The document, or parts, may be downloaded and printed as required. This aids in the dissemination of the document and has helped to make amending the guidelines a more convenient, timely and inexpensive process.

The Director of Public Prosecutions Act 1986 and associated legislation created for the first time in NSW an independent professional service for the prosecution of serious criminal offences. These guidelines are issued pursuant to section 13 of the Act. A reference to a prosecutor in the document is a reference to any legal practitioner representing the interests of the Crown or of the Director in criminal and related proceedings pursuant to the Act.

Prosecution Policy and Guidelines were first issued in July 1987 when the Office commenced operations and further editions were published in 1988, 1991, 1993, 1995 and 1998. They were consolidated into one document and re-issued in 2003. There will always be a need to keep them up to date and in step with legislative and procedural changes affecting the criminal justice process.

These guidelines are freely and publicly available and should be read in conjunction with the many other instruments that affect the conduct of prosecutions. They serve to guide prosecutors and to inform the community about actions taken in its name.



Sydney
1 June 2007

I The Director of Public Prosecutions

[Furnished 20 October 2003]

The Director prosecutes on behalf of the Crown (that is, the community) under the *Director of Public Prosecutions Act 1986*. He or she is responsible to the Attorney General for the due exercise of the functions of the office, but acts independently of the government and of political influence. The Director also acts independently of inappropriate individual or sectional interests in the community and of inappropriate influence by the media.

As Kirby P (as he then was) said in *Price v Ferris* (1994) 34 NSWLR 704 at p 707, the object of having a Director of Public Prosecutions is

“to ensure a high degree of independence in the vital task of making prosecution decisions and exercising prosecution discretions.”

It ensures that there is

“manifest independence in the conduct of the prosecution. It is to avoid the suspicion that important prosecutorial discretions will be exercised otherwise than on neutral grounds. It is to avoid the suspicion, and to answer the occasional allegation, that the prosecution may not be conducted with appropriate vigour.”

The Director’s functions are carried out independently of the courts.

“Our courts do not purport to exercise control over the institution or continuation of criminal proceedings, save where it is necessary to do so to prevent an abuse of process or to ensure a fair trial”

(per Dawson and McHugh JJ in *Maxwell v The Queen* (1995) 184 CLR 501.)

Cases are prepared and conducted by lawyers employed in the Office of the Director of Public Prosecutions (“ODPP”). In many cases Crown Prosecutors are briefed and in some cases private counsel. In all cases the legal practitioners act on

behalf of the Director. They are also subject to his or her general direction in the exercise of their professional functions, which direction may be given by way of published guidelines including these Prosecution Guidelines.

Pursuant to the *Director of Public Prosecutions Act 1986* the Director may delegate the exercise of particular functions.

Staff of the ODPP and Crown Prosecutors carry out their duties in compliance with the Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors promulgated by the International Association of Prosecutors (Appendix A).

2 Role and Duties of the Prosecutor

[Furnished on 20 October 2003]

A prosecutor is a “minister of justice”. The prosecutor’s principal role is to assist the court to arrive at the truth and to do justice between the community and the accused according to law and the dictates of fairness.

A prosecutor is not entitled to act as if representing private interests in litigation. A prosecutor represents the community and not any individual or sectional interest. A prosecutor acts independently, yet in the general public interest. The “public interest” is to be understood in that context as an historical continuum: acknowledging debts to previous generations and obligations to future generations.

In carrying out that function

“it behoves him - Neither to indict, nor on trial to speak for conviction except upon credible evidence of guilt; nor to do even a little wrong for the sake of expediency, or to pique any person or please any power; not to be either gullible or suspicious, intolerant or over-pliant; in the firm and abiding mind to do right to all manner of people, to seek justice with care, understanding and good countenance.”

(per R R Kidston QC, former Senior Crown Prosecutor of New South Wales, in *“The Office of Crown Prosecutor (More Particularly in New South Wales)”* (1958) 32 ALJ 148.)

It is a specialised and demanding role, the features of which need to be clearly recognised and understood. It is a role that is not easily assimilated by all legal practitioners schooled in an adversarial environment. It is essential that it be carried out with the confidence of the community in whose name it is performed.

“It cannot be over-emphasised that the purpose of a criminal prosecution is not to obtain a conviction; it is to lay before

a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of the prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which in civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings.”

(per Rand J in the Supreme Court of Canada in *Boucher v The Queen* (1954) 110 CCC 263 at p 270.)

In this State that role must be discharged in the environment of an adversarial approach to litigation. The observance of those canons of conduct is not compatible with the adoption of an advocate’s role. The advocacy must be conducted, however, temperately and with restraint.

The prosecutor represents the community generally at the trial of an accused person.

“Prosecuting counsel in a criminal trial represents the State. The accused, the court and the community are entitled to expect that, in performing his function of presenting the case against an accused, he will act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused’s trial is a fair one.”

(per Deane J in *Whitehorn v The Queen* (1983) 152 CLR 657 at pp 663-664.)

Nevertheless, there will be occasions when the prosecutor will be entitled firmly and vigorously to urge the prosecution’s

view about a particular issue and to test, and if necessary to attack, that advanced on behalf of an accused person or evidence adduced by the defence. Adversarial tactics may need to be employed in one trial that may be out of place in another. A criminal trial is an accusatorial, adversarial procedure and the prosecutor will seek by all proper means provided by that process to secure the conviction of the perpetrator of the crime charged.

3 Fairness

[Furnished 20 October 2003; amended 1 June 2007]

Having regard to the role and duties of the prosecutor as described in Guideline 2, a prosecutor must act impartially and fairly according to law. This will involve the prosecutor informing the defence and the court of directions, warnings or authorities which may be appropriate in the circumstances of the case, even where unfavourable to the prosecution. It will also involve identifying portions of evidence which may be objectionable and declining

to open on such evidence.

As a general rule the prosecution must offer all its proofs during the presentation of its case (and, for example, should not first adduce evidence of an admission which is relevant to a fact in issue during cross-examination of an accused person).

Cross-examination of an accused person as to credit or motive must be fairly conducted. Material put to an accused

person must be considered on reasonable grounds to be accurate and its use justified in the circumstances of the trial. (See also Barristers' and Solicitors' Rules 63 and 64 — Appendix B.

The prosecutor owes a duty of fairness to the community. The community's interest is twofold: that those who are guilty be brought to justice and that those who are innocent not be wrongly convicted.

Procedural Fairness to the Prosecution

The prosecution's right to be treated fairly must not be overlooked.

In *Moss v Brown* (1979) 1 NSWLR 114 at 126 the Court of Appeal said:

"In any discussion of fairness, it is imperative to consider the position of all parties. It is sometimes forgotten that the Crown has rights and, as it has a heavy responsibility in respect of the invoking and enforcement of the criminal law, which includes seeing that the public revenue is not imposed upon, it is entitled to maintain those rights, even if they may bear heavily upon some accused. As Lord Goddard CJ said in R v Grondkowski (1946) KB 369 at 372: 'The judge must consider the

interests of justice as well as the interests of the prisoners.'"

Ensuring the prosecution's right to fairness may require a prosecutor to seek an adjournment of a matter due to insufficient notice of listing being given to the prosecution or to allow an appeal pursuant to section 5F of the Criminal Appeal Act 1912 to be considered

4 The Decision to Prosecute

[Furnished 20 October 2003; amended 1 June 2007]

The prosecution process is usually enlivened by a suspicion, an allegation or a confession. Not every one, however, will result in a prosecution.

"It has never been the rule in this country ... that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should ... prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a nature that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration."

(per Sir Hartley Shawcross QC, UK Attorney General and former Nuremberg trial prosecutor, speaking in the House of Commons on 29 January 1951.)

That statement applies equally to the position in New South Wales. The general public interest is the paramount concern.

The question whether or not the public interest requires that a matter be prosecuted is resolved by determining:

- (1) whether or not the admissible evidence available is capable of establishing each element of the offence;
- (2) whether or not it can be said that there is no reasonable prospect of conviction by a reasonable jury (or other tribunal of fact) properly instructed as to the law; and if not
- (3) whether or not discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

The first matter requires no elaboration: it is the *prima facie* case test.

The second matter requires an exercise of judgment which will depend in part upon an evaluation of the weight of the available evidence and the persuasive strength of the prosecution case in light of the anticipated course of proceedings, including the circumstances in which they will take place. It is a test appropriate for both indictable and summary charges.

The third matter requires consideration of many factors which may include the following:

- 3.1 the seriousness or, conversely, the triviality of the alleged offence or that it is of a "technical" nature only;
- 3.2 the obsolescence or obscurity of the law;
- 3.3 whether or not the prosecution would be perceived as counter-productive; for example, by bringing the law into disrepute;
- 3.4 special circumstances that would prevent a fair trial from being conducted;
- 3.5 whether or not the alleged offence is of considerable general public concern;
- 3.6 the necessity to maintain public confidence in such basic institutions as the Parliament and the courts;
- 3.7 the staleness of the alleged offence;
- 3.8 the prevalence of the alleged offence and any need for deterrence, both personal and general;
- 3.9 the availability and efficacy of any alternatives to prosecution;
- 3.10 whether or not the alleged offence is triable only on indictment;
- 3.11 the likely length and expense of a trial;

- 3.12 whether or not any resulting conviction would necessarily be regarded as unsafe and unsatisfactory;
- 3.13 the likely outcome in the event of a finding of guilt, having regard to the sentencing options available to the court;
- 3.14 whether or not the proceedings or the consequences of any resulting conviction would be unduly harsh or oppressive;
- 3.15 the degree of culpability of the alleged offender in connection with the offence;
- 3.16 any mitigating or aggravating circumstances;
- 3.17 the youth, age, maturity, intelligence, physical health, mental health or special disability or infirmity of the alleged offender, a witness or a victim;
- 3.18 the alleged offender's antecedents and background, including culture and language ability;
- 3.19 whether or not the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- 3.20 the attitude of a victim or in some cases a material witness to a prosecution;
- 3.21 whether or not and in what circumstances it is likely that a confiscation order will be made against the offender's property;
- 3.22 any entitlement or liability of a victim or other person or body to criminal compensation, reparation or forfeiture if prosecution action is taken; and/or

4 The Decision to Prosecute Continued

[Furnished 20 October 2003; amended 1 June 2007]

3.23 whether or not the Attorney General's or Director's consent is required to prosecute.

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

A decision whether or not to proceed must not be influenced by:

- (i) the race, religion, sex, national origin, social affiliation or political associations, activities or beliefs of the alleged offender or any other person involved (unless they have special significance to the commission of the particular offence or should otherwise be taken into account objectively);
- (ii) personal feelings of the prosecutor concerning the offence, the alleged offender or a victim;

(iii) possible political advantage or disadvantage to the government or any political party, group or individual;

(iv) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution or otherwise involved in its conduct; or

(v) possible media or community reaction to the decision.

It is recognised that the resources available for prosecuting are finite and should not be expended pursuing inappropriate cases. Alternatives to prosecution, including diversionary procedures, should always be considered.

5 Expedition

[Furnished 20 October 2003; amended 1 June 2007]

It is a fundamental obligation of a prosecutor to assist in the timely and efficient administration of criminal justice. Accordingly and particularly

- cases should be prepared for hearing as quickly as possible;
- bills of indictment should be found as early as possible, preferably (as normally required) within 28 days of committal for trial;
- particulars of the indictment should be communicated to the accused as soon as possible;
- any proposed amendment to an indictment should be communicated to the accused forthwith in anticipation of consent or an application for an order giving leave to amend; and
- any event that affects the question of whether or not a jury will be empanelled must be reported to the Sheriff as soon as practicable

6 Settling Charges

[Furnished 20 October 2003]

Charges are to be selected that adequately and appropriately address the criminality alleged and enable the matter to be dealt with fairly and expeditiously according to law.

Substantive charges are to be preferred to conspiracy where possible; however, there will be occasions when a charge of conspiracy is appropriate by reason of the facts and/or the need adequately to address the overall criminality of the conduct alleged.

Prosecutors must in all cases guard against the risk of hearings becoming unduly complex or lengthy (although complexity and/or length in some cases may be unavoidable, necessary or otherwise appropriate).

7 Discontinuing Prosecutions

[Furnished 20 October 2003]

Discontinuing Local Court Prosecutions and District Court Appeals

The lawyer with conduct of a matter must advise the police officer-in-charge and the victim whenever the ODPP is considering whether or not to discontinue a prosecution in the Local Court or to offer no evidence in an appeal to the District Court. The police officer-in-charge should be consulted on any relevant matters, including perceived deficiencies in the evidence and any matters raised by the accused person or appellant. The views of the victim on the proposed course of action must be sought. The views of the police officer-in-charge and the victim should be recorded prior to the submission of a report and recommendation. However, if the police officer-in-charge or victim is not able to be consulted within a reasonable time, the attempts made to contact him or her must be described in the relevant report.

An important purpose of this consultation is to make sure that the prosecution is aware of all relevant factors before discontinuing or offering no evidence in a matter:

This consultation is the responsibility of each lawyer preparing a first report on the question whether the matter should be discontinued or no evidence offered. The views of the police officer-in-charge and the victim (if obtained) must be included in that first report. It is the responsibility of the Managing Lawyer to ensure that a second report is prepared and to check if the consultations have occurred and that the results are reflected in the first report.

After a decision has been made, the lawyer with carriage of the matter must notify the police officer-in-charge and the victim of the decision as soon as practicable.

Discontinuing Trials and Committals for Sentence

Accused persons or their representatives or prosecutors may make application that a charge or charges be discontinued or varied or that a bill of indictment not be found. Such applications are to be dealt with expeditiously.

In considering and preparing such applications regard is to be had principally to the three tests set out in Guideline 4, bearing in mind any additional considerations of fact or argument put forward by the defence.

In trials and matters committed for sentence it is the responsibility of the Crown Prosecutor, Trial Advocate or Lawyer who authors the report to the Director's Chambers to ensure that the consultations with the police officer-in-charge and the victim described above have occurred. The views of the police officer-in-charge and the victim should be included in the report. However, if the police officer-in-charge or victim is not able to be consulted within a reasonable time, the attempts made to contact him or her must be described in the relevant report.

After a decision has been made, the lawyer with carriage of the matter must notify the police officer-in-charge and the victim of the decision as soon as practicable.

Generally

Where a direction has been given in a matter to proceed or to take no further proceedings, that direction will not be reversed unless significant new facts warrant it, the direction was obtained by fraud or impropriety or the direction was obtained or made on an erroneous basis, and in any such case the interests of justice require a reversal.

8 Election for offence to be dealt with on indictment

[Furnished 20 October 2003; amended 1 June 2007]

Procedures are prescribed by Chapter 5 of the *Criminal Procedure Act 1986* and Tables 1 and 2 for certain offences ("table offences") to be dealt with either summarily or on indictment. The prosecution may elect to have a table offence dealt with on indictment.

If a police prosecutor considers that such an election should be made the matter will be referred to the ODPP with all relevant material. The lawyer to whom it is referred is to make a recommendation to a Managing Lawyer or a Trial Advocate for decision (or to a Deputy or Assistant Solicitor if circumstances dictate). The police prosecutor is then to be advised of the decision.

If an election is made, the Director takes over the prosecution. If it is not, then the matter is generally returned to the police.

Division 1A of the *Crimes (Sentencing Procedure) Act 1999* relating to standard non-parole periods applies only where no penalty other than imprisonment is appropriate.

In relation to offences included in the table of standard non-parole period offences pursuant to section 54D of the Act, if the view is taken that no penalty other than imprisonment is appropriate and that the offence falls within the middle of the range of objective seriousness or higher for that particular table offence, then election should be made for the offence to be dealt with on indictment.

