

Office of the Director of Public Prosecutions

New South Wales



Annual Report 2005–2006

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



Mr R J Debus MP
Attorney General
Level 36, Governor Macquarie Tower
1 Farrer Place
Sydney NSW 2000

Dear Attorney

2005–2006 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 2006.

Yours faithfully

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

N R Cowdery AM QC
Director of Public Prosecutions

28th October 2006

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Director's Overview



Director's Overview

This is the Office's 19th Annual Report (and my 12th). For another year we have been presented with challenges broadly similar to those of past years, especially the challenge of (in the words of the State's last Premier) "doing more with less". Translating that into practice in a prosecution agency can have only one result: the quality of what is done will fall. That will be reflected in longer delays, rushed work and inadequate service of the courts and the public. The quality of criminal justice will be diminished. Does the community of NSW want that?

Another way of dealing with having less is not to do more, or even the same amount, but to do less – to decline to take on as much work. The opportunities for doing that in a mid-stream agency that cannot control the demand for its services and whose system partners are loathe to consult, cooperate and coordinate their efforts are very limited. In the years ahead we may simply have to reject some work and leave it to others to deal with the consequences.

Without regard for such problems, additional commitments continue to be suggested. For example, in December the Attorney General released the report of the Criminal Justice Sexual Offences Taskforce (of which I was a member) "Responding to sexual assault: the way forward". Of the report's 70 recommendations about 10 applied directly to the operations of my Office. While there has been considerable reform already of court procedures by amendments to the Criminal Procedure Act 1986, many of the recommendations encompass the employment of specially trained prosecutors at all levels and more Witness Assistance Service officers to stay with matters from initial bail application to the end of proceedings. That would entail significant additional expense. It is not just a matter of designating and/or reassigning officers to this area of work. For any matters, of any type, to be serviced by

dedicated prosecutors and WAS officers at all bail applications and variations, mentions, committals, arraignments, pre-trial hearings, trials, sentences and appeals, much smaller individual caseloads would be required and more officers made available at all levels. Any increase in what the Government calls "front line" staff automatically and inevitably (contrary to Government rhetoric) requires additional recurrent expenditure on corporate and support services including Research, Library, Learning and Development, Information Management and Technology, Assets and Facilities, Personnel, Financial Services and clerical support. There are concomitant capital costs involved.

In the election campaign under way at the end of the reporting period the Government aims to shed 5,000 public sector staff and the Opposition 30,000. At the same time the Government talks of recruiting 750 additional police and the NSW Police Association wants 3,000. The Corrective Services Department is opening more prisons. There has been no talk of increased funding for the agencies that, presumably, will be required to process the additional criminals apprehended by the additional police before they end up in the additional gaols. Indeed, we are all being cut. It does not seem to be a rational or properly manageable approach.

Despite these pressures, as throughout my time as Director, my officers in this year have again given professional service to the highest standards achievable. Agreed workload limits mean that they cannot be further burdened in order to carry the loads of positions that might be left vacant. In an agency where 80% of funds are expended on staff and where support services are as lean as can be achieved (and significantly leaner than in other public sector agencies), any significant financial savings can only be realised by cutting "front line" staff. If that happens, some work cannot be done well – or at all.

Staff members have dedicated themselves, nevertheless, to projects that are capable of greatly assisting the administration of criminal justice and I mention two. The Case Conferencing initiative (mentioned in my Overview last year under its then description of Criminal Case Processing) is proceeding, although it is still a work in progress and there will be further developments (and hopefully legislation) next year. Initial indications are promising. Claire Giroto, Deputy Solicitor for Public Prosecutions (Operations) and Steve O'Connor, Deputy Chief Executive Officer (Legal) of the Legal Aid Commission, on 20 September were jointly awarded the John Edmund Hennessy Fellowship which enabled them to travel to England to study relevant features of the criminal justice process there with a view to enhancing our procedures in NSW. They have formally reported on their findings.

The second was a joint project of the Library staff and the IM&T Branch, converting 9,000 unreported hard copy judgments of the Court of Criminal Appeal to electronic format and creating a searchable database for use by the Office. It was also made available to the NSW Judicial Commission. I was pleased to present to all staff involved a Director's Service Excellence Award.

Notwithstanding a notable lack of effective consultation, cooperation and coordination among criminal justice agencies, as recorded elsewhere in this report many of my staff make considerable commitments to the operation of external committees and the like. We do try to make a difference within and outside the Office.

It would be nice if the sentiment could be reciprocated. Following a number of security incidents throughout the year in the Supreme Court Bails Court, Queens Square and following numerous substantially fruitless appeals to the relevant authorities, a WorkCover

Director's Overview Continued

investigation was undertaken at my request. This culminated in a decision to relocate that court to a purpose-built facility in the St James Road complex in early 2007, with security to be improved in the existing court in the meantime. Court security elsewhere in Sydney and the State has also become a pressing issue. Its lack in some courts in other, comparable

countries has resulted in death and injury in an apparently increasingly violent age.

We operate in an ever-changing legal environment. The principle of double jeopardy is under investigation by Government, along with the recreation of the Innocence Panel in some form. Reforms to procedures in England and Wales affecting the so-called right to

silence, defence disclosure, the use of evidence of the bad character of an accused person and involving the judiciary more in case management give much food for thought. There is more that can yet be done to improve the criminal justice system and process.

Prosecution Guidelines

Amendments were made to Prosecution Guidelines 14 and 19. On 24 October provisions were made in Guideline 19 Victims of Crime to take account of legislative changes affecting child witnesses and their judicial interpretation.

On 11 November Guideline 14 Advice to Police was amended to accommodate a new protocol between the ODPP and NSW Police made on 28 October.

Consequently, the Prosecution Guidelines as in force at 30 June are published in full in this Report.

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.

The Executive Board, which I chair, continues its work. Minutes of its meetings

are provided to the Attorney General and to the Treasurer.

In the current election campaign the Opposition has announced that, in government, it would establish a Parliamentary committee of oversight over the Office (which, however, would not allow community consultation, even with victims of crime). Apparently it would review prosecution decisions, although

with what consequence is not clear. This is not to be found in any comparable jurisdiction and would be an unwarranted, unprincipled and obstructive interference with the independence and operation of the Office. Similarly, any move to convert the Director's tenure to appointment for a term should be resisted.

Senior Staff

Messrs G E Smith SC and L M B Lamprati SC continued in office as Deputy Directors.

There were no changes to senior staff in the Solicitor's Executive.

Crown Prosecutors

Mr J L A Bennett SC, Deputy Senior Crown Prosecutor, was appointed a Judge of the District Court on 1 May.

Mr P S Dare SC, Crown Prosecutor, was appointed a Magistrate of the Local Court on 27 July.

Mr D U Arnott SC was appointed as Deputy Senior Crown Prosecutor on 11 April.

Mr M McL Hobart, Crown Prosecutor, was appointed as Deputy Senior Crown Prosecutor on 6 June.

Mr P M Miller, Crown Prosecutor, was appointed as Acting Deputy Senior Crown Prosecutor on 6 June.

Mr G C Corr, Acting Crown Prosecutor, was appointed as Crown Prosecutor on 1 September.

Mr C M Everson, Barrister, was appointed as Acting Crown Prosecutor on 1 September.

Mr P R King, Barrister, was appointed as Acting Crown Prosecutor from 4 October to 3 April.

Mr W H W Norman, Crown Prosecutor, retired on 21 October.

Ms G M O'Rourke, Acting Crown Prosecutor, was appointed as Crown Prosecutor on 12 January.

Mr L J Attard, Crown Prosecutor, retired on 20 January.

Ms J Wright, Crown Prosecutor, retired on 22 January.

Mr L M Shaw, Trial Advocate, was appointed as Acting Crown Prosecutor on 23 January.

Mss A P Bowens and M M Cinque and Messrs H Baker, T W Hardman, B H Hughes, T M Macintosh and M G O'Brien continued as Acting Crown Prosecutors.

In October Mr D C Frearson SC, Deputy Senior Crown Prosecutor, appeared for the State (respondent) in an appeal in the Supreme Court of the Fiji Islands in Suva.

In March Messrs M McL Hobart and T W Thorpe were seconded for 12 months to the RAMSI assistance program as prosecutors in the Solomon Islands.

The Annual Crown Prosecutors' Conference was held at Leura in April.

The NSW Bar Association's Continuing Professional Development program applies to all Crown Prosecutors (all of whom are Barristers) and complementary CPD educational sessions were held in house throughout the year.

Travel

- The Deputy Directors and I, often accompanied by senior members of the Solicitor's Office, continued to visit regional offices, at times making MCLE presentations there (and in head office) and discussing developments of general application.
- I have participated in various NSW and interstate conferences and meetings on a range of matters connected with the criminal law, the criminal justice system and the operations of the Office.
- The Conference of Australian Directors of Public Prosecutions (CADs) met in Brisbane in March.
- In August I attended the 10th Annual Conference and General Meeting of the International Association of Prosecutors (IAP – of which I was President until the end of that meeting) in Copenhagen, Denmark.
- In September I attended the biennial meeting of the Heads of Prosecution Agencies Conference (HOPAC) in Belfast, Northern Ireland and Dublin, Republic of Ireland.
- In September I attended and addressed the Commonwealth Law Conference in London, England.
- In October I attended (on leave) and addressed a seminar in Colombo, Sri Lanka on the protection of human rights.
- In November I attended (on leave) an international meeting of Prosecutors General in Doha, Qatar and spent time at the Office of the Prosecutor of the International Criminal Court in The Hague, The Netherlands.
- In December I attended (on leave) an international meeting of Prosecutors General in Shenzhen, China.

As noted elsewhere in this report, the Office has hosted many groups of visiting prosecutors and judges from other countries during the year. For the first time, in July 2006, the Office will host four Chinese prosecutors from Beijing for a period of 12 weeks training. They will be mentored by four Office lawyers and placed in four operational groups in Sydney. Many other ODPP prosecutors will contribute to the programs undertaken by the visitors.

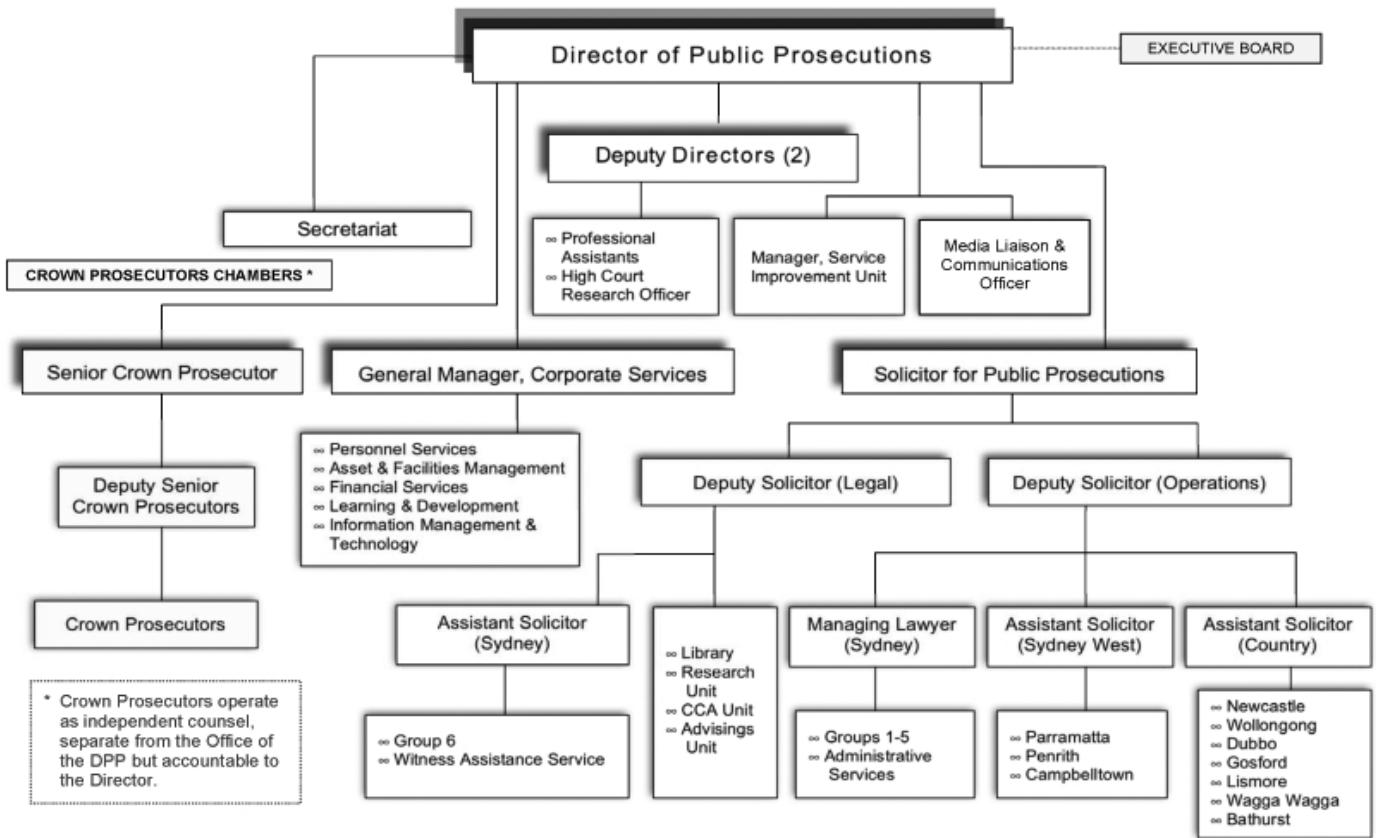
Many ODPP lawyers and Crown Prosecutors have been assisted by sponsorship to attend local, interstate and international conferences. I regard it as essential that we continue to maintain professional contact at appropriate levels with our colleagues elsewhere and with developments in criminal law and practice throughout the world. I have said this before and I shall say it again. The efficient and effective conduct of the criminal justice system in NSW requires that we continually seek out and apply in our system best international practice against the threat of crime. By doing so, there is no doubt that the ODPP remains a leader in the field.

Management and Organisation

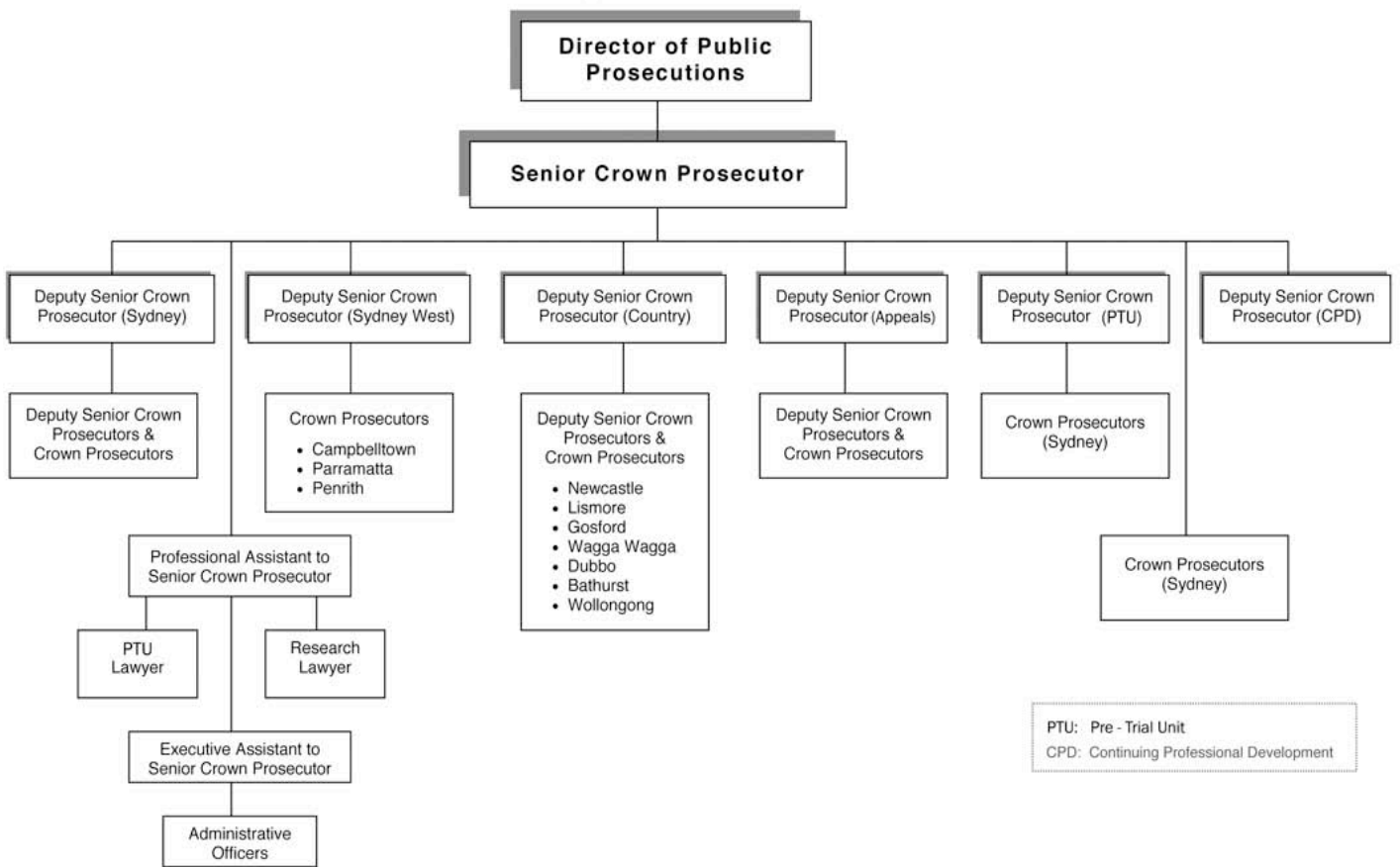


Organisational Structure

ORGANISATIONAL STRUCTURE OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS & CROWN PROSECUTORS CHAMBERS



CROWN PROSECUTORS CHAMBERS Organisational Chart



PTU: Pre - Trial Unit
CPD: Continuing Professional Development

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.

Greg Smith SC LLB

Deputy Director of Public Prosecutions

Practised as a Solicitor from admission in 1973 in two city firms and later at the Commonwealth Deputy Crown Solicitor's Office, Sydney from 1975 to 1984, mainly in the Prosecutions Section including a period as Instructing Solicitor to Stewart Royal Commission into Drug Trafficking. On establishment of the Commonwealth DPP Sydney office, acted as Senior Assistant DPP 1984–1985. Appointed as

Senior Advisor (Legal) to National Crime Authority, Sydney, 1985–1987. Admitted to the Bar in 1987. Appointed a NSW Crown Prosecutor in 1987 and Deputy Senior Crown Prosecutor in January 1998. Seconded to the ICAC as Counsel Assisting 1992–1993. Appointed as Deputy Director of Public Prosecutions in April 2002 and Senior Counsel in October 2004.

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.

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.

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 (Advisings 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 Director of Public Prosecutions, also an independent statutory officer. They are answerable by law to the Director for the performance of their duties and the Director may make arrangements for the disposition of their work.

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

Previously a private barrister and a lecturer in law. He has been a Crown Prosecutor since 1983, 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) Greg Smith SC Luigi Lamprati SC Mark Tedeschi QC	Stephen Kavanagh Patrick McMahon John Hunter (External representative) Dr. Sandra Egger (External representative)
Management Committee	Nicholas Cowdery AM QC (Chair) Greg Smith SC Luigi Lamprati SC Mark Tedeschi QC Patrick McMahon	Stephen Kavanagh Robyn Gray Philip Dart Graham Bailey Claire Giroto Jim Hughes
Audit and Risk Management Committee	Greg Smith SC (Chair) Mark Tedeschi QC Stephen Kavanagh	Luigi Lamprati SC Patrick McMahon Jeff Shaw
Information Management & Technology Steering Committee	Patrick McMahon Stephen Kavanagh Claire Giroto Robyn Gray Graham Bailey	Craig Hyland Patrick Power SC Hop Nguyen Diane Harris
Crown Prosecutors Management Committee	Mark Tedeschi QC (Chair) David Frearson SC Tim Hoyle SC Paul Conlon SC Representatives: Level 9: Richard Herps (alt. Sally Dowling) Level 8, Castlereagh St: David Arnott SC (alt. John Favretto) Pitt St: Patrick Barrett (alt. Priscilla Adey)	Peter Barnett Wayne Roser Daniel Howard SC Deborah Carney Sydney West: Keith Alder (alt. Siobhan Herbert) Country: Paul Cattini (alt. David Brack) Treasurer: Lou Lungo
Occupational Health & Safety Committee	Sydney Office Helen Langley Jenny Wells Andrew Dziedzic Employer Representatives Tonia Adamson Peter Bridge Gary Corkill Jim Hughes	Sydney West Peter Wood Michael Frost Fiona Horder Country Roger Hyman Vicki Taylor Sue Maxwell Patricia Collins
PSA/Management Joint Consultative Committee	Greg Smith SC Graham Bailey Gary Corkill David Curran	Andrew Dziedzic Claire Giroto Patrick McMahon
Witness Assistance Service Implementation Sub Committee	Gary Corkill (Chair) Peter Bridge Andrew Dziedzic	Craig Hyland Deborah Scott

Report Against Corporate Plan



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

<u>Goal</u>	<u>Strategy</u>	<u>Outcome</u>
I.1 To provide a just and independent prosecution service	I.1.1 Continually review, evaluate and improve standards for criminal prosecutions	Achievement of justice
	I.1.2 Improve the timeliness and quality of briefs through liaison with investigative agencies	

Performance Indicator

- I.1(a) Percentage of cases where costs are awarded due to the conduct of the prosecution
- I.1(b) Proportion of matters returning a finding of guilt

Report:

- I.1(a) In this reporting period, costs were awarded in 0.11% of the 17,000 cases dealt with due to the conduct of the prosecutions.
- I.1(b) 79% 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 conducted in management of unsatisfactory performance for 25 participants. Further sessions were held following enhancements to the Improving Performance and Conduct Toolkit (by Personnel and Learning and Development Branches). Toolkit 1 ½ day training sessions were conducted on 28-29 Jul, 25-26 Aug, 24-25 Oct 2005, 3 Feb, 27 Mar and 10 May 2006. A total of 53 managers and supervisors have now attended this training. A further workshop will be held later in the year.

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.

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) 84% of advisings were completed within the agreed time.
- 1.3(b) The proportion of all trials adjourned (other than hung or aborted trials) in 2005-6 on the application of the Crown was 16%.
- 1.3(c) The average number of days between arrest and committal for trial during 2005-06 was 213.

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 will be conducted this year and reported on in the next annual report. Details of past survey results have been included in the Consumer Response report at Appendix 38 at page 97.

Key Result Area 3: Accountability and efficiency

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

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) Energy: 2005 Government Energy Management Plan completed and submitted on 31 Oct 2005.

EEO Annual Report: Submitted to ODEOPE on 10 Oct 2005.

Annual Financial Statements 2005-06: Completed and will be submitted to Auditor General within the set deadline of 11 Aug 2006.

FBT: Annual return for 2005-06 submitted on time on 22 May 2006 (as per the set deadline of 22 May 2006) and quarterly payment made up to June 2006.

BAS: Monthly return submitted up to July 2006 before the set deadline of 21 July 2006.

Annual Report: 2004-2005 completed and submitted to the Attorney General within statutory guidelines.

Waste Reduction and Purchasing Plan (WRAPP), biennial report is due on 31 Aug 2007. A report has been prepared for the 2005-2006 Annual Report detailing the ODPP's recycling and waste reduction efforts.

Automatic lighting systems (Cbus) have been installed in the Criminal Case Processing areas at Campbelltown, Dubbo, Lismore and 130 Elizabeth Street 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 in 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 overnight 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	Value for money
	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	

Performance Indicator

- 3.2(a) Cost per matter disposed of
3.2(b) Expenditure within budget

Report:

- 3.2(a) This indicator is unable to be accurately reported on at this stage. Activity Based Costing was fully implemented at the beginning of 2006. Meaningful data will not be able to be extracted until the next reporting period where a large proportion of costed matters will have been completed and a cost able to be assigned.
- 3.2(b) 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).
- Monthly finance report submitted to the Executive Board and Management Committee. Quarterly CS Branch reports submitted.
- Training of Crown Prosecutors' Support staff in the Integrated Document Management System (IDMS) has been completed. The training of the Crown Prosecutors to use the IDMS is being planned by L&D Branch. 3 sessions have taken place to date. No implementation date confirmed as yet.
- The OPMS/ABC System has been released into production and information sessions have been conducted for all regional offices and all head office groups. The majority of Crown Prosecutors have been trained. Further sessions are being organised for those unable to attend initial training. Automatic selection of matters for costing has commenced. Specifications for the additional reports to be reviewed and approved by the business areas.
- The Information Security Management System (ISMS) commenced in September 2004. SAI Global was engaged to conduct a pre-audit review of the ISMS in April 2005. As a result, the scope of the certification has been revised to include the ODPP ICT infrastructure and the IM&T Operations at Head Office, Castlereagh Street. IM&T Branch has been advised that they will be recommended for full certification by the auditors, SAI Global. The remaining ICT upgrade sub-projects described in the IM&T Strategic Plan for 2003-06 will be carried out in this financial year. They include:

Key Result Area 3: Accountability and efficiency (continued)

1. Upgrade of the Wide Area Network (WAN) and Internet Access
2. Upgrade of Microsoft software licensing and refreshment of desktop hardware
3. Remote Access
4. 'Warm' Site for Disaster Recovery
5. ODPP Portal

The WAN and internet access has been upgraded, improving both network and internet performance. Migration of the Windows NT Domain to Microsoft 2003 Active Directory, and the migration of email servers to Microsoft Exchange 2003 have been completed. Laptops have been purchased for the remote access project. A regional Office was selected as the disaster recovery 'warm site', the computer room has been set up, equipment delivered and will be installed by September 2006. Development work for the portal is underway.

The Attorney General's Department implemented the Courtlink System in the Supreme Court on 2 August 2004 and is developing an interim viewing platform for information currently obtained by the ODPP from the CourtNet (Supreme Court) System. Improved business procedures have been developed to exchange information with the Supreme Court Registry until the SCIE platform is available. There is some concern that Courtlink may be developed without the facility for the payment of witness expenses. This Office has made it clear it will not assume that function.

The release of the KIOSK (Electronic Self Service) has proved extremely successful. The system enables staff and managers to access personnel information, including leave and payroll details and position history as well as providing the facility for electronic leave processing.

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	High quality, committed staff
	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	

Performance Indicator

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

Report:

4.1(a) Staff turnover for 1 July 2005 to 30 June 2006 was 0.4%. The Australian Benchmark is 15.16% Total appointments from July 2005 to end of June 2006 was 106.6. Total terminations from July to end of June 2006 was 104 – an increase of 2.6 staff.

32 staff participated in Recruitment and Selection workshops during 2005/06. Two workshops were held in November 2005. 2-day Recruitment (Inexperienced) course was held on 14-15 November 2005, and a Refresher 1-day course was held on 28 November 2005.

4.1(b) No salary increments were deferred.

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 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 worker's compensation claims per capita
 4.2(b) Average sick leave absences per capita

Report:

- 4.2(a) The Office's Workers Compensation Claims as at 30 June 2006 numbered eighteen (18), representing a total gross payment cost of \$93,815. This compares with twenty-two (22) claims at 30 June 2005, representing a total gross payment cost of \$229,719.
- 4.2(b) Statistics on workers compensation are no longer provided by the Insurer as they are being replaced by targets set out in the Government's 'Working Together' document. The Working Together document is a strategy to secure improvements in the public sector's health and safety performance, with a specific focus on injury management. There are five targets to achieve which are required to be incorporated into the ODPD Corporate Plan and reported against in the annual report. These targets are:
1. 40% reduction in workplace injuries by June 2012, with a least half of that improvement achieved by June 2007;
 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;
 3. 15% reduction in the average cost of claims by June 2008;
 4. 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;
 5. 90% of managers to be provided with appropriate information, instruction and training in their roles and responsibilities under their OHS and injury management system by approximately June 2007.

These statistics will be provided by Allianz (the Office's insurer) later in the year.

Average Sick Leave for the Office from July 2005 to June 2006 was 5.97 days. According to the Australian HR Benchmarking Report for 2001, the desired average is 6.35 days.

Managers have been advised that flex time and excessive Recreation Leave are being monitored and reports issued to ensure compliance with policy and award provisions.

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

Goal	Strategy	Outcome
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	Staff and Crown Prosecutors who are able to perform effectively in a changing and challenging environment
	4.3.2 Increase participation in learning and development activities	
	4.3.3 Increase use of the ODPP Performance Management system	

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:

L&D plan for 2005/06 to address priority needs identified through organisational priorities - Management Development, justice sector initiatives (e.g. CSA court), IM&T changes, individual L&D plans, and MCLE requirements.

