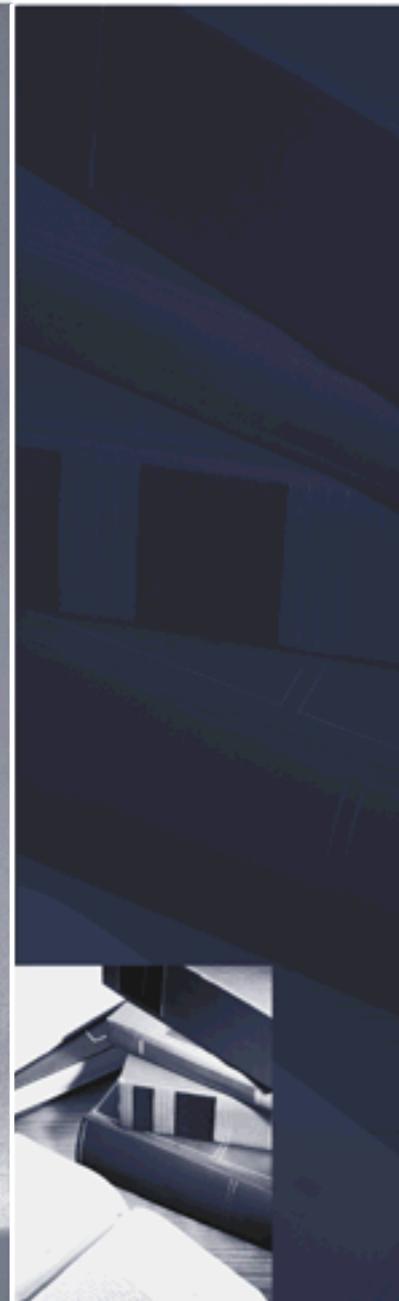




OFFICE OF THE
DIRECTOR OF
PUBLIC PROSECUTIONS
NEW SOUTH WALES

ANNUAL REPORT 2003–2004



• INDEPENDENT • EFFICIENT • FAIR • JUST

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 proceeding 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 a counsel or solicitor in any proceedings which are carried on by the Director.

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.

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

2003–2004 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 2004.

Yours faithfully

A handwritten signature in black ink, which appears to read 'N R Cowdery'. The signature is fluid and cursive.

N R Cowdery AM QC
Director of Public Prosecutions

29th October 2004

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Director's Overview

Director's Overview

“Prosecuting crime is a core business of government and adequate resources simply have to be made available for it to be done efficiently and effectively. The work of the Office is demand-driven and we are working in a system not of our creation and not subject to our control: a system that imposes its own timetables. Consequently there is very little flexibility possible in the internal management of our workload. Although we continually strive to improve our efficiency, we reached the limits of flexibility and resources in this year.”

That was how I began my Overview in last year's Annual Report 2002–03. It seems that those who control the Government's purse strings have not read it or did not understand it or did not agree with it in substance; so I repeat it this year particularly for their benefit. It remains the case and little has changed.

The inter-departmental Base Budget Review Committee appointed by the Attorney General (to which I also referred last year) recommended additional funding for the Office and the amount of \$8.6m extra was provided. This enabled us to negotiate an end to disruptive industrial action and to plan ahead for appropriate recruitment action to meet our increasing workload (acknowledged in the Base Budget Review Report).

Alas, in March 2004 the Government presented a “mini-budget” and issued an edict that, notwithstanding that it had recognised our need for additional funds and had satisfied some of that need, it was taking some of that back – \$2.15m in 2004–05 and in each of the following three years.

There is no logic in this approach. At year's end negotiations were continuing and readers will have to consult next year's Annual Report to see how they turned out. It may well be that the Government does need to tighten its belt for a range of reasons; but when criminal justice is being considered, the broader picture needs to be borne in mind. Government has effectively quarantined the NSW Police and Corrective Services Department from the worst impacts of budget cuts; however, it has cut severely the Attorney General's Department (which operates the courts and associated services), my Office (which prosecutes) and the Legal Aid Commission (which does most of the defence work in serious crime). The clear message is that a fair trial in a timely manner is not a core business of Government – all it needs are police to arrest and charge people and prisons in which to confine them.