An election should not be made unless:

- (i) the accused person's criminality (taking into account the objective seriousness and his or her subjective considerations) could not be adequately addressed within the sentencing limits of the Local Court; and/or
- (ii) for some other reason, consistently with these guidelines, it is in the interests of justice that the matter not be dealt with summarily (eg. a comparable co-offender is to be dealt with on indictment; or the accused person also faces a strictly indictable charge to which the instant charge is not a back-up).

Election decisions and review of those decisions in matters under Division 1A of the Act should be made by a Crown Prosecutor, a Trial Advocate or a Managing Lawyer (or an Assistant Solicitor or Deputy Solicitor if circumstances dictate).

9 Finding Bills of Indictment

[Furnished on 20th October 2003]

This guideline is to be read in conjunction with Guideline 6 (Settling Charges) and Guideline 20 (Charge Negotiation and Agreement; Agreed Statements of Facts; Form 1).

An *ex officio* indictment is a bill of indictment found for an offence in respect of which there has been no committal for trial. An *ex officio* count in an indictment may be similarly described.

Pursuant to section 5(1)(b) of the *Crown Prosecutors Act* 1986 a Crown Prosecutor may find a bill of indictment in respect of an offence whether or not the person concerned has been committed for trial in respect of the offence. However, the approval of the Director or a Deputy Director should be sought to the finding of any bill of indictment or count in respect of any offence that is substantially different in nature or seriousness from an offence founding a committal for trial. Such approval, if required urgently, may be sought by telephone, to be confirmed later upon a submission in writing. A bill of indictment may be found for a truly alternative count to a committal charge without the Director's or a Deputy Director's additional sanction.

A decision whether or not to proceed by way of *ex officio* indictment or count where no committal proceedings have taken place should be made by the Director or a Deputy Director and should be made within two months of the matter arising or being referred to the ODPP for consideration. The alleged offender must be advised of the direction given.

If a prosecutor has doubt about the finding of a particular bill the approval of the Director or a Deputy Director should be sought. In any event, where a charge is to be reduced in scope or severity from the committal charge, the police officer-in-charge and the victim should be consulted.

Where the police officer-in-charge or the victim objects to the proposed reduced charge, the Crown Prosecutor or Trial Advocate should consult the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor, or in regional areas the most senior Crown Prosecutor available, and if appropriate the Director or a Deputy Director. A written record must be made of all consultations described above.

The alleged offender in each case must be kept informed. Where appropriate the alleged offender should be given the opportunity of making representations when consideration is being given to an *ex officio* indictment or count against him or her.

A proceeding such as a coronial inquest or inquiry or a committal hearing in respect of another charge in a matter may be regarded as a sufficient substitute for committal proceedings; or it may be considered that an issue or issues could appropriately be explored in pre-trial proceedings (a so-called *Basha* inquiry). If that is not the case and an *ex officio* indictment would be inappropriate, then police should be advised that proceedings should be commenced in the Local Court unless the alleged offender requests that the matter be dealt with directly on indictment.

10 Taking over Proceedings

[Furnished 20 October 2003; amended 1 June 2007]

The Director may take over a matter pursuant to section 9 of the *Director of Public Prosecutions Act* 1986. Although the right of an individual to prosecute in the Local Court survives, the object of having a Director of Public Prosecutions is to ensure manifest integrity, neutrality and consistency in the making of prosecutorial decisions and the conduct of prosecutions.

Proceedings may be taken over if:

- (i) the police officer-in-charge of the investigation so requests and there is a sound basis for doing so;
- (ii) there is no reasonable prospect of conviction;
- (iii) they appear to be frivolous or vexatious or brought for an inappropriate ulterior purpose;
- (iv) they appear to have arisen out of a conflict of a predominantly civil nature and/or a civil legal remedy may be available;
- (v) they have been brought contrary to advice or a decision by the Director not to proceed;
- (vi) they have been instituted by police or a private person and there appears to be a conflict of interest or the risk of unfairness arising from their conduct of the prosecution;
- (vii) the public interest otherwise requires it, having regard (for example) to the gravity of the offence, its connection with another offence being prosecuted by the ODPP and all the surrounding circumstances; and/or
- (viii) an ODPP officer holding specific delegation pursuant to the Consolidated Instrument of Delegation and Orders approves the takeover.

If such a decision is made the notices required by section 10 of the Act must be given expeditiously and before the next court appearance. Nevertheless, the mere act of appearing before a court in a prosecution or proceeding (including an appeal) in respect of an offence will constitute the taking over of that matter by the Director. In any such case an original informant disappears from the record (see *Price v Ferris* (1994) 34 NSWLR 704). Accordingly, after a matter has been taken over it cannot be returned to or conducted by or in the name of the original prosecutor.

Before any matter is taken over other than in accordance with (viii) above and if time reasonably permits, it must be assessed and a decision made by the Director as to its future course (eg to continue or discontinue the proceedings).

II Privacy

[Furnished 20 October 2003; amended 1 June 2007]

The ODPP must observe the Information Protection Principles set out in the *Privacy and Personal Information Protection Act 1998*. The principles apply to the collection, retention, access, alteration, use and disclosure of personal information.

The ODPP must also observe the Health Privacy Principles set out in the *Health Records and Information Privacy Act 2002*. The principles apply to the collection, storage, access, accuracy, use and disclosure of personal health information.

12 Reasons for Decisions

[Furnished 20 October 2003; amended 1 June 2007]

Reasons for decisions made in the course of prosecutions or of giving advice, in appropriate circumstances, may be disclosed by the Director to persons outside the ODPP. Reasons will not be given in any case, however, where to do so may cause serious undue harm to a victim, a witness or an accused person, or could significantly prejudice the administration of justice.

Generally the disclosure of reasons for prosecution decisions is consistent with the open and accountable operations of the ODPP; however, the terms of advice given to or by the Director may be subject to legal professional privilege and privacy considerations may arise. Reasons will only be given to an inquirer with a legitimate interest in the matter and where it is otherwise appropriate to do so. A legitimate interest includes the interest of the media in reporting the open dispensing of justice where previous proceedings have been public.

Reasons for not proceeding with a prosecution where committal proceedings or an inquest has taken place may be given by the Director.

Where there have been no prior public proceedings and a decision is made not to commence or continue a prosecution, reasons may also be given by the Director. However, where it would mean publishing material assessed as not having sufficient evidentiary value to justify prosecution, only a brief explanation may be given.

Detailed reasons will not normally be given publicly for the decision to appeal or not to appeal against a sentence.

13 The Director of Public Prosecutions and Police

[Furnished on 20 October 2003]

The Director prosecutes. The police (and some other agencies) investigate. The Director has no investigative function and no power to direct police or other agencies in their investigations.

The Director does not act or appear on behalf of any person (other than the Crown), nor (in the absence of express instructions) do police act or appear on his or her behalf.

The Director may advise investigators in relation to the sufficiency of evidence to support nominated charges and the appropriateness of charges; but not in relation to operational issues, the conduct of investigations or the exercise of police or agency powers. Any advice given to such persons may only be done formally and on behalf of the Director. Guidelines on the giving of advice to police are in Guideline 14.

14 Advice to Police

[Furnished 20 October 2003; amended 11 November 2005 and 1 June 2007]

In accordance with the Protocol between the ODPP and the NSW Police, advice will be provided as set out below in respect of the following matters:

- that are strictly indictable;
- that involve allegations of child sexual assault;
- that are indictable offences where the ODPP may exercise its discretion to elect to proceed on indictment: but these matters must be referred to the ODPP for a decision as to jurisdiction before advice will be provided.

The protocol does not apply to proceedings against a police officer or to requests for advice received from police in specialist investigative agencies.

Advice as to the sufficiency of evidence or the appropriateness of charges may be given in the following circumstances

- i) After a determination by the Local Area Commander, Crime Manager (or equivalent) or Police Legal Services that the evidence is sufficient and a Court Attendance Notice ("CAN") is appropriate, a matter may be referred by police for advice as to the sufficiency of evidence or the appropriateness of a CAN.
- (ii) Advice will be provided only on receipt of sufficient material in admissible form.
- (iii) Where insufficient material is provided to allow a decision to be made, the ODPP may request additional material before advice will be provided.
- (iv) Advice as to the sufficiency of evidence will generally be provided within four weeks of receipt of the material referred to in (ii) and (iii); however, where practicable and on the provision

of reasons for urgency in the matter in question, a shorter period may be negotiated.

- (v) The advice will include reasons why charges are not recommended, the draft wording of charges recommended and requisitions for any additional material considered appropriate.

Advice during the course of an investigation

The ODPP may provide advice to police during an investigation into an indictable offence. Requests for this type of advice should be made in writing and endorsed by the Local Area Commander, Crime Manager (or equivalent) or Police Legal Services.

Advice will be given only as to:

- i) the admissibility of evidence already obtained by police (which may include advice as to whether such evidence is admissible, or whether it can be made admissible);
- (ii) evidence that is likely to be obtained including its admissibility, how to make it admissible and legal provisions relevant to obtaining the evidence;
- (iii) the legal implications of alternative or proposed courses described by police.

Applications for advice as to the admissibility of any evidence or the legal implications of alternatives proposed by police must provide sufficient information to enable the question to be answered. The application for advice will be considered by the ODPP on the information provided and supporting documentation may be required to enable proper consideration.

The ODPP will not direct police as to which choice should be made, but rather provide advice as to the legal limitations or consequences of a particular choice.

Advice during the course of an investigation will be provided within at least three working days.

General Issues

There is no distinction to be drawn between "formal" and "informal" advice and "provisional" or conditional advice should not be given.

Where the main issue is the credibility of the complainant or another main witness, the papers are to include an assessment of the credibility of that person. Generally the ODPP will not interview witnesses for the purpose of giving advice as to the sufficiency of evidence or the appropriateness of charges.

Whether police follow the advice as to the sufficiency of evidence or the appropriateness of charges is a matter for them. It is also a matter for police whether they wish to inform any person of the terms of the advice given to them by the ODPP. The ODPP generally will not disclose to persons outside the ODPP that police have sought advice or that advice has been provided and will not disclose in any case the terms of any advice provided.

The ODPP will not advise the police to discontinue an investigation.

Matters to be referred to the Director or a Deputy Director

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

- i) whether or not a prosecution should proceed following a proposed international extradition;
- (ii) whether or not an immunity (indemnity or undertaking) should be requested;

14 Advice to Police Continued

[furnished on the 20 October 2003 and amended on 11 November 2005]

- (iii) whether or not an appeal should be lodged (including an application for prerogative relief);
- (iv) whether or not a police officer should be prosecuted for an indictable offence;
- (v) whether or not an ex officio indictment should be filed or an ex officio count included on an indictment;
- (vi) where the Director's sanction or approval is required for the commencement of proceedings (eg perjury, certain sexual offences, Listening Devices Act 1984 prosecutions);
- (vii) matters of particular sensitivity, including allegations of corruption or serious misconduct by any public official and allegations of criminal conduct by persons in the practice of professions.
- (b) the present state of law with respect to a certain subject matter (where this requires detailed evaluation);
- (c) the merits of dealing with a matter summarily rather than on indictment, by means of preferring a less serious charge;
- (d) the availability of:
- an ex officio indictment or count;
 - an appeal to the District Court on sentence;
 - an appeal pursuant to the Criminal Appeal Act 1912;
 - a stated case; or
 - prerogative relief;
- (e) the discontinuance of Local Court proceedings;
- (f) matters relating to whether or not an individual is to be charged or the form of the proceedings and, if requested, the ultimate venue of any such proceedings;

In cases of homicide (including murder, manslaughter; infanticide) or dangerous driving causing death, the recommendation is to be referred to the Director's Chambers for final consideration.

Advisings Generally

All requests by police for advice, including requests concerning:

- (a) the availability of criminal charges, involving:
- (i) a question of the sufficiency of evidence;
 - (ii) a consideration of the admissibility of evidence; and/or
 - (iii) a view as to the appropriateness of preferring a particular charge or of proceeding in a particular court;

are to be answered in writing following upon a specific written request for such advice.

Should a person seeking advice be unable to do so in writing because of the urgency of the request or other circumstances of the matter; this should not preclude the giving of advice. In such instances the written advice should recite the oral request made of the ODPP and the information upon which the advice is based.

In the event that the urgency or circumstances of the matter preclude the initial provision of written advice, this again should not preclude the giving of oral advice. A letter confirming the oral advice is to be dispatched within 24 hours.

Requests for advice relating to matters of law which require a detailed evaluation or involve police or other investigative powers are to be referred to the Deputy Solicitor (Legal).

All requests are to be forwarded to the Assistant Solicitor (Operations) in Sydney or the Managing Lawyer at a regional office as appropriate.

All requests for advice are to be registered on CASES.

15 Induced Statements

[Furnished 20 October 2003; amended 1 June 2007]

An induced statement is one taken from a person on the basis that the information in the statement will not be used against the person making the statement. It is a statement from a person who is prepared to supply information relevant to the investigation of criminal activity which may tend to incriminate him or her in criminal activity and who is not otherwise prepared to supply the information.

Local Area Commanders or police officers of equivalent rank (Superintendent and above) who are in line command of the officer making the application are authorised to approve the taking of an induced statement.

However, if a matter is already with the ODPP for the conduct of a prosecution already begun (not simply to provide advice as to the sufficiency of evidence to support charges) and:

- it is intended by police to take an induced statement from the defendant, accused or appellant; and
- the statement relates to the matter;

then the police are to obtain written approval from the Director before the induced statement is taken. Such authorisation will only be given after consideration of a written request supported by copies of all available relevant documents.

Requests for authorisation must be referred to the Director's Chambers.

The inducement to be recorded at the beginning of the statement should be in the following terms:

"I am making this statement after a promise held out to me by ... that no information given in it will be used in any criminal proceedings against me in any court in New South Wales, except in respect of the falsity of my statement or for the purpose of establishing the falsity of evidence given by me as a witness".

Prior to charges being laid against any person/s inculpated in the induced statement, all correspondence is to be treated by the ODPP as sensitive and securely stored and treated accordingly.

This Guideline does not apply to police carrying out investigations pursuant to Australian Crime Commission, Independent Commission Against Corruption, NSW Crime Commission or Police Integrity Commission references.

16 Informers

[Furnished 20 October 2003; amended 1 June 2007]

An informer is a person (not being a victim in the matter) who:

- has given assistance to police or investigators as a consequence of knowledge that has come into his or her possession through direct personal contact with an alleged offender; and
- is a co-offender, prisoner, civilian undercover operative, or a person bargaining such knowledge for the advantage of himself or herself or another person.

As far as possible, care must be taken to ensure that the tribunal of fact is aware of all matters that would assist the proper evaluation of the evidence of an informer. In every such case a decision must first be made whether or not an informer should be called at all.

If it is contemplated that an informer be called as a witness, approval should be sought from the Assistant Solicitor (Legal) or, if a Crown Prosecutor is briefed in the matter, the Crown Prosecutor.

In all cases the ODPP Index of Informers should be accessed and considered before approval to call an informer is given. Requests for access should be in writing, identifying the matter in which it is contemplated the informer will be called and accompanied by a Witness Informer Report from the police and a copy of the informer's statement/s. The matter will then be recorded on the index.

When a decision has been made whether or not to approve the calling of the informer, that decision is to be notified in writing to those who maintain the index. If the decision is not to approve the calling of the informer, that notification is to include the reasons.

In the case of a prison informer (a prisoner or former prisoner who provides evidence

of an admission made by a fellow prisoner during imprisonment), the approval of the Director or a Deputy Director must first be obtained.