The following training has occurred between July 2005-June 2006:

- | | | |
|--|---|-------------------------------|
| o 25 MCLE courses | o 1 Grievance Advisors Course | o 4 Defensive Driving courses |
| o 2 Sentencing Advocacy courses | o 1 Understanding Grief & Loss course | o 12 Technology Inductions |
| o 2 Short Matters courses | o 1 Country Conference (65 staff attended) | o 6 IDMS training sessions |
| o 1 Witnesses with Disabilities course | o 2 Managing Unsatisfactory Performance courses | o 2 CASES sessions |
| o 1 Cops Warrant course | o 6 Performance & Conduct Toolkit sessions | o 11 ERISP editing sessions |
| o 1 Introduction to the ODPP session | o 1 Firearms workshop | o 1 SUN session |
| o 1 In-house PowerPoint course | | |
| o 2 Recruitment & Selection courses | | |

L&D activities scheduled for July-December 2006 include:

- | | | |
|---|----------------------------------|-------------------------------------|
| o Child Sexual Assault (CSA) course | o Introduction to the ODPP (Sep) | o CASES Introduction & Intermediate |
| o Managing Clerks/Manager Support Services Conference (Aug) | o Advocacy training (Sep) | o Firearms Workshop (Sep/Oct) |
| o Solicitors Conference (Dec) | o CASES Refresher sessions | o Acting Skills for Advocates (Oct) |

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

- 11 EEO/Anti Discrimination workshops, and 16 OH&S workshops were completed between May-August 2005 to assist solicitors to meet their practicing certificate requirement of training in these areas. Crown Prosecutors have a similar requirement and were also invited to attend.
- Sexual Assault training held during 2005/2006: 2 Sexual Assault MCLEs, 1 Sexual Assault workshop (2-days), 1 Sexual Assault Forum and, 1 Cultural Understanding & Sexual Assault session. Staff are also attending relevant external activities. \$17k reimbursement received from Attorney General's Department for 2005/06.
- Work experience students (July 2005- June 2006): 10 placements were made from 18 requests. No international work experience students have been placed.
- 10 international delegations have visited the ODPP that L&D Branch have coordinated.
- Manuals that have been updated onto the Intranet: "Accessing the Training Database" and "Flex User Instructions", Outlook, ERIC mail, Personnel Disposition List. Manuals currently being updated for the Intranet: CASES, WAS, Flex User, Monthly Statistics, and Training Managers.

Learning & Development participation rate (excluding Crown Prosecutors) year to date: 66% of staff have attended two (2) L&D activities. Cumulative statistics – July 2005-June 2006

Number of learning programs: 239

Number of studies assistance participants: 45

Total days study leave accessed: 274 days

Total study reimbursements: \$15,369.80 (No reimbursements requested during the June 2006 period.)

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 2005-6 was 561
- 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 review of the Uniform Evidence Acts by the Australian and NSW Law Reform Commissions; the draft recommendations of the Criminal Justice Sexual Offences Taskforce; the draft protocol for the Execution of Search Warrants at the offices and homes of Members of Parliament; the draft recommendations of the Aboriginal Child Sexual Assault Taskforce and the working party re: reform of the Children (Criminal Proceedings) Act; the Discussion Paper re unauthorised use of photographs on the internet; further proposals by the Federal Attorney General's Department to modify advocates' immunity from suit; amendments to the DPP Act (to permit the signing of indictments by private barristers briefed by the DPP and the conferral of a power to remit matters to the Local Court after determination of an appeal); the Mental Health (Criminal Procedure) Act and the Mental Health Act, the Crimes (Sentencing Procedure) Act, the Confiscation of Proceeds of Crime Act, the Judicial Officers Act; majority jury verdicts; the Drug Misuse and Trafficking Act and Regulation (re section 25A and the definition of supply); the Child Protection (Offenders Registration) Act; various amendments to the Criminal Procedure Act (including the provisions relating to waiver of committal proceedings, institution of proceedings for summary and indictable offences, a right of appeal against a decision to uphold a plea in bar, pre-trial rulings in sexual assault matters, tender of statements at committal by consent as evidence in chief); the Crimes Act (offences of sexual intercourse with a child under 16 years and the availability of defence of honest and reasonable mistake of fact as to age and impediments to prosecution where complainant is unable to be precise as to age; vitiation of consent in sexual assault prosecutions (by lies as to disease status), anomalies in offences relating to break and enter); expiry dates on arrest warrants; the Evidence (Children) Act, the Crimes (Serious Offenders) Bill 2006; the Firearms Act; amendments to the Public Health Act to protect the privacy of complainants; legal criteria for eligibility to participate in the Compulsory Drug Treatment Correctional Centre and related amendments to the Drug Court Act; costs in apprehended domestic violence matters; the Child Sexual Assault Jurisdiction Pilot and various amendments to the Local Court Rules.

In addition, the Office has participated in numerous external committees and groups including court user groups, Bar Association and Law Society committees, court security committees, the Aboriginal Affairs Policy Justice Cluster Committee, the Sexual Assault Review Committee, the Child Sexual Assault Jurisdiction Interagency Project Team, the Local Court Rules Committee, the Merit Statewide Steering Group and the Victims of Crime Interagency Committee. For full details of all external committees in which the Office has participated see the relevant Appendix.

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.

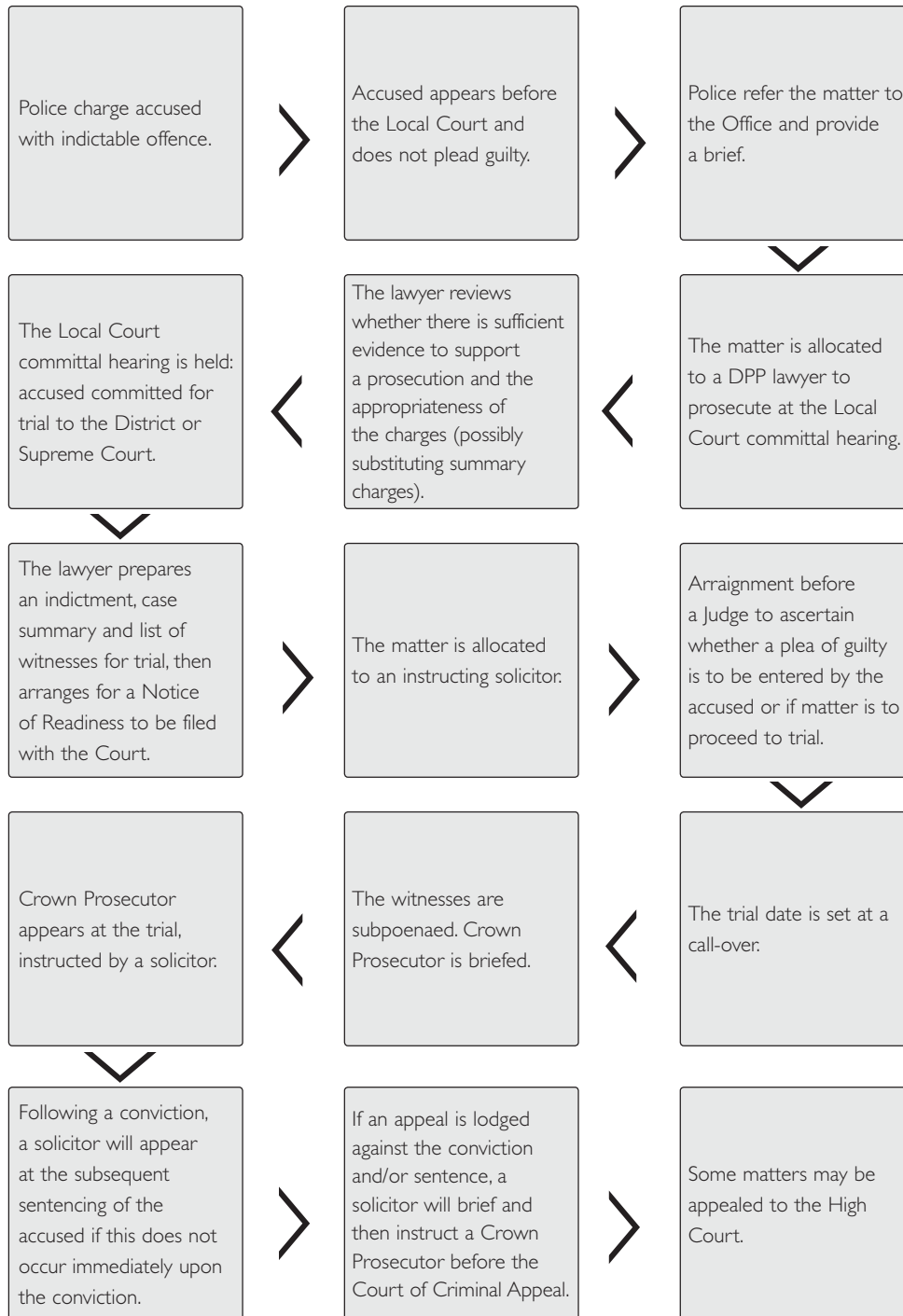
Section 33

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.

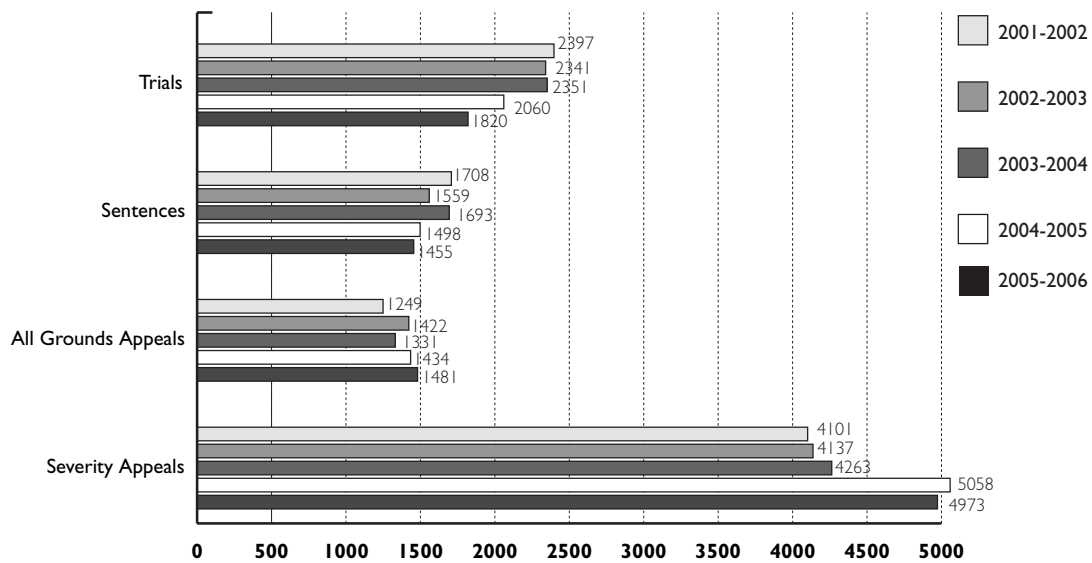
Appendices



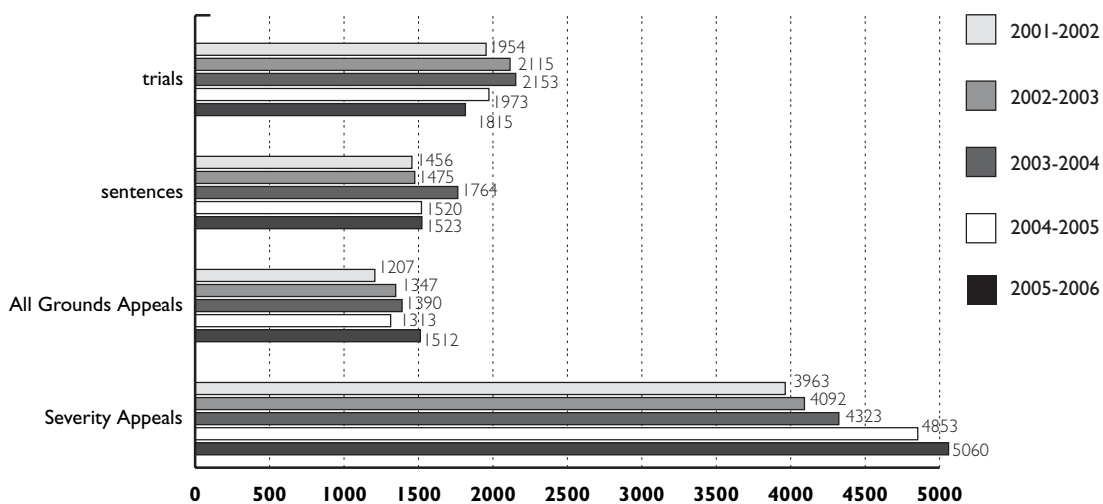
Appendix I

District Court – State Summary

District Court Matters Received – State



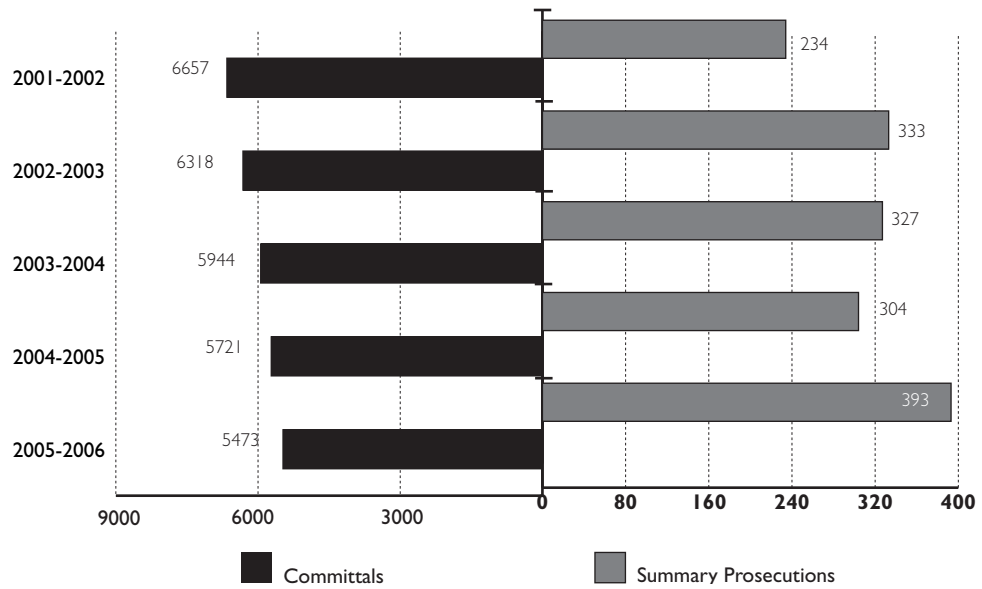
District Court Matters Completed – State



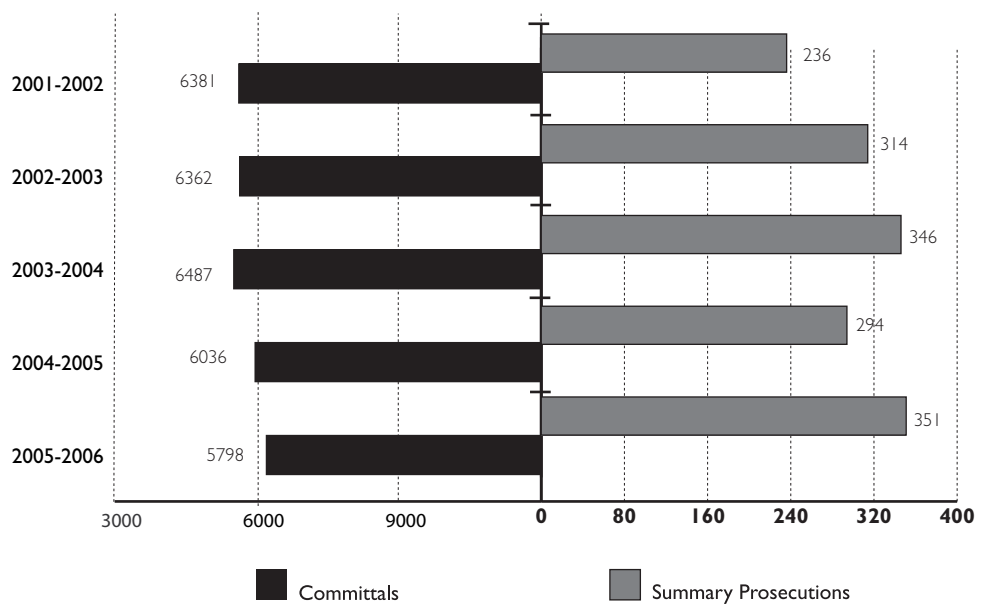
Appendix 2

Local Court – State Summary

Local Court Matters Received – State



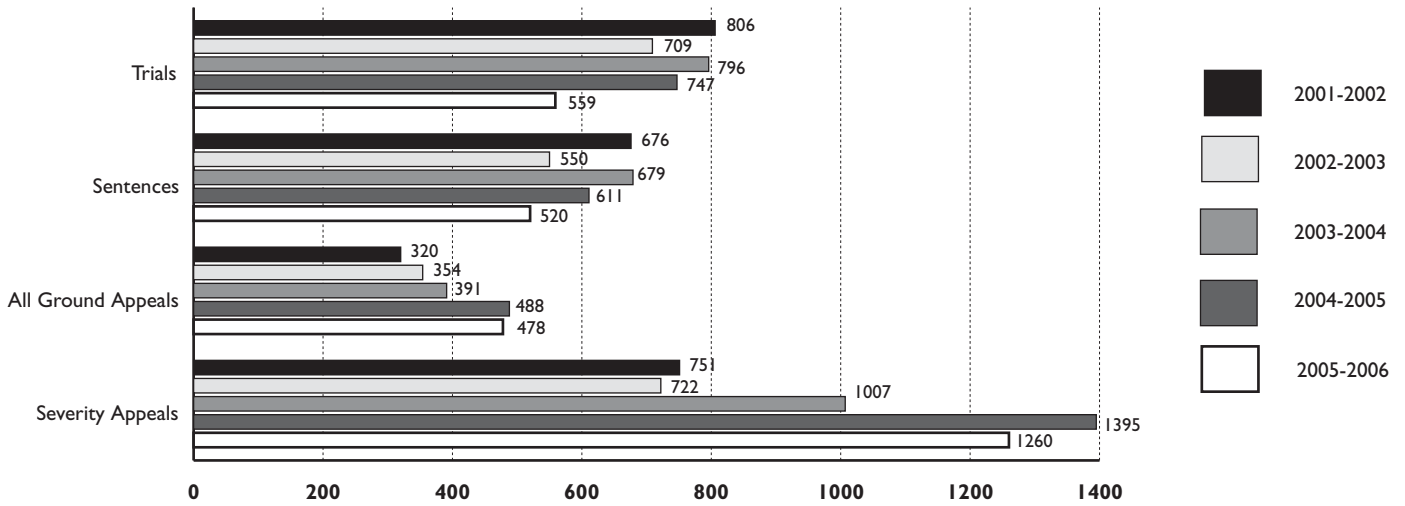
Local Court Matters Completed – State



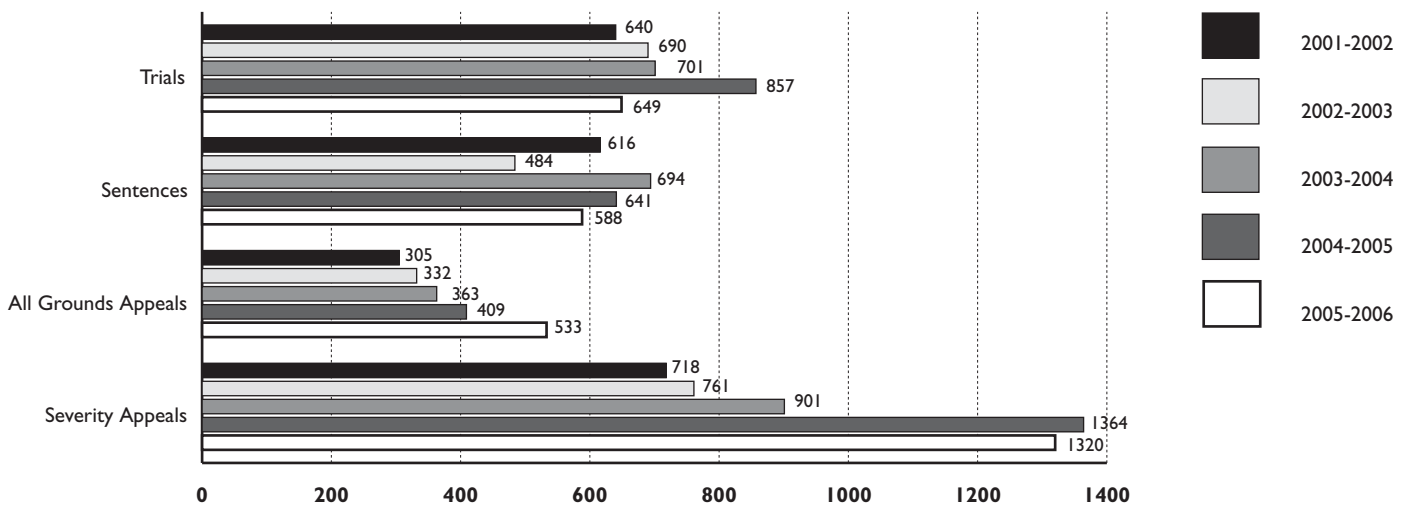
Appendix 3

District Court – Sydney Summary

District Court Matters Received – Sydney



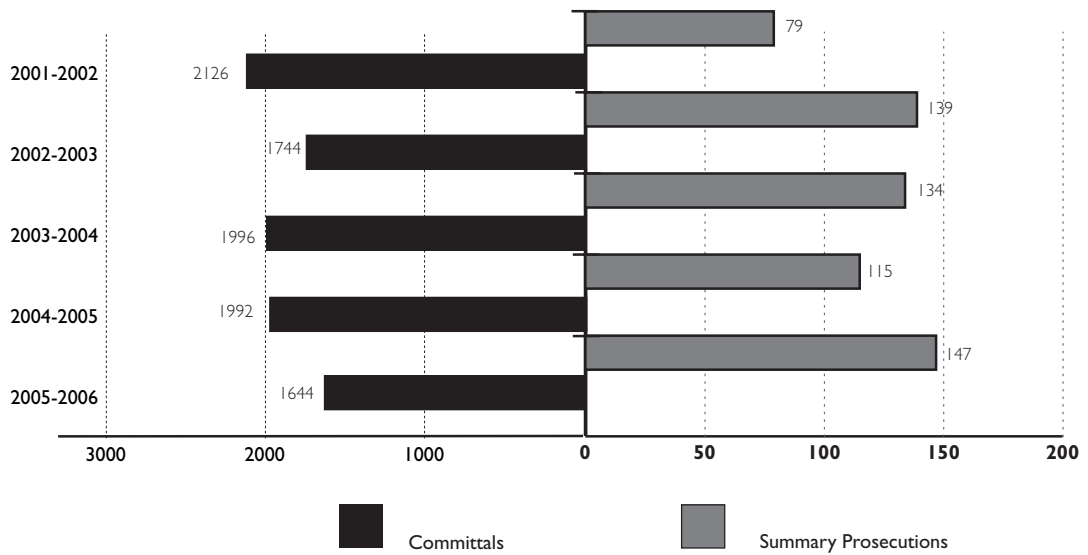
District Court Matters Completed – Sydney



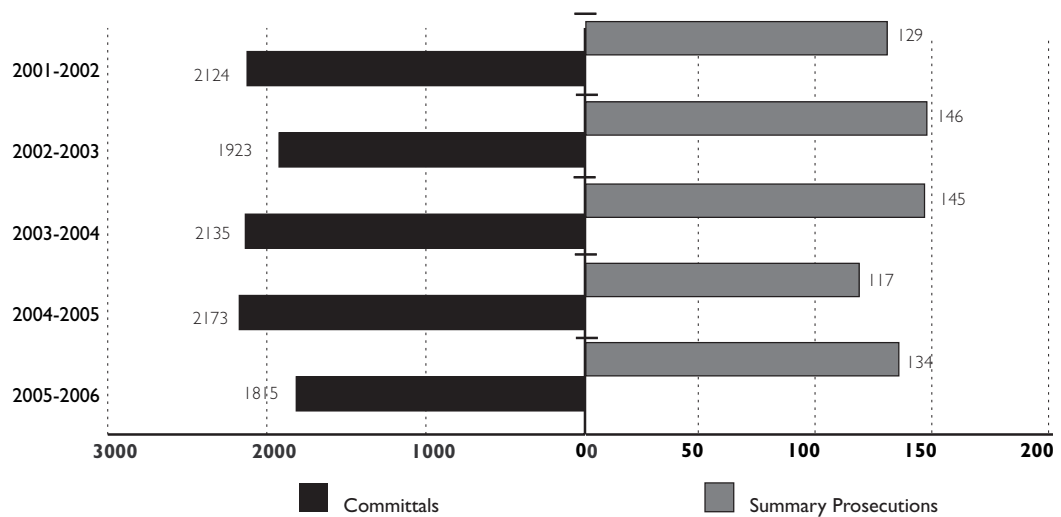
Appendix 4

Local Court – Sydney Summary

Local Court Matters Received – Sydney



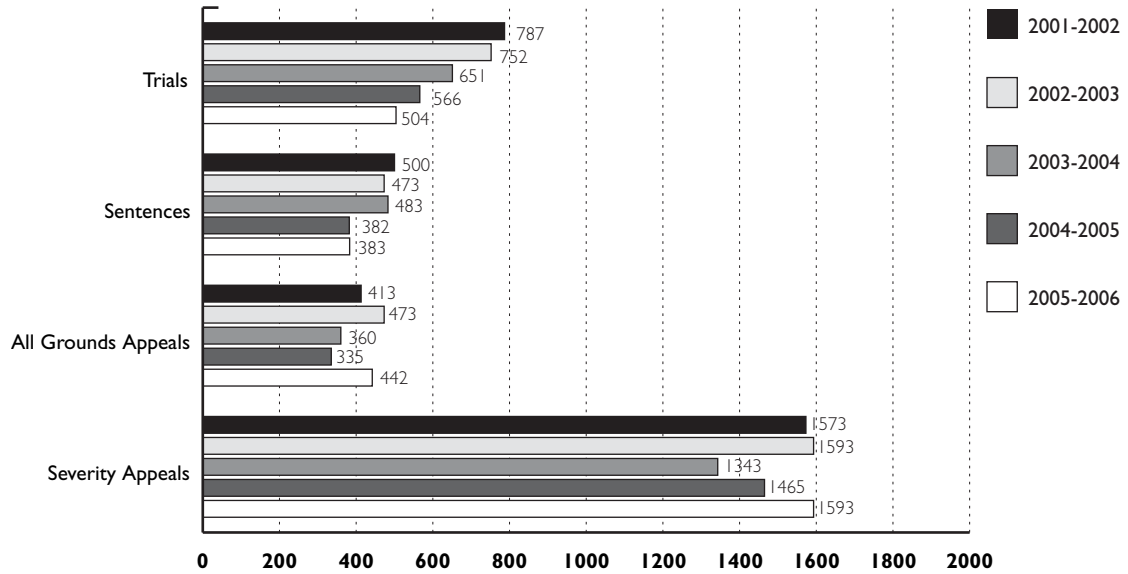
Local Court Matters Completed – Sydney



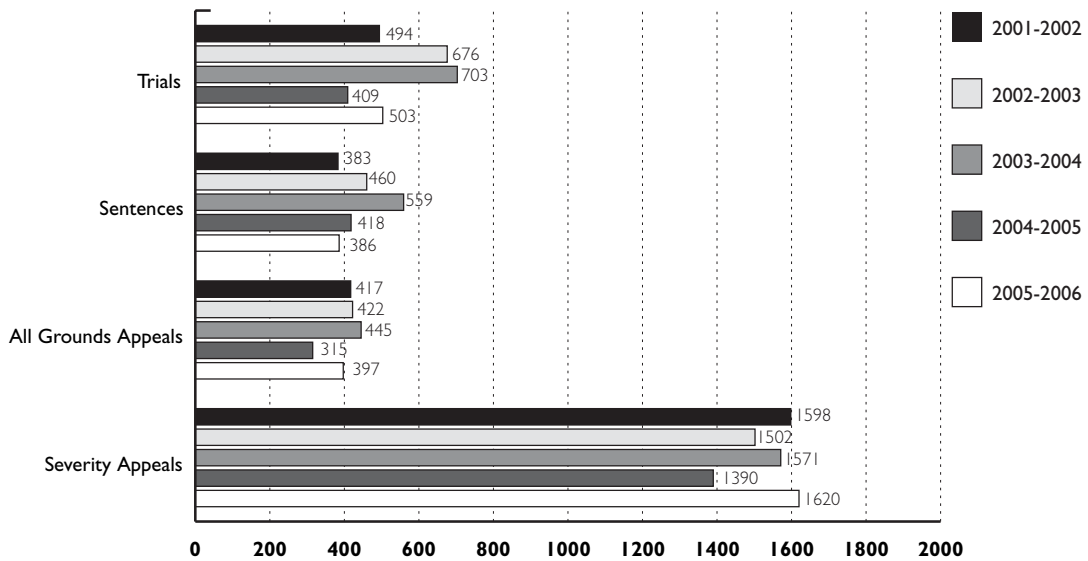
Appendix 5

District Court – Sydney West Summary

District Court Matters Received – Sydney West



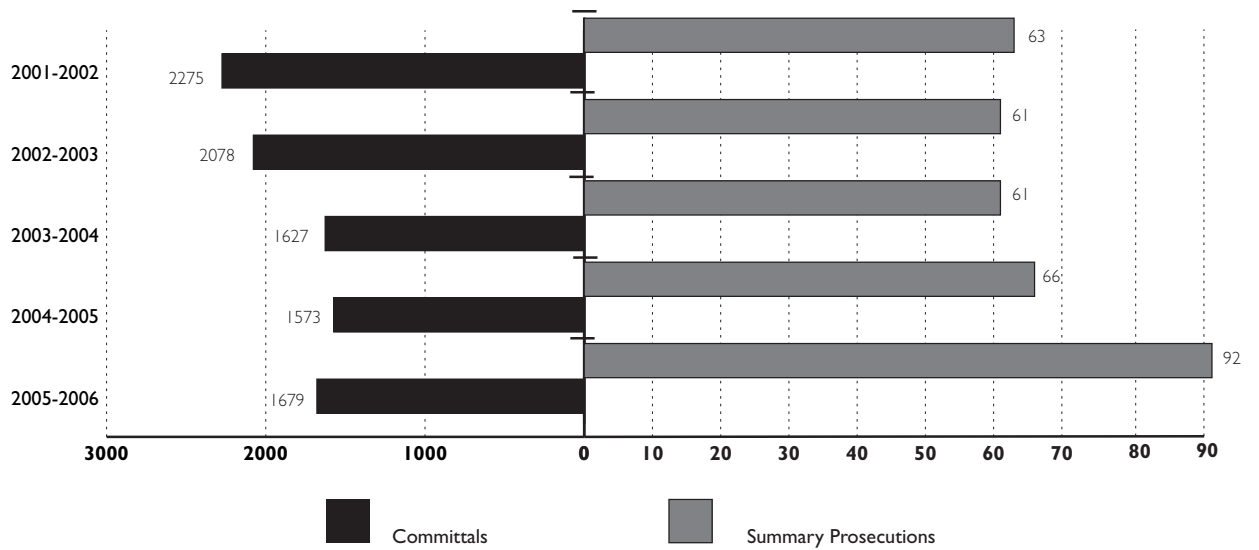
District Court Matters Completed – Sydney West