This is my tenth Annual Report and the Office's 17th. I can report once again that, even without the proper level of support by Government, the State is well served indeed by nearly 630 of my officers (comprising nearly 100 Crown Prosecutors, nearly 300 lawyers and over 200 administrative staff – including 34 Witness Assistance Service officers, three of them in indigenous designated positions). We work from 11 offices around the State, responding to the demands of criminal justice to the highest professional standard reasonably achievable. This is reflected in the public praise that is given throughout the year and in the efforts made by other prosecuting agencies to copy our successes. (I said something like that last year, too.) The Office is a leader, nationally and internationally.

Our work for the year is described in the pages of this Annual Report and I commend it to you. Many progressive initiatives taken by the Office in many areas continue to improve our efficiency and effectiveness and the operations of the criminal justice system generally. The initiatives of 2003–04 are reported upon elsewhere in this document. Given appropriate resources, there is much more that we could do.

Prosecution Guidelines

The old Prosecution Policy and Guidelines were replaced in this year. On 20 October I furnished, pursuant to section 13 of the Director of Public Prosecutions Act 1986, a new set of Prosecution Guidelines. This is one consolidated document with few

Appendices. The guidelines are available electronically on the Office website www.odpp.nsw.gov.au (go to "Prosecution Guidelines") and paper copies may be requested (free of charge) from the Library. They are included also in the

standard criminal law practice publications. The new guidelines are published in this Annual Report in accordance with the requirements of sections 15 and 34 of the Director of Public Prosecutions Act 1986.

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.

For the first and only time in the Office's history, a request was made to the Attorney General pursuant to section 29 that he consider the exercise of his function to request that a case be stated in a matter. On the hearing of a prisoner appeal by the District Court an error of law was made and the accused person was wrongly acquitted. The error was not identified and commented upon until after the expiration of the time

limited by law for stating a case to the Court of Criminal Appeal; and, in any event, the law in respect of which the error had been made did not require appellate clarification. Well out of time I declined to request that a case be stated. The Attorney General strongly took a different view and in the circumstances I determined that a request be made under section 29 "in the interests of justice". The Attorney General sought to appeal on a stated case and the Court of Criminal Appeal refused to extend time and dismissed the application.

The Executive Board, which I chair, continued its work. It contains two independent members and, while not

involved directly in the prosecution function, it provides valuable assistance to and enhanced accountability for the Office on matters of management and administration. Minutes of the meetings of the Board are provided to the Attorney General and to the Treasurer.

Yet again (as this seems to have become at least an annual event) the Opposition has sought to introduce legislation to establish a Parliamentary Joint Committee to "monitor and review" the exercise of my functions. It is also proposed by some to limit the term of office of future Directors to seven years. Both proposals are unnecessary and contrary to principle and deserve to fail.

Senior Staff

Mr R D Ellis, Deputy Director, was appointed a Judge of the District Court on 11 August.

Mr G E Smith continued in office as Deputy Director.

Mr L M B Lamprati SC, Deputy Senior Crown Prosecutor, was appointed Senior Counsel on 1 October and as Deputy Director on 22 December.

Mr S E O'Connor, Solicitor for Public Prosecutions, resigned on 29 August to take up the position of Deputy Chief Executive Officer (Legal Services) of the Legal Aid Commission.

Mr S C Kavanagh was appointed Acting Solicitor for Public Prosecutions.

Mr C K Smith, Deputy Solicitor for Public Prosecutions (Operations), resigned on 5 December to take up the position of Principal Courts Administrator in the District Court.

Ms C Giroto was appointed Acting Deputy Solicitor for Public Prosecutions (Operations).

Crown Prosecutors

Mr R A Hulme SC resigned as a Deputy Senior Crown Prosecutor to take up appointment as a Deputy Senior Public Defender on 9 July.

Mr B C Newport QC, Deputy Senior Crown Prosecutor, retired on 26 January.

Mr M C Marien SC, Deputy Senior Crown Prosecutor on secondment as Director of the Criminal Law Review Division of the Attorney General's Department, was appointed Senior Counsel on 1 October and a Judge of the District Court on 3 February.

Ms M M Cunneen continued as Acting Deputy Senior Crown Prosecutor and was appointed as a Deputy Senior Crown Prosecutor on 26 August.

Mr W G Roser continued as Acting Deputy Senior Crown Prosecutor and was appointed as a Deputy Senior Crown Prosecutor on 26 May.