Independent evidence that supports the account given by the informer or other independent evidence proving guilt should be identified (and some independent evidence of the making of an admission will generally be required in the case of a prison informer).

The ODPP Index of Informers records informers who have given evidence or been proposed to give evidence and any known public evaluation of their evidence by the courts. Such information assists in the determination whether or not to call such witnesses. The relevant entry/ies generally will be made available to the defence if such a witness is to be called.

The accused person should be informed in advance of the trial of:

- (a) the informer's criminal record;
- (b) whether or not the Police or Corrective Services Department has any information which might assist in evaluating the informer's credibility, particularly as to:
 - (i) motivation,
 - (ii) previous animosity against accused persons,
 - (iii) favourable/different treatment by Corrective Services,
 - (iv) mental health/reliability,
 - (v) the extent to which public officers have given evidence or written reports on behalf of the informer (eg to courts, Parole Board);
- (c) whether any monetary or other benefit of any kind has been claimed, offered or provided;

(d) whether the informer was in custody at the time of giving assistance;

(e) whether an immunity has been granted or requested;

(f) whether any discount on sentence has been given for assistance in the matter; and/or

(g) other current or former criminal proceedings in which the informer has given evidence or was proposed to give evidence.

Public interest immunity in some circumstances may prevent the disclosure of the identity of an informer (see Guideline 18).

17 Immunities (Indemnities and Undertakings)

[Furnished 20 October 2003; amended 1 June 2007]

There are two types of immunities: indemnities under section 32 and undertakings under section 33 of the *Criminal Procedure Act 1986*.

In principle it is desirable that the criminal justice system should operate without the need to grant any concessions to persons who participated in the commission of offences or who have guilty knowledge of their commission. Nevertheless, it may be appropriate to do so in some cases in the public interest.

Section 19 of the *Director of Public Prosecutions Act 1986* enables the Director to request the Attorney General to grant indemnity from prosecution or to give an undertaking that an answer, statement or disclosure will not be used in evidence. The Director may not grant such an indemnity or give such an undertaking. The Attorney General may do so pursuant to Chapter 2 of the *Criminal Procedure Act 1986* and may also give an undertaking that binds him or her in honour.

Generally an accomplice should be prosecuted (subject to these guidelines) whether or not he or she is to be called as a witness. An accomplice who pleads guilty and agrees to co-operate in the prosecution of another is entitled to receive a consequential reduction in the otherwise appropriate sentence.

There may be rare cases, however, where that course cannot be taken (for example, there may be insufficient admissible evidence to support charges against the accomplice).

A request for an indemnity or undertaking on behalf of a witness will only be made by the Director to the Attorney General after consideration of a number of factors, the most significant being:

- (i) whether or not the evidence that the witness can give is reasonably necessary to secure the conviction of the accused person;

- (ii) whether or not that evidence is available from other sources; and
- (iii) the relative degrees of culpability of the witness and the accused person.

It must be able to be demonstrated in all cases that the interests of justice require that the immunity be given.

The Interagency Protocol for Indemnities and Undertakings provides procedures for applications to the Attorney General for immunities and for their revocation that should be followed by the ODPP.

Any request to the Attorney General for an immunity (indemnity or undertaking) pursuant to the *Criminal Procedure Act 1986* or otherwise must be made in a timely manner and must address the following matters:

- a) The present circumstances of the proposed witness should be outlined and in doing that his or her attitude to giving evidence without the benefit of any immunity and his or her exposure to prosecution from having previously given evidence should be addressed.
- (b) The evidence which the proposed witness is capable of giving should be summarised.
- (c) The involvement and culpability of the proposed witness in the criminal activity compared with that of the accused person should be considered.
- (d) The appropriateness of the kind of protection (ie. indemnity or undertaking) proposed should be considered.
- (e) The availability of evidence that would substantiate charges against the proposed witness must be stated and the question whether it would be in the public interest that he or she be prosecuted but for his or her preparedness to testify for the prosecution if given an immunity under the Act should be examined.
- (f) The strength of the prosecution evidence against the accused person

without the evidence it is expected the witness can give should be assessed.

- (g) The question of whether, if some charge or charges could be established against the accused person without the evidence of the proposed witness, the charge(s) would properly reflect the accused person's criminality should be addressed.
- (h) The proposed witness's reliability should be assessed and whether or not his or her evidence may be corroborated.
- (i) The likelihood of the weakness in the prosecution case being strengthened other than by relying on the evidence the proposed witness can give (eg. the likelihood of further investigations disclosing sufficient independent evidence to remedy the weakness or evidence being forthcoming from another source) should be examined.
- (j) The request should also deal with the likelihood of a conviction being secured using the proposed witness's evidence.
- (k) The general character of the proposed witness should be examined and, in particular, the outcome of reliance on any previous grant should be addressed.
- (l) The question whether any inducement or other reward, benefit or assistance has been claimed, offered or provided should be addressed.
- (m) The views of any other relevant State or Commonwealth investigatory or prosecuting authority should be addressed.
- (n) Consideration should be given to whether or not a certificate under section 128 of the *Evidence Act 1995* would be likely to be granted and whether or not that course would afford sufficient protection to the witness.

The Interagency Protocol and forms of indemnity and undertaking are in Appendix C.

18 Disclosure

[Furnished 20 October 2003; amended 1 June 2007]

Prosecutors are under a continuing obligation to make full disclosure to the accused in a timely manner of all material known to the prosecutor which can be seen on a sensible appraisal by the prosecution:

- to be relevant or possibly relevant to an issue in the case;
- to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; and/or
- to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two situations.

The prosecution duty of disclosure does not extend to disclosing material:

- relevant only to the credibility of defence (as distinct from prosecution) witnesses;
- relevant only to the credibility of the accused person;
- relevant only because it might deter an accused person from giving false evidence or raising an issue of fact which might be shown to be false; or
- of which it is aware concerning the accused's own conduct to prevent an accused from creating a trap for himself or herself, if at the time the prosecution became aware of that material it was not seen as relevant to an issue in the case or otherwise disclosable pursuant to the criteria above.

In all matters prosecuted by the Director, police, in addition to providing the brief of evidence, must notify the Director of the existence of, and where requested disclose, all other documentation, material and other information, including that concerning any proposed witness, which documentation, material or other information might be of

relevance to either the prosecution or the defence in relation to the matter and must certify that the Director has been notified of all such documentation, material and other information. (Procedures are in place for such certification to occur.)

Subject to public interest immunity considerations, such material, if assessed as relevant in the way described above, should be disclosed and, where practicable, made available, to the defence.

Where a prosecutor receives, directly or indirectly, sensitive documentation, material or information, or material that may possibly be subject to a claim of public interest immunity, the prosecutor should not disclose that documentation, material or information to the defence without first consulting with the police officer-in-charge of the case. The purpose of the consultation is to give that officer the opportunity to raise any concerns as to such disclosure. Accordingly, the officer should be allowed a reasonable opportunity to seek advice if there is any concern or dispute.

Where there is disagreement between a prosecutor and the police as to what, if any, of the sensitive documentation, material or information should be disclosed and there is no claim of public interest immunity, then in cases being prosecuted by counsel, the matter is to be referred to the Director or a Deputy Director and in cases being prosecuted by lawyers, the Solicitor for Public Prosecutions or a Deputy Solicitor.

In cases where a claim of public interest immunity is to be pursued or is being pursued, then the question of disclosure will be determined by the outcome of that claim.

The duty of disclosure extends to any record of a statement by a witness that is inconsistent with the witness' previously intended evidence or adds to it significantly,

including any statement made in conference (recorded in writing or otherwise) and any victim impact statement. Subject to public interest immunity considerations, the Director will not claim legal professional privilege (including client legal privilege) in respect of such statements recorded in writing or on tape, provided the disclosure of such records serves a legitimate forensic purpose.

If a witness makes any such statement in conference (adding significantly to or inconsistent with any previous statement/s), the lawyer present must note that fact and arrange for a supplementary written statement to be taken by investigators. That supplementary statement should be disclosed to the defence.

Rare occasions may arise where the overriding interests of justice - for example, a need to protect the integrity of the administration of justice, the identity of an informer (covered by public interest immunity) or to prevent danger to life or personal safety - require the withholding of disclosable information. Such a course should only be taken with the approval of the Director or a Deputy Director.

Legal professional privilege ordinarily will be claimed against the production of any document in the nature of an internal ODPP advising (eg. a submission to the Director; submissions between lawyers and Crown Prosecutors).

Reference should be made to Barristers' Rules 66, 66A and 66B and Solicitors' Rules A66, A66A and A66B (Appendix B). The requirement of Barristers' Rule 66 and Solicitors' Rule A66 to disclose "the means of finding prospective witnesses" may be satisfied by making the witnesses available to the opponent where possible, subject to public interest immunity considerations. It remains the practice of the ODPP not to include addresses or telephone numbers of

18 Disclosure (continued)

[Furnished 20 October 2003; amended 1 June 2007]

witnesses in statements provided to the defence (except where they are material to an issue in the proceedings).

Regard should be had to the protection of the privacy of victims. (See also point 8, Charter of Victims' Rights, Victims Rights Act 1996 - Appendix D.)

Security of documents and other material

All due care must be taken to protect the security of sensitive documents and other material and information, the inappropriate disclosure of which may affect the safety of individuals, jeopardise continuing investigations, potentially affect the flow of confidential information to and between justice agencies or otherwise prejudice the criminal justice process or diminish public confidence in the criminal justice system. This includes the locking away of such material when the workplace is not attended and not leaving the material unattended at court, in motor vehicles or other non-secure places or exposing it to casual perusal by unauthorised observers. It also includes discussion of such matters in circumstances where it may be overheard by members of the public or persons not authorised to receive such information.

19 Victims of Crime; Vulnerable Witnesses; Conferences

[Furnished 20 October 2003; amended 24 October 2005 and 1 June 2007]

A victim of crime (as defined in section 5 of the *Victims Rights Act 1996*) is a person who suffers harm as a direct result of an act committed, or apparently committed, by another person in the course of a criminal offence and includes a member or nominated representative member of the victim's immediate family if the person dies. "Harm" includes physical or psychological harm, the loss of an immediate family member or having property taken, destroyed or damaged.

ODPP Lawyers and Crown Prosecutors, to the extent that it is relevant and practicable to do so, must have regard to the Charter of Victims' Rights (Appendix D) in addition to any other relevant matter.

Victims, whether witnesses or not, should appropriately and at an early stage of proceedings have explained to them the prosecution process and their role in it. ODPP Lawyers are required to make contact with the victim and provide ongoing information about the progress of the case. This should be done by the ODPP Lawyer (and where appropriate by a Crown Prosecutor) directly, rather than through intermediaries (such as ODPP Clerks or Witness Assistance Service officers).

Victims of crime (whether they have requested it or not) should be informed in a timely manner of:

- charges laid or reasons for not laying charges;
- any decision to change, modify or not proceed with charges laid and any decision to accept a plea to a less serious charge;
- the date and place of hearing of any charge laid; and
- the outcome of proceedings, including appeal proceedings, and sentence imposed.

Where the offence involves sexual violence or results in actual bodily harm, mental illness or nervous shock to the victim, the victim should be consulted before any decision under the second dot point above is made, unless the victim has indicated that he or she does not wish to be consulted or his or her whereabouts cannot be ascertained after reasonable inquiry.

The Witness Assistance Service ("WAS") may assist in appropriate cases. That assistance should be sought in every case of any substance; that is to say, certainly in any case in which there is an identifiable victim of serious crime, particularly a case of sexual assault or a domestic violence related matter. Early referral to the WAS is recommended where possible. The WAS can assist with providing information, identifying special needs of victims and witnesses, referring victims for counselling and support, providing court preparation and coordinating court support.

The views of victims will be sought, considered and taken into account in making decisions about prosecutions; but those views will not alone be determinative. It is the general public, not any private individual or sectional, interest that must be served. Views expressed should be recorded on the ODPP file.

Careful consideration should be given to any request by a victim that proceedings be discontinued. In sexual offences, particularly, such requests, properly considered and freely made, should be accorded significant weight. It must be borne in mind, however, that the expressed wishes of victims may not coincide with the general public interest and in such cases, particularly where there is other evidence implicating the accused person, there is a history of similar offending or where the gravity of the alleged offence requires it, the general public interest must prevail.

In domestic violence offences (as defined

by section 562A of the *Crimes Act 1900* and which may also include a sexual assault offence), any request by the victim that proceedings be discontinued should be carefully considered in accordance with the ODPP Protocol for Reviewing Domestic Violence Offences (Appendix E). The needs, welfare and safety of the victim and any children should be considered as relevant factors in determining where the overall general public interest lies. It may be necessary to defer any decision on discontinuance until a thorough appraisal of all the circumstances of the case can be made.

Victims with special needs or conditions should be given careful consideration. Prosecutors should seek the involvement of the WAS in their dealings with such persons.

Child Witnesses

ODPP Lawyers should comply with the NSW Interagency Guidelines for Child Protection Intervention in cases of the physical or sexual assault of children (excerpts from which are contained in Appendix F). In the case of a child witness the ODPP Lawyer is to ensure that the child is appropriately prepared for and supported in his or her appearance in court. All child victims and witnesses should be referred to the WAS at the earliest opportunity. Child witnesses are to be treated consistently with the provisions of the UN Convention on the Rights of the Child (excerpts from which are contained in Appendix G).

ODPP Lawyers and Crown Prosecutors should ensure that they are familiar with the legislated provisions available for children to give evidence at court. A child may give evidence-in-chief wholly or partly in the form of a recording made by an investigating official of an interview with a child. It should be noted that evidence

19 Victims of Crime; Vulnerable Witnesses; Conferences Continued

[Furnished on 20th October 2003 & amended on 24th October 2005]

given in that form is not required to be served on a party to any proceeding, including a proceeding in relation to apprehended violence commenced under Part 15A of the *Crimes Act* 1900.

The recommended procedure is described in *R v NZ* [2005] NSWCCA 278 at [210]. Generally, the audiotape or the videotape of the interview should not become an exhibit and should not be sent with the exhibits to the jury room. Early conferences with children in relation to their electronic statements are desirable. Considerable time should be allowed for this process. (See the ODPP Child Sexual Assault Manual for relevant legislative information and procedural guidelines).

Vulnerable Adult Witnesses

Witnesses who have a disability (eg. intellectual disability, physical disability, sensory disability or psychiatric disability) should be referred to the WAS to assess their support needs and to determine any barriers to communication and/or access that may require some planning. There is a presumption in favour of CCTV for such persons and consideration should also be given to other alternative provisions (eg. screens, closed courts) for giving evidence that could assist vulnerable adult witnesses, particularly in matters related to personal violence or sexual assault. Prosecutors are encouraged to consult with an Aboriginal WAS officer about Aboriginal victims and witnesses who may require assistance.

Conferences

Due of pre-trial disclosure, and especially where complainants are not required for committal hearings, there is an obligation upon prosecutors to confer with witnesses at the earliest available opportunity before all court hearings.

Conferences serve the dual purposes of obtaining information from and about witnesses on evidentiary issues and providing relevant information about the proceedings to witnesses and to families of victims in matters involving death. In sexual assault matters complainants should be informed of the requirement, for the purpose of establishing the elements of the offence, to recount in precise detail the sexual assault, including explicit and detailed acts of sexual intercourse and sexual penetration. Conferences should also be conducted for the purpose of informing victims of charge negotiations and to discuss any agreed statement of facts. Victims may wish to have the presence of a support person during a conference and it may be useful to consider the presence of a WAS officer for some types of conferences (see ODPP Conferencing Guidelines).