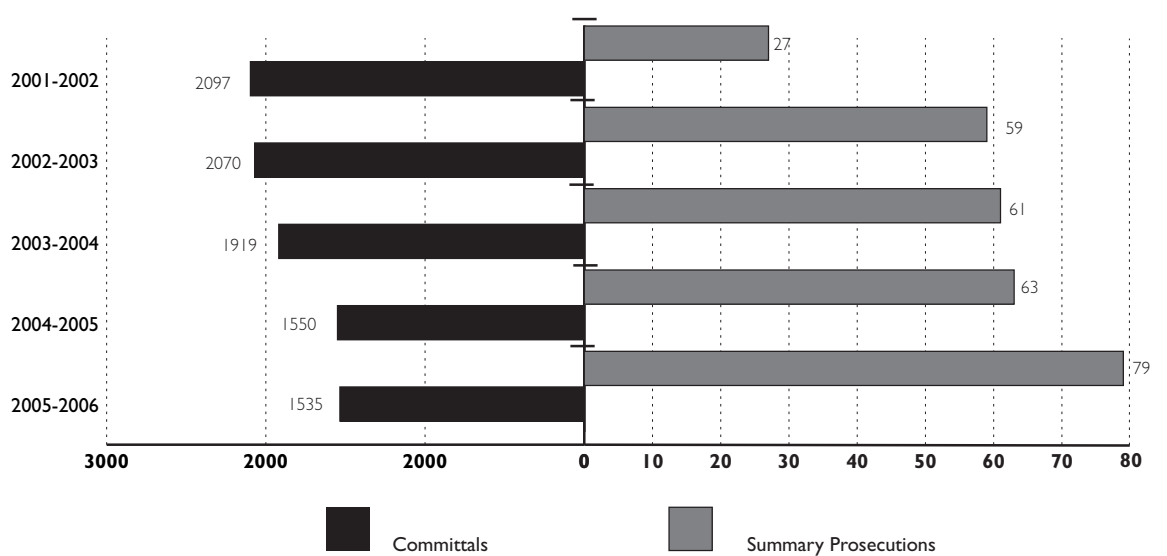
Appendix 6

Local Court – Sydney West Summary

Local Court Matters Received – Sydney West



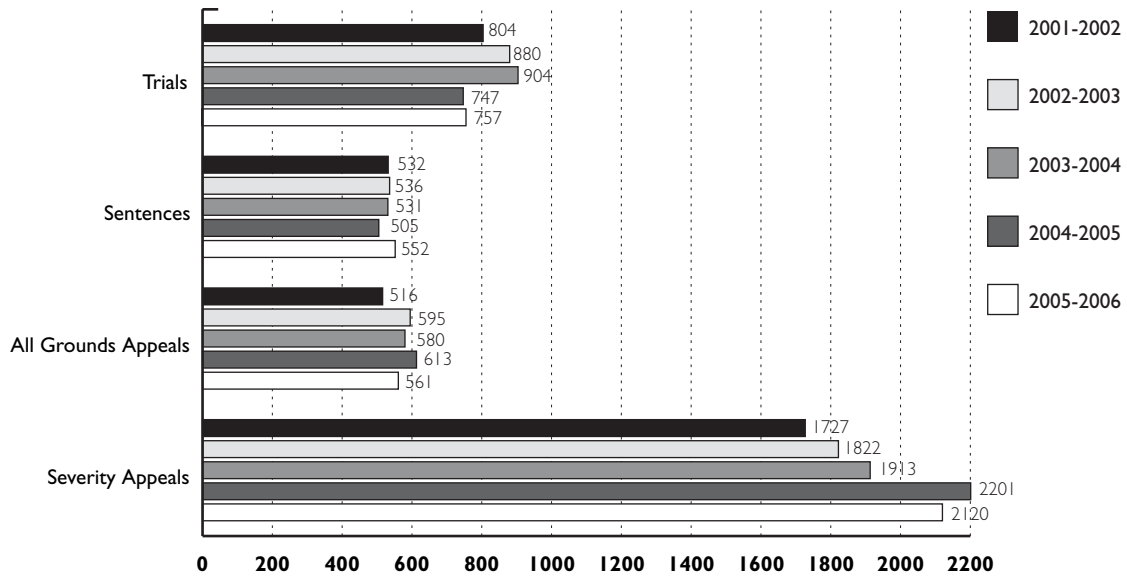
Local Court Matters Completed – Sydney West



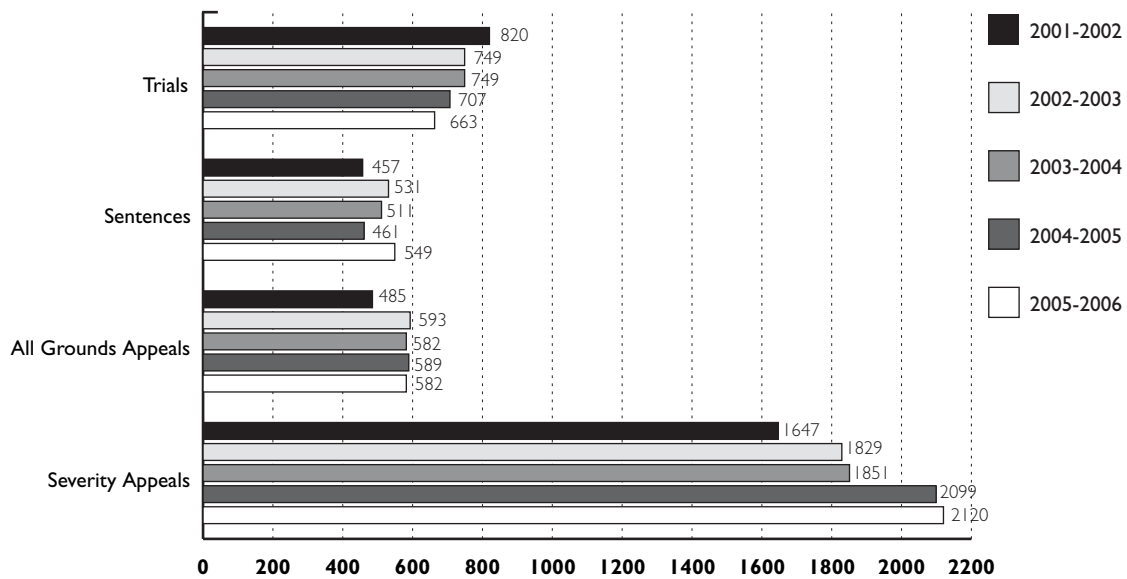
Appendix 7

District Court – Country Summary

District Court Matters Received – Country



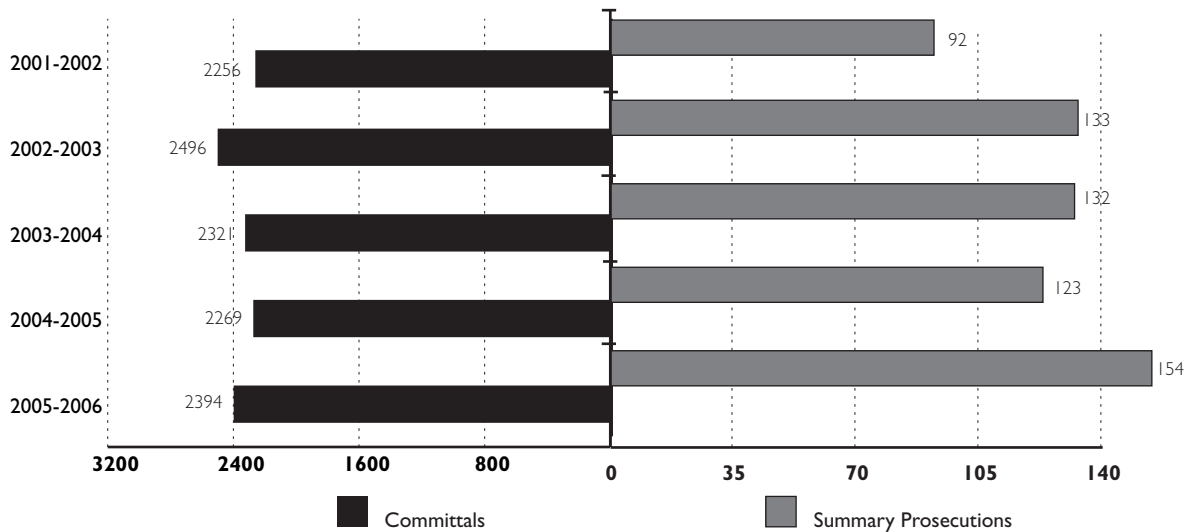
District Court Matters Completed – Country



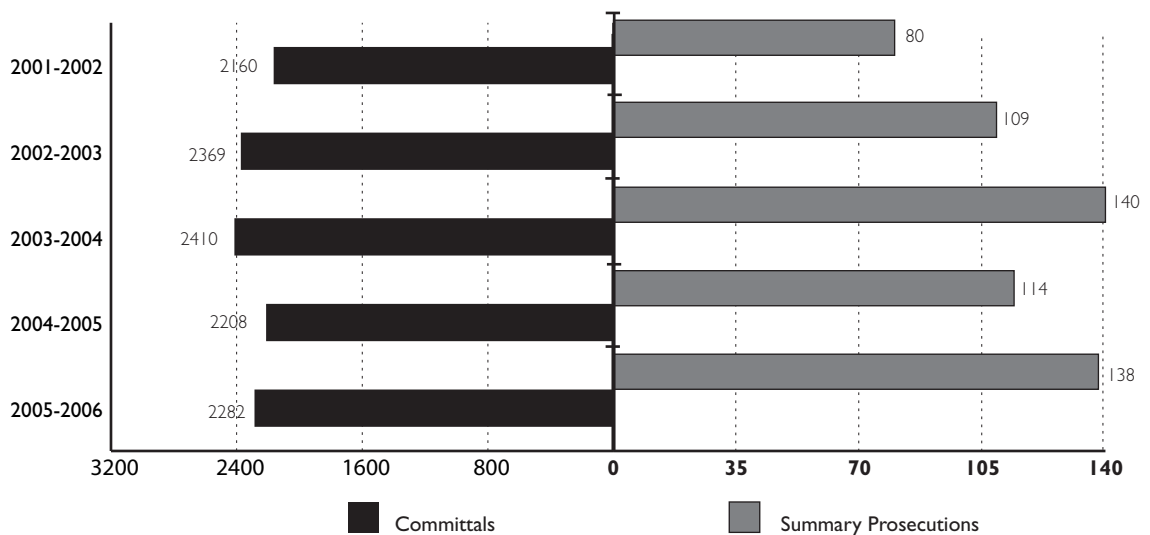
Appendix 8

Local Court – Country Summary

Local Court Matters Received – Country



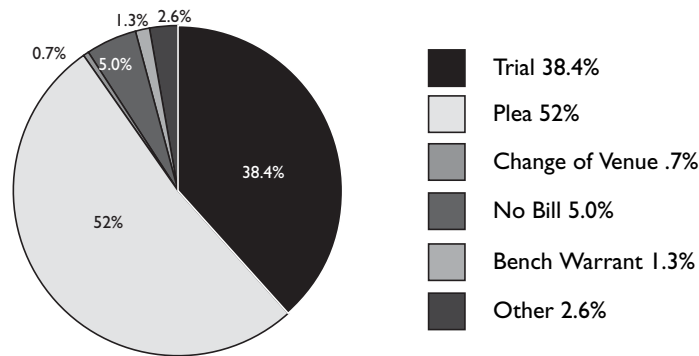
Local Court Matters Completed – Country



Appendix 9

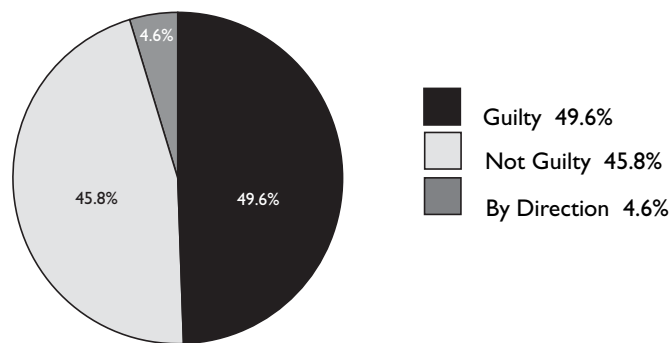
District Court – Trial Statistics

Disposal of Trials Listed

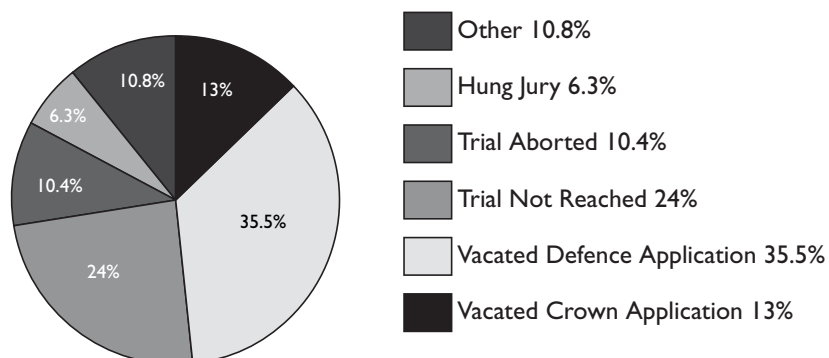


Trial Verdicts Comparison	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006
Guilty	41.4%	53.2%	51.5%	47.3%	49.5%
Not Guilty	48.8%	41.4%	41.6%	48.1%	45.8%
By Direction	9.8%	5.4%	6.9%	4.6%	4.6%

Trials Verdicts



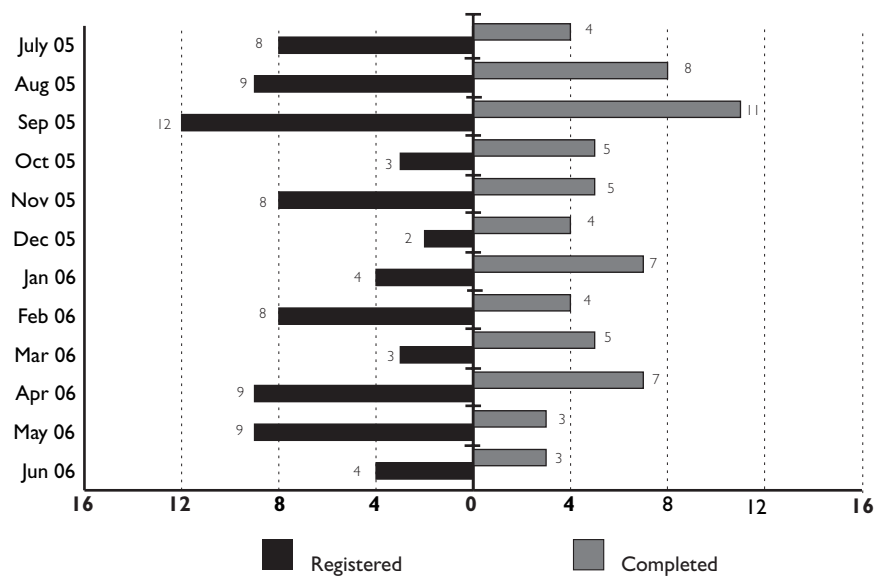
Trials Adjudged



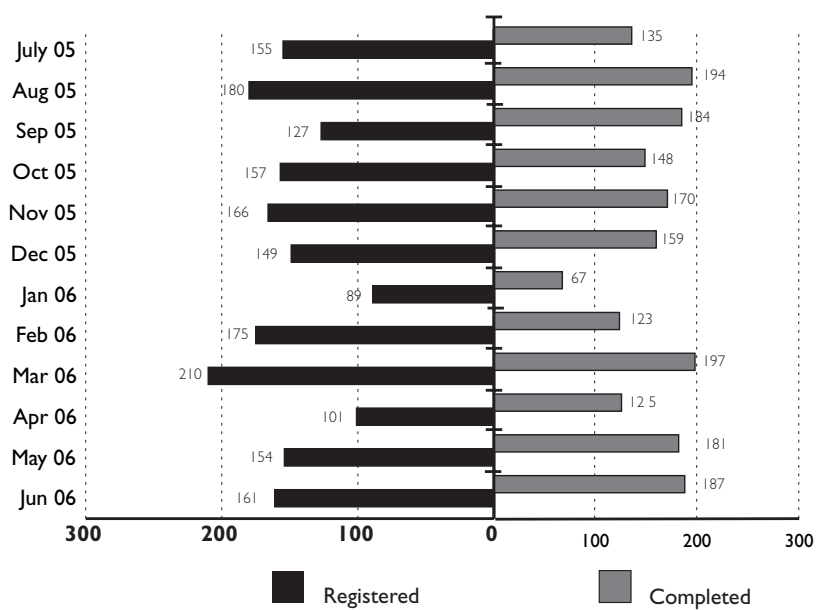
Appendix 10

Trials Registered and Completed

Supreme Court Trials Registered and Completed in 2005–2006



District Court Trials Registered and Completed in 2005–2006



Appendix I I

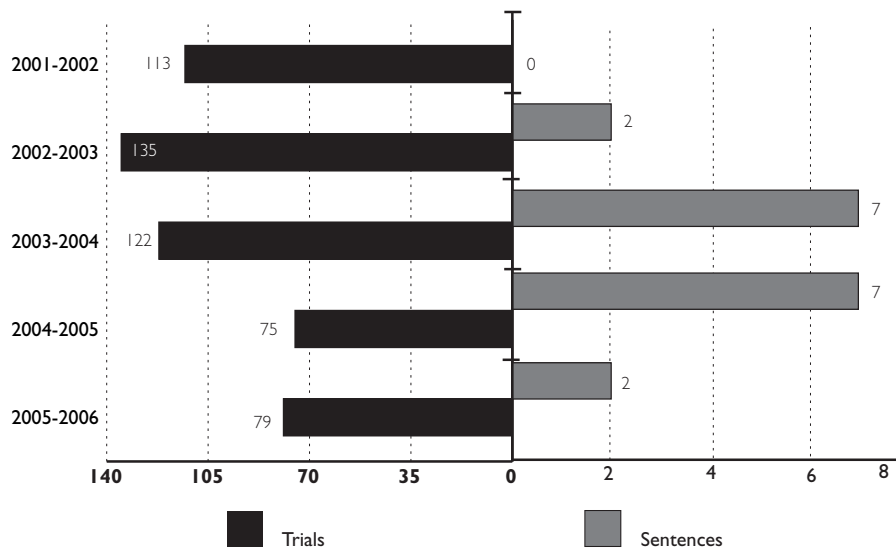
Local Court Committals – July 2005 to June 2006

Regional Office	Registrations	Disposals						On hand at End of June 2006	
		Committed for Trial	Committed for Sentence	Summarily Convicted	Discharged	Discont	Other		Total
Sydney Registrations	1551								
Group 1		106	109	104	4	25	65	413	163
Group 2		125	108	59	25	2	87	406	148
Group 3		120	103	84	20	28	59	414	154
Group 4		121	130	70	10	19	62	412	152
Group 5		0	0	0	0	0	0	0	2
Group 6		41	14	52	13	17	47	184	76
Admin Services		0	1	0	0	0	31	32	13
Sydney Miscellaneous		65	69	52	12	15	75	288	171
Sydney	1551	513	465	369	72	91	351	1861	879
Parramatta	614	183	169	96	21	18	128	615	324
Penrith	502	153	79	86	4	55	130	507	261
Campbelltown	465	123	107	111	12	29	101	483	241
Sydney West	1581	459	355	293	37	102	359	1605	826
Newcastle	570	226	143	159	20	102	69	719	276
Lismore	387	118	73	106	15	33	39	384	232
Dubbo	245	61	26	36	19	23	20	185	112
Gosford	241	54	68	46	7	21	33	229	106
Wagga	218	63	37	41	3	27	37	208	99
Wollongong	428	129	121	58	2	109	29	448	138
Bathurst	125	30	20	23	7	15	9	104	53
Country	2214	681	488	469	73	330	236	2277	1016
State Totals	5346	1653	1308	1131	182	523	946	5743	2721

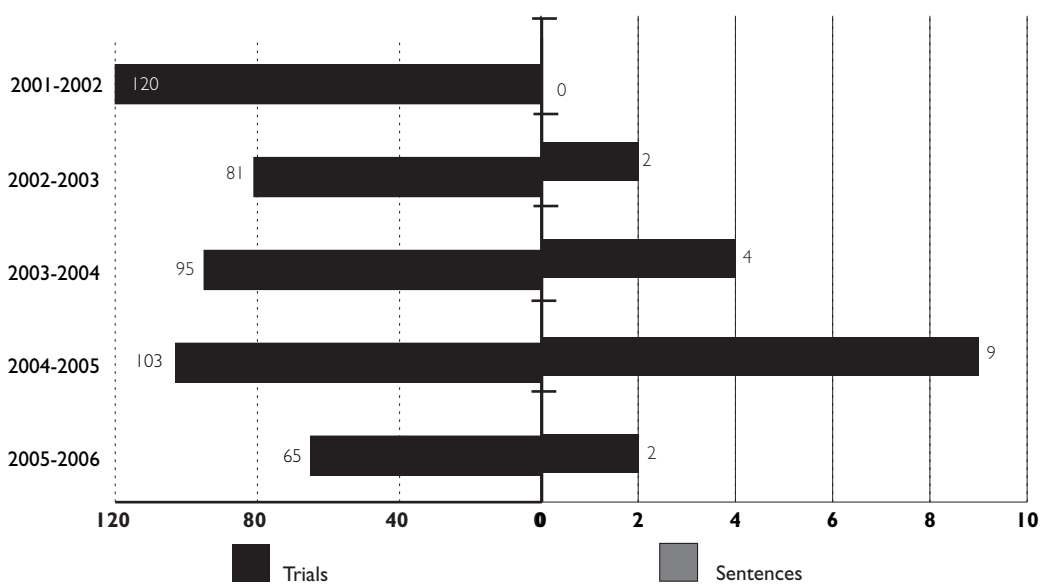
Appendix 12

Supreme Court – State Summary

Supreme Court Matters Received – State



Supreme Court Matters Completed – State

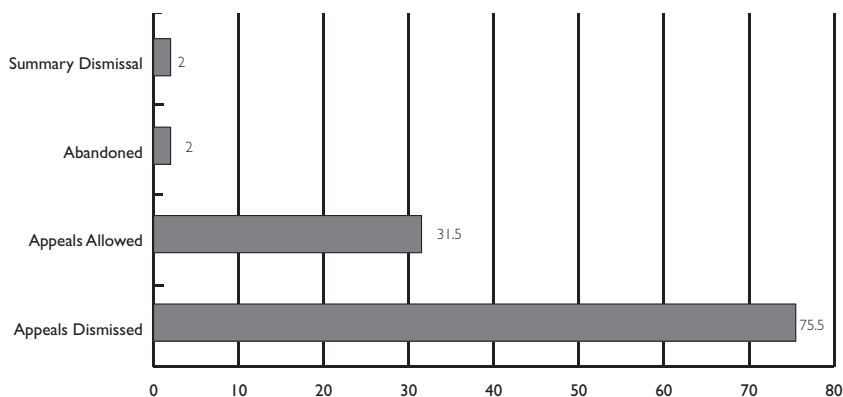


Appendix 13

Court of Criminal Appeal and High Court

Court of Criminal Appeal	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006
A. Appeals by Offenders finalised					
Conviction and sentence appeals	119	154	105	119	107
Sentence appeals	246	185	217	259	211
Summary dismissals	114	71	11	0	2
Appeals abandoned	212	149	7	6	6
TOTAL	691	559	340	384	326
	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006
B. Crown Inadequacy Appeals finalised					
Abandoned	14	16	19	24	24
Allowed	40	32	29	37	35
Dismissed	33	36	50	26	21
TOTAL	79	84	98	87	80
	2001–2002	2002–2003	2003–2004	2004–2005	2005–2006
C. Appeals against interlocutory judgments or orders (s.5F appeals)					
	14	35	25	20	25
D. Stated cases from the District Court					
	2	1	4	3	1
E. Total of all appeals finalised					
	786	679	467	494	432
High Court matters finalised					
Completed applications for special leave to appeal					
Applications by the offender	27	22	25	22	15
Applications by the Crown	0	0	1	1	0
Hearings conducted after grant of special leave to appeal					
Appeal by offenders	6	4	3	3	2
Appeal by the Crown	1	0	0	1	0

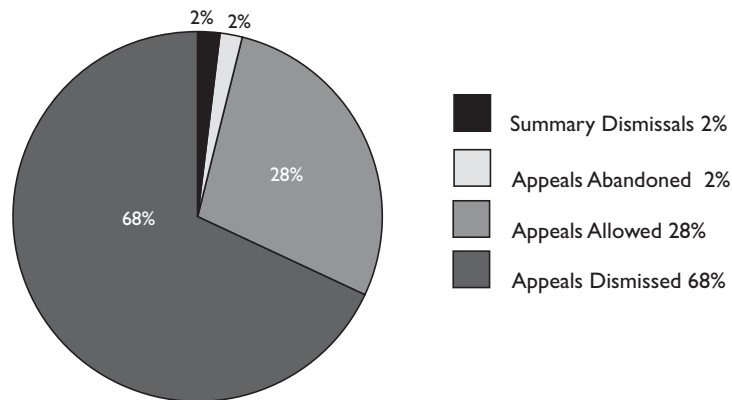
Conviction and Sentence appeals finalised in 2005–06 in Court of Criminal Appeal – Breakdown by numbers



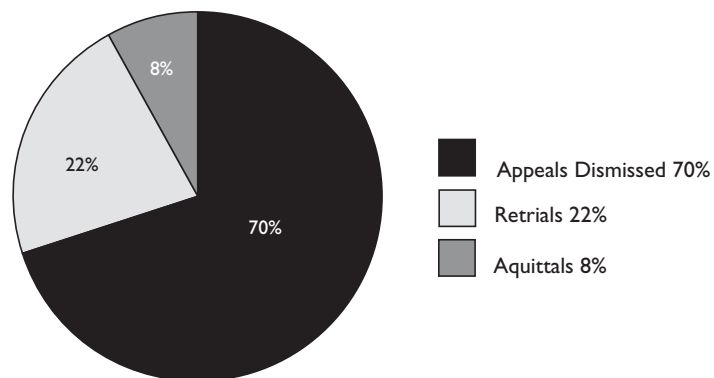
Appendix I3 Continued

Court of Criminal Appeal and High Court

Conviction and sentence appeals finalised in 2005/06 in Court of Criminal Appeal
 – Breakdown by percentage



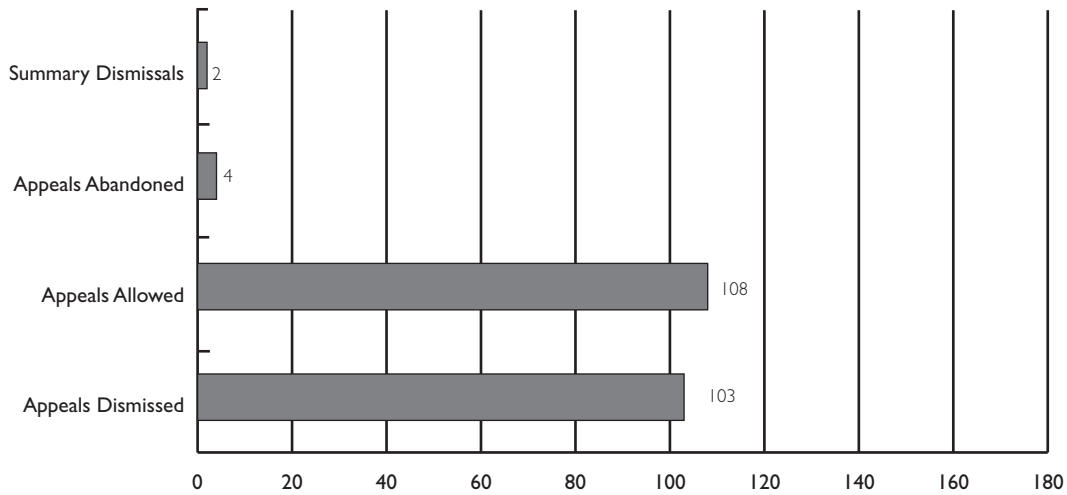
Results of finalised conviction and sentence appeals in 2005/06 in Court of Criminal Appeal
 – Breakdown by percentage



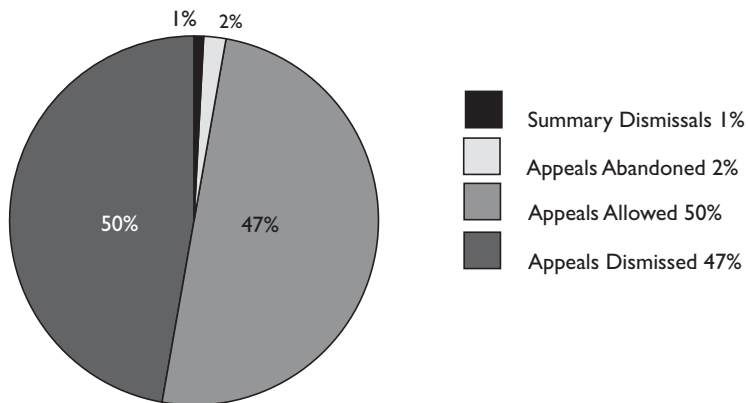
Appendix 13 Continued

Court of Criminal Appeal and High Court

Sentence appeals finalised in Court of Criminal Appeal in 2005/06 –
Breakdown by number



Sentence appeals finalised in 2005/06 in Court of Criminal Appeal –
Breakdown by percentage



Appendix 14

Significant Legislative Changes

Law Enforcement (Powers and Responsibilities) Act 2002 (No 103)

Assent 29/11/2002. Commencement (except Part 8A) 1/12/2005, Gaz 45, 15/4/2005 p 1356. Part 8A (Use of police in car video equipment) commenced 23/12/2004.