Messrs B J Knox SC and N A P Harrison were appointed as Deputy Senior Crown Prosecutors on 26 May.

Mr P S Dare SC continued as Acting Deputy Senior Crown Prosecutor until 31 December.

Ms E A Wilkins was appointed as Acting Deputy Senior Crown Prosecutor on 26 May.

Mr T P Grew retired on 19 December.

Ms J E Cash, Ms G M O'Rourke and Messrs S G Apps, G C Corr, J D Favretto and R J Willis continued as Acting Crown Prosecutors.

Mr L A Babb was seconded as Director of the Criminal Law Review Division of the Attorney General's Department from 22 December.

Dr P J P Power SC, Deputy Senior Crown Prosecutor, was reappointed Chairperson of the Youth Justice Advisory Committee.

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

The NSW Bar Association's Continuing Professional Development program applies to Crown Prosecutors and complementary CPD educational sessions were held in house throughout the year.

Travel

- The Deputy Directors and I have continued to visit regional offices, at times delivering papers in MCLE sessions there and in head office.
- I have participated in various NSW and interstate conferences and meetings on a range of matters connected with the criminal law.
- The Conference of Australian Directors of Public Prosecutions (CADs) met in Adelaide in November and in Sydney in April.
- In June/July I attended the biennial conference of the Criminal Lawyers' Association of the Northern Territory (CLANT) in Port Douglas.
- In August I attended the 8th Annual Conference and General Meeting of the International Association of Prosecutors (IAP – of which I am still President) in Washington DC, USA. I also attended the annual conference of the International Society for the Reform of the Criminal Law (ISRCL) in The Hague, The Netherlands and visited there the Secretariat of the IAP and the ICTY.
(It is noted that – for the first time in relation to an IAP conference – the Attorney General refused to approve attendance at either of these conferences as attendance on duty. Consequently no State money was spent on them, other than the 17.5% leave loading on my salary while I was away.)
- In October I attended the Pacific Islands Law Officers' Meeting (PILOM) in Melbourne.
- In November I spoke at the giving of the solemn undertaking by the Deputy Prosecutor (Investigations) at the International Criminal Court (ICC) in The Hague, The Netherlands.
(No State money was spent on this engagement.)
- In November I undertook for the International Bar Association (IBA) a mission inquiring into the introduction of the electronic recording of interviews with suspects in Japan and co-wrote a report.
(No State money was spent on this engagement.)
- In January I returned to Japan to follow up the earlier mission after publication of the report and to address a large convention of lawyers and lawmakers on the subject in Tokyo.
(No State money was spent on this engagement.)
- In February/March I attended and presided over a meeting of the Executive Committee of the IAP in Chiang Mai, Thailand.
(The Attorney General again, in a departure from past practice, refused to approve attendance at this regular meeting as attendance on duty and accordingly I took leave to attend.
No State money was spent on this engagement.)
- In May I participated for the fourth time (over 5 years) in workshops for prosecutors in China with other criminal justice practitioners and administrators from the public sector in NSW. These were held in Xi'an, Shaanxi Province. This was a continuation of the inter-governmental program between China and Australia which has been reported before.
(No State money was spent on this engagement.)

I remain firmly convinced, as I have said before, that the fight against crime cannot be waged in geographical isolation. We need to know the methods being employed to meet new challenges by our colleagues in other jurisdictions and to communicate and co-operate with them. One of the most effective ways to do this is to meet and talk with them face to face. We borrow and adapt good ideas in this way and others borrow from us.