Early conferences enable compliance with the Charter of Victims' Rights (Appendix D), more effective screening of cases and more accurate disclosure of relevant material (see Guideline 18) and enhance the professionalism of the ODPP and the effectiveness of the criminal justice process.

Victim impact statements

The *Crimes (Sentencing Procedure) Act* 1999, Part 3 Division 2 enables victim impact statements to be provided in some circumstances and the Charter of Victims' Rights provides that victims should have access to information and assistance for their preparation. Prosecutors should be familiar with the relevant legislation.

ODPP Lawyers and Crown Prosecutors should ensure that a victim impact statement complies with the legislation - especially that it does not contain material that is offensive, threatening or harassing.

Such material and other inadmissible material (eg. allegations of further criminal conduct not charged) is to be deleted before a statement is tendered. Victims should be consulted as to changes that may be required to be made to their victim impact statements and be informed of the reasons for these changes. The question of the victim impact statement being read out in court should also be canvassed with the victim or immediate family member or other representative. A victim impact statement that has been duly received by a court may be read out in court, in part or in whole, by a victim to whom it relates or by a member of the immediate family or other representative of the victim. It may not be read out by a Crown Prosecutor or ODPP Lawyer or staff member.

Copies of statements should ordinarily be made available to prisoners to read; however, prisoners are not to retain copies of victim impact statements.

When offenders are convicted and sentenced, victims should be informed about the relevant Victims Register with the Department of Corrective Services, the Department of Juvenile Justice or the Mental Health Review Tribunal.

See also Guidelines 7 (Discontinuing Prosecutions) and 20 (Charge Negotiation and Agreement; Agreed Statements of Facts; Form 1) in relation to victim consultation requirements.

20 Charge Negotiation and Agreement; Agreed Statements of Facts; Form I

[Furnished 20 October 2003; amended 1 June 2007]

A plea of guilty is a factor to be taken into account in mitigation of sentence. There are obvious benefits also to the criminal justice system resulting from a plea of guilty. The earlier it is offered, the greater will be the benefits accruing to the accused person and the community.

Negotiations between the parties are to be encouraged and may occur at any stage of the progress of a matter through the courts. Charge negotiations must be based on principle and reason, not on expedience alone. Written records of the charge negotiations must be kept in the interests of transparency and probity.

Prosecutors are actively to encourage the entering of pleas of guilty to appropriate charges. They should point out to the defence the benefits available pursuant to section 22 of the Crimes (Sentencing Procedure) Act 1999 and *R v Thomson and Houlton* (2000) 49 NSWLR 383 and the significance of the time at which a plea is entered. They should refer to the section and the judgment, where appropriate, in submissions to the court.

Where the appropriate authority or delegation has been obtained or is in place, a prosecutor may agree to discontinue a charge or charges upon the promise of an accused person to plead guilty to another or others. A plea of guilty in those circumstances may be accepted if the public interest is satisfied after consideration of the following matters:

- (a) the alternative charge adequately reflects the essential criminality of the conduct and the plea provides adequate scope for sentencing; and/or
- (b) the evidence available to support the prosecution case is weak in any material respect; and/or
- (c) the saving of cost and time weighed against the likely outcome of the matter if it proceeded to trial is substantial; and/or
- (d) it will save a witness, particularly a victim or other vulnerable witness, from the stress of testifying in a trial and/or a victim has expressed a wish not to proceed with the original charge or charges.

The views of the police officer-in-charge and the victim must be sought at the outset of formal discussions, and in any event before any formal position is communicated to the defence, and must be recorded on file. Delegated lawyers and Crown Prosecutors may substitute charges in the Local Court where the police officer-in-charge and/or the victim (if any) agree or do not agree. The terms of the delegation must be understood and complied with.

In matters in the District and Supreme Courts, where the police officer-in-charge or the victim objects to the proposed charge or charges, the Crown Prosecutor should consult the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor; or in regional areas the most senior Crown Prosecutor available, or if appropriate the Director or a Deputy Director. A Trial Advocate with conduct of such a matter should submit the matter to the Director's Chambers. A written record must be made of all consultations described above.

If a version of the facts is negotiated and agreed, the ODPP lawyer or Crown Prosecutor involved must prepare or obtain a written statement of agreed facts to be signed on behalf of both parties. A copy must be kept on file with an explanation of how and when it came into

being. Where reference to any substantial and otherwise relevant and available evidence is to be omitted from a statement of facts, the views of the police officer-in-charge and the victim must be sought about the statement of agreed facts before it is adopted.

The views of the victim about the acceptance of a plea of guilty and the contents of a statement of agreed facts will be taken into account before final decisions are made; but those views are not alone determinative. It is the general public, not any private individual or sectional, interest that must be served.

An alternative plea will not be considered where its acceptance would produce a distortion of the facts and create an artificial basis for sentencing, or where facts essential to establishing the criminality of the conduct would not be able to be relied upon, or where the accused person intimates that he or she is not guilty of any offence.

Prosecutors should be familiar with the principles established in *R v De Simoni* (1981) 147 CLR 383. Where the prosecution agrees not to rely on an aggravating factor no inconsistent material should be placed before the sentencing judge.

It is often not possible for the same prosecutor to have the conduct of the one matter throughout the course of the proceedings. Consequently, records must be made as events occur for the assistance of prosecutors coming into the matter at later times and for transparency and probity. The progress of negotiations and connected requirements must be recorded, step by step, by the ODPP Lawyer and Crown Prosecutor involved at the time by notes on the file made as soon as

20 Charge Negotiation and Agreement; Agreed Statements of Facts; Form I (continued)

[Furnished 20 October 2003; amended 1 June 2007]

practicable after the event. Entries should also be made on CASES which enable the course of the proceedings to be traced, but they may be less detailed. Any offer by the defence must be recorded clearly, including any offer that is rejected.

If facts for a plea of guilty to an indictable matter are agreed while the matter is in the Local Court, they should be amended later only if the evidence available has altered in a material respect. Ordinarily, however, a statement of agreed facts is to be finally settled by a Crown Prosecutor or Trial Advocate when agreement is reached for a plea of guilty in the District Court or Supreme Court.

Any written offers or representations by the defence must be filed. In many cases there will not need to be any written record from the defence; but in any case of complexity or sensitivity, the defence should be asked to put in writing (or to adopt a prosecution document recording), without prejudice, the offer of a plea and the reasons why it is considered an appropriate disposition of the matter. In some cases it may be appropriate to inform the defence that the prosecution will not consider an offer unless its terms are clearly set out in writing. The content and timing of such communications will be of significance to the defence as well, given the weight to be accorded to early and appropriate pleas.

Where an earlier offer has been rejected by a lawyer or Crown Prosecutor any subsequent proposal to reverse the decision where circumstances are otherwise unchanged should be referred to a Managing Lawyer or Deputy Senior Crown Prosecutor respectively.

If a prosecutor is contemplating accepting a plea of guilty to manslaughter on the basis of substantial impairment by an abnormality

of mind arising from an underlying condition pursuant to section 23A of the Crimes Act 1900, the community values inherent in the requirement of section 23A(1)(b) are to be taken into consideration.

Form I

Some charges may be suitable for inclusion on a Form I under section 32 of the Crimes (Sentencing Procedure) Act 1999. The decision to place offences on a Form should be based on principle and reason, not administrative convenience or expedience alone. It should be remembered that offences on a Form I are all taken into account when sentencing for the principal offence and that the maximum penalty available is the maximum of the particular principal offence. The remarks of Spigelman CJ in *Attorney General's Application under s37 of the Crimes (Sentencing Procedure) Act 1999 No 1 of 2002* (2002) NSWCCA 518 at [68] are significant:

"Striking the appropriate balance between overloading an indictment and ensuring that the indictment - leading to conviction and to sentence for, and only for, matters on the indictment - adequately reflects the totality of the admitted criminality, is primarily a matter for the Crown. The decision of the Crown in this regard will, no doubt, be guided by the determination in this case that, when matters are 'taken into account' on a Form I, the sentencing judge does not, in any sense, impose sentences for those offences."

A balance is to be struck between the number of counts on the indictment and the Form I. Excessive counts on the indictment can make sentence proceedings unduly lengthy and complex. On the other hand, there is a public interest in ensuring

that certain offences are recorded as convictions.

In *R v Barton* [2001] NSWCCA 63 Spigelman CJ examined the means by which the additional matters, taken into account on a Form I, are reflected in the sentence imposed. His Honour stated:

"[64] The position, in my opinion, is that, although a court is sentencing for a particular offence, it takes into account the matters for which guilt has been admitted, with a view to increasing the penalty that would otherwise be appropriate for the particular offence. The Court does so by giving greater weight to two elements which are always material in the sentencing process. The first is the need for personal deterrence, which the commission of the other offences will frequently indicate, ought to be given greater weight by reason of the course of conduct in which the accused has engaged. The second is the community's entitlement to exact retribution for serious offences when there are offences for which no punishment has in fact been imposed. These elements are entitled to greater weight than they may otherwise be given when sentencing for the primary offence. There are matters which limit the extent to which this is so. The express position in subs 33(3) referring to the maximum penalty for the primary offence is one. The principle of totality is another."

The counts on indictment should reflect such matters as the individual victims, range of dates, value of property and aggravating factors. Where there are multiple offences relating to the one episode it will be appropriate to place preparatory or lesser offences on the Form I: eg. indecent assault leading to sexual intercourse without consent; robbery of customers within a bank

20 Charge Negotiation and Agreement; Agreed Statements of Facts; Form 1 (continued)

[Furnished 20 October 2003; amended 1 June 2007]

during a bank robbery (unless there are aggravating factors such as actual bodily harm caused to the customer).

Generally speaking, the maximum penalty of offences placed on a Form 1 should be less than the maximum penalty available for the principal offence. An obvious exception to this is the situation where multiple counts for the same or similar offences (such as a series of counts for break, enter and steal or robbery) have been laid against an accused person. However, even in these situations aggravated forms of such offences should not be included on a Form 1 if the principal offence is a non-aggravated count of the same general type.

Offences such as failure to appear, firearms offences (where there are multiple firearms offences some may be placed on a Form 1), serious offences against police officers, breaches of apprehended domestic violence orders, offences committed while on bail or while on probation/parole, offences in relation to the administration of justice, or traffic offences where the offender has a poor traffic record should not generally be placed on a Form 1. Such a matter should usually proceed on indictment or by summary proceedings so that a conviction is entered for the public record.

The views of the police officer-in-charge and the victim must be sought and recorded on file before any decision is made about placing offences on a Form 1.

Police officers are a prescribed class of persons for the purpose of signing a Form 1 on behalf of the Director. The Director has also authorised Crown Prosecutors and some senior lawyers to sign Forms 1. Ordinarily a Form 1 will be signed by a police officer:

It is the responsibility of the prosecutor negotiating the use of a Form 1 to have a properly completed Form 1 signed by an authorised person before that negotiation can be settled with the defence.

Prosecutors who do not have the delegated authority to sign a Form 1 cannot give an undertaking that an offence will be included on a Form 1.

The Form 1 schedule should contain as much detail as possible. It is not sufficient merely to recite the title of the offence.

A brief statement of facts within the schedule is usually sufficient, but in more serious cases statements of facts relevant to the Form 1 offences should be tendered, together with witness statements and other relevant information, and cross-referenced on the Form 1. The schedule should contain the charge number and sequence number so that all charges can be accounted for. The prosecutor conducting the sentence proceedings should be satisfied that the decision to place offences on a Form 1 is within principle and reason. If necessary the prosecutor should consult a senior officer:

Pursuant to section 16BA(1) of the *Crimes Act 1914* (Cth), Commonwealth offences can be taken into account on a schedule provided there is a Commonwealth offence on the indictment and provided approval is obtained from an appropriately delegated officer; that is, an officer delegated to sign Commonwealth indictments (which includes the Director, Deputy Directors and some Crown Prosecutors). The general principles, as set out above, apply to the decision to place Commonwealth offences on a schedule.

21 Young Offenders

[Furnished 20 October 2003]

Special considerations may apply to the prosecution of children. The longer term damage which can be done to a child because of an encounter with the criminal law early in his or her life should not be underestimated and consequently in some cases prosecution must be regarded as a severe measure with significant implications for the future development of the child concerned. Whilst each situation must be assessed on its merits, frequently there will be a stronger case for dealing with the situation by some means other than prosecution, such as by way of caution or youth justice conference under the *Young Offenders Act 1997*. On the other hand, the seriousness of the alleged offence, harm to any victim and the conduct, character and general circumstances of the child concerned may require that prosecution be undertaken.

The public interest will not normally require the prosecution of a child who is a first offender where the alleged offence is not a serious one.

Different considerations may apply in relation to traffic offences where infringements may endanger the lives of the young driver and other members of the community.

The factors set out in Guideline 4 are also relevant to any consideration as to whether a child should be prosecuted; however, the following matters are particularly important:

- the seriousness of the alleged offence;
- the age, apparent maturity and mental capacity of the child;
- the available alternatives to prosecution and their likely efficacy;
- the sentencing options available to the court if the matter were to be prosecuted;
- the family circumstances and, in particular, whether the parents appear willing and able to exercise effective discipline and control of the child;
- the child's antecedents, including the circumstances of any relevant past behaviour and of any previous cautions or youth justice conferences; and
- whether a prosecution would be likely to cause emotional or social harm to the child, having regard to such matters as his or her personality and family circumstances.

It should be noted that in 1990 the Australian Government agreed to be bound by the United Nations Convention on the Rights of the Child (see Appendix G), article 3.1 of which states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

22 Mental Health Issues

[Furnished 20 October 2003; amended 1 June 2007]

From time to time persons suffering from a mental illness, intellectual impairment or some other psychological problem are charged with criminal offences and come before the courts. It is often not appropriate for these matters to be prosecuted through the ordinary criminal justice process because the alleged offender is incapable of understanding the charges or the procedures involved or cannot give instructions. In these cases the matters generally proceed under the provisions of the *Mental Health (Criminal Procedure) Act 1990*.

Where a person is charged with a summary offence and the proceedings are before the Local Court there is provision under the Act for the magistrate to dispose of the charge without a hearing if it appears to the magistrate that the person is or was at the time of the alleged offence suffering from a mental illness or mental condition. Options available to the magistrate include dismissing the charge and discharging the person unconditionally or with conditions generally relating to the person's care or making a community treatment order under the *Mental Health Act 1990*.

The effect of dealing with an offence under the Act is to remove the person from the procedures and sanctions of the criminal justice system on the basis of the person's mental condition, generally with a view to having the person receive treatment for the condition or come under some form of supervision. It is therefore important

that the magistrate be provided with as much evidence as possible as to the nature and circumstances of the offence, the nature and extent of the person's mental problem and the availability of relevant health services in order for the magistrate to be able to decide whether or not it is appropriate that the person be dealt with under the Act.

Where the person has been committed to the District Court or the Supreme Court the matter is generally brought under the provisions of the Act by raising before the court the issue of the person's fitness to be tried for the offence. This issue, as far as possible, should be raised before the person is arraigned at trial; but it may be raised at any time during the course of proceedings and may be raised more than once. In most cases the issue is raised by the defence on the basis of a psychiatric or psychological report indicating that the person is unfit to be tried. The issue, however, can be raised by any party to the proceedings and is occasionally raised by the Crown, generally where the person is unrepresented. Where the issue is raised by the defence it is the practice of the Crown to obtain an independent psychiatric assessment of the person as soon as practicable.

Whether the issue is raised before or after arraignment the court considers submissions in relation to conducting an inquiry into the person's fitness and if satisfied that an inquiry is warranted conducts the inquiry as soon as practicable.

The fitness inquiry is a non-adversarial procedure with no onus of proof on any particular party. The object of the inquiry is for the parties to place all relevant evidence before the court concerning the question of the person's unfitness to be tried for the offence. The inquiry is conducted by judge alone.