Law Enforcement (Powers and Responsibilities) Act 2002 (No 103)

centralises, in one Act, most of the powers of police and other law enforcement officers that were previously contained in various individual statutes. Broadly speaking the Act creates new statutory powers; consolidates and restates existing statutory powers; codifies some common law powers; sets out safeguards applicable to persons being investigated for offences; and repeals certain Acts and makes minor amendments to others.

Law Enforcement (Powers and Responsibilities) Act 2002 is made up of 19 Parts, 243 sections and five Schedules. Although the Act is an important one in the context of police operations, its sheer size makes it difficult to deal with in summary form. The specific areas covered by the Act are: Part 1, Preliminary; Part 2, Powers of Entry; Part 3, Powers to require identity to be disclosed; Part 4, Search and seizure powers without warrant; Part 5, Search and seizure powers with warrant or other authority; Part 6, Search, entry and seizure powers relating to domestic violence offences; Part 7, Crimes Scenes; Part 8, Powers Relating to Arrest; Part 8A, Use of police in car video equipment; Part 9, Investigations and questioning; Part 10, Other powers relating to persons in custody; Part 11, Drug detection powers; Part 12, Powers relating to vehicles and traffic; Part 13, Use of dogs to detect firearms and explosives; Part 14, Powers to give directions; Part 15, Safeguards relating to powers; Part 16, Powers relating to intoxicated persons; Part 17,

Property in police custody; Part 18, Use of force and Part 19, Miscellaneous.

The Act creates several new police powers. These include a power in Part 5, s 53 for a police officer to apply, to an authorised officer, for a notice to produce documents, where that officer believes on reasonable grounds that an authorised deposit-taking institution holds documents which may be connected with an offence committed by another person. A second new area of police powers are those contained in part 7 which govern crime scenes. Part 7 provides police with powers as to when they may establish crime scenes, what powers can be used to do so and what powers can be exercised at the scene of a crime.

Crimes Amendment (Animal Cruelty) Act 2005 (No 94)

Assent 24/11/2005. Gaz 148, 2/12/2005 p 9859. Commencement 16/12/2005. Gaz 158 16/12/2005 p 11189.

The Crimes Amendment (Animal Cruelty) Act 2005 (No 94) amends three separate Acts in relation to offences involving animal cruelty and these are dealt with below.

Crimes Act 1900

A new offence of "serious animal cruelty" is created under s 530. Section 530 makes it an offence for a person who, intending to inflict severe pain, tortures, beats or commits any other serious act of cruelty on an animal and kills or seriously injures or causes prolonged suffering to the animal. The maximum penalty for this offence is five years imprisonment. Section 530(2) exempts animal research authorised under the **Animal Research Act 1985** or any other Act or law. It also exempts conduct during or for routine agricultural or animal husbandry practices, recognised religious practices,

pest extermination or veterinary practice (for which defences are provided) or other circumstances where the overriding intention to inflict severe pain is absent. Under s 530(3), "animal" means "a mammal (other than human being), a bird or a reptile."

A new offence of killing or seriously injuring animals used for law enforcement is created by the insertion of s 531. The new s 531 makes it an offence to (a) intentionally kill or seriously injure an animal knowing it is being used by a law enforcement officer in the execution of that officer's duty or (b) as a consequence of, or in retaliation for, the use of the animal by a law enforcement officer while in the execution of their duty. The maximum penalty for this offence is five years. The word "animal" means "a dog, horse or other mammal (other than a human being)": s 531(2). "Law enforcement officer" is broadly defined. The offences do not prevent the operation of the defence of self-defence under s 418 **Crimes Act 1900**.

Sections 530 and 531 do not affect offences contained in the **Prevention of Cruelty to Animals Act 1979**.

Criminal Procedure Act 1986

Section 268 and Table 2 in Schedule 1 of the Criminal Procedure Act 1986 are amended to enable the new offences to be dealt with summarily, unless the prosecutor otherwise elects. The maximum sentence that may be imposed where the offence is dealt with summarily is two years.

Law Enforcement (Powers and Responsibilities) Act 2002 (No 103)

Section 134 of the **Law Enforcement (Powers and Responsibilities) Act 2002** is amended by adding s 134(5)(c1). This new sub-section enables a court which finds an offence proven against a person under s

Appendix 14 Continued

Significant Legislative Changes

s 5 (Cruelty to animals) or s 6 (Aggravated cruelty to animals) of the **Prevention of Cruelty to Animals Act 1979** to order the person to attend a police station to have their identification particulars (eg photographs, finger-prints and palm-prints) taken.

Mental Health (Criminal Procedure) Amendment Act 2005 (No 109)

Assent 7/12/2005: Gaz 157, 16/12/2005, p 10874. Commencement 1/1/2006. Gaz 158, 16/12/2005 p 11190

The **Mental Health (Criminal Procedure) Amendment Act 2005 (No 109)** amends the **Mental Health (Criminal Procedure) Act 1990** in relation to inquiries held to determine a person's fitness to be tried for an offence and the holding of special hearings. It also amends the **Mental Health Act 1990** in connection with these matters.

Amendments to the Mental Health (Criminal Procedure) Act 1990

Section 8 is amended to remove the Attorney General's role in relation to an inquiry held by the District Court or Supreme Court as to the fitness of a person to be tried for an offence and in relation to directing the holding of a special hearing for a person who is not fit to be tried for an offence. Section 18 is repealed and ss 19 and 29 substituted to give the court, the Mental Health Review Tribunal and the Director of Public Prosecutions certain functions in relation to special hearings and fitness hearings. Section 11 is substituted and s 11A is repealed to provide that a judge alone, instead of a jury, is to determine a person's fitness to be tried for an offence. The new s 11 applies only to proceedings which commenced after 1 January 2006.

Section 21A is substituted to provide that a judge alone is to determine a special hearing, unless the defendant,

the defendant's representative or the prosecutor elects to have the matter determined by a jury. This section also applies only to proceedings commenced after 1 January 2006. Section 32 is amended to extend the options available to a magistrate when dealing with a person who was developmentally disabled or suffering from a mental illness or other mental condition at the time he or she committed an offence, but was not "mentally ill" within the meaning of the Act. Sections 32 and 33 are amended to require a magistrate and certain authorised officers to state reasons for certain decisions made in proceedings where it is alleged that the defendant was developmentally disabled, suffering from a mental condition or mentally ill.

Section 32A is amended to enable a person who, in accordance with a magistrate's order, assesses the mental condition of a defendant or provides treatment to a defendant who is developmentally disabled or suffering from a mental illness or other mental condition to report breaches of the order to certain officers of the Probation and Parole Service or the Department of Juvenile Justice (or another person or body prescribed by the regulations). Section 34 is repealed to remove a provision requiring a magistrate, on application by the defendant in proceedings, to disqualify himself or herself from continuing to hear the proceedings in certain circumstances.

Transitional provisions apply in relation to the commencement of the amendments and are contained in Sch 1, cl 3 of the **Mental Health (Criminal Procedure) Act 1990**.

Amendments to the Mental Health Act 1990

Sections 80 and 82 are amended and s 104 substituted in connection with amendments made to the **Mental**

Health (Criminal Procedure) Act 1990.

Section 82 is also amended to prevent the Mental Health Review Tribunal from recommending the release of a forensic patient if they have been transferred to hospital while serving a sentence of imprisonment and have not finished serving the sentence or the non-parole period if that is applicable. Section 93 is amended to enable the Minister for Health (as the prescribed authority under the **Mental Health Act 1990**) to take action when a person breaches a court order under s 39 of the principal Act, releasing a person from custody after a finding of not guilty by reason of mental illness. The definition of "forensic patient" in Sch 1 of the **Mental Health (Criminal Procedure) Act 1990** is extended to include a person granted bail under s 14 (b)(ii) or 17(2) of the **Mental Health (Criminal Procedure) Act 1990**.

Transitional provisions apply in relation to the commencement of the amendments and these are contained in Sch 7, Part 9, cl 45 of the **Mental Health Act 1990**.

The Mental Health (Criminal Procedure) Amendment Act 2005

contains four useful flowcharts which set out the processes which apply to persons found not guilty by reason of mental illness (Table 1); persons who may be unfit to plead (Table 2); persons found by the tribunal not likely to be fit to be tried (Table 3) and the effects of the review of cases and a determination by a tribunal (Table 4).

Jury Amendment (Verdicts) Act 2006 (No 19)

Assent 15/5/2006. Commencement 26/5/2006. Gaz 68, 26/5/2006 p 3165.

The **Jury Amendment (Verdicts) Act 2006** amends the **Jury Act 1977** to allow for majority verdicts in criminal proceedings.

Appendix I4 Continued

Significant Legislative Changes

A new s 55F is inserted into the **Jury Act**. Section 55F(1) applies to a verdict in criminal proceedings where the jury consists of not less than 11 persons. Section 55F(2) allows the decision of 11 out of 12 jurors or 10 out of 11 jurors to be returned as a majority verdict in criminal proceedings in the following circumstances. First, if all of the jurors are unable to agree on a verdict after deliberating for a period that the court considers reasonable (being not less than 8 hours) having regard to the nature and complexity of the criminal proceedings, and secondly if the court is satisfied, after examination on oath of one or more of the jurors, that it is unlikely that all of the jurors will reach a unanimous verdict after further deliberation.

Section 55F(3) defines the terms “majority verdict” and “unanimous verdict” as follows. A “majority verdict” is a verdict agreed to by 11 jurors where the jury consists of 12 persons at the time the verdict is returned, or a verdict agreed to by 10 jurors where the jury consists of 11 persons at the time the verdict is returned. A “unanimous verdict” is one that is agreed to by all members of the jury. Under s 55(4) a verdict must be unanimous for an accused found guilty of an offence against a Commonwealth law.

Section 56 of the **Jury Act** is substituted with a new section which deals with the discharge of a jury that disagree in criminal proceedings. Section 56(1) allows the court to discharge a jury of 11 or 12 persons if it finds that it is unlikely that the jurors will reach a unanimous or majority verdict. Section 56(2) also makes it clear that a jury cannot be discharged by the court if the court finds that it is likely that the jurors will reach a majority verdict. Sub-section (3) of s 56 re-enacts the

previous s 56 in relation to juries made up of 10 or less persons, and allows the court to discharge the jury if it finds that it is unlikely that the jurors will reach a unanimous verdict.

A new s 80 is inserted into the **Jury Act** to provide for a review of the new legislative changes. Section 80 (1) statutorily obliges the Minister to review the operation of the amendments to determine whether the policy objectives of the amendments are still valid and appropriate.

In his second reading speech to the NSW Legislative Assembly, the Honourable R J Debus MP, Attorney General, said in relation to the policy objective of the proposed amendments that —

“... [t]he central aim of this bill is to reduce the number of hung juries in order to give certainty and finality to criminal proceedings; it is not necessarily aimed at achieving a greater number of convictions by majority verdict, it is to ensure that jury deliberations are not thwarted by a single person who is unwilling to engage in a proper examination of the evidence. The proposed majority verdict amendments will also apply to offences carrying life imprisonment, such as murder”.

Section 80(2) provides for a review of the changes made by the **Jury Amendment (Verdicts) Act 2006** five years from the date of commencement. Under s 80(3) a report on the outcome of the review is to be tabled in each house of parliament within 12 months after the expiration of this five year period.

A new Part 9, containing transitional and savings provisions, is inserted into Sch 8 of the **Jury Act**. Clause 18 of the new Part 9 provides that the amendments made

to the **Jury Act** apply only if the jury is empanelled for criminal proceedings **after** the commencement of the amendments. This rule is subject to the following exceptions, listed in cl 18 (2). The amendments do not apply where a jury is empanelled **after** the commencement of the amendments, if in earlier criminal proceedings against the accused for an offence or conduct that occurred on the same occasion to which the current offence proceedings relate (i) the jury was discharged because a verdict could not be reached; or (ii) a decision in those proceedings was set aside on appeal and a retrial ordered; or (iii) the trial was aborted; **and** the jury was empanelled in those earlier proceedings before the amendments commenced.

¹ The High Court in *Cheatle and Another v The Queen* [1993] HCA 44, decided that s 80 of the Constitution of the Commonwealth precluded a majority verdict in such circumstances.

Appendix 15

Significant Judicial Decisions

High Court of Australia

The Queen v Lavender [2005] HCA 37

Lavender was employed as the operator of a 25 tonne front end loader at a sand mine. The loader was a large vehicle capable of travelling at only about four km per hour. The mine site was unfenced, and was in an area of sand dunes covered with vegetation.

On 2 October 2001 the victim, a 13 year old boy, went with three other boys to the mine site to play. Lavender drove the loader towards the boys, intending to chase them away. The boys ran into thick scrub. Lavender lost sight of them, however continued driving, and ran over the victim, killing him.

Lavender was convicted by a jury of manslaughter by criminal negligence. At trial the judge directed the jury that there were five elements of the offence of involuntary manslaughter which the prosecution was required to establish, namely (1) that Lavender had a duty of care to the victim; (2) that he breached that duty; (3) that his actions were deliberate in the sense that he was in control of the vehicle; (4) that Lavender's actions in driving the vehicle caused the death of the victim; and (5) that Lavender's actions fell so far short of the standard of care which a reasonable person would have exercised in the circumstances and involved such a high risk that death or really serious bodily harm would follow, that the action merited criminal punishment.

An appeal by Lavender to the NSW CCA was allowed on the basis that the trial judge had fundamentally misconceived the nature of the offence by failing to advert to what was said to be an essential element of the offence – that is “malice” as defined in s 5 of the Crimes Act 1900.

The basis of this finding was an analysis of s 18 of the Crimes Act 1900, which is in the following terms:

18 (1) (a) Murder shall be taken to have been committed where the act of the accused, or thing by him or her omitted to be done, causing the death charged, was done or omitted with reckless indifference to human life, or with intent to kill or inflict grievous bodily harm upon some person, or done in an attempt to commit, or during or immediately after the commission, by the accused, or some accomplice with him or her, of a crime punishable by imprisonment for life or for 25 years.

(b) Every other punishable homicide shall be taken to be manslaughter.

(2) (a) No act or omission which was not malicious, or for which the accused had lawful cause or excuse, shall be within this section.

(b)..

The NSWCCA held that the effect of sub-section (2)(a) was that “malice”, as that term is defined in s 5 of the Crimes Act, is an essential element of all offences of punishable homicide, including involuntary manslaughter.

The DPP subsequently appealed to the High Court, essentially contending that malice is not an element of involuntary manslaughter. The High Court allowed the appeal, and ordered that Lavender's appeal to the NSWCCA against his conviction be dismissed. The court made the following findings:

- There are two categories of involuntary manslaughter at common law:

manslaughter by unlawful and dangerous act, and manslaughter by criminal negligence. The elements of these offences are prescribed, not by the Crimes Act, but by the common law.

-The effect of s 18(1) of the Crimes Act is that certain forms of punishable homicide, which at common law would have been described as “unlawful homicide with malice aforethought”, are taken to be “murder”, and all other forms of punishable homicide are not murder but manslaughter. At common law the presence or absence of malice was the point of difference between murder and manslaughter.

-The fact that Part 3 of the Crimes Act has at all material times expressly recognised (in s 24) that, in a case of manslaughter, a nominal penalty only may be sufficient is consistent with the common law position that malice is not a necessary element of manslaughter.

-Section 18 is to be construed in context, which includes the whole of the Crimes Act. Of particular relevance is the former s 376 of the Crimes Act (repealed in 1951), which prescribed the forms of indictment for murder and manslaughter and, reflecting the common law, required that an indictment for murder, but not manslaughter, allege malice. The wider context extends beyond the Crimes Act and includes the common law, in the context of which Part 3 was enacted.

- On a true construction of s 18, understood in context, the section did not alter the common law of unlawful homicide by involuntary manslaughter. The words “within this section” in s 18(2)(a) refer to the work done by the legislation in defining the crime of murder.

Appendix 15 Continued

Significant Judicial Decisions

In relation to a subsidiary issue raised, the trial judge was correct to decline to direct the jury that a sixth element of the offence was that the accused did not hold an honest and reasonable belief that it was safe to operate the vehicle as he did, because:

- (1) the supposed sixth element was subsumed by the fifth, which required the prosecution to persuade the jury that the accused's conduct was not only unreasonable but "wickedly negligent" and
- (2) the direction sought was inconsistent with the objectivity of the test for involuntary manslaughter - the accused's opinion as to whether it was safe to proceed was irrelevant.

J Antoun v The Queen; A Antoun v The Queen [2006] HCA 2

The Antouns were jointly charged with demanding money with menaces with intent to steal. The trial was conducted in the District Court of NSW before a judge alone. The Antouns were convicted and sentenced to terms of imprisonment. They appealed unsuccessfully to the NSWCCA.

The Antouns' sole ground of their further appeals to the High Court was that the trial judge had conducted himself in such a way that an impartial observer might reasonably apprehend that he might not bring an impartial and unprejudiced mind to the question of guilt. The "apprehended bias" was said to arise from the following two aspects of the trial judge's conduct:

- (1) when informed that a submission to the effect that there was no case to answer was to be made on behalf of the Antouns the following day, he immediately announced his decision to dismiss it in a peremptory manner and repeated that decision before hearing

any argument. He then listened to the argument on sufferance and repeated his decision.

- (2) At the conclusion of A Antoun's evidence, but before the close of the defence case, he revoked bail of his own volition.

The High Court allowed the appeals and ordered a re-trial. In doing so the court (per Callinan J) made the following observations:

- As has been stated in *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, so important is the principle that the tribunal be independent and impartial, that even the appearance of departure from it is prohibited lest the integrity of the judicial system be undermined. Deciding whether a judicial officer might not bring an impartial mind to the resolution of a question requires no prediction about how the judge will in fact approach the matter. Similarly, if the matter has been decided, the test is one which requires no conclusion about what factors actually influenced the outcome. No attempt need be made to inquire into the actual thought processes of the judge.
 - The test emphasises that the appearance of a possibility of an absence of an impartial mind on the part of a judge may lead to disqualification. The test does not involve, or require, an inquiry into the facts or matters which brought the apprehended state of mind of the judge to one of apparent bias. It follows that the fact that the case may not only at the time, but also in retrospect, seem to be a strong one, indeed a very strong one, does not absolve the judge from giving it a fair hearing and attending carefully and open-mindedly to the submissions for the parties.
- In this case the trial judge's conduct did present an appearance, indeed an unmistakable one, of prejudgment. As Ebner makes clear, when conduct of that kind occurs, it is not relevant to the inquiry as to whether an apprehension of bias has arisen that the strength of one party's case may have brought the judge to the point of making the remarks that he did. It follows that the apparent strength of the Crown case, and the weaknesses of the defence, cannot be used as justification or excuse for the trial judge's expressions of a determination to reject submissions foreshadowed but not yet made and developed.
- This will be so, even though, as in the present case, the trial judge would have been bound to hold that there was evidence of all the necessary elements of the offence, and that therefore the trial should proceed.
 - The apprehension of bias which must have arisen as a result of the trial judge's statements with respect to the appellants' foreshadowing of their "no case" submission could only have been further increased by the trial judge's threatened revocation of bail in the absence, not only of any application in that regard by the respondent, but also of any reference to the considerations to which he was bound to have regard under the Bail Act. The demeanour of one only of the appellants in the witness box could provide little foundation, let alone any sound substitute, for the statutory considerations relevant to a grant or a revocation of bail in respect of both of them.

Appendix 15 Continued

Significant Judicial Decisions

NSW Court of Criminal Appeal

R v Hien Puoc Tang [2006] NSWCCA 167

Hien Puoc Tang was found guilty by a jury of one count of robbery with an offensive weapon under s 97(2) Crimes Act. He was sentenced to seven years imprisonment with a non-parole period of five years and three months. Mr Tang was one of three offenders who robbed a convenience store of \$910 cash, 202 packets of cigarettes and a quantity of chewing gum. The robbery was captured on videotape. The tape showed three offenders, but was of insufficient quality to enable clear identification of each accused. Two co-offenders, arrested soon after the offence, pleaded guilty. Clothing worn by the co-accused and or found in the car matched that worn by two of the robbers depicted in the surveillance video. The car in which they were travelling contained property similar to that stolen from the store. DNA connected the co-offenders to hats in the getaway car, which matched those worn by two of the offenders on the surveillance video.

The issue at trial was whether Mr Tang was the third offender. In his appeal against conviction and sentence to the NSW Court of Criminal Appeal a significant issue was whether the opinion evidence of Dr Meiya Sutisno, a Forensic Anatomist, regarding the identification of Mr Tang had been correctly admitted into evidence at trial. Dr Sutisno had identified points of resemblance between surveillance images of the third offender and photographs of Mr Tang using facial mapping and body mapping techniques.

Dr Sutisno's opinion evidence comprised two distinct types. First, identification of the appellant as the person in the videotape on the basis of facial

characteristics (facial mapping). Secondly, identification of the appellant as the person in the videotape on the basis of physical characteristics of other parts of his body and of posture (body mapping). The doctor expressed three opinions; first, that the two sets of photographs depicted one and the same person; second, that this conclusion was supported by the application of a six point scale and thirdly, that certain characteristics were "unique identifiers". Dr Sutisno testified about the accuracy of the technology she used and in cross examination rejected the defence suggestion that her assessment was subjective.

The court allowed the appeal, quashed the conviction and ordered a new trial. In relation to the admissibility of Dr Sutisno's evidence based on facial and body mapping it held as follows:

(a) Evidence of similarities between the photographs of the appellant and the photographs of the third offender was admissible. Identification of points of similarity by Dr Sutisno was based on her skill and training especially in relation to facial anatomy and her experience in conducting such comparisons on other occasions. Through multiple viewing of the videotape, detailed selection, identification and magnification of images Dr Sutisno became an "ad hoc expert". **Butera v Director of Public Prosecutions (Vict)** (1987) 164 CLR 180; **R v Leung** (1999) 47 NSWLR 405; **R v Li** (2003) 139 A Crim R 28 cited.

(b) Three kinds of opinion expressed by Dr Sutisno were not admissible. These opinions were first, evidence that the two sets of photographs depicted one and the same person. Secondly, evidence that on the six point scale applied to photographic evidence, the similarities did "lend support" to the conclusion that the offender and the appellant were one and

the same person." Thirdly, Dr Sutisno's characterisation of certain matters as "unique identifiers".

The court held that to be admitted under s 79 **Evidence Act**, an opinion must satisfy the two limbs of the section. Under the first limb, it is necessary to identify "specialised knowledge" derived from "training, study or experience". Under the second limb the opinion must be shown to be based "wholly or substantially" on that knowledge". In relation to the first limb, on the evidence at trial there was an area of specialised knowledge based on facial identification. Dr Sutisno's detailed knowledge of anatomy together with her training, research and experience in facial reconstruction supported her evidence of facial characteristics. However, nothing was presented to the court to indicate that Dr Sutisno's extension from facial to body mapping, concerning matters of posture, had the same level of background and support. Specialist knowledge of posture can exist (**R v Li** (2003) 139 A Crim R 28) but the foundation for its admissibility must be laid and in this case it was not. The so called "unique identifier" of posture was an essential element of Dr Sutisno's evidence of identity in this case. Yet the relevant evidence about posture was expressed in terms of "upright posture of the upper torso" or similar words. The only links to any 'training, study or experience' was the witness' study of anatomy and some unspecified experience in comparing photographs for the purposes of comparing posture. The evidence did not allow a finding that the expert evidence was based on a study of anatomy. That evidence, "barely, if at all, rose above a subjective belief" and "did not manifest anything of a 'specialised' character."

In relation to each of the three opinions expressed, Dr Sutisno did not reveal her process of reasoning and therefore

Appendix 15 Continued

Significant Judicial Decisions

failed to satisfy the second limb of s 79 **Evidence Act**.

Skipworth v Regina [2006] NSWCCA 37

Bruce Skipworth (the appellant) was convicted, by a jury, of two counts of sexual intercourse without consent (counts 5 and 7) under s 66I **Crimes Act**; and one act of indecency under s 66N(2) **Crimes Act** (count 6). He was found not guilty of three counts of indecent assault (counts 1, 2 and 9), three counts of sexual intercourse without consent (counts 3, 4 and 10), and one act of indecency (count 8). Sentences imposed were imprisonment for two years, with non-parole period of 18 months (count 5), imprisonment for a fixed term of 12 months (count 6) and imprisonment for two years, with a non-parole period of 14 months (count 7). The total sentence was three and a half years imprisonment, with a non parole period of two years, eight months.

The appellant employed the complainant's mother and knew the complainant. At the time of the offences the appellant was providing temporary accommodation to them in his own home. On one occasion, when the complainant's mother was away for work, the appellant grabbed the complainant, pulled her onto his bed and the activity that followed formed the basis for counts one to eight. The complainant alleged two further incidents, one a few days later involving the appellant putting his hand down her pants and rubbing her bottom (count 9) and the other, about a week later, which involved the appellant again putting his hand down her pants and inserting a finger or two fingers into her vagina (count 10). The victim complained to her mother 66 days after the offences allegedly occurred.

The appellant appealed against conviction

and sentence to the NSW Court of Criminal Appeal. A number of issues arose on appeal including whether the trial judge made an error in admitting the evidence of complaint.