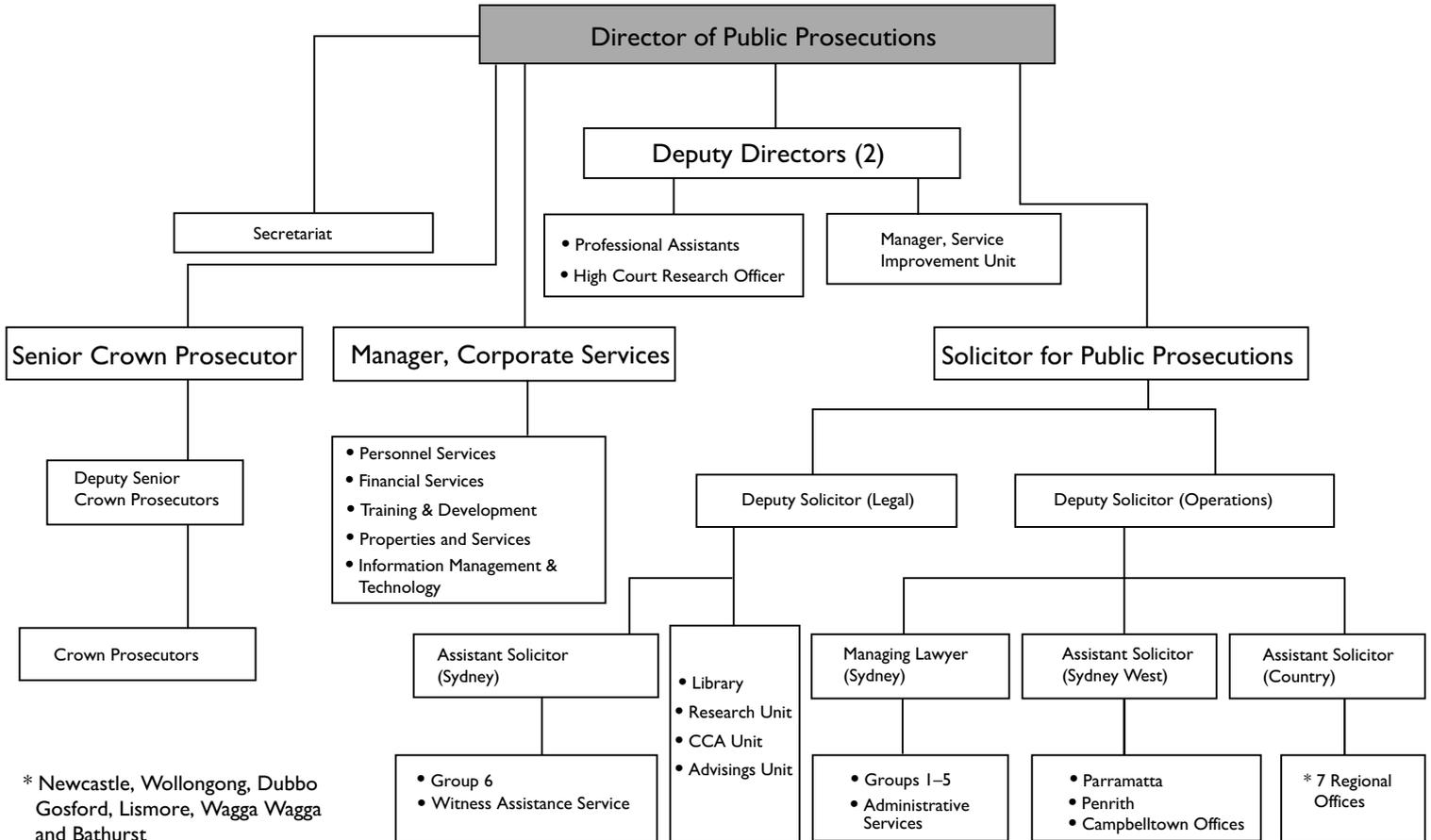
It is in that spirit also that the ODPP hosts many groups of visiting prosecutors (and occasionally judges) from a number of other countries throughout the year and my officers and I participate in meetings, information sessions and workshops in which experiences and ideas are freely exchanged.

Interaction of this kind furthers the interests of the administration of justice in NSW. It must be supported appropriately by Government.



Management and Organisation

Organisational Structure



* Newcastle, Wollongong, Dubbo Gosford, Lismore, Wagga Wagga and Bathurst

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. He is President of the International Association of Prosecutors.

Greg Smith 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.

Provides advice to the Director of Public Prosecutions; appears in the High Court and other appellate courts; 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. Deputy Senior Crown Prosecutor in April 2002. SC in October 2003. Appointed Deputy Director of Public Prosecutions in December 2003.

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

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.

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

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 as Solicitor for Public Prosecutions in June 2004.

Patrick McMahon Grad Certif in Management, AFAIM

Manager, Corporate Services

Employed in the NSW Public Service for over 38 years 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 Manager, Corporate Services in February 1999.