If the person remains unfit to be tried the matter proceeds to a special hearing unless the Director determines otherwise. The special hearing is conducted as nearly as possible as if it were a trial and is conducted by judge alone unless the accused, defence representative or prosecutor elects to have a jury.

23 Unrepresented Accused Persons

[Furnished 20 October 2003]

Particular care must be exercised by a prosecutor in dealing with an accused person without legal representation. The basic requirement, while complying in all other respects with these guidelines, is to ensure that the accused person is properly informed of the prosecution case so as to be equipped to respond to it, while the prosecutor maintains an appropriate detachment from the accused person's interests.

Oral communications with an unrepresented accused person, so far as practicable, should be witnessed if face to face and promptly noted in all cases. A record should be maintained of all information and material provided to an unrepresented accused person. Prosecutors may also, where appropriate, communicate with the accused person through the court.

While a prosecutor has a duty of fairness to an accused person, it is not a prosecutor's function to advise an accused person about legal issues, evidence, inquiries and investigations that might be made, possible defences or the conduct of the defence. However, the prosecutor also has a duty to ensure that the trial judge gives appropriate assistance to the unrepresented accused person.

Where there is a child witness, regard must be had to section 28 of the *Evidence (Children) Act 1997*.

In relation to adult and child complainants of sexual assault, regard must be had to section 294A of the *Criminal Procedure Act 1986*.

24 Judge Alone Trials

[Furnished 20 October 2003]

An accused person may elect to be tried by a judge alone, subject to the consent of the Director or his delegate (see section 132 of the Criminal Procedure Act 1986.)

Each case is to be considered on its merits. There is no presumption in favour of consent. It should be borne in mind that the community has a role to play in the administration of justice by serving as jurors and those expectations and contributions are not lightly to be disregarded. Consent is not to be given where the principal motivation appears to be "judge shopping". Consent is not to be given where the election has not been made in accordance with section 132(4) of the Criminal Procedure Act 1986 (see *R v Coles* (1993) 31 NSW LR 550).

Predictions of the likelihood of conviction by either jury or judge alone or of a jury disagreement are not to be considered.

The principal consideration is the achieving of justice by the fairest and most expeditious means available.

Trials in which judgment is required on issues raising community values – for example: reasonableness, provocation, dishonesty, indecency, substantial impairment under section 23A of the Crimes Act 1900 – or in which the cases are wholly circumstantial or in which there are substantial issues of credit should ordinarily be heard by a jury.

Cases which may be better suited to jury trial include those where the interests of the alleged victim require a decision by representatives of the community.

Cases which may be better suited to trial by judge alone include cases where:

- the evidence is of a technical nature, or where the main issues arise (in cases other than substantial impairment under section 23A of the Crimes Act 1900) out of expert opinions (including medical experts);
- there are likely to be lengthy arguments over the admissibility of evidence in the course of the trial;
- there is a real and substantial risk that directions by the trial judge or other measures will not be sufficient to overcome prejudice arising from pre-trial publicity or other cause;
- the only issue is a matter of law;
- the offence is of a trivial or technical nature;
- witnesses or the accused person/s may so conduct themselves as to cause a jury trial to abort; and/or
- significant hurt or embarrassment to any alleged victim may thereby be reduced.

The power to consent has been delegated by the Director to all Crown Prosecutors and Trial Advocates. Where uncertainty exists as to whether or not to consent, reference should be made to the Director or a Deputy Director, the Senior Crown Prosecutor or a Deputy Senior Crown Prosecutor.

25 Jury Selection

[Furnished 20 October 2003]

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

26 Witnesses

[Furnished 20 October 2003]

The prosecution should generally call all apparently credible witnesses whose evidence is admissible and essential to the complete unfolding of the prosecution case or is otherwise material to the proceedings. Unchallenged evidence that is merely repetitious should not be called unless that witness is requested by the accused.

If a decision is made not to call evidence from a material witness where there are identifiable circumstances clearly establishing that his or her evidence is unreliable, the prosecution, where the accused requests that the witness be called and where appropriate, should assist the accused to call such a witness by making him or her available or, in some cases, call the witness for the purpose of making him or her available for cross-examination without adducing relevant evidence in chief (see Rule A.66B(j) of the Solicitors' Rules – Appendix B).

Mere inconsistency of the testimony of a witness with the prosecution case is not, of itself, grounds for refusing to call the witness. A decision not to call a witness otherwise reasonably to be expected to be called should be notified to the accused a reasonable time before the commencement of the trial, together with a general indication of the reason for the decision (eg The witness is not available or not accepted as a witness of truth). In some circumstances, the public interest may require that no reasons be given. Where practicable the prosecution should confer with the witness before making a decision not to call the witness.

If the defence provides a statement of a witness containing evidence that is unfavourable to the prosecution case, the material may be investigated by police. In any event, such action does not alone oblige the prosecution to call that evidence in its case.

There should be disclosure of any information, including any criminal convictions, in the possession of the prosecutor that reflects materially on the credibility of a prosecution witness or where cross-examination based upon it might reasonably be expected to materially affect that credibility.

The mere unwillingness or unavailability of a witness to testify is not ordinarily required to be disclosed unless the matter proceeds to a contested hearing.

Any immunity (indemnity or undertaking) – granted or approved in principle – or inducement provided to a prosecution witness should be disclosed to the accused in advance of the trial.

Child witnesses are to be treated, so far as practicable, consistently with the provisions of the UN Convention on the Rights of the Child (excerpts from which are Appendix G).

27 Evidence

[Furnished 20 October 2003]

Disputed Evidence

Especially where the defence advises that the admission of evidence is to be challenged, care should be taken in opening a case to a jury to ensure that nothing is said that may lead to a subsequent discharge of the jury.

Illegally or Improperly Obtained Evidence

Where evidence intended to be led appears on reasonable grounds to have been illegally or improperly obtained, the prosecutor must inform the accused within a reasonable time (and see Barristers' and Solicitors' Rule 67 – Appendix B.)

Hypnosis or EMDR Evidence

The following guidelines apply to evidence obtained by either hypnosis or EMDR (eye movement desensitization and reprocessing) and should be read accordingly. Failure to comply with them will give rise to a high probability that the court will decline to admit such evidence, whether tendered by the prosecution or the defence.

Prosecutors will have regard to these guidelines when determining whether or not such evidence should be tendered on behalf of the prosecution.

1. Hypnotically induced evidence (to be read for present purposes as including reference to evidence obtained by EMDR) must be limited to matters which the witness has recalled and related prior to the hypnosis (or EMDR) – referred to as “the original recollection”. In other words, evidence will not be tendered by the prosecution where its subject matter was recalled for the first time under hypnosis or thereafter. The effect of that restriction is that only detail recalled for the first time under hypnosis or thereafter may be advanced as evidence in support of the original recollection.
2. The substance of the original recollection must have been preserved in written, audio or video recorded form.
3. The hypnosis must have been conducted in accordance with the following procedures:
 - (a) the witness gave informed consent to the hypnosis;
 - (b) the hypnosis was performed by a person who is experienced in its use and who is independent of the police, the prosecution and the accused person;
 - (c) the witness's original recollection and other information supplied to the hypnotist concerning the subject matter of the hypnosis was recorded in writing or by audio or videorecording in advance of the hypnosis; and
 - (d) the hypnosis was performed in the absence of police, the prosecution and the accused person, but was video recorded.

28 Sentence

[Furnished 20 October 2003; amended 1 June 2007]

The prosecution has an active role to play in the sentencing process.

The starting point for a consideration of its role is Barristers' Rule 71 and Solicitors' Rule A71 (see Appendix B) which provide:

"A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:

- (a) must correct any error made by the opponent in address on sentence;
- (b) must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
- (c) must assist the court to avoid appealable error on the issue of sentence;
- (d) may submit that a custodial or non-custodial sentence is appropriate; and
- (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority."

In pursuing this last requirement, a prosecutor should:

- adequately present the facts;
- ensure that the court is not proceeding upon any error of law or fact;
- provide assistance on the facts or law as required;
- fairly test the opposing case as required;
- refer to relevant official statistics and comparable cases and the sentencing options available;
- if it appears there is a real possibility that the court may make a sentencing order that would be inappropriate and not within a proper exercise of the

sentencing discretion, make submissions on that issue - particularly if, where a custodial sentence is appropriate, the court is contemplating a non-custodial penalty.

It is a judicial officer's duty to find and apply the law and that responsibility is not circumscribed by the conduct of legal representatives. Any understanding between the prosecution and defence as to submissions that will be made on sentence does not bind the judge or magistrate.

A prosecutor should not in any way fetter the discretion of the Director to appeal against the inadequacy of a sentence (including by informing the court or an opponent whether or not the Director would, or would be likely to, appeal, or whether or not a sentence imposed is regarded as appropriate and adequate). The Director's instructions may be sought in advance in exceptional cases.

Co-operation by convicted persons with law enforcement agencies should be appropriately acknowledged and, if necessary, tested at the time of sentencing. When the NSW Police Force wishes to bring an informer's assistance to the attention of a sentencing court, the NSW Police Force Handbook court matters instruction requires it to do so by way of an affidavit of assistance.

The main features of the "Affidavit of Assistance" are:

- the report of the case officer is annexed to the affidavit;
- the affidavit is sworn by the case officer's supervisor to the effect that he or she has conducted appropriate enquiries and is satisfied that the contents of the report are true and accurate; and
- the affidavit is to be delivered by the case officer to the prosecutor

seven working days before the sentence date.

Prosecutors should refer also to [Guideline 29](#) (Appeals Against Sentence).

Defence Disclosure on Sentence

Unless copies of all documents to be tendered by the defence on sentence are lodged with the ODPP at least two clear working days before the hearing of the matter by the court, the prosecution may make an application for a direction under section 4(2) and (3) of the Evidence Act 1995 that the law of evidence applies to the proceedings. If this application is successful, hearsay evidence will be inadmissible pursuant to the general provisions of the Evidence Act. If the application is not granted, the prosecution may seek an adjournment for the sentence hearing to be re-listed before the same magistrate or judge.

If an adjournment is not granted, the prosecution will indicate to the court that it has not been possible to test the material and therefore it is the prosecution's submission that the court should give it less weight.

A receipt is to be given for documents supplied in advance to the prosecution.

Where copies of defence documents have been supplied in advance to the prosecution, the ODPP will advise the defence in writing at least 24 hours before the hearing of the matter if the authors of any defence documents are required for cross-examination.

Where the defence documents are not supplied in advance, the prosecution will retain copies of those tendered on the prosecution file and in specific cases or at random will seek verification of those documents after the hearing.

29 Appeals Against Sentences

[Furnished 20 October 2003; amended 1 June 2007]

The prosecutor in any case conducted by the ODPP should assess any sentence imposed. If it is considered to be appellable or possibly so, or it is a matter likely to attract significant public interest, a report should be provided promptly to the Director for determination of whether or not an appeal will be instituted.

In determining whether or not to appeal against a sentence imposed by a judge or magistrate, the Director will have regard to the following matters:

- (i) whether or not the sentencer made a material error of law or fact, misunderstood or misapplied proper sentencing principles, or wrongly assessed or omitted to consider some salient feature of the evidence, apparent from the remarks on sentence;
- (ii) manifest inadequacy of the sentence which may imply an error of principle by the sentencer;
- (iii) the range of sentences (having regard to official statistics and comparable cases) legitimately open to the sentencer on the facts;
- (iv) the conduct of the proceedings at first instance, including the prosecution's opportunity to be heard and the conduct of the case;
- (v) the element of double jeopardy involved in a prosecution/Crown appeal and its likely effect on the outcome (the probable imposition of a lesser sentence than was appropriate at first instance);
- (vi) the appeal court's residual discretion not to intervene, even if the sentence is considered too lenient; and/or
- (vii) whether the appeal is considered likely to succeed.

In addition to the above matters prosecutors should be aware that:

- prosecution/Crown appeals are and ought to be rare, as an exception to the general conduct of the administration of criminal justice they should be brought to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic approaches to be corrected and to correct sentences that are so disproportionate to the seriousness of the crime as to lead to a loss of confidence in the administration of criminal justice;
- the appellate court will intervene only where it is clear that the sentencer has made a material error of fact or law or has imposed a sentence that is manifestly inadequate (which in the exercise of discretion may still not be sufficient cause);
- the appellate court will take into account the advantages enjoyed by the sentencer which are denied to it;
- the appellate court will not be concerned whether or not it would have found the facts differently, but will consider whether or not it was open to the sentencer to find the facts as he or she did;
- a respondent to a prosecution/Crown appeal suffers a species of double jeopardy which is undesirable;
- apparent leniency or inadequacy alone may not be enough to justify appellate correction;
- scope must remain for the exercise of mercy by the primary sentencer;
- the range of appropriate sentences with respect to a particular offence is a matter on which reasonable minds may differ; and

- if an appeal is to be instituted, it must be done promptly.

Prosecutors should refer also to Guideline 28 (Sentence).

When a Crown appeal against sentence is being considered, the offender should be so advised if time reasonably permits and again when a direction has been given. Such advice should be given before any information about the appeal or the process is released publicly. If an appeal is instituted and later abandoned, the offender is also to be advised in a timely manner.

The spirit and intent of Barristers' and Solicitors' Rules 71 and A71 (see Appendix B) should also guide the approach taken by prosecutors appearing in the Court of Criminal Appeal (in both Crown and offender appeals).

In some appeals the circumstances may justify the Crown submitting that the particular case falls within the "worst case" category and so should attract the maximum penalty or a penalty close to the maximum. In other appeals it may be appropriate to inform the court of the range of sentences which the Crown considers to be appropriate, having regard to official statistics and comparable cases. A specific sentence should not be suggested unless the court expressly seeks assistance in the calculation of an appropriate term of imprisonment.

30 Proceeds of Crime

[Furnished 20 October 2003]

Confiscation is an issue to be considered from the outset in all cases - it is not a mere "optional add-on" to sentence proceedings or to the conduct of a prosecution. It may be available in many differing types of cases, including, for example, some drug offences, bribery and "contract" bashings and "contract" killings. The ODPP is responsible for confiscation in all matters other than those in which the NSW Crime Commission acts.

Although the *Confiscation of Proceeds of Crime Act 1989* is conviction based, restraining and ancillary orders (which preserve property for possible future confiscation) may be sought up to 48 hours before charges are laid.

Pecuniary penalty orders (for non-drug offences) and forfeiture orders are only available after conviction.

The Advising Unit should be consulted promptly if confiscation proceedings may be available.

31 Retrials

[Furnished 20 October 2003; amended 1 June 2007]

Where a trial has ended without verdict consideration should be given to whether or not a retrial is required. Factors to be considered include:

- whether or not the jury was unable to agree (or the trial ended for other reasons);
- whether or not another jury would be in any better or worse position to reach a verdict;
- the cost of a retrial to the community and to the accused person;
- the views of any victim of crime involved

Where two juries have been unable to agree upon a verdict, a third or additional trial will be directed only in exceptional circumstances. Any such direction must be given by the Director or a Deputy Director.

32 Media Contact

[Furnished 20 October 2003; amended 1 June 2007]

The functions of the ODPP bring it into contact with the media (which expression includes public reporters and commentators of all kinds). This cannot and should not be avoided as the public have a right to (and should) know what is happening publicly in the criminal justice process.

However, there is a need to ensure that prosecutors are aware of the legal regime applying to such action, of the limits of their professional obligations and of the rights of others and are sensitive to the way in which their comments and conduct may be reported.