In dismissing the conviction and sentence appeals the court held that the trial judge made no error in admitting the complaint evidence. What the complainant told Mr D (a friend) was capable of providing some corroboration of her account. It was clearly indicative of an unwelcome sexual advance about which the complainant did not want to go into detail. Although there were discrepancies as to the details and completeness of the complaint, these were matters for the jury. As to what the complainant told her mother, the appellant's "fresh in the memory" arguments based on the principles in *Graham v The Queen* (1998) 195 CLR 606 and *Papakosmos v The Queen* (1999) 196 CLR 297 were dismissed. This point was not raised at trial and there was nothing to suggest a miscarriage of justice stemmed from the admission of the evidence. The 66 day delay in making the complaint was not great and there were reasons why the complainant's memory of the events was sufficiently fresh to make the evidence admissible on this wider basis.

Other findings made by the court were as follows:

- The trial judge's directions on the complaint evidence contained no error. The jury were directed in unobjectionable terms as to the use they could make of the complaint evidence. It was clear from the summing up that much had been made in the defence counsel's address about discrepancies between the versions of the complaint, as it was equally made clear the complainant's reasons for such discrepancies. Nothing in the case

called for a judicial warning, such as that given in *Domican v The Queen* (1992) 173 CLR 555, as distinct from a reminder of the competing submissions. The directions were not the subject of any application for further direction at trial and there was no error; nor any miscarriage relating to this matter.

- The verdicts were not unreasonable nor were they inconsistent. There were understandable reasons why the appellant was acquitted on counts 1-4 and counts 8-10 and nothing in the evidence showed that the jury were obliged to have a reasonable doubt about guilt on counts 5, 6 and 7. The verdicts were explicable on the evidence having regard to the way in which the case was fought at trial. There was nothing in the acquittals that necessarily reflected that the complainant was untruthful or unreliable such that the court should consider the reasonableness of the guilty verdicts: *MFA v The Queen* (2002) 213 CLR 606.
- There was no misdirection as to the roles of Crown prosecutor; defence counsel and jury. The appellant submitted that the trial judge's directions were unfairly balanced in favour of the Crown because they not only portrayed the Crown as being conspicuously fair; but did so in a manner which sought to distinguish the Crown's approach from that of defence counsel. It was also submitted that when the directions that the prosecutor was bringing the charges on behalf of the community were combined with the comments that the jury were representatives of the community, it impermissibly influenced the jury to believe that their role was in some way aligned with that of the

Appendix I5 Continued

Significant Judicial Decisions

Crown Prosecutor. However none of the judge's statements were untrue or misrepresented the situation in any way and when dealing with the role of the prosecutor His Honour was doing little more than providing an attenuated summary of the principles from **The Queen v Apostilides (1984) 154 CLR 563**.

- No error was made in cumulating the sentences for the two more serious offences. The applicant submitted that there were exceptional circumstances stemming not only from the circumstances of the offences, but based also on his strong subjective case, which included the absence of prior convictions, good character, no real prospect of re-offending, and excellent prospects of rehabilitation. However the length of the sentences and the remarks on sentence confirmed that the judge had given considerable weight to these issues, and there was no error in making the sentences on the two more serious offences cumulative.

BP v Regina; SW v Regina [2006] NSWCCA 172

This case involved appeals by two children (BP and SW) against their convictions for sexual offences committed against a 16 year old complainant. BP was convicted of one count of aggravated sexual assault comprising digital penetration under s 61J(1) **Crimes Act** (count 3) and sexual intercourse without consent as a statutory alternative under s 61I **Crimes Act** (count 2). SW was convicted of one count of aggravated sexual assault under s 61J(1) **Crimes Act**. BP was sentenced to s 9 bond for three years (count 2) and to three years imprisonment with a non-parole period of 12 months (count 3). SW was sentenced to a fixed term of imprisonment of two years suspended on

entering into a bond.

At the time of the offences BP and SW were aged 12 years and 11 years respectively. During the commission of some of the acts, the complainant screamed, tried to kick BP off and hit him. She told BP to move or get off several times. BP asked the complainant not to tell anyone; the complainant said that she was going to tell the police. BP asked the complainant not to do so and continued assaulting her.

At trial the issue was whether BP and SW understood the nature of their respective actions so as to be criminally responsible for them. Section 5 of the **Children (Criminal Proceedings) Act 1987** modifies the common law concerning the criminal responsibility of children by providing for a conclusive presumption that no child under the age of ten years can be guilty of an offence. For children aged between 10 – 14 years, the presumption of doli incapax operates. That is, the child is incapable of committing a crime because of a lack of understanding between right and wrong and therefore an absence of the requisite mens rea or guilty mind.

The court dismissed both conviction appeals. It held the prosecution had proved that BP and SW committed the acts charged, that they possessed the requisite mental knowledge for committing these acts and that in perpetrating them, each knew that it was "... seriously wrong as distinct from an act of mere naughtiness or mischief": **The Queen v M** (1977) 16 SASR 589. Hodgson J said that a narrow view should not be taken of the circumstances of the offence that can operate as evidence of the acts charged. If the jury accepted the complainant's evidence that she was crying and struggling and asking BP to stop, these would be factors capable of supporting the inference that BP knew that what he

was doing was causing great distress to another and was seriously wrong. That evidence, together with evidence that BP asked SW to stop the complainant from screaming, that BP continued his conduct after the complainant said she would tell the police, and a statement by the Assistant School Principal regarding BP's alleged acknowledgement of the nature of his behaviour, was "plainly sufficient" for the jury to make a finding beyond reasonable doubt that BP had sufficiently understood that his conduct was wrong.

The court also held the following: (a) A trial judge's direction to a jury regarding the presumption of doli incapax requires no set form of words. The jury need to be directed that the Crown must prove beyond reasonable doubt that the accused, when committing the act, knew it was seriously wrong, as opposed to being "mere naughtiness or mischief." (b) The trial judge's summing up to the jury was sufficient and did not give rise to a miscarriage of justice. (c) The jury's verdicts were not unreasonable and were capable of being supported on the evidence at trial.

Harris v R [2005] NSWCCA 432

Frederick O'Neal Harris (the appellant) was convicted, by a jury, of one count of manslaughter under s 24 **Crimes Act**. He was sentenced to imprisonment for seven and a half years, with a non-parole period of four years and eleven months.

The appellant punched the deceased twice in the face during an altercation at an RSL club. The victim was taken to hospital and a day later made a statement to police about what had occurred. He died less than a week later from head injuries inflicted by the appellant.

The appellant appealed to the NSW Court of Criminal Appeal against his conviction. The two main issues for

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Significant Judicial Decisions

determination were whether the trial judge erred in admitting the deceased's prior representations made in his statement to police and whether His Honour erred in directing the jury on self-defence. In relation to the first issue, the court found that no mistake was made in admitting the statement into evidence under s 65(2)(b) of the **Evidence Act 1995**. Section 65(2)(b) excludes application of the hearsay rule to evidence of a previous representation made "... when or shortly after the asserted fact occurred and in circumstances that make it unlikely that the representation is a fabrication."

The **Evidence Act 1995** does not define what is meant by "shortly after". "In **Conway v The Queen** (2000) 98 FCR 204, the introduction of the words 'shortly after' was seen as a significant departure from the position prior to the introduction of the Act." The phrase been judicially considered in a number of cases including **R v Mankotia** (unrep, NSWCCA, 27/7/1998) and **R v Polkinghorne** (1999) 108 A Crim R 189). In **Williams v The Queen** (2000) 119 A Crim R 490 which is cited in **Harris**, Whitlam, Madgwick and Weinberg JJ said the rationale for the exception to the hearsay rule under s 65(2)(b) is not based only on the necessity to ensure that the relevant events may be easily recalled, rather the provision is, as a whole, intended to allow evidence that is unlikely to be a fabrication. In **Williams v The Queen** at 502 [49] the court "... considered a lapse of five days took the representations '... outside the likely temporal realm of statements that may be considered to be reliable because made spontaneously during, or under the proximal pressure of events.'" The NSWCCA took the view that is was open to the trial judge in **Harris** to determine that the deceased's statement, made only 24 hours after the event, was made "shortly after" the asserted fact occurred.

In reaching this conclusion the court found that the victim's level of intoxication was mild, his version was not inherently unlikely, he would have appreciated that there were witnesses in the club that the police would interview concerning the incident, and his statement was made before he realised the nature and extent of his injuries. These circumstances made it unlikely that the representations in the statement were fabricated and the statement was therefore admissible under s 65(2)(b).

The court also held that based on the trial judge's directions to the jury about self defence, there was no real risk the jury misunderstood the Crown's burden of proof concerning self-defence. The trial judge directed the jury that it was for the Crown to convince them that the appellant's defence of self defence should be rejected. His Honour also directed the jury that the Crown had to convince the jury beyond reasonable doubt that either the accused did not believe that he had to do what he did to defend himself, or that what he did was not a reasonable response to the situation as he saw it. The trial judge's directions made the burden and standard of proof clear to the jury and, having regard to all the instructions given on the issue, there was no real risk the jury misunderstood the burden or nature of the onus imposed on the Crown.

An application by the appellant for special leave to appeal to the High Court of Australia against the decision of the NSW Court of Criminal Appeal was refused on 19 May 2006.

DPP v El Mawas [2006] NSWCA 154

El Mawas was the defendant in summary criminal proceedings for malicious wounding (two counts), assault occasioning actual bodily harm (two counts), enter building with intent to commit an indictable offence and other offences arising from

alleged incidents involving his neighbour. He suffered from behavioural, affective and cognitive difficulties as a consequence of a brain injury. Before the Magistrate, El Mawas sought that the charges be dealt with otherwise than according to law pursuant to s 32(1) of the Mental Health (Criminal Procedure) Act 1990 (the Act). It was accepted that he suffered from a "mental condition" as defined in s 3 of the Act, and a psychologist's report was tendered suggesting a treatment plan. The magistrate however refused the application, and El Mawas then sought leave to appeal against this decision to the Supreme Court.

Greg James J upheld the appeal, finding, inter alia, that the magistrate had erred in determining the application under s 32, in that she had placed too much emphasis on the seriousness of the offences, and erroneously found and taken into account that the offences were not related to El Mawas's mental condition, as they were characterised by a degree of planning inconsistent with the "impulsivity and inability to plan" characteristic of his condition.

An appeal by the DPP against the judgment of Greg James J was allowed.

The Court of Appeal held that Part 3 of the Act requires a magistrate to balance the public interest in those charged with a criminal offence facing the full weight of the law against the public interest in treating, or regulating to the greatest extent practical, the conduct of individuals suffering from any of the mental conditions referred to in s 32(1) or mental illness (s 33) with the object of ensuring that the community is protected from the conduct of such persons. The requirement in s 32 for a magistrate to determine whether it would be more appropriate to deal with a defendant under Part 3 of the Act rather than in accordance with law involves a discretionary decision in which

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Significant Judicial Decisions

the magistrate is permitted latitude, confined only by the subject matter and the object of the Act. In the present case the seriousness of the offences, and the finding that the impulsivity and inability to plan which characterised El Mawas's mental condition were not evident at the time of the alleged offences, were relevant considerations. Determining what weight was to be given to these factors was a matter for the magistrate, although, as was noted in *Confos v DPP* [2004] NSWSC 1159 at [17], the seriousness of the alleged offence was always a matter entitled to weight.

Accordingly the magistrate did not err at law in the exercise of her discretion to refuse to deal with the matters under s 32 of the Act.

Sharman v DPP [2006] NSWSC 135

Sharman, a police officer, was driving a police vehicle when he collided with a tree, killing his passenger, another police officer. An investigation into the collision was conducted, and it was decided to charge Sharman with Negligent Driving Occasioning Death, Exceed speed limit, and use police insignia other than as a police officer. As the offences to be charged were all summary in nature, proceedings were required to be commenced within six months of the date of their alleged commission. Section 178(1) of the Criminal Procedure Act (the Act) provides that all proceedings are taken to have commenced on the date on which a Court Attendance Notice (CAN) is filed in the registry of a relevant court in accordance with Div 1 of Pt 2 of Ch 4 of the Act (the Division). Within the Division, s 177 provides that a CAN issued by a police officer must be served in accordance with the rules, and that a copy of the CAN must be filed in a court not later than seven days after it is served

and must contain an endorsement as to service.

Four days prior to the expiry of the six month period the police inspector in charge of the investigation contacted Sharman's solicitor, who confirmed previous advice to the effect that he had instructions to accept service of the CANs for the offences on Sharman's behalf. On the following day, by arrangement, the three CANs were served by facsimile transmission on the solicitor's office. The next day the inspector again contacted the solicitor, and informed him that he had now been advised by the Legal Service Branch of NSW Police that the CANs were required to be served personally. On the same day, pursuant to that advice, another police officer attended the court registry, where he filed copies of the three CANs which were endorsed with details of the service by facsimile on Sharman's solicitor the previous day. He then attended Sharman's home address and served further copies of the three CANs personally on Sharman. However no further copies of the CANs containing an endorsement as to the personal service on Sharman were ever filed in the court registry.

When the proceedings were listed before the Local Court, Sharman contended that they had not been validly commenced, and that therefore the court was without jurisdiction. The basis of this contention was a factual dispute as to whether copies of the CANs endorsed as to the service on Sharman's solicitor had been filed in the court registry within seven days of service. The magistrate found that the copies endorsed as to that service had in fact been filed within that time, and held that the proceedings had been validly commenced.

Sharman then commenced proceedings in the Supreme Court seeking judicial review

of this determination.

The Supreme Court overturned the magistrate's decision, holding that the proceedings had not been commenced in accordance with the provisions of the Act within six months of the date on which the offences were alleged to have been committed and that therefore the Local Court had no jurisdiction to entertain them. In so finding the court held:

The Criminal Procedure Amendment (Justices and Local Courts) Act 2001, which contained the legislative provisions under consideration, introduced a completely new scheme with respect to the commencement of criminal proceedings. Nothing in the Attorney General's second reading speech at the time of its introduction explains why it was proposed that under the new scheme filing of the initiating process was to depend on service (save in some circumstances not presently relevant). Service did not go to jurisdiction under the scheme of the commencement of summary criminal proceedings under the former Justices Act 1902.

However the language of s 177(4) is imperative and requires as a condition of the valid commencement of proceedings that a copy of a CAN containing an endorsement of service be filed within seven days of service. The service so endorsed must be valid service for the purposes of the Act. In the present case the copies of the CANs which were filed contained endorsements of defective service, in that facsimile transmission to a solicitor's office is not a valid method of service under clause 18 of the *Local Courts (Criminal and Applications Procedure) Rule 2003*. Accordingly, while police did validly serve the CANs (by personal service) within six months of the alleged commission of the offences, at no stage were copies of the CANs bearing

Appendix 15 Continued

Significant Judicial Decisions

endorsement as to that valid service filed in the court registry. Thus an essential condition of the commencement of valid proceedings was not met.

DPP v Aydogen and Gosper [2006] NSWSC 558

Two police officers, Aydogen and Gosper and two other officers transported a Ms Bishop in a caged truck to her home address after she had had been verbally abusive to them. On arrival the officers removed Bishop from the truck and were preparing to leave when she hit the truck with a crutch. She was then arrested for offensive behaviour and placed back in the truck. The officers drove her to a racecourse. When she was asked to get out she refused and allegedly spat at Aydogen. Aydogen then closed the door and told her that she was now under arrest for assault police. She was then driven to a police station and charged with assault police.

Subsequently Aydogen and Gosper each made statements in relation to the events surrounding the alleged offence, in which they each omitted any reference to transporting Bishop to the racecourse, and falsely stated that the alleged assault had taken place outside Bishop's home. Some weeks later Gosper advised a superior officer that she had omitted something from her statement, and was advised that both she and Aydogen should prepare additional statements correcting the earlier ones. This they both did. The proceedings against Bishop were subsequently withdrawn. Accordingly the false statements were not placed in a brief of evidence, not served on Bishop and not tendered in evidence in any proceeding.

Aydogen and Gosper were subsequently charged with "Fabricating false evidence" in relation to their initial statements. After a hearing in the Local Court, the magistrate

held that no prima facie case had been established in that the false statements did not constitute "evidence" within the meaning of s 317(b) of the *Crimes Act*.

An appeal to the Supreme Court by the DPP against this decision was allowed, and the matters remitted to the magistrate to be dealt with according to law. The Supreme Court made the following findings:

- Section 317(b) appears in Division 2 of Part 7 of the *Crimes Act*, headed "Public justice offences", and its construction must be undertaken in its legislative context. Part 7 was introduced in order to consolidate the common law and statutory offences in relation to interference with the course of justice. The enacting legislation abolished the common law offences of perverting the course of justice and attempting to pervert the course of justice. However a general offence of perverting the course of justice was provided for by s 319 in Division 2. No such provision was made for the offence of attempting to pervert the course of justice. Accordingly, conduct which was capable of amounting to an attempt to pervert the course of justice at common law is now found within the specific offences established by Part 7.
- At common law offences constituted by tampering with or fabricating evidence were prosecuted as attempts to pervert the course of justice.
- In *R v Rogerson* (1992) 174 CLR 268 the High Court confirmed the principle that the offence of attempting to pervert the course of justice at a time when no curial proceedings are on foot can be committed. *Rogerson* and other authorities render it beyond doubt that an offence amounting to an attempt to pervert the course of justice may be

committed regardless of whether the false document or record or accusation finds its way into evidence in a judicial proceeding.

- Disregarding Divisions 1 and 5, Part 7 consists of three broad categories of offences: offences arising out of conduct antecedent to the institution of proceedings (Division 2), offences arising out of conduct that interferes with the proper performance of obligations undertaken by persons engaged in judicial proceedings (Division 3) and offences arising out of conduct by persons in the course of judicial proceedings (Division 4). Division 2 contains those offences which were otherwise recognised under the common law as attempts to pervert the course of justice as discussed in the relevant authorities.
- In the light of this analysis there is no basis for adopting a construction of s 317(b) and (c) which would confine the offences to the fabrication of physical items per se, or to physical items introduced into evidence or intended to be introduced into evidence (as had been contended).

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 2004–2007

The Corporate Plan 2004–2007 contains information on the Office's goals, objectives and implementation strategies which will guide the operation of the ODPP until 2007.

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 re-published in their entirety in October 2003 and individual Guidelines have been amended since that date. These 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

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Publications of the ODPP (NSW)

Centre at the State Library of NSW or 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

Editor Hugh Donnelly. Comprises summaries of most NSW Court of Criminal Appeal decisions, all 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 8764 between 9.00 – 5.00 pm weekdays.

Cost: \$75 incl GST.

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

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Publications of the ODPP (NSW)

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.

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

2005-2006 EEO Achievements

The EEO statistics were produced as part of the NSW Public Sector Workforce Profile. The number of women employed within the Office increased from 403 to 434 and the number of men employed decreased from 287 to 281.

The number of women earning salaries above \$78,344 (non-SES) increased from 115 to 116 and the number of men in the same salary band decreased from 203 to 201.

The Office continued to employ one

cadet under the Aboriginal and Torres Strait Islander Cadetship Program.

The following relevant policies were implemented and/or reviewed during the year:

- Dignity and Respect in the Workplace Charter;
- Recruitment and Employment .

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
< \$32,606	2	50%		100%	100.0%				
\$32,606 - \$42,824	19	68%	37%	63%		31%	8%	15%	
\$42,825 – \$47,876	84	83%	12%	88%	1.4%	39%	29%	9%	5.7%
\$47,877 – \$60,583	150	77%	19%	81%	3.4%	28%	13%	5%	0.9%
\$60,584 – \$78,344	143	69%	24%	76%	1.0%	22%	18%	4%	1.0%
\$78,345 – \$97,932	186	87%	55%	45%		19%	11%	6%	1.9%
> \$97,932 (non SES)	125	59%	76%	24%		15%	5%	4%	1.4%
> \$97,932 (SES)	6	100%	67%	33%		17%	17%	17%	16.7%
TOTAL	715	76%	39%	61%	1.4%	23%	14%	6%	1.9%

Estimate Range (95% confidence level)

1.0% to 1.8% 21.5% to 25.1% 12.5% to 15.3% 4.6% to 6.6% 1.5% to 2.4%

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	409	81%	42%	58%	0.9%	26%	17%	7%	2.7%
Part-Time	68	88%	6%	94%		23%	12%	3%	
Temporary Full-Time	122	71%	23%	77%	2.3%	25%	13%	3%	
Part-Time	12	58%	8%	92%	14.3%				
Contract SES	6	100%	67%	33%		17%	17%	17%	16.7%
Non SES									
Training Positions	1	100%		100%	100%				
Retained Staff									
Casual									
TOTAL	618	79%	34%	66%	1.5%	25%	15%	6%	2.0%

Estimate Range (95% confidence level)

1.1% to 2.1% 23% to 26.5% 13.9% to 16.8% 4.9% to 6.8% 1.6% to 2.5%

Appendix 19

Government Energy Management Plan (GEMP)

At the time of writing this section of the Annual Report, the Office of the Director of Public Prosecutions (ODPP) is currently finalising its GEMP Report 2006 for submission to the Ministry of Energy and Utilities.

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.

The Office continues to assist in the effort to reduce power wastage by:

- installing the C-bus lighting systems in all new refurbishments, where lengthy leases exist and the value for the initial expenditure will be realised. This energy efficient system has been installed to date at Lismore, Campbelltown, Dubbo and Sydney locations. The basis of this system is that all offices and meeting rooms are connected to movement detectors and only operate while these areas are occupied,
- purchase in-contract electricity (contract 777), including Green Power,
- purchase of energy efficient star rated equipment,
- engagement of power-save facilities on equipment (where those facilities are available).
- leasing energy efficient motor vehicles for the ODPP fleet.

The ODPP's General Manager, Corporate Services, has the overall responsibility for the energy management of the Office, with the day-to-day GEMP-related tasks and follow-up action towards meeting the Office's energy goals, being the responsibility of the Manager Asset and

Facilities Management Branch. 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. This is being achieved.
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 diesel and gas powered vehicles where opportunities exist. The ODPP is removing 'D-category' energy inefficient vehicles from the fleet and leasing 'A and B-category' vehicles when operational requirements permit. The ODPP has two 'A-category' Prius vehicles in the fleet. The ODPP has also amended its motor vehicle fleet profile to include smaller vehicles 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. Refer to the Report Against Corporate Plan in this Annual Report.
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. The 2006 follow-up review has not been undertaken to date but is expected to be finalized prior to the end of the calendar year and show an improved result increasing the star rating to 3 and above.

Future Direction

The ODPP is continuing its endeavours as reported last year, i.e. to introduce energy efficiencies during fitout work; comply with Government direction in respect to purchasing Green Power and in-contract energy; purchasing efficient equipment and by educating staff to use energy efficient methodologies and adopt a common-sense approach to energy management. The ODPP utilises the basic power sources, but the ODPP has the commitment to assist the Government in attaining its energy management goals and make savings in energy usage. The stance by the ODPP to remove 'D-category' vehicles from its fleet was a significant adjustment which was complied with from the top down. The Director was the first to comply under the new policy.

Appendix 20

Waste Reduction and Purchasing Plan and Recycling

The Office of the Director of Public Prosecutions (ODPP) has a sincere commitment to reduce waste and introduce wherever possible recycled products that will not have an effect on the operation of the Office equipment or interfere with its operational goals. The key reporting areas from the Office's latest produced WRAPP 2005 are reproduced below. The next WRAPP is due in 2007.

Inclusion of WRAPP principles in corporate plans 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 that will provide efficiencies in high-speed double-sided printing from PC's. Efficiencies have been realised in printing time. Paper, consumables consumption and subsequent costs are not areas where savings are being realised as reported in previous years. This is because of the amount of copies that are made of emails and other information sent electronically.

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

The ODPP's purchasing policy requires purchases to be made under Government contract wherever possible. This ensures that the ODPP complies with this key reporting area. It was disappointing for the Office to discover that 100% recycled paper caused major problems in the operation of the Office's multi-functional copiers/printers/scanners. A test was undertaken and it was proved that pure

100% recycled paper caused the majority of paper jams in the machines. Testing took place on a number of paper types containing varied amounts of recycled content, but no further action has been taken to introduce the use of recycled paper for use in copiers.

The ODPP does use other recycled products in the course of its operations, i.e. envelopes, post-it notes and writing pads. Modular furniture is recycled where appropriate and suitable. The recent fitout at Penrith is an example where \$20,000 worth of dismantled furniture from other ODPP locations was re-installed and is providing as good a service as new furniture.

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 provided. As mentioned above, 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% recycled copier and printing paper failure, the ODPP continues to pursue the purchase and use of other recycled products such as envelopes, post-it-notes and writing pads.

Raising staff awareness about the WRAPP, 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 collected 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 2002	30 June 2003	30 June 2004	30 June 2005	30 June 2006
SES Level 1	3	3	3	3	3
SES Level 2	3	3	3	3	3
SES Level 3	—	—	—	—	—
SES Level 4	—	—	—	—	—
SES Level 5	—	—	—	—	—
SES Level 6	—	—	—	—	—
Statutory Appointments					
Under the DPP Act	4	4	4	4	4
Number of positions filled by women	2	2	2	2	2

*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 2002	30 June 2003	30 June 2004	30 June 2005	30 June 2006
Statutorily Appointed and SES	100	104	100	105	105
Lawyers	280	282	303	315	324
Administration and Clerical Staff	193	199	221	233	225
Total	573	585	624	653	654

Recruitment Statistics	2001/02	2002/03	2003/04	2004/05	2005/06
Senior Executive Service	1	0	0	0	0
Statutory Appointments	1	0	2	0	0
Crown Prosecutors	19	14	1	5	2
Prosecution Officer (Lawyers)	74	33	27	44	17
Prosecution Officer (Administrative)	64	70	76	70	73
Total	159	117	106	119	92

Appendix 22

Report of the Chief Information Officer on Major IM&T Projects During 2005-06

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 records and full integration with existing workflow applications. It forms the first stage of the Office's compliance with the records management requirements of the State Records Act. 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 all staff within the Solicitor's office and user training has been completed. The system is being rolled out to Crown Prosecutors, commencing with Crown Prosecutors in the Appeals in the 05/06 financial year.

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

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.

The Activity Based Costing project has been initiated to capture critical data regarding the cost of each prosecution activity initiated. It will provide important management information to enable better-informed resource allocation, budgeting and accountability. Automatic selection of matters commenced in January 06 and statistical data will be available at the end of 2006.

ICT Infrastructure Upgrade Project

The following sub-projects make up the ICT Infrastructure Upgrade; the target date for completion of the whole project is the 2006/2007 financial year.

1. Upgrade of the Wide Area Network (WAN) and Internet access.

This project aims to upgrade the existing WAN and Internet infrastructure to maintain adequate performance of ODPP applications at all sites, including regional offices. It also aims to allow the distribution of large electronic documents between offices and to improve communications and research by implementing less restrictive email and internet access. This upgrade has been completed.

2. Upgrade of Microsoft Software Licensing

This project aims to upgrade all Microsoft software to current, supported versions. This includes the upgrade of the network environment to Windows 2003 Active Directory Services, upgrade of email server software to Exchange Server 2003, and upgrade of desktop software to MS Office 2003.

The new standard operating environment has now been implemented, with completion of the migration of Windows NT domain to Microsoft 2003 Active Directory and the roll out of new PCs.

3. Remote Access Project

This project has developed strategies, policies and procedures to improve access to ODDP information and systems for staff who are working from outside the office, particularly those on court circuit. The operating system on all laptops used for remote access has been upgraded to Windows XP. Trials of wireless broadband facilities are presently underway with roll out expected at the end of 2006.

4. Security Certification to AS/NZS 7799:2 Standard

This project aimed at implementing the Information Security Management System (ISMS) to achieve certification to the Australian Information Security Standard. The scope of the certification was revised to cover IM&T Operations and Infrastructure at ODPP Head Office.

The certification audit was completed in May 06 and the ODPP has been recommended for security certification.

The Information Asset register has been revised and the Risk Treatment Plan has been updated. Interviews with staff for the Business Continuity Plan have been held and plans for each business unit are being developed.

5. 'Warm Site' for Disaster Recovery

In order to comply with Premier's Department Circular 2003-02, the project implemented a 'warm site' for disaster recovery as proposed in the ODPP Disaster Recovery Plan. A regional office of the ODPP was selected as the Office's Disaster Recovery Site. A computer room has been designed and a vendor for the equipment and network facilities has been selected; the site is expected to be installed by December 2006.

6. ODPP Portal

This project aims to manage disparate ODPP information resources in a consistent and integrated manner, whilst simplifying access to the information for ODPP personnel. This also includes upgrading of the DPPNet, the Research System and the ODPP web site. A business agent has been employed to assist with the user requirements and acceptance testing; developmental work for the Portal is underway including consultation with relevant business areas

Appendix 22 Continued

Report of the Chief Information Officer on Major IM&T Projects During 2005-06

for their requirements and feedback and the testing of links between the underlying system (Objective) and the new portal interface.

Employee Self Service

The Office's time recording system (FLEX) was incorporated into its financial system (CHRIS). Staff and managers are now able to access personnel records. Electronic lodgement of leave applications has now been implemented.

Courtlink

Courtlink is a project of the Attorney General's Department designed to produce a common case management system across the three jurisdictions of courts in NSW and replace the three recording systems (GLC JIS and Supreme Court systems). Electronic interfaces with major information exchange partners (Police, LAC, ODPP, Criminal Records and BOCSAR) will enable the electronic filing of documents and automatic population of court results. The target date for roll out to the Supreme and District Courts is October 2006, with the Local Court to follow in 2007.