Jury trials require that the evidence be presented in a way that makes it (for the most part) immediately accessible to the media. In some other higher court proceedings, in committal proceedings and in some other proceedings in the Local Court that usually will not be the case because of the use of written statements by witnesses and the presentation of evidence and other material in documentary form.

In trials, rulings on evidence and any other matters dealt with in the absence of the jury (where one is to be or has been empanelled) should not be commented upon publicly by prosecutors, other than to remind the media that those matters should not be reported during the trial.

The seeking and giving of legal advice within the ODPP is not carried out in public and the process is subject to privilege. No public comment concerning matters referred to the ODPP for advice is to be made without the Director's approval.

Statutory Provisions Limiting Publication

Prosecutors and all ODPP staff should be aware of the following statutory provisions

that affect the publication of information and comment

- (a) *The Children (Criminal Proceedings) Act 1987* and the *Children (Care and Protection) Act 1987* strictly prohibit and make an offence the publication or broadcast of the identity of a child or material that might enable identification. In no circumstances should the media be given the name or description or other means of likely identification (including, for example, the name or a photograph of a family member) of a child called as a witness, a child to whom the proceedings relate or a child who is otherwise involved or mentioned in any proceedings. This prohibition extends to a deceased child and a child victim's siblings where they are children.
- (b) Section 291 of the *Criminal Procedure Act 1986* requires certain criminal proceedings to be held in camera if the court so directs.
- (c) Section 578A of the *Crimes Act 1900* and Part 5, Division 1 of the *Criminal Procedure Act 1986* deal with, respectively, the non-publication of evidence and the prohibition of publication of the identity of complainants in proceedings for certain offences.
- (d) Part 5, Division 2 of the *Criminal Procedure Act 1986* limits the disclosure of privileged sexual assault counselling communications.
- (e) The *Witness Protection Act 1995* protects the identity of participants in the Witness Protection Program.
- (f) The *Law Enforcement (Controlled Operations) Act 1997* confers wide powers on courts to protect from publication the identity of participants in authorised operations.
- (g) The *Law Enforcement and National*

Security (Assumed Identities) Act 1998 enables courts to protect the identity of certain officers who have an assumed identity approval under the Act.

- (h) The *Privacy and Personal Information Protection Act 1998* restricts the collection, retention, access, alteration, use and disclosure of personal information in some circumstances.
- (i) The *Health Records and Information Privacy Act 2002* affects the collection, storage, access, accuracy, use and disclosure of personal health information.

Prosecutors and ODPP staff should not provide the media with any information which would circumvent the effect or permit a breach of Part 5 of the *Criminal Procedure Act 1986* or section 578A of the *Crimes Act* or the provisions of the legislation relating to children.

Section 314 of the *Criminal Procedure Act 1986* provides for media representatives to inspect court documents on application to a court registrar.

Professional Rules

All legal practitioners (solicitors and barristers) are bound by Bar Rule 59 of the Barristers' Rules (see Appendix B) which provides as follows:

"59. A barrister must not publish, or take steps towards the publication of, any material concerning current proceedings in which the barrister is appearing or has appeared, unless:

- (a) the barrister is merely supplying, with the consent of the instructing solicitor or the client, as the case may be:
 - (i) copies of pleadings or court process in their current form, which have been filed, and which

32 Media Contact Continued

[Furnished 20 October 2003; amended 1 June 2007]

have been served in accordance with the court's requirements;

- (ii) copies of affidavits or witness statements, which have been read, tendered or verified in open court, clearly marked so as to show any parts which have not been read, tendered, or verified or which have been disallowed on objection;

- (iii) copies of the transcript of evidence given in open court, if permitted by copyright and clearly marked so as to show any corrections agreed by the other parties or directed by the court;

- (iv) copies of exhibits admitted in open court and without restriction on access; or

- (v) copies of written submissions which have been given to the court, and which have been served on all other parties; or

- (b) the barrister, with the consent of the instructing solicitor or the client, as the case may be, is answering unsolicited questions from journalists concerning proceedings in which there is no possibility of a jury ever hearing the case or any re-trial and:

- (i) the answers are limited to information as to the identity of the parties or of any witness already called, the nature of the issues in the case, the nature of the orders made or judgment given including any reasons given by the court;

- (ii) the answers are accurate and uncoloured by comment or unnecessary description; and

- (iii) the answers do not appear to

express the barrister's own opinions on any matters relevant to the case."

This rule should be read carefully and understood.

For the purposes of Rule 59, in proceedings in which ODPP Lawyers, Crown Prosecutors or private counsel appear, the Director is the "client".

General

All inquiries from the media for information should be directed to the Media Liaison and Communications Officer ("MLCO"), except where the information requested is of an uncontroversial nature, is of a kind routinely provided directly by prosecutors and has been provided to the defence or is readily obtainable by the defence (for example, statements of facts admitted or handed up to the bench on bail hearings or pleas of guilty, names or addresses of witnesses who have given them in open testimony in court, details of charges heard in open court or included in a Court Attendance Notice, agreed statements of facts that have been tendered and admitted). Prosecutors may provide the media with the MLCO's contacts (including e-mail address, work and mobile telephone numbers) who may be contacted at all times.

Media releases on behalf of the ODPP are to be issued only by the MLCO with the approval of the Director (or if he or she is not readily available, a Deputy Director). If it is considered that something should be issued proactively to the media on behalf of the ODPP (for example the issue of a statement of a general kind), the matter should be referred to the Director's Chambers or the MLCO.

In special cases where particular sensitivity may be required (and legal practitioners should exercise judgment so as to identify

such cases) there may be a need to refer to the Director or the MLCO for advice or instructions on how to proceed; but generally the instructions are as follows.

1. There is no general obligation to provide information to the media.
2. There must be compliance with Bar Rule 59, except for the following matters.
3. Notwithstanding Bar Rule 59, the names and addresses of victims and addresses of other witnesses who are to be or have been called in court proceedings should not be supplied to the media. Information already given in open court (including names and addresses) may be confirmed. Care must be taken to ensure that the identities of witnesses such as prisoners, informers and others who are giving evidence at some personal risk are kept confidential (so far as is possible) and are not disclosed to the media.
4. Notwithstanding Bar Rule 59, true copies of open exhibits (including paper photographs and prints) may, if convenient, be inspected or provided if otherwise appropriate; or the media may be referred to section 314 of the Criminal Procedure Act 1986 (see above).
5. Notwithstanding Bar Rule 59, videotapes and audiotapes of recorded interviews, re-enactments, demonstrations and identifications and all digital photographs and recordings are not to be provided or made available for inspection.

32 Media Contact Continued

[Furnished 20 October 2003; amended 1 June 2007]

6. It is permissible if requested by the media for a prosecutor to give his or her name and indicate that the prosecution is being conducted by the ODPP, but many prosecutors prefer to remain anonymous and security considerations may militate against disclosure of names.
7. It is not appropriate to discuss with the media the likely result of proceedings or the prospect of appellate proceedings being instituted, a matter being discontinued or an ex officio indictment being filed.
8. It is not appropriate to comment to the media on the correctness or otherwise of any determination of a court.

Discretion should be exercised in relation to sensitive material (eg. Medical reports, pre-sentence reports) or material produced under compulsion, where it may be more appropriate to direct inquiries to the court. Medical (including psychiatric and psychological) reports on offenders and victims should not be made available to the media by the prosecution.

Statements, summaries, criminal histories, exhibits or copies (including documents, paper photographs, plans and the like), the disclosure of which is permissible pursuant to Bar Rule 59 and these guidelines, are only to be provided to the media, subject to the following qualifications. Inspection of any such items should take place in the ODPP officer's presence and only if convenient. It is permissible to allow the media to view lengthy documents for the purposes of accurate reporting and where appropriate to do so otherwise than in the presence of the prosecution representative. The media may photograph real evidence and paper photographs in evidence if they

wish and if that may be done conveniently. Copies of statements of witnesses admitted into evidence with addresses and telephone numbers deleted may be provided if that is the more convenient course, subject to the restrictions and provisions referred to above. Transcripts of court proceedings may not be provided or displayed to the media because of copyright restrictions.

Disclosure of documentation or information, other than that permitted by Bar Rule 59 and in accordance with these guidelines, is not to occur unless approved by the Director or a Deputy Director. The public release of information must be done consistently. Public confusion and criticism may result if different officers publish different material about the same or a related or comparable matter. Uncoordinated release of information may also prejudice action being taken by others (for example the Attorney General) which may not be known to all officers.

Requests for Interviews

Requests for interviews with ODPP officers on matters concerning prosecutions should be referred to the MLCO who may consult with the Director.

Incorrect Media Reports

Incorrect media reports about the conduct of a prosecution or any other matter concerning the ODPP may be reported to the MLCO for remedial action.

Special Interest Matters

Prosecutors with the conduct of matters that are likely to attract significant media attention are requested to provide details of the matters, in advance, to the MLCO.

33 International Guidelines

[Furnished 20 October 2003]

In 1990 the United Nations adopted Guidelines on the Role of Prosecutors. They are Appendix H.

In 1999 the International Association of Prosecutors adopted Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors. They are Appendix A.

In 1985 the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. It is Appendix I.

These instruments provide further guidance for prosecutors.

APPENDIX A

[Furnished on 20 October 2003]

[Guidelines 1,33]

International Association of Prosecutors

STANDARDS OF PROFESSIONAL RESPONSIBILITY and THE STATEMENT OF THE ESSENTIAL DUTIES AND RIGHTS OF PROSECUTORS

1. Professional Conduct

Prosecutors shall:

- (a) at all times maintain the honour and dignity of their profession;
- (b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- (c) at all times exercise the highest standards of integrity and care;
- (d) keep themselves well-informed and abreast of relevant legal developments;
- (e) strive to be, and to be seen to be, consistent, independent and impartial;
- (f) always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- (g) always serve and protect the public interest;
- (h) respect, protect and uphold the universal concept of human dignity and human rights.

2. Independence

- 2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.

- 2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:
 - transparent;
 - consistent with lawful authority;
 - subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.
- 2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. Impartiality

Prosecutors shall perform their duties without fear, favour or prejudice. In particular they shall:

- a) carry out their functions impartially;
- (b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- (c) act with objectivity;
- (d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- (e) in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary

and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;

- (f) always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness

4. Role in criminal proceedings

- 4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.
- 4.2 Prosecutors shall perform an active role in criminal proceedings as follows:
 - (a) where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;
 - (b) when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
 - (c) when giving advice, they will take care to remain impartial and objective;
 - (d) in the institution of criminal proceedings, they will proceed only when a case is well-founded

APPENDIX A Continued

[Furnished on 20th October 2003]

[Guidelines 1,33]

International Association of Prosecutors

STANDARDS OF PROFESSIONAL RESPONSIBILITY and THE STATEMENT OF THE ESSENTIAL DUTIES AND RIGHTS OF PROSECUTORS

upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;

- (e) throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;
- (f) when, under local law and practice, they exercise a supervisory function in relation to the implementation of court decisions or perform other non-prosecutorial functions, they will always act in the public interest.

4.3 Prosecutors shall, furthermore;

- (a) preserve professional confidentiality;
- (b) in accordance with local law and the requirements of a fair trial, consider the views, legitimate interests and possible concerns of victims and witnesses, when their personal interests are, or might be, affected, and seek to ensure that victims and witnesses are informed of their rights; and similarly seek to ensure that any aggrieved party is informed of the right of recourse to some higher authority/court, where that is possible;
- (c) safeguard the rights of the accused in co-operation with the

court and other relevant agencies;

- (d) disclose to the accused relevant prejudicial and beneficial information as soon as reasonably possible, in accordance with the law or the requirements of a fair trial;
- (e) examine proposed evidence to ascertain if it has been lawfully or constitutionally obtained;
- (f) refuse to use evidence reasonably believed to have been obtained through recourse to unlawful methods which constitute a grave violation of the suspect's human rights and particularly methods which constitute torture or cruel treatment;
- (g) seek to ensure that appropriate action is taken against those responsible for using such methods;
- (h) in accordance with local law and the requirements of a fair trial, give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally or diverting criminal cases, and particularly those involving young defendants, from the formal justice system, with full respect for the rights of suspects and victims, where such action is appropriate.

5. Co-operation

In order to ensure the fairness and effectiveness of prosecutions, prosecutors shall:

- (a) co-operate with the police, the courts, the legal profession, defence counsel, public defenders and other government agencies, whether nationally or internationally; and
- (b) render assistance to the prosecution services and colleagues of other jurisdictions, in accordance with the law and in a spirit of mutual co-operation.

6. Empowerment

In order to ensure that prosecutors are able to carry out their professional responsibilities independently and in accordance with these standards, prosecutors should be protected against arbitrary action by governments. In general they should be entitled:

- (a) to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal or other liability;
- (b) together with their families, to be physically protected by the authorities when their personal safety is threatened as a result of the proper discharge of their prosecutorial functions;

APPENDIX A Continued

[Furnished on 20 October 2003]

[Guidelines 1,33]

International Association of Prosecutors

STANDARDS OF PROFESSIONAL RESPONSIBILITY and THE STATEMENT OF THE ESSENTIAL DUTIES AND RIGHTS OF PROSECUTORS

- (c) to reasonable conditions of service and adequate remuneration, commensurate with the crucial role performed by them and not to have their salaries or other benefits arbitrarily diminished;
- (d) to reasonable and regulated tenure, pension and age of retirement subject to conditions of employment or election in particular cases;
- (e) to recruitment and promotion based on objective factors, and in particular professional qualifications, ability, integrity, performance and experience, and decided upon in accordance with fair and impartial procedures;
- (f) to expeditious and fair hearings, based on law or legal regulations, where disciplinary steps are necessitated by complaints alleging action outside the range of proper professional standards;
- (g) to objective evaluation and decisions in disciplinary hearings;
- (h) to form and join professional associations or other organizations to represent their interests, to promote their professional training and to protect their status; and
- (i) to relief from compliance with an unlawful order or an order which is contrary to professional standards or ethics.

APPENDIX B

[Furnished 20 October 2003]

[Guidelines 3, 18, 26, 27, 28, 29, 32]

NEW SOUTH WALES BARRISTERS' RULES 62 - 72

Prosecutor's duties

62. 62.A prosecutor must fairly assist the court to arrive at the truth, must seek impartially to have the whole of the relevant evidence placed intelligibly before the court, and must seek to assist the court with adequate submissions of law to enable the law properly to be applied to the facts.
63. A prosecutor must not press the prosecution's case for a conviction beyond a full and firm presentation of that case.
64. A prosecutor must not, by language or other conduct, seek to inflame or bias the court against the accused.
65. A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds to be capable of contributing to a finding of guilt and also to carry weight.
66. A prosecutor must disclose to the opponent as soon as practicable all material (including the names of and means of finding prospective witnesses in connection with such material) available to the prosecutor or of which the prosecutor becomes aware which could constitute evidence relevant to the guilt or innocence of the accused, unless:
- (a) such disclosure, or full disclosure, would seriously threaten the integrity of the administration of justice in those proceedings or the safety of any person; and
 - (b) the prosecutor believes on reasonable grounds that such a threat could not be avoided by confining such disclosure, or full disclosure, to the opponent being a legal practitioner, on appropriate conditions which may include an undertaking by the opponent not to disclose certain material to the opponent's client or any other person.
- 66A. A prosecutor who has decided not to disclose material to the opponent under Rule 66 must consider whether:
- (a) the defence of the accused could suffer by reason of such non-disclosure;
 - (b) the charge against the accused to which such material is relevant should be withdrawn; and
 - (c) the accused should be faced only with a lesser charge to which such material would not be so relevant.
- 66B. A prosecutor must call as part of the prosecution's case all witnesses:
- (a) whose testimony is admissible and necessary for the presentation of the whole picture;
 - (b) whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
 - (c) whose testimony or statements were used in the course of any committal proceedings; and
 - (d) from whom statements have been obtained in the preparation or conduct of the prosecution's case;
- unless:
- (e) the opponent consents to the prosecutor not calling a particular witness;
 - (f) the only matter with respect to which the particular witness can give admissible evidence has been dealt with by an admission on behalf of the accused; or
 - (g) the prosecutor believes on reasonable grounds that the administration of justice in the case would be harmed by calling a particular witness or particular witnesses to establish a particular point already adequately established by another witness or other witnesses;
- provided that:
- (h) the prosecutor is not obliged to call evidence from a particular witness, who would otherwise fall within (a)-(d), if the prosecutor believes on reasonable grounds that the testimony of that witness is plainly unreliable by reason of the witness being in the camp of the accused; and
 - (i) the prosecutor must inform the opponent as soon as practicable of the identity of any witness whom the prosecutor intends not to call on any ground within (f), (g) and (h), together with the grounds on which the prosecutor has reached that decision.