In order to interface with Courtlink a processing layer needs to be built by each relevant agency. The AGD, as the lead agency and on behalf of the members of the Justice Sector Exchange Co-ordinating Committee, was unsuccessful in obtaining an invitation to submit a joint Business Case for the 07/08 financial year to fund this interface. Agencies not linked by the interface, such as the ODPP will still be able to obtain information on a view only basis.

Digital ERISP

This is another multi-agency project, involving the Attorney General's

Department, the NSW Police (lead agency), Legal Aid Commission and the ODPP. The project involves the replacement of old and outdated video equipment used to electronically record and play interviews conducted with suspected persons, particularly accused persons. Video and audio cassette recording of such interviews will be replaced with a single standard format Digital Versatile Disc (DVD). Editing of these interviews will be made much simpler – by way of a DVD editing programme which is easier to use and very portable (for circuit work). The anticipated date for installation of the recording equipment in Police stations is mid 2007.

Appendix 23

Freedom of Information Act 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP).

Period

1 July 2005 to 30 June 2006

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 2006 under the FOI Act is included at the end of this Appendix.

In the period 1 July 2005 to 30 June 2006 the ODPP received 5 applications under the FOI Act for access to documents. Three applications were granted in full. A further

one application was granted in part: the balance of the documents sought were determined to be exempt because they related to the prosecuting function of the ODPP.

The documents requested in one application were determined to be exempt because all of the documents related to the prosecuting function of the ODPP. The ODPP was consulted pursuant to s59B on one occasion.

During the reporting period:

- No Ministerial Certificates were issued.
- All applications for access to documents were processed within 21 days, or within the 14 day period allowed by s.59B(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 District Court.

	Personal		Other		Total	
	2004-05	2005-06	2004-05	2005-06	2004-05	2005-06
Number Received	5	3	5	2	10	5
Number Completed	5	3	5	2	10	5
Transferred Out	0	0	1 in part	0	1 in part	0
Total Processed	5	3	5	2	10	5
Results*						
Granted in Full	1	2	1	1	2	3
Granted in Part	2	1	2	0	4	1
Refused	1	0	2	1	3	1
No Documents Held	1	0	0	0	1	0
Completed	5	3	5	2	10	5

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

Appendix 23 Continued

Summary of Affairs as at 30 June 2006

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 Office of the Director of Public Prosecutions (ODPP) is set out in the "Prosecution Guidelines of the Director of Public Prosecutions", which were last furnished in their entirety on 20 October 2003. The Guideline relating to Elections (Guideline 8) was amended on 10 December 2004. The Guideline relating to Victims of Crime (Guideline 19) was amended on 24 October 2005. The Guideline relating to Advice to Police (Guideline 14) was amended on 11 November 2005. A copy of the Guidelines 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 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 2006.

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 (Legal)
Office of the Director of
Public Prosecutions

30 June 2006

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 Worker's Compensation and Motor Vehicles respectively.

In the 2005-2006 reporting period the Office's motor vehicle claims as at 31 March 2006 numbered twenty-three, representing an average cost per vehicle of \$1,913.00. This compares with twenty-one claims received during 2004-2005 (as at 31 March 2005), at an average cost per vehicle of \$1,952.00, representing a slight improvement in the overall cost of claims.

In the 2005-2006 reporting period, the Office's worker's compensation claims as at 30 June 2006 numbered eighteen, representing a total gross payment cost of \$93,815. This compares with twenty-two claims received during 2004/2005 (as at 30 June 2005), representing a total gross payment cost of \$229,719.

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 2005/06 include but are not limited to:

- Ongoing involvement in workplace safety training sessions - focussing on office ergonomics, manual handling, personal security, vicarious trauma etc;
- Regular workplace assessments both one on one and in group settings.
- Ongoing research into and introduction of appropriate OHS equipment;
- 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.
- Ongoing project work with ODPP EAP Counsellor to identify and implement strategies for issues specific to the ODPP;
- Ongoing workplace inspections and commitment to the 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 2005-2006

During 2005-2006 WAS across the state continued to work to improve the service delivery for victims and witnesses who are going through the criminal justice process and to improve the ways in which WAS assists in the prosecution process.

WAS is guided by the Best Practice Early Referral Flowchart and is currently working to improve this document. WAS continues to try to work proactively with victims and witnesses and this can be challenging as the legal system is a reactive one.

WAS is committed to maintaining and strengthening the communication and liaison both within the ODPP with solicitors and Crown Prosecutors and with government and non-government agencies external to the ODPP such as the Police, Health, Department of Community Services and victims groups and support services.

The last year has been one of some uncertainty for the Witness Assistance Service due to the possible implementation of the recommendations of the WAS review referred to later in this report. As a result, one of the Senior positions was filled on a temporary basis and policy development for the service as a whole was somewhat stalled. There have also been some changes in staffing which is probably inevitable with a larger WAS team as people have left the service temporarily or permanently to pursue alternative professional or personal goals.

Witness Assistance Service Review and Impact on WAS Structure

The WAS Review was conducted by the Manager Service Improvement from March 2005 with the final report

and recommendations published in August 2005. The report was circulated and feedback sought from appropriate management representatives and the PSA.

During 2005-2006 the ODPP examined the feasibility of implementing the recommendations of the WAS review which included improving the integration of WAS into the solicitor's office by changing the reporting relationships within the organisation and by co-locating Sydney WAS within the legal groups at Head Office in Sydney. Examining the feasibility of these proposals continues into 2006-7.

The Senior WAS positions that were established in 2004 as part of the enhancement to the service were abolished just before the end of the financial year.

Main initiatives to enhance service delivery to victims and witnesses

- Penrith office has relocated and the office has been able to upgrade the WAS offices and establish a conference room appropriate for children and their carers
- the development of a WAS section on the Crown arraignment sheet
- Further enhancements to the WAS database computer system that improve the tracking of matters that have been closed
- the development of remote facilities for vulnerable witnesses giving evidence
- the Police have developed a referral sheet that directly notifies WAS of witnesses and victims that fall within the WAS priority areas for early referral.

Aims, role and function 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, anxiety and re-traumatisation 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.

Service Delivery 2005-2006

The number of new WAS registrations in 2005-6 is similar to the last two years, with a total of 2520.

The number of WAS priority matters was 66% of the new referrals, that is, matters involving child sexual assault, adult sexual assault, other child abuse matters and matters involving death. Again, these figures are very similar to those reported on for the previous year.

Child Sexual Assault

The evaluation of the child sexual assault jurisdiction pilot was released in September 2005.

During the latter part of 2005 and continuing into the next financial year WAS has been involved in the "Courtwise" project, a project managed by Victims Services at the Attorney-General's Department. This is an interagency project, with representatives from courts, ODPP, Police, Department of Health, CASAC services, Victims Services, Education Centre Against Violence aimed at developing a website about court aimed primarily at young people but suitable for all ages.

Appendix 26 Continued

Witness Assistance Service Report

Adult Sexual Assault

WAS has continued to respond to the legislative changes introduced last year for adult victims of sexual assault and the development of the vulnerable witness rooms at the Downing Centre court complex.

The Criminal Justice Sexual Offences Taskforce, "Responding to sexual assault: the way forward" was released in December 2005.

Aboriginal Victims and Witnesses

Since May 2004 there have been three Aboriginal WAS Officers at the ODPP who provide services for indigenous victims of crime and witnesses and also assist with general service provision. These positions have a regional focus, each covering approximately a third of the state.

The new registrations for 2005-2006 have continued to be higher than in past years. New registrations in this period were 162. The statistics are also very conservative given the difficulties that remain with early identification of victims and witnesses as Aboriginal or Torres Strait Islander. The statistics also do not reflect the general support that is also provided to a large number of Aboriginal witnesses and community support people when providing support at court, especially in rural areas.

The Aboriginal WAS Officers have established a protocol for referral with WAS Officers and ODPP Lawyers. They continue to liaise with police and other external agencies to promote their positions, and to establish better ways of identifying Aboriginal victims and witnesses so that a more proactive service can be provided in the future.

As mentioned below, the WAS Manager and one of the ATSI WAS Officers presented at the Crowns' conference in 2006 on servicing Aboriginal victims and witnesses. Peter Barnett, Deputy Senior Crown Prosecutor presented with the Aboriginal WAS Officer to provide a Crown's perspective on working with Aboriginal WAS Officers. The Crown spoke about a recent high profile matter in which he worked closely with the Aboriginal WAS Officer and the benefits to the prosecution process in utilising the service.

WAS Statewide Operations and Standards

The WAS Senior team has been discussing the introduction of benchmarking WAS activities such as early contact and contact made to discuss court preparation and arrangements for court. The lawyers have tasks that they need to complete on the cases system and introducing benchmarks for WAS is an attempt to parallel these, to improve accountability for WAS and also to assist WAS Officers in their planning and assessment. It is envisaged that this would be particularly helpful for new workers as well as being a reminder for others.

The WAS Senior team is also looking at the feasibility of introducing weighting of WAS matters so that the caseloads are a more accurate reflection of the workloads of WAS Officers. This is a strategy that has assisted the solicitors in their workload management and it is hoped that it would also be of assistance to WAS.

A number of WAS Officers across the state formed a working party to examine and improve the WAS template letters that are sent to victims and witnesses. This project is now complete though has not

been loaded onto the computer system as further enhancement is needed to do so. This project has been a good example of WAS Officers working on a project together from different offices, using email and telephone conferencing. It is hoped that similar projects will occur in the future as this provides WAS Officers with the opportunity to network with each other across regions and to be involved in work other than casework.

Students

WAS Officers have continued to provide fieldwork placements for students in the financial year 2005 -2006

Professional Development

Conference, workshops and forums attended by various WAS staff include

- "Rough Play – Children who kill children "and Doli Incapax. Speaker was Dr. Deb. Ambery, B. Soc. Sc (Criminal Justice), School Of Social Sciences and Liberal Studies from Charles Stuart University
- Internal ODPP training on "Working with People with Intellectual Disabilities"
- "Change your thinking", a cognitive behavioural training programme presented by the Centre for Continuing Education at the University of Sydney
- Norimbah Network conference, July 2005
- "Children and the Courts" conference at the Museum of Sydney
- "Sexual Assault Matters" workshop, February 2006, internal ODPP training
- "Understanding grief and loss", April 2006, internal ODPP training

Appendix 26 Continued

Witness Assistance Service Report

Interagency Liaison and Policy Development

- Sexual Assault Forums were held in Sydney and Sydney West coordinated by Sydney WAS and Sydney West WAS and Learning and Development respectively.
- Homicide Victims Support Group, meeting at Sydney WAS
- Interdisciplinary forum on the pre trial management and conduct of sexual assault trials organised by the Attorney General's department and Judge Knox, January 2006. This forum was attended by lawyers and WAS Officers from the ODPP, representatives from Legal Aid, the Bar Council, courts, and members of the judiciary.
- Presentation and panel representation at the Northern Beaches Interagency Forum by a WAS Officer and SALO (Sexual Assault Liaison Officer)
- Contribution to policy submissions by the Sydney ATSI worker, including the ACSAT submission, the review of the Interagency Guidelines for Child Protection, the Justice Cluster draft plan of the Aboriginal Justice plan
- SALO attended the Canberra Roundtable at the Australian Institute of Criminology

Interagency Committees

- ODPP Sexual Assault Review Committee
- Aboriginal Child Sexual Assault Taskforce
- Victims of Crime Interagency
- JIRT State Management Group
- NSW Police Adult Sexual Assault Interagency
- Child Protection Senior Officers Group

Education, Training and Consultation

- Mission Australia training
- Specialist New Worker Sexual Assault Service Training sessions for the Education Centre Against Violence NSW Health
- Presentation at the Crown conference by WAS Manager and Sydney ATSI worker
- ODPP Foundation Skills for Lawyers training on Aboriginal victim/witness issues
- Training and orientation provided to new 24 weekers
- Training provided to Hornsby detectives by Sydney WAS

National and International Liaison and Networking

The WAS Manager, a Senior WAS Officer and WAS Officers from Sydney West and Country attended the National WAS Conference held in Adelaide in September 2005. Both the WAS Manager and Senior WAS Officer presented papers.

Appendix 27

Overseas Travel Information

1 JULY 2005 – 30 JUNE 2006

Staff Member	Dates, Places and Travel Details	Reason for Travel, and Expenses Details (\$AUS)	Total Cost
N Cowdery AM QC	23-25 June 2005 Milan, Italy	IBA Conference Accommodation \$621	\$621
N Cowdery AM QC	26-30 June 2006 Edinburgh, Scotland	International Society for the Reform of Criminal Law Conference Accommodation \$1,934	\$1,934
N Cowdery AM QC	28 August - 1 September 2005 Copenhagen, Denmark 4-6 September 2005 Belfast & Dublin, Ireland 11-15 September 2005 London, England	International Association of Prosecutors 10th Annual Conference HOPAC Biennial Conference Commonwealth Law Conference Airfare \$7,218 Registration Accommodation \$2,408 Taxi \$ 246 Sustenance \$5,956	\$15,828
J Henderson	26-30 June 2005 Edinburgh, Scotland	International Society for the Reform of Criminal Law 19th International Conference Registration \$1,305	\$1,305
J Bennett SC	29 June to 2 July 2005 Dublin, Ireland	Australian and Irish Bar Associations Conference Registration \$1,550 Accommodation \$1,420	\$2,970
P Barnett	29 June to 2 July 2005 Dublin, Ireland	Australian and Irish Bar Associations Conference Registration \$1,550 Accommodation \$1,001	\$2,551
K Magnus	3-9 July 2005 Bali, Indonesia	Criminal Law Association of the Northern Territory Biennial Conference	NIL
S Dowling	28 August - 1 September 2005 Copenhagen, Denmark	International Association of Prosecutors 10th Annual Conference Registration \$1,138 Accommodation \$1,111	\$2,249

Appendix 27 Continued

Overseas Travel Information

1 JULY 2005 – 30 JUNE 2006

Staff Member	Dates, Places and Travel Details	Reason for Travel, and Expenses Details (\$AUS)	Total Cost
J Girdham	28 August - 1 September 2005 Copenhagen, Denmark	International Association of Prosecutors 10th Annual Conference Registration \$1,263 Accommodation \$ 783	\$2,046
P Whitsed	28 August - 1 September 2005 Copenhagen, Denmark	International Association of Prosecutors 10th Annual Conference Registration \$1,300 Accommodation \$ 838	\$2,138
N Norman	28 August - 1 September 2005 Copenhagen, Denmark	International Association of Prosecutors 10th Annual Conference Registration \$1,264 Accommodation \$1,107	\$2,371
G Tabuteau	28 August - 1 September 2005 Copenhagen, Denmark	International Association of Prosecutors 10th Annual Conference Registration \$1,264 Accommodation \$1,312	\$2,576
G Turner	11-15 September 2005 London, England	Commonwealth Law Conference Registration \$2,290 Accommodation \$ 895	\$3,185
J Pickering	11-15 September 2005 London, England	Commonwealth Law Conference	NIL
C Girotto	12-27 October 2005 London, England	Criminal Case Processing John Edmund Hennessy Fellowship Actual Expenses \$ 742 Accommodation \$3,430	\$4,172
D Frearson SC	16-18 October 2005 Fiji	To conduct an appeal at the request of the Fijian DPP	NIL
A Tillers	20-22 October 2005 Winnipeg, Canada	Unlocking Innocence - Avoiding Wrongful Conviction Registration \$ 738 Accommodation \$ 545	\$1,283
G Davies	17-19 November 2005 Port Villa, Vanuatu	AustLII and PacLII 7th Conference "Law via the Internet 2005" Registration \$ 600	\$ 600

Appendix 27 Continued

Overseas Travel Information

1 JULY 2005 – 30 JUNE 2006

Staff Member	Dates, Places and Travel Details	Reason for Travel, and Expenses Details (\$AUS)	Total Cost
M Tedeschi QC	10-12 December 2005 Beijing, China	Transnational Crime Prevention International Conference	NIL
C Maxwell QC	13-14 December 2005 Jakarta, Indonesia	Asian Law Group's Training of Prosecutors	NIL
T Macintosh	12-14 January 2006 Macau, China	IAP 3rd Asia and Pacific Regional Conference Registration \$ 206 Accommodation \$ 257 Sustenance \$ 562	\$1,025
T Thorpe	From February for 1 year Solomon Islands	Regional Assistance Mission to the Solomon Islands - S.I. Law and Justice Sector Institutional Strengthening Program	NIL
M Hobart	From February for 1 year Solomon Islands	Regional Assistance Mission to the Solomon Islands - S.I. Law and Justice Sector Institutional Strengthening Program	NIL
J Shaw	9-11 May 2006 Hong Kong, China	Annual Hong Kong ICAC Symposium Registration \$ 409 Accommodation \$ 755 Actual Expenses (Meal) \$ 218 Rail Fare \$ 42	\$1,424

Total cost to Office for overseas travel: \$48,278

Appendix 28

Internal Audit

The Internal Audit Committee was re-named the Audit and Risk Management Committee to more accurately reflect the role performed. The Committee comprises:

Both Deputy Directors

The Senior Crown Prosecutor

The Solicitor for Public Prosecutions

The General Manager, Corporate Services

The Manager, Service Improvement Unit

Appendix 29

System Reviews and Program Evaluations

- The Audit and Risk Management Committee approved the conduct of Operational Reviews of Bathurst, Dubbo, Wagga Region Offices and Group 2 located within Head Office.
- 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.
- The Office provided input into the Canadian Heads of Prosecutions study of Quality Assurance Practices.

Appendix 30

Consultants 2005-2006

PAYEE	CATEGORIES	Amount Excl. GST
KPMG	IDENTIFYING POTENTIAL ACCOUNTING ADJUSTMENTS OF AEIFRS	\$5,080
Total		\$5,080

Appendix 3 I

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 has during the past year sought to increase satisfaction among our stakeholders and to ensure access to the criminal justice system for those from culturally and linguistically diverse backgrounds who are Australian citizens or permanent residents and others from non-English speaking backgrounds.

MOU with Commission

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 the Commission's 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.

For many years, the ODPP has offered and 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

Throughout the year, the ODPP Witness Assistance Service (the WAS) has given priority to certain vulnerable witnesses and special needs groups, including people who experience cultural or language barriers. There are now 33.6 positions in the WAS, including 3 Aboriginal WAS officers. The WAS provides information, referral and support for victims of violent crimes and vulnerable witnesses giving evidence in matters prosecuted by the ODPP.

The Service 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. The Service 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 and operates in all ODPP offices across the State. The Service 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, the Service 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.

WAS publishes a number of pamphlets and brochures aimed at providing information to victims and witnesses about the criminal process. The interpreter service number is prominently displayed on all WAS brochures published by the ODPP. 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.

The Service provides services for victims and witnesses where other services are not available, particularly in rural and remote locations. The Service is able to liaise with the NSW Police and advocate special arrangements for witnesses in relation to travel and expenses where necessary. The Service also assists the ODPP Learning and Development Branch in planning and implementing education programs for prosecutors in relation to victims and witness issues. The Service assists in interagency liaison, and in identifying areas for legislative reform and improvement in the criminal justice system.

Appendix 3I 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 "Courtwise" Court Preparation Website Interagency Committee

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 a component in relation to anti-discrimination. All training programs conducted by the ODPP for its staff have regard to 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. Components addressing cultural awareness are included in training courses relating to prosecution of sexual assault and matters involving indigenous victims.

International Delegations

During this financial year, the ODPP received visits from 12 international delegations, (including senior prosecutors, law enforcement officers, judicial officers, members of Law Societies and librarians) from Albania, Mongolia, China, Nepal, Korea, Laos, Japan, South Africa and the USA. Each group was provided with formal information and instruction about the activities of the ODPP or about the topic/s of particular interest to it (such as specific internal administrative processes and policies) in programs ranging in length from two hours to two days.

The DPP and a number of Crown Prosecutors participated in many activities of the International Association of Prosecutors. It was arranged that a DPP lawyer would work with the DPP's office in Bermuda on a long term secondment, but unexpected developments frustrated that arrangement at the last moment. Two Crown Prosecutors are working on secondment in the Solomon Islands. Arrangements are being made for four Chinese prosecutors to spend 12 weeks training in the ODPP commencing from July 2006; and for the services of an interpreter to be available as needed.

Prosecution Guidelines

It remains the policy of the ODPP in its conduct of criminal proceedings to deal with all witnesses and accused and other persons with whom its officers come into contact having proper regard to, and respect for, their different linguistic, religious, racial and ethnic backgrounds. In accordance with the Director's Prosecution

Guidelines, 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. Pursuant to NSW DPP Prosecution Guideline 4, a decision to prosecute must not be influenced by, inter alia, the race, religion or national origin of the alleged offender or any other person involved.

Strategies for next financial year

The ODPP will continue to implement the MOU, to participate in the various activities described above, and to pursue the strategies described above, including the promotion of its Witness Assistance Service, during the next year.

Appendix 32

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. Nominations are made by staff.

Individual Recipients

1. Sonia Mangano
2. William Gibson
3. Sevinch Morkaya
4. Derek Lee

Team Recipients

CCA Judgements Electronic Database Team

Team Members – ODPP Library - Gayle Davies, Rosanne Shepherd, Kaye Sutton, Shauna Harrison. IM&T Branch – Hop Nguyen, Leader Shrestha, Diane Harris and Julie Wilson.

Corporate Services Staff Recognition Awards

A number of Corporate Services staff have been acknowledged with awards for outstanding service this financial year. The awards have been made following nominations from staff of the Office.

Nigel Richardson, Melanie Ng, Kirrely Goodridge and Michael Keating (Personnel Services)

Harsh Gandhar and Leader Shrestha (IM&T)

Ratna Rajasundaram and Robert Saville (Financial Services)

Alan Bailey (Asset & Facilities Management)

Diane Keelan (Corporate Services Executive)

Appendix 33

Some Cases Dealt With During The Year

R v Bilal SKAF, R v Mohammed SKAF - Aggravated Sexual Assault Re-Trial

As a result of an incident involving Ms D at Gosling Park, Greenacre on 12 August 2000, Bilal Skaf was charged with two counts of aggravated sexual intercourse without consent and Mohammed Skaf was charged with one count of accessory before the fact to aggravated sexual intercourse without consent.

On that evening Ms D, who was 16 years old, was contacted by Mohammed Skaf who invited her to go for a drive with him to the city. Ms D had met Mohammed Skaf on a number of occasions and knew him as 'Sam'. Mohammed Skaf and two other males arrived by car at her home within the hour. Ms D was driven to Gosling Park, Greenacre, and Mohammed Skaf eventually left her in the car park on the premise of collecting a debt owed to him. A white van arrived in the car park and Bilal Skaf alighted from the driver's seat - he indicated to Ms D he was 'Sam's brother Sam'. Another seven males also alighted from that vehicle, and a blue hatchback arrived carrying another three males. Ms D declined to go for a walk with Bilal Skaf. He then grabbed her by the hair, and the males surrounded her. Ms D was dragged through the park to an area near large tanks. She was pinned down by the males and Bilal Skaf sexually assaulted her. Following this another male sexually assaulted Ms D. After the second assault a gun was placed against Ms D's head. She then managed to escape. Ms D identified both Bilal and Mohammed Skaf during identification procedures. Evidence was also obtained to show extensive telephone contact between Bilal and Mohammed Skaf on the evening in question. Both accused entered pleas of not guilty.

The first trial in relation to this matter, which was one of a number of trials

relating to these accused, took place in July 2002. On 11 July 2002 the jury returned verdicts of guilty in relation to all counts. Those convictions were overturned by the Court of Criminal Appeal as a result of misconduct by two members of the jury who during the course of the trial visited the location where the offences had taken place. A new trial was ordered. That new trial was set for 28 February 2005 however prior to that date it was directed by the Director of Public Prosecutions that there be no further proceedings. On 12 May 2005 ss 306A-G of the Criminal Procedure Act 1986 (NSW) became operational which allowed the Crown to tender the original evidence of a complainant during a re-trial for a prescribed sexual offence. In June 2005 an ex-officio indictment was filed in the Supreme Court and proceedings were re-commenced. In this re-trial the Crown relied upon the new provisions of the Criminal Procedure Act and tendered a transcript of Ms D's evidence in the original trial. The evidence was then read to the jury. On 11 April 2006 both accused were again convicted of the original charges.

Mohammed Skaf was sentenced to 15 years imprisonment with a non-parole period of 7.5 years. That sentence was cumulative on the sentences he was serving for other matters.

Bilal Skaf was sentenced for the two offences to a total of 18 years imprisonment, and a non-parole period of 12 years. Those sentences were to date from 2021 - two years prior to the expiration of the sentence Bilal Skaf was serving for other matters.

R-v-Michael KANAAN- Shoot with Intent to Murder

The accused at 3.10am on the 23rd December 1998 was driving along Neild Avenue, Paddington with three co-offenders in a Toyota Camry. Upon sighting Constables Fotopoulos and Patrech in a marked police vehicle the accused's vehicle accelerated away to the bottom of a dead end street. The accused and the three co-offenders left the vehicle and ran into Weigall Sports Ground with the two police officers giving chase.

Upon reaching the bottom of a wire fence at the Weigall Park Tennis Courts Senior Constable Fotopoulos crash tackled one co-offender whilst Constable Patrech climbed the tennis court fence in pursuit of the accused. When Constable Patrech reached the top of the wire fence the accused on the other side withdrew his pistol and shot the police officer twice. Senior Constable Fotopoulos then shot at and apprehended the accused.

In December 1999 the accused was charged by way of an Ex-officio Indictment with the attempted murder of the two police officers following the discharge of the accused at committal. In October 2000 the first trial in the Supreme Court was vacated so the alibi evidence of a co-accused could be further investigated. The second trial in August 2003 concluded with the jury being discharged following the inability to reach a unanimous verdict. The third trial concluded in December 2005 when the jury were again discharged following two jurors improperly discussing the case outside court.

The fourth and final trial commenced in May 2006 with the jury returning guilty verdicts on the alternative counts that the accused maliciously discharged a firearm to inflict GBH on the two police officers. On the 31st May 2006 the accused was sentenced to ten years imprisonment to

Appendix 33 Continued

Some Cases Dealt With During The Year

expire on the 30th March 2018 with a non parole period to expire on the 29th March 2013.

On the 5th July 2006 the accused filed a Notice of Appeal against both conviction and sentence in the Court of Criminal Appeal.

R v Adnan Darwiche, Ramzi Aouad & Naseam EL Zeyat - Murder

At about 2.13pm on 30 October 2003 Ahmed Fahda was shot and killed by two men at the A.P. Service Station in Punchbowl.

Mr Fahda had been traveling with Bassam Said when the vehicle they were in ran out of petrol. Both Mr Fahda and Mr Said pushed the vehicle into the AP Service Station. Immediately before the shooting a silver/blue coloured Holden Commodore sedan was seen to stop on Punchbowl Rd at the kerb on the same side of the road as the service station. Two men wearing dark hooded tops got out of the Commodore and pulled out hand guns. They walked up close to where Ahmed Fahda was standing and shot their pistols a number of times directly at Ahmed Fahda. After firing the shots, the men ran back to the Commodore, which then drove off at high speed. A third man was driving the car. An eyewitness who watched the gunmen noted the registration of the Commodore. Eye witnesses also recognized the gunmen as being Ramzi Aouad and Naseam El Zeyat. Another witness was able to complete a COM-FIT picture of both gunmen. One of the COM-FIT pictures bore a remarkable resemblance to the accused Ramzi Aouad.

Police arrived at the scene at approximately 2.20pm. Ambulance officers arrived shortly after and tried to treat Mr Fahda. Unfortunately, attempts at resuscitation failed. The ballistics evidence

indicated that 29 shots were fired from the two guns. The forensic pathologist's report indicated that at least twenty-one of these bullets may have hit Mr Fahda. At about 8.20pm the same day, the Holden Commodore was found alight approximately 1.5km from the murder scene. Police were able to establish that all three accused had connections to the getaway car.

Ramzi Aouad was the brother in law of Ahmed Fahda. The marriage of Aouad to Mr Fahda's sister had broken down and Aouad was fearful that Mr Fahda would seek to punish him for his bad treatment of his sister. It was the Crown case that Ramzi Aouad had killed Ahmed Fahda in a preemptive action.

The accused Ramzi Aouad and Naseam El Zeyat stood trial for the murder of Ahmed Fahda. Their co-accused & associate, Adnan Darwiche stood trial for encouraging Naseam El Zeyat to commit murder and for being an accessory after the fact to murder.

A jury found both Ramzi Aouad & Naseam El-Zeyat guilty of murder. The jury found Adnan Darwiche not guilty.

Aouad and El-Zeyat are to be sentenced on 27 October 2006. They remain in custody.

Regina v Wayne Anthony Trindall - Sexual Assault

The Offender pleaded guilty to numerous charges involving violence and sexual assaults against seven women over a period spanning nine years from 1995 to 2004. The sexual assaults were of an extremely serious nature and involved the infliction of actual bodily harm and humiliation to the victims, several of whom were working as prostitutes at the time of the offences.

The gravity of the matters came to light when the final victim, who was familiar with the Offender, complained to the Police of an assault perpetrated on her by the Offender. The Offender's DNA was obtained in the course of that investigation and, consequently, was matched with swabs taken from another six victims dating back to 1995.

The Offender's most common modus operandi was to take his victims to a secluded location, often Centennial Park in Sydney. There he would detain them with the use of bindings and commit various acts of sexual assault, robbery and violence. The attacks would often be accompanied with explicit verbal threats. Two of the victims were heavily, and visibly, pregnant at the time of the commission of the offences. Some of the offences were also characterised by the use of a knife.

The matter proceeded as a Committal for Sentence to the District Court on the following charges:

- Aggravated Sexual Assault x 6
- Sexual Intercourse Without Consent x 3
- Inflict Actual Bodily Harm With Intent to Have Sexual Intercourse
- Detain for Advantage and Cause Substantial Injury x 3
- Detain for Advantage and Occasion Actual Bodily Harm
- Detain for Advantage
- Robbery x 2

The Offender came before His Honour Judge Hosking SC for sentence. He was convicted and sentenced to an effective overall term of 24 years imprisonment, with a total of minimum and non-parole periods of 22 years. His non-parole period is due to expire on 5 April 2026.

Appendix 33

Some Cases Dealt With During The Year

R v William Thomas CLARE - Manslaughter; Aggravated Sexual Assault

The deceased was 3 years old at the time of death. He and his sister, who was aged 6 at the time, were being babysat by the accused, an acquaintance of their mother. Around mid-August 2003 the mother was having difficulty finding help to mind the children. The accused, after introducing himself at Croydon railway station, offered to assist by looking after the children in the evenings. As a result the children spent the majority of their time with the accused.

On 13th September 2003 the accused took the children to visit their mother between the hours of 4.00pm and 6.00pm. The mother gave the accused a box of party pies for the children's dinner. The children left with the accused about 6.30pm and returned to the accused's flat. The children watched television and had dinner with the accused. At this time the deceased was lying on a mattress on the floor whilst his sister was asleep on the lounge.

The accused's case was that the deceased had started to choke on vomit and in an attempt to revive the child the accused used a 240 volt electrical wire to shock him. The accused called Triple 0 at 12.09am on 14th September 2003, during which he stated "I am just trying to revive a 3-year old boy" and "he's throwing up, and just choked on it, and just couldn't breathe." The accused later told police that he made the call to Triple 0 after the deceased had been unconscious for 20 minutes. After the arrival of the ambulance the deceased was taken to Royal Prince Alfred Hospital where he was pronounced deceased and where it was discovered that there were significant injuries to his anus. It was the Crown case that these injuries were caused by the accused in the preceding 12 hours before the death.

The accused was charged with the murder and aggravated sexual assault of the deceased. On the first day of the trial the accused pleaded guilty to the charge of aggravated sexual assault but proceeded to contest the charge of murder.

During the course of the trial evidence was taken from numerous medical experts as no precise cause of death was found. The Crown ran its case on an alternative basis. Firstly, that the sexual assault by the accused on the deceased led the deceased to vomit and aspirate his vomit, causing choking and his death. Secondly, that the application of the electrical wires by the accused to the deceased's body caused cardiac arrest and produced his death.

The accused was found not guilty of murder but guilty of manslaughter. At sentence His Honour Justice Grove was satisfied that the accused caused the death and that the chain of causation was commenced by penile penetration which was such a painful experience for the infant that he reacted by vomiting incompletely digested food from within his body and that this vomitus was inhaled into his airways, the obstructions having the catastrophic result of death. His Honour stressed that it was not his finding that death followed immediately after the sexual assault. His Honour proceeded to sentence the accused on the ground of manslaughter by an unlawful and dangerous act. His Honour found that this offence fell into the worst case of manslaughter and imposed the following sentences;

In relation to the charge of aggravated sexual assault against the deceased, to which the accused entered a plea of guilty - 16 years imprisonment reduced to 14 years to reflect the utilitarian value of the plea. His Honour declined to set a non parole period.

In relation to the offence of manslaughter - the accused was sentenced to a non parole period of 18 years and nine months commencing on 17 October 2015 and expiring on 16 July 2033, with a balance term of six years and three months commencing on 17 July 2033. The total sentence imposed was 25 years.

His Honour chose to accumulate the sentences for these offences committed against the deceased upon sexual offences committed against the deceased's sister, for which he had been previously sentenced to a non parole period of 12 years and one month to expire on 17 October 2015.

Appendix 34

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 which 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 which 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 which 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.

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.

Appendix 34 Continued

Code of Conduct

- 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 Employment and Management Act 2002 No 43 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 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;

Appendix 34 Continued

Code of Conduct

- 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 ODPP Information Security Policies and Guidelines;
- be aware of and adhere to the ODPP Information Security Policies and Guidelines;
- 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/

smutty), 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;
- 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

Appendix 34 Continued

Code of Conduct

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) to:

- The Solicitor for Public Prosecutions (for Solicitors Office staff)
- The 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. An entry, indicating whether an approval to retain or otherwise has been given, should be made in the gift register, maintained by the position holder referred to above or their nominee/s. 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 manager or senior executive officer. Such approval must be recorded in writing in the gift register

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 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 which 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;

Appendix 34 Continued

Code of Conduct

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

22. Court character references

Crown Prosecutors, lawyers and all other officers are not to use Crown Prosecutors' or ODPP letterheads when giving written character references to be used in court proceedings.

References may be given, but in the officer's private capacity. However, it is permissible to state (in writing or in evidence) that the officer is a Crown Prosecutor or a lawyer or officer employed by the ODPP.

If an officer is to be called to give character evidence by the defence (or it is reasonably expected that he/she will be called) prior notice (being before the day of court at the very latest, but otherwise as soon as it is known) is to be given to either the Senior Crown Prosecutor (or a Deputy Senior Crown Prosecutor in his absence) or the Solicitor for Public Prosecutions or a Deputy Solicitor for Public Prosecutions by a Crown Prosecutor (in the first case), lawyer or

other staff member (in the second case).

This notice will assist in avoiding any embarrassment to the prosecutor in the matter.

When giving a written reference or evidence in court it is to be made known expressly that the officer is doing so privately and not in his/her capacity as a Crown Prosecutor, lawyer or other officer employed by the ODPP.

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 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.

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Code of Conduct

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 Practitioners Act 1987
- 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
- 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

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

Appendix 35

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 is also committed to promoting training and employment opportunities throughout NSW Offices.

The Office continues to participate 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 four years to improve the delivery of services to people with disabilities. Objectives of the Plan include 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. It is

also an important network for sharing information on practical workplace issues for people with disabilities.

The ODPP DAP is in the final stages of review. However, the Office has continued to provide training and employment opportunities during the 2005/06 period. This period was also useful in identifying practical workplace modification requirements that were subsequently actioned.

Appendix 36

Director of Public Prosecutions' Prosecution Guidelines

Amendments to Guidelines 14 and 19 were effected during the reporting period. Due to these amendments the Guidelines have been reproduced in full in this

Annual Report, commencing at page 131.

Appendix 37

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Aboriginal Affairs Policy Justice Cluster Committee	Philip Dart
Advisory Committee to the DNA Laboratory	Nicholas Cowdery AM QC
Attorney General's Criminal Justice Forum	Nicholas Cowdery AM QC
Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders)	Philip Dart
Video Conferencing Steering Committee	Johanna Pheils
Australian Law Reform Commission Advisory Committee re: Evidence Act 1985	Wayne Roser
Bar Association: Criminal Law Committee	Greg Smith SC Paul Conlon SC James Bennett SC Maria Cinque Sally Dowling Dan Howard SC
Bar Association: Human Rights Committee	Nicholas Cowdery AM QC
Bar Association: Professional Conduct Committees	Frank Veltro Paul Conlon SC James Bennett SC 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) Virginia Lydiard (Equal Opportunity Committee)
Bar Council	Virginia Lydiard
Cabinet Office Senior Officers Group on Child Protection (continually reviews child protection in NSW)	Philip Dart
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
Courtlink Inter-agency Group	Colette Dash Craig Hyland Claire Giroto Diane Harris

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Court of Criminal Appeal/Supreme Court Crime Users Group	Dominique Kelly Michael Day David Frearson SC
Court Security Committee	John Kiely SC
Criminal Case Processing Committee	Claire Girotto Craig Hyland
Criminal Justice Research Network Committee	Helen Cunningham
Criminal Justice Sexual Offences Taskforce	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers' Standing Committee	Nicholas Cowdery AM QC
Criminal Justice System Chief Executive Officers – Senior Officers' Group	Philip Dart
Criminal Law Committee of the Law Society of NSW	Robyn Gray
Criminal Law Specialist Accreditation Board	Wayne Roser
Criminal Listing Review Committee (reviewing listings in the District Court)	Claire Girotto John Favretto
Delays in Committal Proceedings Working Party	Nicholas Cowdery AM QC
Digital ERISP Steering Committee	Craig Hyland
Forensic Science Co-ordinating Committee	Claire Girotto
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 Girotto Johanna Pheils
Inter-agency Guidelines for Responding to Adult Sexual Assault Committee	Amy Watts
Inter-departmental Committee to review the Mental Health (Criminal Procedure) Act 1990	Craig Williams

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Inter-departmental Working Group on Findlay's Review of Crimes (Forensic Procedures) Act 2000	Patrick Barrett
Internal Affairs Liaison Group	Janis Watson-Wood
International Association of Prosecutors	Nicholas Cowdery AM QC
Joint Investigation Response Teams State Management Group	Amy Watts
Local Court Rules Committee	Robyn Gray
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 Giroto
National Child Sexual Assault Law Reform Committee	Nicholas Cowdery AM QC
NSW Law Reform Commission	James Bennett SC
NSW Sentencing Council	Nicholas Cowdery AM QC
NSW Strategy to Reduce Violence Against Women – Senior Officers Group	Philip Dart
Police Adult Sexual Assault Interagency Committee	Amy Watts
Police Forensic Services/DAL/ODPP Liaison Committee	Paul Conlon SC Greg Smith SC Craig Hyland
Police Integrity Commission Liaison Group	Janis Watson-Wood
Police–ODPP Prosecution Liaison Standing Committee	Graham Bailey Peter Miller Claire Giroto Jim Hughes Craig Hyland Stephen Kavanagh
Senior Officers Working Group for Reviewing Court Preparation Resources for Child Victims of Sexual Assault	Deborah Scott

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

Committee/Steering Group	ODPP Representative
Serious Vilification Working Group	Beatrice Scheepers
Sexual Assault Review Committee	Philip Dart (Chair) Julie Lannen 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
Victims of Crime Inter-agency Committee	Philip Dart Deborah Scott Amy Watts Samantha Smith
Victims of Crime Inter-agency Sub-committee on Victim Information Needs	Deborah Scott
Working Party on the Merger and Reform of the Childrens (Criminal Proceedings) Act and the Young Offenders Act	Craig Hyland
Youth Justice Advisory Committee	Patrick Power SC (Chairperson)

Appendix 37 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	Johanna Pheils 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 38

Consumer Response

The Office undertakes a comprehensive victim and witness satisfaction survey biennially as the main qualitative measure of our service. The next survey is due to be conducted for the next reporting period and will be reported on in the next annual report.

The table below represents the results of the past six surveys conducted by the Office. It has been clear from comments made in all surveys that the defining issue in relation to satisfaction with the service provided by the Office is the level of communication received from the Office. Results of surveys conducted indicate that

case outcomes have no significant impact on service satisfaction levels.

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.

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

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
•JJRT	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 2005–2006

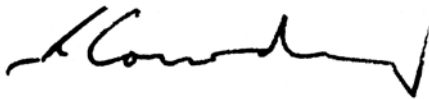
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Financial Statements for the Year Ended 30 June 2006

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 2000 and the Treasurer's Directions;
- (b) the 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

12 October 2006



GPO BOX 12
Sydney NSW 2001

INDEPENDENT AUDIT REPORT

Office of the Director of Public Prosecutions

To Members of the New South Wales Parliament

Audit Opinion

In my opinion, the financial report of the Office of the Director of Public Prosecutions:

- presents fairly the Office of the Director of Public Prosecutions' financial position as at 30 June 2006 and its performance for the year ended on that date, in accordance with Accounting Standards and other mandatory financial reporting requirements in Australia, and
- complies with section 45E of the *Public Finance and Audit Act 1983* (the Act) and the *Public Finance and Audit Regulation 2005*.

My opinion should be read in conjunction with the rest of this report.

Scope

The Financial Report and the Director's Responsibility

The financial report comprises the operating statement, statement of changes in equity, balance sheet, cash flow statement, summary of compliance with financial directives and accompanying notes to the financial statements for the Office of the Director of Public Prosecutions, for the year ended 30 June 2006.

The Director is responsible for the preparation and true and fair presentation of the financial report in accordance with the Act. This includes responsibility for the maintenance of adequate accounting records and internal controls that are designed to prevent and detect fraud and error, and for the accounting policies and accounting estimates inherent in the financial report.

Audit Approach

I conducted an independent audit in order to express an opinion on the financial report. My audit provides *reasonable assurance* to Members of the New South Wales Parliament that the financial report is free of *material* misstatement.

My audit accorded with Australian Auditing Standards and statutory requirements, and I:

- assessed the appropriateness of the accounting policies and disclosures used and the reasonableness of significant accounting estimates made by the Director in preparing the financial report, and
- examined a sample of evidence that supports the amounts and disclosures in the financial report.

An audit does *not* guarantee that every amount and disclosure in the financial report is error free. The terms 'reasonable assurance' and 'material' recognise that an audit does not examine all evidence and transactions. However, the audit procedures used should identify errors or omissions significant enough to adversely affect decisions made by users of the financial report or indicate that the Director had not fulfilled his reporting obligations.

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.

Audit Independence

The Audit Office complies with all applicable independence requirements of Australian professional ethical pronouncements. The 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.



M T Spriggins, CA
Director, Financial Audit Services

SYDNEY
13 October 2006

Operating Statement

for the Year Ended 30 June 2006

	Notes	Actual 2006 \$'000	Budget 2006 \$'000	Actual 2005 \$'000
Expenses excluding losses				
Operating expenses				
Employee related	2(a)	73,587	73,500	69,544
Other operating expenses	2(b)	12,793	12,110	11,878
Depreciation and amortisation	2(c)	4,123	3,603	3,102
Other expenses	2(d)	2,967	3,235	2,780
Total Expenses excluding losses		93,470	92,448	87,304
Less:				
Revenue				
Sale of goods and services	3(a)	87	33	86
Investment revenue	3(b)	163	55	103
Grants and contributions	3(c)	130	-	-
Other revenue	3(d)	262	234	257
Total Revenue		642	322	446
Gain/(Loss) on disposal		-	5	-
Net Cost of Services	18	92,828	92,121	86,858
Government Contributions				
Recurrent appropriation	4	82,785	82,860	73,953
Capital appropriation	4	5,532	4,472	2,475
Acceptance by the Crown Entity of employee benefits and other liabilities	5	6,153	6,224	9,843
Total Government Contributions		94,470	93,556	86,271
SURPLUS/(DEFICIT) FOR THE YEAR		1,642	1,435	(587)
The accompanying notes form part of these financial statements.				

Statement of Changes in Equity for the Year Ended 30 June 2006

	Notes	Actual 2006 \$'000	Budget 2006 \$'000	Actual 2005 \$'000
TOTAL INCOME AND EXPENSE RECOGNISED DIRECTLY IN EQUITY				
Surplus / (Deficit) for the Year		1,642	1,435	(587)
TOTAL INCOME AND EXPENSE RECOGNISED FOR THE YEAR		1,642	1,435	(587)

The accompanying notes form part of these financial statements.

Balance Sheet

as at 30 June 2006

	Notes	Actual 2006 \$'000	Budget 2006 \$'000	Actual 2005 \$'000
ASSETS				
Current Assets				
Cash and cash equivalents	7	2,421	2,133	2,112
Receivables	8	1,543	1,750	1,548
Inventories	9	-	2	2
Total Current Assets		3,964	3,885	3,662
Non-Current Assets				
Plant and Equipment	10	12,465	13,034	10,485
Intangible assets	11	3,622	2,400	4,159
Total Non-Current Assets		16,087	15,434	14,644
Total Assets		20,051	19,319	18,306
LIABILITIES				
Current Liabilities				
Payables	12	1,378	1,740	1,544
Provisions	13	6,800	4,423	4,771
Other	14	203	238	238
Total Current Liabilities		8,381	6,401	6,553
Non-Current Liabilities				
Provisions	13	407	1,556	1,726
Other	14	579	491	790
Total Non-Current Liabilities		986	2,047	2,516
Total Liabilities		9,367	8,448	9,069
Net Assets		10,684	10,871	9,237
EQUITY				
Reserves	15	356	551	551
Accumulated funds		10,328	10,320	8,686
Total Equity		10,684	10,871	9,237

The accompanying notes form part of these financial statements.

Cash Flows Statement

for the Year Ended 30 June 2006

	Notes	Actual 2006 \$'000	Budget 2006 \$'000	Actual 2005 \$'000
CASH FLOWS FROM OPERATING ACTIVITIES				
Payments				
Employee related		(67,014)	(67,394)	(61,918)
Other		(17,711)	(17,062)	(16,508)
Total Payments		(84,725)	(84,456)	(78,426)
Receipts				
Sale of goods and services		88	33	86
Interest Received		121	61	100
Other		2,173	1,518	1,674
Total Receipts		2,382	1,612	1,860
Cash Flows from Government				
Recurrent appropriation		82,785	82,860	73,953
Capital appropriation		5,532	4,472	2,475
Cash reimbursements from the Crown Entity		-	-	2,846
Net Cash Flows from Government		88,317	87,332	79,274
NET CASH FLOWS FROM OPERATING ACTIVITIES	18	5,974	4,488	2,708
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchases of plant and equipment		(5,665)	(4,467)	(2,476)
NET CASH FLOWS FROM INVESTING ACTIVITIES		(5,665)	(4,467)	(2,476)
NET INCREASE/(DECREASE) IN CASH				
Opening cash and cash equivalents		2,112	2,112	1,880
CLOSING CASH AND CASH EQUIVALENTS	7	2,421	2,133	2,112

The accompanying notes form part of these financial statements.

Supplementary Financial Statements

Summary of Compliance with Financial Directives

for the Year Ended 30 June 2006

	2006				2005			
	Recurrent Appropriation	Expenditure/ Net Claim on Consolidated Fund	Capital Appropriation	Expenditure/ Net Claim on Consolidated Fund	Recurrent Appropriation	Expenditure	Capital Appropriation	Expenditure
	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000	\$'000
ORIGINAL BUDGET APPROPRIATION/EXPENDITURE								
• Appropriation Act	82,860	82,763	4,472	4,472	71,324	70,986	1,225	1,225
	82,860	82,763	4,472	4,472	71,324	70,986	1,225	1,225
OTHER APPROPRIATIONS/ EXPENDITURE								
• Treasurer's Advance	225	22	1,060	1,060	2,967	2,967	1,250	1,250
	225	22	1,060	1,060	2,967	2,967	1,250	1,250
Total Appropriations/Expenditure/Net Claim on Consolidated Fund (includes transfer payments)	83,085	82,785	5,532	5,532	74,291	73,953	2,475	2,475
Amount drawn down against Appropriation		82,785		5,532		73,988		2,475
Liability to Consolidated Fund*		-		-		35		-

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.

This financial report for the year ended 30 June 2006 has been authorised for issue by the Director on 12 October 2006.

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));
- the requirements of the *Public Finance and Audit Act (1983)* and *Regulations (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 financial statements and notes comply with Australian Accounting Standards, which include AEIFRS.

This is the first financial report prepared based on AEIFRS and comparatives for the year ended 30 June 2005 have been restated accordingly, except as stated below.

In accordance with AASB1 *First-time Adoption of Australian Equivalents to International Financial Reporting Standards* and Treasury Mandates, the date of transition to AASB132 *Financial Instruments: Disclosure and Presentation* and AASB 139 *Financial Instruments: Recognition and Measurement* has been deferred to 1 July 2005. As a result, comparative information for these two standards is presented under the previous Australian Accounting Standards which applied to the year ended 30 June 2005.

The basis used to prepare the 2004/2005 comparative information for financial instruments under previous Australian Accounting Standards is discussed in Note 1(x) below. The financial instrument accounting policies for 2005/06 are specified in Notes 1(d)(iii) and (r) and (u) below.

Reconciliations of AEIFRS equity and deficit for 30 June 2005 to the balances reported in the 30 June 2005 financial report are detailed in Note 20.

(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

Notes to the Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

income when the office obtains control over the assets comprising the appropriations/contributions. Control over appropriations and contribution is 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 4 as part of "Current Liabilities - Other".

(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).

(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 amounts 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". Prior to 2005/06 the Crown Entity also assumed the defined contribution superannuation liability.

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 06/09) to employee with five or more years of service, using current rate 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.

Notes to the Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**(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.

(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 a network costing more than \$5,000) are 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" (TPP 05-3). 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 uses, 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.

Notes to the Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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.

Where an asset that has previously been revalued is disposed of, any balance remaining in the asset 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 component of assets are depreciated over their shorter useful lives.

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

Office Equipment	5 years
Computer Equipment	4 years
Library Books	15 years
Furniture & Fittings	10 years
Photocopiers	7 years
PABX Equipment	7 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.

Notes to the Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

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

(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 normal cost, the cost is its fair value as at the date of acquisition. Software is classified as an intangible asset.

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) 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 entity will not be able to collect all amount due.

(r) Receivables Year ended 30 June 2006 (refer Note I(x) for 2004/05 policy)

Receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market. Receivables are recognised initially at fair value, usually based on the transaction cost or face value.

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

(s) 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 entity will not be able to collect all amount 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.

Notes to the Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**(t) Other Assets**

Other assets are recognised on a cost basis.

(u) Payables - Year ended 30 June 2006 (refer Note I(x) for 2004/05 policy)

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

(v) 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 statements (rather than carried forward estimates).

(w) Comparative Information

Comparative figures have been restated based on AEIFRS with the exception of financial instruments information, which has been prepared under the previous AGAAP Standard (AAS 33) as permitted by AASB 1.36A (refer para (x) below). The transition date to AEIFRS for financial instruments was 1 July 2005. The impact of adopting AASB 132/139 is further discussed in Note 20.

(x) Financial instruments accounting policy for 2004/05 comparative period**Investment income**

Interest revenue is recognised as it accrues.

Receivables

Receivables are recognised and carried at cost, based on the original invoice amount less a provision for any uncollectible debts. An estimate for doubtful debts is made when collection of the full amount is no longer probable. Bad debts are written off as incurred.

Payable

These amounts represent liabilities for goods and services provided to the Office and other amounts.

(y) 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.

(z) Witness Expenses

Witness expenses are paid to witnesses who attend conferences with the Office and courts 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.

Notes to the Financial Statements

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

(aa) New Australian Accounting Standards Issued but not effective

The Office early adopts Accounting Standard AASB 2005-4 regarding AASB 139 fair value adoption. Any initial impacts on the first time adoption are discussed as part of Note 20, along with the other AEIFRS impacts.

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

AASB 119 (December 2004) *Employee Benefits*;

AASB 2004-3 amendments to AASB 119 *Employee Benefits*.

Notes to the Financial Statements

2 EXPENSES EXCLUDING LOSSES

	2006 \$'000	2005 \$'000
(a) Employee related expenses		
Salaries and wages (including recreation leave)	59,455	55,222
Superannuation - defined benefit plans	3,321	3,166
Superannuation - defined contribution plans	3,028	2,846
Long service leave	2,633	3,470
Workers' compensation Insurance	498	213
Payroll tax and fringe benefit tax	4,448	4,151
On-cost on Long Service Leave	66	343
Temporary Staff	138	133
	73,587	69,544

(b) Other operating expenses including the following:

Auditor's remuneration - audit of financial reports	33	32
Operating lease rental expense - minimum lease payments	5,487	5,277
Outgoings	237	184
Insurance	198	165
Books	434	310
Cleaning	238	214
Consultants	5	45
Fees - Private barristers	458	414
Fees - Practising certificates	233	228
Fees - Security	139	124
Gas & electricity	197	166
Motor vehicles	346	353
Postage	94	107
Courier	28	27
Printing	93	78
Maintenance*	939	703
Stores and equipment	476	482
Telephones	1,139	984
Training	116	190
Travel **	1,079	954
Other	824	841
	12,793	11,878

*** Reconciliation- Total maintenance**

Maintenance expenses- contracted labour and other (non-employee related), as above	939
Employee related maintenance expense included in Note 2 (a)	120
Total maintenance expenses included in Note2(a) + 2(b)	1,059

** Travel expenses represent expenditure incurred by all staff of the Office for 2005-2006.

Notes to the Financial Statements

2 EXPENSES EXCLUDING LOSSES (continued)

	2006 \$'000	2005 \$'000
(c) Depreciation and amortisation expense		
Depreciation		
Computer equipment	452	313
General plant and equipment	1,794	1,305
Library collection	140	129
	2,386	1,747
Amortisation		
Software	1,737	1,355
	4,123	3,102
	2006 \$'000	2005 \$'000
(d) Other expenses		
Allowances to witnesses	2,942	2,764
Maintenance costs of non Australian citizens	25	16
	2,967	2,780

3 REVENUES

	2006 \$'000	2005 \$'000
(a) Sale of goods and services		
Rendering of services	-	3
Commissions - miscellaneous deductions	5	6
Costs awarded	49	33
On-cost - officers on loan	-	25
Appearance fees	31	12
Training fees	2	7
	87	86
	2006 \$'000	2005 \$'000
(b) Investment income		
Interest	163	103
	163	103

Notes to the Financial Statements

3 REVENUES (continued)		
	2006	2005
	\$'000	\$'000
(c) Grants and contributions		
Grants	130	-
	130	-
(d) Other revenue		
Lease incentive	238	238
Other revenue	27	19
	265	257
4 APPROPRIATIONS		
	2006	2005
	\$'000	\$'000
Recurrent appropriations		
Total recurrent draw-down from NSW Treasury (per Summary of Compliance)	82,785	73,988
Less: Liability to Consolidated Fund (per Summary of Compliance)	-	35
	82,785	73,953
Comprising:		
Recurrent appropriations (per Operating Statement)	82,785	73,953
	82,785	73,953
Capital appropriations		
Total capital draw-down from NSW Treasury (per Summary of Compliance)	5,532	2,475
Less: Liability to Consolidated Fund (per Summary of Compliance)	-	-
	5,532	2,475
Comprising:		
Capital appropriations (per Operating Statement)	5,532	2,475
	5,532	2,475

Notes to the Financial Statements

5 ACCEPTANCE BY THE CROWN ENTITY OF EMPLOYEE BENEFITS AND OTHER LIABILITIES

	2006 \$'000	2005 \$'000
The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies:		
Superannuation	3,321	6,012
Long service leave	2,633	3,470
Payroll tax	199	361
	6,153	9,843

6 PROGRAMS / ACTIVITIES OF THE OFFICE

The Office operates on one program "22.1.1 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.

7 CURRENT ASSETS – CASH AND CASH EQUIVALENTS

	2006 \$'000	2005 \$'000
Cash at bank and on hand	2,241	1,932
Permanent witness advance	180	180
	2,421	2,112

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

The Office had a Liability to Consolidated Fund of \$35,000 at the end of 2005 financial year as disclosed in note 14.

The Office has the following banking facilities as at 30 June 2006:

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.

MasterCard 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:

	2006 \$'000	2005 \$'000
Cash and cash equivalent (per Balance Sheet)	2,421	2,112
Closing cash and cash equivalents (per Cash Flow Statement)	2,421	2,112

Notes to the Financial Statements

8 CURRENT ASSETS – RECEIVABLES

	2006 \$'000	2005 \$'000
Rendering of services	18	7
Prepayments	1,124	1,141
Interest	91	49
Advances	68	40
GST recoverable from ATO	242	311
	1,543	1,548

9 CURRENT ASSETS – INVENTORIES

	2006 \$'000	2005 \$'000
Corporate wardrobe		
At cost	-	2
	-	2

10 NON-CURRENT ASSETS – PLANT AND EQUIPMENT

	Plant and Equipment \$'000
At 1 July 2005	
Gross carrying amount	25,772
Accumulated depreciation	15,287
Net Carrying Amount	10,485
At 30 June 2006	
Gross carrying amount	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 current reporting period is set out below.