APPENDIX B Continued

[Furnished 20 October 2003]

[Guidelines 3, 18, 26, 27, 28, 29, 32]

NEW SOUTH WALES BARRISTERS' RULES 62 - 72

67. A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully obtained must promptly:
- inform the opponent if the prosecutor intends to use the material; and
 - make available to the opponent a copy of the material if it is in documentary form.
68. A prosecutor must not confer with or interview any of the accused except in the presence of the accused's representative.
69. A prosecutor must not inform the court or the opponent that the prosecution has evidence supporting an aspect of its case unless the prosecutor believes on reasonable grounds that such evidence will be available from material already available to the prosecutor.
70. A prosecutor who has informed the court of matters within Rule 69, and who has later learnt that such evidence will not be available, must immediately inform the opponent of that fact and must inform the court of it when next the case is before the court.
71. A prosecutor must not seek to persuade the court to impose a vindictive sentence or a sentence of a particular magnitude, but:
- must correct any error made by the opponent in address on sentence;
 - must inform the court of any relevant authority or legislation bearing on the appropriate sentence;
 - must assist the court to avoid appealable error on the issue of sentence;
- (d) may submit that a custodial or non-custodial sentence is appropriate; and
- (e) may inform the court of an appropriate range of severity of penalty, including a period of imprisonment, by reference to relevant appellate authority
72. A barrister who appears as counsel assisting an inquisitorial body such as the Independent Commission Against Corruption, the National Crime Authority, the Australian Securities Commission, a Royal Commission or other statutory tribunal or body having investigative powers must act in accordance with Rules 62, 64 and 65 as if the body were the court referred to in those Rules and any person whose conduct is in question before the body were the accused referred to in Rule 64.

THE LAW SOCIETY OF NEW SOUTH WALES SOLICITORS RULES A62 to A72

[Rules A.62-A.72 of the Advocacy Rules included in the Solicitors' Rules are in generally similar terms to the Barristers' Rules set out above. Where there are differences the relevant rule and part are set out below.]

A.66B ...and

- the prosecutor must call any witness whom the prosecutor intends not to call on the ground in (h) if the opponent requests the prosecutor to do so for the

purpose of permitting the opponent to cross-examine that witness.

A.67 A prosecutor who has reasonable grounds to believe that certain material available to the prosecution may have been unlawfully or improperly obtained must promptly:

- inform the opponent if the prosecutor intends to use the material; and

(b) make available to the opponent a copy of the material if it is in documentary form;

(c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.

APPENDIX C

[Furnished 20 October 2003; amended 1 June 2007]

[Guidelines 17]

INTERAGENCY PROTOCOL FOR INDEMNITIES & UNDERTAKINGS

1. This interagency protocol has been approved by the Attorney General to apply to applications for, and revocations of, indemnities (s 32 Criminal Procedure Act 1986) and undertakings (s 33 Criminal Procedure Act 1986).
2. The protocol applies to applications made by agencies of government, including the Director of Public Prosecutions ("DPP"). It does not apply to applications made by, or on behalf of, individuals.
3. The protocol applies to revocations where the initial application for the indemnity was made by a government agency (the applicant). It does not apply to revocations where the initial application was made by, or on behalf of, individuals.
4. that the Attorney General grant an indemnity or an undertaking, or may recommend that the Attorney General not grant an indemnity or an undertaking, or may provide advice to the Attorney General in relation to an application for an indemnity or an undertaking.
5. discuss the DPP's request, recommendation or advice with the applicant.
6. Where considered necessary to assist the Crown Advocate to prepare advice to the Attorney General, the Crown Advocate may convene a conference involving relevant parties.
7. Prior to the DPP settling advice and any recommendation to the Attorney General concerning an application, the DPP will first notify the applicant of any concerns the DPP has about the application and/or the applicant's recommendation and invite the applicant to comment.
8. Any request, recommendation or advice from the DPP to the Attorney General will include a copy of the original submission by the applicant supporting the application, as well as any additional submissions made in response to a notification under paragraph 7 of this protocol.
9. In exceptional cases, the Attorney General may, upon receipt of the Crown Advocate's advice, convene a further conference with the relevant parties to discuss the issues arising from the application.
10. For the purpose of such discussion, the Attorney General may consider it appropriate to disclose the substance of the Crown Advocate's advice to the applicant and the DPP on a confidential basis.

Applications

4. Applications should be in accordance with the guidelines published by the DPP in the Prosecution Guidelines. The Crime Commission has agreed to submit its applications to the Attorney General through the DPP.
5. Any matter not dealt with in the DPP's guidelines, which the applicant considers relevant to the application, should be expressly stated. If any matter which an applicant, not being the DPP, considers relevant to the application comes to the attention of the applicant after the application has been submitted, it is the responsibility of the applicant to formally and promptly draw that matter to the attention of the DPP in writing.
6. The DPP may request or recommend
7. When the DPP sends a request, recommendation or advice to the Attorney General it is processed by the Legal & Community Services Division within the Attorney General's Department and briefed to the Crown Advocate to advise the Attorney General.
8. The Crown Advocate may discuss any concerns the Crown Advocate has about the application with the applicant and/or the DPP if the Crown Advocate believes that would be of assistance before advising the Attorney General on the application.
9. With the consent of the Attorney General, the Crown Advocate may

Revocations

15. The DPP may request or recommend that the Attorney General revoke an indemnity or an undertaking, or may provide advice to the Attorney General in relation to the revocation of an indemnity or an undertaking.
16. Prior to the DPP settling advice and any recommendation to the Attorney General concerning a revocation application or advice, the DPP will first notify the original applicant of any grounds it has for seeking a revocation and invite the applicant to comment.
17. Any request, recommendation or advice from the DPP to the Attorney General will include a copy of any submissions made by the applicant in

APPENDIX C

[Furnished 20 October 2003; amended 1 June 2007]

[Guidelines 17]

INTERAGENCY PROTOCOL FOR INDEMNITIES & UNDERTAKINGS

- response to a notification under paragraph 16 of this protocol.
18. When the DPP sends a request, recommendation or advice to the Attorney General concerning a revocation it is processed by the Legal & Community Services Division within the Attorney General's Department and briefed to the Crown Advocate to advise the Attorney General.
 19. The Crown Advocate may discuss any concerns the Crown Advocate has about the revocation with the applicant and/or the DPP if the Crown Advocate believes that would be of assistance before advising the Attorney General on the application.
 20. With the consent of the Attorney General, the Crown Advocate may discuss the DPP's request, recommendation or advice with the applicant.
 21. Where considered necessary to assist the Crown Advocate to prepare advice to the Attorney General, the Crown Advocate may convene a conference involving relevant parties.
 22. In exceptional cases, the Attorney General may, upon receipt of the Crown Advocate's advice, convene a further conference with the relevant parties to discuss the issues arising from the proposed revocation.
 23. For the purpose of such discussion, the Attorney General may consider it appropriate to disclose the substance of the Crown Advocate's advice to the applicant and the DPP on a confidential basis.

Forms of Immunities

TO.....[1]

Indemnity under Criminal Procedure Act 1986, s32

If you actively co-operate in an inquiry into the conviction/the committal/the trial [2]

of.....[3] for[4]

and if your evidence there is the truth, the whole truth and nothing but the truth, I grant you indemnity from prosecution for:

1.[5]; or

2. [6] any associated offence in respect of matters relevant to the inquiry/trial [7] and covered by your evidence at an inquiry/trial; or [8]

3. [9].....

.....
Attorney General

[date]

APPENDIX C Continued

[Furnished 20 October 2003; amended 1 June 2007]

[Guidelines 17]

INTERAGENCY PROTOCOL FOR INDEMNITIES & UNDERTAKINGS

Forms of Immunities

TO.....[10]

Undertaking Under Criminal Procedure Act 1986, s33

If you actively co-operate in criminal proceedings [11] against.....

.....[12]

for.....[13]

and if your evidence there is the truth, the whole truth and nothing but the truth, I undertake that

- evidence which you give or produce;
- the fact that you do so; and
- information or evidence obtained as a result

will not be used in proceedings against you except in respect of the falsity of your evidence.

Attorney General

[date]

[1] Full name of witness.

[2] Delete whichever is inapplicable.

[3] Insert name of accused or person whose conviction is subject to inquiry.

[4] Describe offence.

[5] Describe offence for which witness is in jeopardy.

[6] This sub-paragraph represents the form of words appropriate to a grant of indemnity from prosecution in respect of matters which emerge in the evidence.

[7] Delete whichever is inapplicable.

[8] The word "or" should be deleted if sub-paragraph 3 is not used.

[9] If an offence already suspected is to be the subject of indemnity, it should be fully described. For example, it could read "any part had by you in the cultivation and supply of cannabis by between the years and inclusive" to indemnify an accomplice.

[10] Insert name of witness

[11] Section 33 cannot be used for inquiries

[12] Insert name of accused.

[13] Describe offence.

APPENDIX D

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 18.19]

NEW SOUTH WALES CHARTER OF VICTIMS RIGHTS

Victims Rights Act 1996

1. Courtesy, compassion and respect

A victim should be treated with courtesy, compassion, and respect for the victim's rights and dignity.

2. Information about services and remedies

A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.³ Access to services

A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

4. Information about investigation of the crime

A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.

5. Information about prosecution of accused

1. A victim should be informed in a timely manner of the following:
 - (a) the charges laid against the accused or the reasons for not laying charges,
 - (b) any decision of the prosecution to modify or

not to proceed with charges laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,

- (c) the date and place of hearing of any charge laid against the accused,
 - (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.
2. A victim should be consulted before a decision referred to in paragraph (b) above is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm or psychological or psychiatric harm to the victim, unless:
 - (a) the victim has indicated that he or she does not wish to be so consulted, or
 - (b) the whereabouts of the victim cannot be ascertained after reasonable inquiry.

6. Information about trial process and role as witness

A victim who is a witness in the trial for the crime should be informed about the trial process and the role of the victim as a witness in the prosecution of the accused.

7. Protection from contact with accused

A victim should be protected from unnecessary contact with the accused and defence witnesses during the course of court proceedings.

8. Protection of identity of victim

A victim's residential address and telephone number should not be disclosed unless a court otherwise directs.

9. Attendance at preliminary hearings

A victim should be relieved from appearing at preliminary hearings or committal hearings unless the court otherwise directs.

10. Return of property of victim held by State

If any property of a victim is held by the State for the purpose of investigation or evidence, the inconvenience to the victim should

APPENDIX D

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 18.19]

NEW SOUTH WALES CHARTER OF VICTIMS RIGHTS

Victims Rights Act 1996

be minimised and the property returned promptly.

11. Protection from accused

A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.

12. Information about special bail conditions

A victim should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or the victim's family.

13. Information about outcome of bail application

A victim should be informed of the outcome of a bail application if the accused has been charged with sexual assault or other serious personal violence.

14. Victim impact statement

A relevant victim should have access to information and assistance for the preparation of any victim impact statement authorised by law to ensure that the full effect of the crime on the victim is placed before the court.

15. Information about impending release, escape or eligibility for absence from custody

A victim should, on request, be kept informed of the offender's impending release or escape from custody, or of any change in security classification that results in the offender being eligible for unescorted absence from custody.

16. Submissions on parole and eligibility for absence from custody of serious offenders

A victim should, on request, be provided with the opportunity to make submissions concerning the granting of parole to a serious offender or any change in security classification that would result in a serious offender being eligible for unescorted absence from custody.

17. Compensation for victims of personal violence

A victim of a crime involving sexual or other serious personal violence should be entitled to make a claim under a statutory scheme for victims compensation.

APPENDIX E

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 19]

ODPP PROTOCOL FOR REVIEWING DOMESTIC VIOLENCE OFFENCES

1. Domestic violence includes a range of violent and abusive behaviours perpetrated by one person against another. It occurs within married and de facto relationships, between family members, couples who are separated or divorced, and within shared households.
 - 1.1 Domestic violence has a profound effect on children and constitutes a form of child abuse. Children can be affected by being exposed to violence in the parental relationship, by becoming the victims of violence, or a combination of the two.
 - 1.2 Domestic violence offences are defined in s562A of the Crimes Act 1900.
2. It is not uncommon for victims of domestic violence to request that the prosecution be discontinued. This may happen for various reasons:
 - the relationship between the victim and the accused resumes
 - the victim forgives the accused
 - the victim is financially dependant on the accused
 - the accused agrees to seek counselling
 - threats, harassment or intimidation by the accused; and
 - disillusionment with the criminal justice system.
 - 2.1 Prosecutors must determine the basis for the victim's wish to not proceed. This should involve making a detailed appraisal of all the circumstances of the case.

The prosecutor should take the following steps:

 - hold a conference with the victim
 - take a written statement from the victim explaining the reasons for not wishing to proceed
 - consult with the police OIC in order to obtain his or her views, as well as any relevant information or investigations required
 - consult with other relevant agencies
 - consult with a Witness Assistance Officer; and
 - prepare a comprehensive report as to recommendations.
 - 2.2 Where the prosecutor suspects that the victim has been frightened or coerced into withdrawing the complaint, the Police OIC should be immediately advised.
 - 2.3 If the victim wants to discontinue, the prosecutor should consider the following factors when making an assessment of the circumstances of the case:
 - the conduct or violence is of a minor or trivial nature and there is no prior history of similar conduct
 - the victim has made an informed decision, free from threats, harassment or intimidation by any person
 - the police and/or the victim agree
 - the likelihood of the accused offending again
 - the victim's continuing relationship with the accused
 - the effect on that relationship of continuing with the case against the victim's wishes
 - the history of the relationship, particularly if there has been any other violence in the past including sexual assault (ie past injuries and previous withdrawal of charges by the victim)
 - where there have been repeated police callouts concerning incidents in the relationship
 - the conduct involves premeditated violence, stalking, harassment or intimidation
 - the seriousness of the offence
 - where the conduct or violence was committed during the term of an Apprehended Domestic Violence Order (under Part 15A of the Crimes Act 1900) or recognisance

APPENDIX E Continued

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 19]

ODPP PROTOCOL FOR REVIEWING DOMESTIC VIOLENCE OFFENCES

involving the same victim or similar conduct or violence

- the victim's injuries
- if the accused used a weapon
- if the accused has made any threats since the offence; and
- the effect on any children living in the household.

2.4 Prosecutors should consult with the police, the Witness Assistance Service and any other relevant service providers (including the Department of Community Services where children are involved) in determining the appropriate course of action.

3. A victim's need or perceived need for protection should be put before a bail authority by the prosecutor in any bail application by the accused.