Year ended 30 June 2006

Net carrying amount at start of the year	10,485
Additions	4,561
Revaluation decrement	(195)
Depreciation expense	(2,386)
Carrying amount at end of year	12,465

Notes to the Financial Statements

10 NON CURRENT ASSETS - PLANT AND EQUIPMENT (Continued)

Plant and Equipment

\$'000

At 1 July 2004

Gross carrying amount	23,795
Accumulated depreciation	13,539
Net Carrying Amount	10,256

At 30 June 2005

Gross carrying amount	25,772
Accumulated depreciation	15,287
Net Carrying Amount	10,485

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 2005

Net carrying amount at start of the year	10,256
Additions	1,976
Depreciation expense	(1,747)
Carrying amount at end of year	10,485

11 INTANGIBLE ASSETS

Software

\$'000

At 1 July 2005

Gross carrying amount	8,094
Accumulated amortisation and impairment	3,935
Net carrying amount	4,159

At 30 June 2006

Gross carrying amount	9,294
Accumulated amortisation and impairment	5,672
Net carrying amount	3,622

Year ended 30 June 2006

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

Notes to the Financial Statements

11 INTANGIBLE ASSETS (Continued)

	Software \$'000
At 1 July 2004	
Gross carrying amount	7,588
Accumulated amortisation and impairment	2,580
Net carrying amount	5,008
At 30 June 2005	
Gross carrying amount	8,094
Accumulated amortisation and impairment	3,935
Net carrying amount	4,159
Year ended 30 June 2005	
Net carrying amount at start of year	5,008
Additions	506
Amortisation (recognised in "depreciation and amortisation")	(1,355)
Net carrying amount at end of year	4,159

12 CURRENT LIABILITIES – PAYABLES

	2006 \$'000	2005 \$'000
Accrued salaries and wages and on-costs	650	765
Creditors	321	394
Accruals	407	385
	1,378	1,544

Notes to the Financial Statements

13 CURRENT/NON-CURRENT LIABILITIES – PROVISIONS

	2006 \$'000	2005 \$'000
CURRENT		
Employee benefits and related on - costs		
Recreation leave*	5,125	4,602
On cost on long service leave	562	60
Payroll Tax on-cost for recreation leave and long service leave	1,113	109
Total provisions - current	6,800	4,771
* Expected to be settled within 12 months		
NON - CURRENT		
Employee benefits and related on - costs		
On cost on long service leave	30	544
Deferred retention allowance	31	16
Payroll tax oncost for long service leave	59	985
	120	1,545
Other Provisions		
Restoration costs	266	170
Rent adjustment reserve	21	11
	287	181
Total provision - non current	407	1,726
Aggregate employee benefits and related on - costs		
Provisions - current	6,800	4,771
Provisions - non-current	120	1,545
Accrued salaries, wages and oncost(Note12)	650	765
	7,570	7,081

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:

2006	Rent adjustments		Total \$'000
	Restoration costs \$'000	Reserve \$'000	
Carrying amount at beginning of financial year	170	11	181
Additional provision recognised	96	10	106
Carrying amount at end of financial year	266	21	287

Notes to the Financial Statements

14 CURRENT/NON-CURRENT LIABILITIES – OTHER

	2006 \$'000	2005 \$'000
CURRENT		
Deferred income	203	203
Liability to Consolidated Fund	-	35
	203	238
NON - CURRENT		
Deferred income	579	790
	579	790

15 CHANGES IN EQUITY

	Accumulated Funds		Asset Revaluation Reserve		Total Equity	
	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000	2006 \$'000	2005 \$'000
Balance at the beginning of the financial year	8,686	9,273	551	551	9,237	9,824
Surplus/(deficit) for the year	1,642	(587)	(195)	-	1,447	(587)
Total	1,642	(587)	(195)	-	1,447	(587)
Balance at the end of the financial year	10,328	8,686	356	551	10,684	9,237

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 Physical Non-Current Assets" as discussed in note 1(j).

16 COMMITMENTS FOR EXPENDITURE**Operating Lease Commitments**

	2006 \$'000	2005 \$'000
Future non-cancellable operating lease rentals not provided for and payable		
Not later than one year	5,579	5,272
Later than one year and not later than five years	10,081	13,279
Later than five years	201	279
Total (including GST)	15,861	18,830

Non cancellable leases relate to commitments for accommodation for Head Office and the 10 regional offices throughout the State, lease of computer equipment and 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 credits of \$1.442 Million (30 June 2005 : \$1.712 Million) expected to be recoverable from the Australian Taxation Office.

Notes to the Financial Statements

17 BUDGET REVIEW

Net Cost of Services

The actual net cost of services was higher than budget by \$0.707 Million, primarily due to higher than budgeted depreciation expenses amounting to \$0.520 Million as a result of increased depreciation rates applied from this year and increased capital expenditure during the year. Higher than budgeted other operating expenditure was as a result of increased travel expenditure in country areas, increased IT maintenance expenditure as a result of the IT infrastructure upgrade and increased telephone expenditure. The over expenditure was offset by higher than budgeted revenue of \$0.320 Million from increased interest from the investment of surplus cash, and less than budget expenditure in witness expenses amounting to \$0.268 Million.

Assets and Liabilities

The non-current assets were higher than the budget by \$0.653 Million due to additional funding of \$1.060 Million that was provided from the Treasurer's Advance account for the relocation of the Penrith Office and additional expenditure for office accommodation fit out required for the implementation of Criminal Case Processing Reform. There was also an increase in depreciation expenses amounting to \$0.520 Million due to increased capital expenditure and increased rates of depreciation applied from this year.

Total liabilities were \$0.919 Million higher than the budget due to an increase in the provision for employee benefit as a result of the 4% award increase and increase in the accumulated leave balance.

Cash Flows

Net cash flow from operating activities was \$1.486 Million higher than the budget, primarily due to the receipt of additional capital funding of \$1.060 Million for minor capital works, receipt of \$0.130 Million for the Digital ERISP project and increased interest received.

Net cash flow from investing activities was \$1.198 Million higher than budget, due to the receipt of additional capital funding of \$1.060 Million from the Treasurer's Advance.

Notes to the Financial Statements

18 RECONCILIATION OF CASH FLOWS FROM OPERATING ACTIVITIES TO NET COST OF SERVICES

	2006 \$'000	2005 \$'000
Net cash used on operating activities	5,974	2,708
Cash Flows from Government / Appropriations	(88,317)	(79,274)
Acceptance by the Crown Entity of employee benefits and other liabilities	(6,153)	(6,997)
Depreciation and amortisation	(4,123)	(3,102)
Decrease / (increase) in provisions	(710)	(1,031)
Increase / (decrease) in prepayments and other assets	(7)	324
Decrease / (increase) in creditors	166	411
Decrease / (increase) in deferred income	246	97
Increase / (decrease) in assets	96	6
Net cost of services	(92,828)	(86,858)

19 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) 11am unofficial cash rate, adjusted for a management fee to NSW Treasury.

Receivables

All trade debtors are recognised as amount 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 impairment). No interest is earned on trade debtors. The carrying amount approximates fair value. Sales are made on 30 day terms.

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 2005:\$nil).

Notes to the Financial Statements

20 IMPACT OF ADOPTION OF AEIFRS

The Office has applied the AEIFRS for the first time in the 2005/06 financial report. The key areas where changes in accounting policies have impacted the financial report are disclosed below. Some of these impacts arise because AEIFRS requirements are different from previous AASB requirements (AGAAP). Other impacts arise from options in AEIFRS that were not available or not applied under previous AGAAP. The Office has adopted the options mandated by NSW Treasury for all NSW public sector agencies. The impacts below reflect Treasury's mandates and policy decisions.

The impacts of adopting AEIFRS on total equity and surplus/(deficit) as reported under previous AGAAP are shown below. There are no material impacts on the Office's cash Flows.

(a) Reconciliation - 1 July 2004 and 30 June 2005**Reconciliation of equity under previous accounting Standards (AGAAP) to equity under AEIFRS:**

	Notes	30 June 2005 \$000	1 July 2004 \$000
Total equity under previous AGAAP		9,436	9,905
Adjustments to accumulated funds			
Recognition of restoration costs	1	(91)	(71)
Recognition of lease incentive	2	(97)	(8)
Recognition of fixed property lease rental	3	(11)	(2)
Total equity under AEIFRS		9,237	9,824

Reconciliation of surplus / (deficit) under previous AGAAP to (deficit) under AEIFRS:

Year ended 30 June 2005	Notes	\$000
Surplus / (deficit) under previous AGAAP		(469)
Recognition of restoration costs	1	(20)
Recognition of lease incentive	2	(89)
Recognition of fixed property lease rental	3	(9)
Surplus / (deficit) under AEIFRS		(587)

Notes to tables above:

1. AASB 116 requires the cost and fair value of property, plant and equipment to be increased to include the estimated restoration costs, where restoration provisions are recognised under AASB 137 *Provisions, Contingent Liabilities and Contingent Assets*. This treatment was not required under previous AGAAP. As a result, the provision, net carrying property, plant and equipment, depreciation expense have all increased.
2. AASB 117 requires the rent free period provided by the lessor to be recognised as a lease incentive and included as deferred income. This treatment was not required under previous AGAAP.
3. AASB 117 requires the fixed property lease rental increases to be recognised as an expense on a straight line basis over the lease term rather than expensing in the financial year incurred. This treatment was not required under previous AGAAP.

(b) Financial Instruments - 1 July 2005 first time adoption impacts

As discussed in Note 1(c) the comparative information for 2004/05 for financial instruments has not been restated and is presented in accordance with previous AGAAP. AASB 132 and AASB 139 have been applied from 1 July 2005. There is no adjustment required for adoption of AASB 132 / AASB 139

Notes to the Financial Statements

20 IMPACT OF ADOPTION OF AEIFRS (continued)

(i) Impairment testing. Under AASB 139, all financial assets except those measured at fair value through profit or loss are subject to review for impairment. The Standard requires a specific impairment test which needs to be supported by objective evidence that the group of assets is impaired or uncollectible. This means that the Office can no longer raise a general provision for doubtful debts. As a result, the allowance for impairment recognised under previous AGAAP has been reduced.

(c) Grant recognition

The Office, as a not-for-profit entity, has applied the requirements in AASB 1004 *Contribution* regarding contributions of assets (including grants) and forgiveness of liabilities. There are no differences in the recognition requirements between the new AASB 1004 and the previous AASB 1004. However, the new AASB 1004 may be amended by proposals in Exposure Draft ED 125 Financial Reporting by Local Governments and ED 147 Revenue from Non-Exchange Transactions (including Taxes and Transfers). If the ED 125 and ED 147 approach is applied, revenue and / or expense recognition will not occur until either the Office supplies the related goods and services (where grants are in-substance agreements for the provision of goods and services) or until conditions are satisfied. ED 125 and ED 147 may therefore delayed revenue recognition compared with AASB 1004, where grants are recognised when controlled. However, at this stage, the timing and dollar impact of these amendments is uncertain.

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 2005 to 30 June 2006

To facilitate comparison against actual performance, an internal target level of 98% was set for the financial year 2005/2006

	Current Year	Previous Years	
	2005/2006	2004/2005	2003/2004
Aging of Accounts Paid:			
Current (ie. within due date)	\$21,867,807	\$17,745,314	\$18,209,525
Less than 30 days overdue	\$793,615	\$895,067	\$923,145
Between 30 and 60 days overdue	\$167,925	\$12,091	\$87,070
Between 60 and 90 days overdue	\$28,864	\$1,825	–
More than 90 days overdue	\$52,190	-	\$181
Accounts Paid on Time:			
Percentage of accounts paid on time	95%	95%	95%
Total of accounts paid on time	\$21,867,807	\$17,745,314	\$18,209,525
Total of account paid	\$22,910,401	\$18,654,297	\$19,219,921

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 sees two important changes from the previous publication.

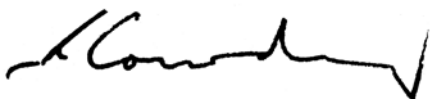
First, the Guidelines are being re-issued as one document, amalgamating the previous Policy and Guidelines into one and reducing substantially the number of Appendices by incorporating much of that material into the Guidelines themselves. It is anticipated that this will make reference to the Guidelines more convenient.

Secondly, for the first time (and consistently with the Office's leading role in information technology application in the NSW public sector) the Guidelines are being published only electronically, on the ODPP website and intranet. Of course, the document, or parts, may be downloaded and printed as required. This will help 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. 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.



N R Cowdery AM QC
Director of Public Prosecutions

Sydney
20th October 2003

I The Director of Public Prosecutions

[Furnished on 20th 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 ([Annexure A](#)).

2 Role and Duties of the Prosecutor

[Furnished on 20th 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 on 20th October 2003]

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 in 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 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 *Grondkowski* (1946) KB 369 at 372: 'The judge must consider*

the interest of justice as well as the interests of the prisoners.'"

Ensuring the prosecution's right to fairness may involve a prosecutor in seeking 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 on 20th October 2003]

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 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

3.22 whether or not the Attorney General's or Director's consent is required to prosecute.

4 The Decision to Prosecute Continued

[Furnished on 20th October 2003]

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 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 on 20th October 2003]

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;
- applications and consents by the Crown in the District and Supreme Courts for vacation of trial dates should be made and given (if time reasonably permits) only after consulting the Director's Chambers; 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 on 20th 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 on 20th 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 on 20th October 2003]

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. Election decisions in matters under Division 1A should be made by a Crown Prosecutor or a Trial Advocate.

In all other cases 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).

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 on 20th October 2003]

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;
- (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 have been brought contrary to advice or a decision by the Director not to proceed;
- (v) 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; and/or
- (vi) the public interest otherwise requires it, having regard (for example) to the gravity of the offence and all the surrounding circumstances.

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 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 on 20th October 2003]

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, use, storage and disclosure of personal information.

12 Reasons for Decisions

[Furnished on 20th October 2003]

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 would cause serious undue harm to a victim, a witness or an accused person, or would significantly prejudice the administration of justice.

Generally the disclosure of reasons for 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 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 20th 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 on the 20 October 2003 and amended on 11 November 2005]

In accordance with the protocol between the ODPP and the NSW Police signed on 28 October 2005, advice will be provided as set out below in respect of the following matters:

- Strictly indictable.
- Involving allegations of child sexual assault.
- Other indictable offences where the ODPP may exercise its discretion to elect to proceed on indictment: these matters must be referred to the ODPP for a decision as to jurisdiction before advice will be provided.

Advice as to the sufficiency of evidence or the appropriateness of charges

- 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 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 4 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 will 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 will 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 as to:

- i) The admissibility of evidence already obtained by police. This 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 to obtain 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 (3) working days.

General Issues

There is no distinction to be drawn between "formal" and "informal" advice and "provisional" 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 DPP generally will not disclose to persons outside the ODPP that police have sought advice 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;
- iii) whether or not an appeal should be lodged (including an application for prerogative relief);

14 Advice to Police Continued

[furnished on the 20 October 2003 and amended on 11 November 2005]

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| <p>iv) whether or not a police officer should be prosecuted;</p> <p>v) whether or not an <i>ex officio</i> indictment should be filed or an <i>ex officio</i> count included on an indictment;</p> <p>vi) where the Director's sanction or approval is required for the commencement of proceedings (eg. perjury, certain sexual offences, Listening Devices Act prosecutions);</p> <p>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.</p> | <p>(d) the availability of:</p> <ul style="list-style-type: none"> - an <i>ex officio</i> 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; <p>(e) the discontinuance of Local Court proceedings;</p> <p>(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;</p> | <p>or at a Regional Office as appropriate.</p> <p>All requests for advice are to be registered on CASES.</p> |
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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.

are to be answered in writing following upon a specific written request for such advice.

Advicings 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;
- (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;

Should the person seeking advice not be able, due to the urgency or other circumstances of the matter, to seek such advice by way of a written request, this should not preclude advice being provided; but in such instances the written advice should also recite the particular oral request made of the ODPP and the information provided upon which the advice is given.

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 twenty-four 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 Managing Lawyer in Sydney, at Sydney West

15 Induced Statements

[Furnished on 20th October 2003]

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 prosecution purposes (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 on 20th October 2003]

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 is 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 (Sydney) 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), 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 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 on 20th October 2003]

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 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.

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 so 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, as should the appropriateness of the kind of protection (ie. indemnity or undertaking) proposed.
- d) 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 undertaking under the Act should be examined.
- e) The strength of the prosecution evidence against the accused person

without the evidence it is expected the witness can give should be assessed, as should 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. The proposed witness's reliability and whether or not his or her evidence may be corroborated should also be addressed.

- f) 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. The request should also deal with the likelihood of a conviction being secured using the proposed witness's evidence.
- g) The general character of the proposed witness should be examined and, in particular, the outcome of reliance on any previous grant should be addressed, as should the question whether any inducement or other reward has been offered.
- h) The views of any other relevant State or Commonwealth investigatory or prosecuting authority should be addressed.

Forms of indemnity and undertaking are in [Appendix C](#).

18 Disclosure

[Furnished on 20th October 2003]

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.

In all matters prosecuted by the Director, police, in addition to providing the brief, 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, that material 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's 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 such records serve a legitimate forensic purpose. If a witness makes any such statement in conference (adding significantly to or contradicting 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 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 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, the inappropriate disclosure of which may affect the safety of individuals, jeopardise continuing investigations or potentially affect the flow of confidential information to and between justice agencies. 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.

19 Victims of Crime; Vulnerable Witnesses; Conferences

[Furnished on 20th October 2003 & amended on 24th October 2005]

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 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 public, not any private individual or sectional, interest that must be served. Those views 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 public interest and in such cases, particularly where there is other evidence implicating the accused person or where the gravity of the alleged offence requires it, the public interest must prevail.

In domestic violence offences (as defined by section 4 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 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 Interagency Guidelines for Child Protection Intervention 2000 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 *Evidence (Children) Act 1997* and the provisions available for children to give evidence at court. Subject to that Act, 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. The recommended procedure is described in *R v NZ* [2005] NSWCCA 278

19 Victims of Crime; Vulnerable Witnesses; Conferences Continued

[Furnished on 20th October 2003 & amended on 24th October 2005]

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. Consideration should be given to alternative provisions (eg. CCTV, 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 to the requirements of pre-trial disclosure, and 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 the 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 the 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. 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. Victims should be consulted as to changes that are 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.

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 on 20th October 2003]

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 the significance of the time at which a plea is entered. They should refer to the section, 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.

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) 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 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 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 any 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 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 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.

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

20 Charge Negotiation and Agreement; Agreed Statements of Facts; Form I Continued

Furnished on 20th October 2003]

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 Crown Prosecutor or lawyer any subsequent proposal to reverse the decision where circumstances are otherwise unchanged should be referred to the Director's Chambers.

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 I 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 paragraph 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 extract 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 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 I 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 I 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 I), serious offences against police officers, breaches of apprehended domestic

20 Charge Negotiation and Agreement; Agreed Statements of Facts; Form I Continued

[Furnished on 20th October 2003]

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 I. 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 I.

Police officers are a prescribed class of persons for the purpose of signing a Form I on behalf of the Director. The Director has also authorised Crown Prosecutors and some senior lawyers to sign Forms I. Ordinarily a Form I will be signed by a police officer.

It is the responsibility of the prosecutor negotiating the use of a Form I to have a properly completed Form I 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 I cannot give an undertaking that an offence will be included on a Form I.

The Form I 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 I offences should be tendered, together with witness statements and other relevant information, and cross-referenced on the Form I. 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 I 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 providing 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 on 20th 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 C](#)), 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 on 20th October 2003]

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 matter generally proceeds 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 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 the 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.

Where the issue is raised prior to arraignment the Director refers the matter to the Attorney General for a determination that there be an inquiry into the person's fitness to be tried for the offence. Where the issue is raised after arraignment the court before which the issue is raised 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 may be conducted with a jury or by judge alone with the consent of the prosecutor. Consent will ordinarily be given unless there exists some special reason justifying

the need for a jury.

If the person remains unfit to be tried, in the majority of cases the Director refers the matter to the Attorney General to determine that there be a special hearing. The special hearing is conducted as nearly as possible as if it were a trial and may be conducted with a jury or by judge alone with the consent of the prosecutor. Consent for a judge alone hearing is generally given, subject to the considerations set out in [Guideline 24](#) relating to judge alone trials.

23 Unrepresented Accused Persons

[Furnished on 20th 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 on 20th 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 on 20th 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 on 20th 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.

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 on 20th 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 desensitisation 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 videorecorded form.
3. The hypnosis must have been conducted 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 videorecorded.

28 Sentence

[Furnished on 20th October 2003]

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.

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 NSW Police wish to bring an informer's assistance to the attention of a sentencing court, the Police Commissioner's instruction 4.12 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 on 20th October 2003]

The prosecutor in any case conducted by the ODPP should assess any sentence imposed. If (and only if) it is considered to be appealable 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 its 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.
- 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.

In addition to the above matters prosecutors should be aware that:

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.

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 on 20th 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 on 20th October 2003]

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.

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 on 20th October 2003]

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 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.

No public comment concerning matters referred to the ODPP for advice is to be made without the Director's approval.

Jury trials require that the evidence be presented in a way that makes it (for the most part) immediately accessible to the media. In committal proceedings in the Local Court that usually will not be the case because of the use of written statements by witnesses.

Statutory Provisions Limiting Publication

Prosecutors and ODPP staff should be aware of the following statutory provisions that limit publication.

- (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. In no circumstances should the media be given the name or description or other means of likely identification 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.
- (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 1998* confers wide powers on courts to protect from publication the identity of participants in authorised operations.
- (g) The *Law Enforcement (Assumed Identities) Act 1998* enables courts to protect the identity of certain officers who have an assumed identity approval under the Act.

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 56 the *Criminal Procedure Act 1986* or section 578A of the *Crimes Act* or the provisions of the legislation relating to children.

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 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

32 Media Contact Continued

[Furnished on 20th October 2003]

- (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". 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 for 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 should also be taken in any case 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, but excluding videotapes and audiotapes of recorded interviews, re-enactments, demonstrations and identifications and digital photographs and recordings) may be inspected by the media after being admitted (if convenient).

It is permissible and appropriate if requested by the media for an officer to give his or her name and indicate that the prosecution is being conducted by the ODPP.

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.

It is not appropriate to comment to the media on the correctness or otherwise of any determination of a court.

In trials, rulings on evidence and all matters in the absence of the jury (where one is to be or has been empanelled) should not be commented upon, other than to remind the media that they should not be reported during the trial.

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.

It is the policy of the ODPP (and therefore the Director's instructions are) not to provide the media with copies of or access to videotapes or audiotapes of any recorded interviews, re-enactments, demonstrations or identifications or digital

photographs or recordings.

Upon charges being laid or the first court appearance of an accused person, the terms of the charge as disclosed in the court attendance notice or, at a later date, the indictment, may be disclosed to the media subject to the various restrictions and provisions referred to herein.

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 not usually to be given or lent to the media (subject to the following qualifications). Inspection of any such items and of the transcript of proceedings should take place in the ODPP officer's presence (and only if convenient). It is permissible to allow the media to view transcripts or other 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.

Section 314 of the *Criminal Procedure Act* 1986 provides for a media representative to inspect court documents on application to a court registrar. Police fact sheets may be provided thereunder only in cases of guilty pleas. Nevertheless, ODPP officers may provide to media representatives copies of police fact sheets provided at first court appearances and/or bail applications if they have already been served on the defence.

32 Media Contact

[Furnished on 20th October 2003] continued

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 is not known to all officers.

When approached directly by the media, officers should refer the inquirer to the Director's Chambers and/or the Media Liaison Officer. If it is considered that something should be done proactively with the media on behalf of the ODPP (for example the issue of a statement of some kind), the matter should be referred to the Director's Chambers.

33 International Guidelines

[Furnished on 20th October 2003]

In 1990 the United Nations adopted Guidelines on the Role of Prosecutors.

They are Annexure 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 Annexure A.

In 1985 the United Nations adopted the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power.

It is Annexure I.

These instruments provide further guidance for prosecutors.

APPENDIX A

[Furnished on 20th October 2003]

[Guidelines 1,33]

International Association of Prosecutors

Standards of Professional Responsibility and Statement of The Essential Duties and Rights of Prosecutors

I. 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 upon evidence reasonably

APPENDIX A Continued

[Furnished on 20th October 2003]

[Guidelines 1,33]

International Association of Prosecutors

Standards of Professional Responsibility and Statement of The Essential Duties and Rights of Prosecutors

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;
- 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,

APPENDIX A Continued

[Furnished on 20th October 2003]

[Guidelines 1,33]

International Association of Prosecutors

Standards of Professional Responsibility and Statement of The Essential Duties and Rights of Prosecutors

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 on 20th October 2003]

[Guidelines 3, 18, 26, 27, 28, 29, 32]

The New South Wales Barristers' Rules 62 to 72

Prosecutor's duties

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:
- 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
 - 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:
- the defence of the accused could suffer by reason of such non-disclosure;
 - the charge against the accused to which such material is relevant should be withdrawn; and
 - 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:
- whose testimony is admissible and necessary for the presentation of the whole picture;
 - whose testimony provides reasonable grounds for the prosecutor to believe that it could provide admissible evidence relevant to any matter in issue;
 - whose testimony or statements were used in the course of any committal proceedings; and
 - from whom statements have been obtained in the preparation or conduct of the prosecution's case;
- unless:
- the opponent consents to the prosecutor not calling a particular witness;
 - 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
 - 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:
- 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
 - 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 on 20th October 2003]

[Guidelines 3, 18, 26, 27, 28, 29, 32]

The New South Wales Barristers' Rules 62 to 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
- make available to the opponent a copy of the material if it is in documentary form;

- inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.

APPENDIX C

[Furnished on 20th October 2003]

[Guideline 17]

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 on 20th October 2003]

[Guideline 17]

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 on 20th October 2003]

[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

- I. 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 1(b) is taken if the accused has been charged with a serious crime that involves sexual violence or that results in actual bodily harm, mental illness or nervous shock 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 Continued

[Furnished on 20th October 2003]

[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 of serious offenders

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 on 20th October 2003]

[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 Section 4 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 Violence Order (under Part 15A of the Crimes Act 1900) or recognisance 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.

APPENDIX E Continued

[Furnished on 20th October 2003]

[Guideline 19]

ODPP PROTOCOL FOR REVIEWING DOMESTIC VIOLENCE OFFENCES

- 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 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 s20A DPP Act 1986).

Appendix F

[Furnished on 20th October 2003]

[Guideline 19]

INTERAGENCY GUIDELINES for CHILD PROTECTION INTERVENTION 2000

(EXCERPTS)

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Role

The role of the Office of the Director of Public Prosecutions in child protection is to conduct criminal and related proceedings with respect to sexual and other serious offences against children and young people.

against an employee, and ensuring that the allegations and convictions made against the employee are investigated and appropriate action taken in relation to the finding.

Responsibilities

As a service provider:

- screening cases to ensure the legal process is child and young person focused and that prosecution proceeds where there is sufficient evidence and prosecution is required in the public interest
- prosecuting offenders in all courts in New South Wales
- communicating effectively with and appropriately supporting victims of crime and witnesses before and during court appearances
- appearing in appeals and related proceedings in the District, Supreme and High Courts.

As an employer:

- training staff to prepare skilled advocates and witness assistance officers for pre-court and court roles
- conducting the Working With Children Check
- reporting to the Ombudsman any child abuse allegations and convictions made

As an interagency partner:

- exchanging relevant information to progress investigations, assessments and case management as permitted by law
- providing advice and consulting with the New South Wales Police Service in matters that are prosecuted
- working with other agencies throughout criminal proceedings to support children or young people who are victims and witnesses
- working with other government and non-government agencies within agreed, coordinated procedures, to plan and provide services for the care and protection of children and young people, and to strengthen and support families
- providing input into law reform issues in the area of child abuse and neglect
- using best endeavours in responding to requests for services from the Department of Community Services provided the request is consistent with ODPP responsibilities and policies.

APPENDIX G

[Furnished on 20th 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

14. 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.

14. 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

14. 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.

2. The child has the right to the protection of the law against such interference or attacks.

APPENDIX G Continued

[Furnished on 20th October 2003]

[GUIDELINES 19, 21, 26]

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (EXCERPTS)

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 recognise 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 recognised 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 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

APPENDIX G Continued

[Furnished on 20th October 2003]

[GUIDELINES 19, 21, 26]

UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD (EXCERPTS)

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. Prosecutors shall ensure that they shall always conduct themselves in accordance with the law and the recognised standards and ethics of their profession.
4. 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.
5. 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.
6. 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.
7. 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.

Freedom of Expression and Association

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 organisations and attend their meetings, without suffering professional disadvantage by reason of their lawful action or their membership in a lawful organisation. In exercising these rights, prosecutors

9. 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.

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 stigmatisation 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 accordance with the law, the code of professional conduct and other established standards and ethics and in the light of the present Guidelines.

APPENDIX H Continued

[Furnished on 20th October 2003]

[GUIDELINE 33]

UNITED NATIONS GUIDELINES ON THE ROLE OF PROSECUTORS

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 on 20th 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 victimisation.
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 minimise

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 victimisation, 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,

APPENDIX I Continued

[Furnished on 20th October 2003]

[GUIDELINE 33]

UNITED NATIONS DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities 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 victimising 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 victimisation.
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 recognised 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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DIRECTOR OF
PUBLIC PROSECUTIONS
NEW SOUTH WALES