3.1 Victims should be informed about any special bail conditions imposed on the accused that are designed to protect the victim or victim's family, and the outcome of any bail application by the accused.

3.2 Prosecutors may institute and conduct, on behalf of the victim, proceedings for an Apprehended Domestic Violence Order or variation of an existing order under Part 15A of the Crimes Act 1900 where necessary in order to protect the victim (see s 20A DPP Act 1986).

Appendix F

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 19]

NEW SOUTH WALES INTERAGENCY GUIDELINES FOR CHILD PROTECTION INTERVENTION

[EXCERPTS FROM CHAPTER 5 “CRIMINAL PROCEEDINGS”]

5.1 ISSUES TO CONSIDER

It is the responsibility of whoever is bringing the prosecution to decide whether there is sufficient evidence to proceed with charges against offenders, and to make an assessment about the emotional and cognitive competency of a child or young person to give evidence in any criminal proceedings and to determine the likelihood of a successful prosecution. In making that determination, consideration will be given to matters including evaluating prospective witnesses in terms of perceived honesty, credibility and ability to handle the rigours of the court process.

Practitioners and agencies need to be responsive to the dilemmas faced by families going through criminal prosecutions and work with children, young people and families to:

- reduce uncertainty by providing as much information as possible about court processes and procedures, including dates and the purpose of proceedings
- increase support and practical assistance
- acknowledge the reality of their distress.

5.3 COMMUNICATING THROUGHOUT CRIMINAL PROCEEDINGS

During the progress of criminal proceedings, issues will arise that need to be communicated to those working with the child or their family. Where there is an allocated case manager, that person should advise the Office of the Director of Public Prosecutions of their role and how they can be contacted. For those situations where the accused person is in the care of the Minister or the Director-General, the Department of Community Services will provide additional support as needed.

It is the responsibility of the Office of the Director of Public Prosecutions or the police officer in charge of the case, when less serious charges are involved, to keep the case manager informed of changes as they occur. These include:

- dates of court listings, hearings, trial adjournments
- dates for the hearing of evidence from a victim
- bail applications, granting of bail and any conditions
- breaches of bail conditions
- progress of proceedings

- charges withdrawn by the Crown ('no bill' applications)
- findings or determinations of courts
- sentencing decisions
- appeals
- any other matter that arises which is relevant to the safety, welfare or wellbeing of the child or young person.

It is the responsibility of the case manager to ensure this information is conveyed to other relevant agencies involved with the child or young person and their parents or care givers and, if appropriate, adjustments made to the case plan in light of the new information.

5.5 COURT PREPARATION FOR A CHILD OR YOUNG VICTIM

The Charter of Victims' Rights requires that a child or young person who gives evidence in criminal proceedings be offered information to assist their understanding of the often demanding court process and procedures. An adult of the child's choosing should also support them through the court process. This person may be any suitable person who is not a witness and who is available to assist the child or young person. The Office of the Director

Appendix F Continued

[Furnished 20 October 2003; amended 1 June 2007]

[Guideline 19]

NEW SOUTH WALES INTERAGENCY GUIDELINES FOR CHILD PROTECTION INTERVENTION

[EXCERPTS FROM CHAPTER 5 “CRIMINAL PROCEEDINGS”]

of Public Prosecutions should advise this court support person of the parameters of their role in relation to the victim.

The police should also advise the Office of the Director of Public Prosecutions if the child or young person is Aboriginal. The identification of such children and accommodation of their needs is of particular importance, given the experience of Aboriginal families and communities with the legal system. Additionally, the Office of the Director of Public Prosecutions needs to be advised by the police if a child or young person has any other special needs, such as related to a physical disability or to an intellectual or cognitive learning disability.

It is the responsibility of the Office of the Director of Public Prosecutions to ensure that a child or young person is appropriately prepared to appear as a witness. This should involve the prosecutor meeting with the child or young person and their caregivers well before the commencement of proceedings in order to assess the needs of the child or young person as a witness. If a NSW Health Sexual Assault Service or another counselling service is involved in the case, the prosecutor should liaise with that service and the case manager, if applicable, to discuss the child's or the young person's specific needs with regard to court preparation and support.

The prosecutor should at this meeting:

- assess the child's or the young person's competence to give evidence
- decide whether the child or young person's pre-recorded statement will be presented as evidence
- in chief, if this record has been made
- form an appreciation of the child's developmental level, including language and conceptual skills,
- their capacity to understand concepts of time and locality, and their capacity to concentrate
- form an appreciation of the child or young person's level of anxiety in relation to the proceedings
- establish some trust and rapport with the child or young person
- liaise with the Witness Assistance Service.

Child sexual assault matters are referred early to the Witness Assistance Service to facilitate access to counselling, support and court preparation and support.

This contact, if involving very young children, may need to occur over several meetings. It will enable the prosecutor to decide what special arrangements should be sought from

the court to facilitate the child giving evidence. There is now a presumption that children will have a right to:

- the presence of a supportive person while giving evidence
- give evidence in chief in the form of a recording, wholly or partly
- give all their evidence by closed circuit television (CCTV), or when CCTV facilities are not available, by alternative arrangements.

NOTE

It must be made clear to the child, young person and relevant parents or caregivers that the court determines court arrangements for children's testimony, and no promises can be given about particular arrangements. It should also be clarified to all relevant parties that, given the pressures on court lists, it is unlikely that the one prosecutor will remain with a matter from start to finish.

5.6 COURT DETERMINATIONS

The Office of the Director of Public Prosecutions is responsible for informing the child or young person and the parents, caregivers or guardian and the case manager, if available, of the outcome of criminal proceedings or any bargaining agreements reached with the defence.

APPENDIX G

[Furnished 20 October 2003]

[GUIDELINES 19, 21, 26]

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (Excerpts)

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.
2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another

member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

PART II

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

APPENDIX G Continued

[Furnished 20 October 2003]

[GUIDELINES 19, 21, 26]

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (Excerpts)

2. The child has the right to the protection of the law against such interference or attacks.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardians(s) or any other person who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be

imposed for offences committed by persons below eighteen years of age;

- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial

authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.
2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:
 - (a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;
 - (b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:
 - (i) To be presumed innocent until proven guilty according to law;
 - (ii) To be informed promptly and directly of the charges against him or her; and, if

APPENDIX G Continued

[Furnished on 20th October 2003]

[GUIDELINES 19, 21, 26]

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (EXCERPTS)

- appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;
- (iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;
- (iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;
- (v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;
- (vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;
- (vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:
- (a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;
- (b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.
4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

APPENDIX H

[Furnished on 20th October 2003]

[GUIDELINE 33]

UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

Qualifications, Selection and Training

1. Persons selected as prosecutors shall be individuals of integrity and ability with appropriate training and qualifications.
2. States shall ensure that:
 - (a) Selection criteria for prosecutors embody safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth, economic or other status, except that it shall not be considered discriminatory to require a candidate for prosecutorial office to be a national of the country concerned;
 - (b) Prosecutors have appropriate education and training and should be made aware of the ideals and ethical duties of their office, of the constitutional and statutory protections for the rights of the suspect and the victim, and of human rights and fundamental freedoms recognised by national and international law.
3. States shall ensure that prosecutors are able to perform their professional functions without intimidation, hindrance, harassment, improper interference or unjustified exposure to civil, penal and other liability.
4. Prosecutors and their families shall be physically protected by the authorities when their personal safety is threatened as a result of the discharge of prosecutorial functions.
5. Reasonable conditions of service of prosecutors, adequate remuneration and, where applicable, tenure, pension and age of retirement shall be set out by law or published rules or regulations.
6. Promotion of prosecutors, wherever such a system exists, shall be based on objective factors, in particular professional qualifications, ability, integrity and experience, and decided upon in accordance with fair and impartial procedures.
7. Prosecutors shall always conduct themselves in accordance with the law and the recognized standards and ethics of their profession.
8. Prosecutors shall be free to form and join professional associations or other organisations to represent their interests, to promote their professional training and to protect their status.

Role in Criminal Proceeding

10. The office of prosecutor shall be strictly separated from judicial functions.
11. Prosecutors shall perform an active role in criminal proceedings, including institution of prosecutions and, where authorised by law or consistent with local practice, in the investigation of crime, supervision over the legality of these investigations, supervision of the execution of court decisions and the exercise of other functions as representatives of the public interest.
12. Prosecutors shall, in accordance with the law, perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system.
13. In the performance of their duties, prosecutors shall:
 - (a) Carry out their functions impartially and avoid all political, social, religious, racial, cultural, sexual or any other kind of discrimination;

Status and Conditions of Service

3. Prosecutors, as essential agents of the administration of justice, shall at all times maintain the honour and dignity of their profession.
8. Prosecutors, like other citizens, are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organization. In exercising these rights, prosecutors

APPENDIX H Continued

[Furnished on 20th October 2003]

[GUIDELINE 33]

UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

- (b) Protect the public interest, act with objectivity, take proper account of the position of the suspect and the victim and pay attention to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
 - (c) Keep matters in their possession confidential, unless the performance of duty or the needs of justice require otherwise;
 - (d) Consider the views and concerns of victims when their personal interests are affected and ensure that victims are informed of their rights in accordance with the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.
14. Prosecutors shall not initiate or continue prosecution, or shall make every effort to stay proceedings, when an impartial investigation shows the charge to be unfounded.
 15. Prosecutors shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violation of human rights and other crimes recognised by international law and, where authorised by law or consistent with local practice, the investigation of such offences.
 16. When prosecutors come into possession of evidence against suspects that they know or believe on reasonable grounds was obtained through recourse to unlawful methods, which constitute a grave

violation of the suspect's human rights, especially involving torture or cruel, inhuman or degrading treatment or punishment, or other abuses of human rights, they shall refuse to use such evidence against anyone other than those who used such methods or inform the court accordingly, and shall take all necessary steps to ensure that those responsible for using such methods are brought to justice.

Discretionary Functions

17. In countries where prosecutors are vested with discretionary functions, the law or published rules or regulations shall provide guidelines to enhance fairness and consistency of approach in taking decisions in the prosecution process, including institution or waiver of prosecution.

Alternatives to Prosecution

18. In accordance with national law, prosecutors shall give due consideration to waiving prosecution, discontinuing proceedings conditionally or unconditionally, or diverting criminal cases from the formal justice system, with full respect for the rights of the suspect(s) and the victim(s). For this purpose, States should fully explore the possibility of adopting diversion schemes not only to alleviate excessive court loads, but also to avoid the stigmatization of pre-trial detention, indictment and conviction, as well as the possible adverse effects of imprisonment.
19. In countries where prosecutors are vested with discretionary functions as

to the decision whether or not to prosecute a juvenile, special consideration shall be given to the nature and gravity of the offence, protection of society and the personality and background of the juvenile. In making that decision, prosecutors shall particularly consider available alternatives to prosecution under the relevant juvenile justice laws and procedures. Prosecutors shall use their best efforts to take prosecutory action against juveniles only to the extent strictly necessary.

Relations with Other Government Agencies or Institutions

20. In order to ensure the fairness and effectiveness of prosecution, prosecutors shall strive to cooperate with the police, the courts, the legal profession, public defenders and other government agencies or institutions.

Disciplinary Proceedings

21. Disciplinary offences of prosecutors shall be based on law or lawful regulations. Complaints against prosecutors which allege they acted in a manner clearly out of the range of professional standards shall be processed expeditiously and fairly under appropriate procedures. Prosecutors shall have the right to a fair hearing. The decision shall be subject to independent review.
22. Disciplinary proceedings against prosecutors shall guarantee an objective evaluation and decision. They shall be determined in

APPENDIX H Continued

[Furnished on 20th October 2003]

[GUIDELINE 33]

UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

Observance of the Guidelines

23. Prosecutors shall respect the present Guidelines. They shall also, to the best of their capability, prevent and actively oppose any violations thereof.
24. Prosecutors who have reason to believe that a violation of the present Guidelines has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

APPENDIX I

[Furnished 20 October 2003]

[GUIDELINE 33]

UNITED NATIONS DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

A. Victims Of Crime

1. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
 2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term "victim" also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
 3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.
- Access to justice and fair treatment**
4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.
 5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.
 6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:
 - a. Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;
 - b. Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;
 - c. Providing proper assistance to victims throughout the legal process;
 - d. Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - e. Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
 7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.
- Restitution**
8. Offenders or third parties responsible for their behaviour should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.
 9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.
 10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities

APPENDIX I

[Furnished 20 October 2003]

[GUIDELINE 33]

UNITED NATIONS DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.

Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:
 - a. Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;
 - b. The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.
13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.
15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.
16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

B. Victims Of Abuse Of Power

18. "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.
19. States should consider incorporating into the national law norms proscribing abuses of power and providing remedies to victims of such abuses. In particular, such remedies should include

restitution and/or compensation, and necessary material, medical, psychological and social assistance and support

20. States should consider negotiating multilateral international treaties relating to victims, as defined in paragraph 18.
21. States should periodically review existing legislation and practices to ensure their responsiveness to changing circumstances, should enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts.

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OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

LOCATIONS

Head Office

265 Castlereagh Street
SYDNEY NSW 2000
Locked Bag A8
SYDNEY SOUTH NSW 1232
Telephone: (02) 9285 8606
Facsimile: (02) 9285 8600

DX:11525
Sydney Downtown

Regional Offices

Campbelltown

Level 3, Centrecourt Building
101 Queen Street
PO Box 1095 CAMPBELLTOWN NSW 2560
Telephone: (02) 4629 2811
Facsimile: (02) 4629 2800

DX:5125

Dubbo

Ground Floor, 130 Brisbane Street
PO Box 811, DUBBO NSW 2830
Telephone: (02) 6881 3300
Facsimile: (02) 6882 9401

DX:4019

Gosford

Level 2, 107–109 Mann Street
P O Box 1987, GOSFORD NSW 2250
Telephone: (02) 4328 7150
Facsimile: (02) 4323 1471

DX:7221

Lismore

Level 3 Credit Union Centre
101 Molesworth Street
PO Box 558, LISMORE NSW 2480
Telephone: (02) 6627 2222
Facsimile: (02) 6627 2233

DX:7707

Bathurst

Level 2
State Government Office Block
140 William Street,
PO Box 701 BATHURST NSW 2795
Telephone: (02) 6332 2555
Facsimile: (02) 6332 6800

Newcastle

Level 1, 51–55 Bolton Street
PO Box 779, NEWCASTLE NSW 2300
Telephone: (02) 4929 4399
Facsimile: (02) 4926 2119

DX:7867

Parramatta

Level 3, 146 Marsden Street
PARRAMATTA NSW 2150
PO Box 3696, PARRAMATTA NSW 2124
Telephone: (02) 9891 9800
Facsimile: (02) 9891 9866

DX:8210

Penrith

Level 2, 295 High Street,
PENRITH NSW 2750
PO Box 781, PENRITH POST BUSINESS CENTRE
NSW 2750
Telephone: (02) 4721 6100
Facsimile: (02) 4721 4149

DX:8022

Wagga Wagga

Level 3, 43-45 Johnston Street
PO Box 124, WAGGA WAGGA NSW 2650
Telephone: (02) 6925 8400
Facsimile: (02) 6921 1086

Wollongong

Level 2, 166 Keira Street
WOLLONGONG NSW 2500
PO Box 606
WOLLONGONG EAST NSW 2520
Telephone: (02) 4224 7111
Facsimile: (02) 4224 7100

DX:27833

Wollongong Court

Note: Each Office is open Monday to Friday (excluding Public Holidays) from 9.00 a.m. to 5.00 p.m. Appointments may be arranged outside these hours if necessary



OFFICE OF THE
DIRECTOR OF
PUBLIC PROSECUTIONS
NEW SOUTH WALES