Responsible for personnel, training and development, financial management, information management and technology, and property functions of the Office.

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, 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.

Management Committee

This Committee comprises of the Director; two Deputy Directors, Senior Crown Prosecutor; Solicitor for Public Prosecutions, 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 Committee

This Committee is chaired by a Deputy Director of Public Prosecutions with the Solicitor for Public Prosecutions, Senior Crown Prosecutor, 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 Committee monitors the internal audit function 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, 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 | |
|--|---|---|
| Crown Committee | Mark Tedeschi QC Mark Hobart | (Chair) (Secretary/Treasurer) |
| | Representatives: Level 9: Terrance Thorpe Level 8: Tim Hoyle SC Pitt St: Mark Hobart Sydney: Keith Alder Country: Paul Cattini | (alt. Lou Lungo) (alt. David Arnott) (alt. Paul Conlon SC) (alt. David Degnan) (alt. Michael Fox) |
| | Industrial Advisers: Phillip Ingram Edwin Moberley | |
| Crown Management Committee | Mark Tedeschi QC David Frearson James Bennett SC Peter Barnett | William Dawe QC Daniel Howard Patrick Barrett Deborah Carney |
| Executive Board | Nicholas Cowdery AM QC (Chair) Greg Smith 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 Luigi Lamprati SC Mark Tedeschi QC Patrick McMahon | Stephen Kavanagh Robyn Gray Philip Dart Graham Bailey Claire Giroto |
| Information Management & Technology Steering Committee | Patrick McMahon Stephen Kavanagh Claire Giroto Robyn Gray | Graham Bailey Patrick Power Hop Nguyen Diane Harris |
| Internal Audit Committee | Greg Smith (Chair) Luigi Lamprati SC Mark Tedeschi QC | Stephen Kavanagh Patrick McMahon Jeff Shaw |
| Occupational Health & Safety Committee | Employee Representatives: Country: Ken Lambeth – Lawyer, Bathurst Vicki Taylor – Lawyer, Dubbo Sydney West: Peter Wood – Lawyer, Penrith Michael Frost – Managing Clerk, Parramatta Sydney Office: Helen Langley – Lawyer, Sydney Jenny Wells – Admin. Officer, Sydney | Employer Representatives on the Committee: Claire Giroto, Deputy Solicitor (Operations); Peter Bridge, Manager, Properties and Services; and Gary Corkill, Manager, Personnel Services. Proxy members: TBA |
| PSA/Management Joint Consultative Committee | Greg Smith Graham Bailey David Curran | Andrew Dziedzic Claire Giroto Patrick McMahon |



Achievements

The Office is unable, at present, to report in detail against some Performance Indicators. However, a system known as the Organisational Performance Management System (OPSM) is to be developed in 2004–05. This project is to provide the capacity for the ongoing

collection, analysis and reporting of data for management purposes and involves the acquisition of business management software and the configuration of that software to provide management reports on ODPP workloads and productivity. This project will be undertaken in conjunction

with Activity Based Costing and will provide the information necessary to report against all PI's. This should be taken into account in relation to PI's 1.1 (a, b & c), 1.3 (a, c & d), 3.2 (a & b)

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

| | | | | |
|-----|---|-------|--|------------------------|
| 1.1 | To provide a just and independent prosecution service | 1.1.1 | Continually review, evaluate and improve standards for criminal prosecutions | Achievement of justice |
| | | 1.1.2 | Improve the timeliness and quality of briefs through liaison with investigative agencies | |

Performance Indicator

- 1.1(a) Percentage of cases where costs are awarded due to the conduct of the prosecution
- 1.1(b) Percentage of matters conducted without sustained complaint
- 1.1(c) Proportion of matters returning a finding of guilt

Report:

- 1.1(a) In this reporting period, costs were awarded in 0.05% of the 17,000 cases dealt with due to the conduct of the prosecution.
- 1.1(b) 0.012% (2 complaints) of 17,000 prosecutions conducted throughout the year.
- 1.1(c) 79.5% of all matters concluded in the District Court 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

| 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) A program known as Introduction to the ODPP has been implemented, incorporating aspects of the Foundation Legal Skills program. The Program is aimed at all new staff. Therefore, through this program, an increasing number of people are exposed to the Code of Conduct and Privacy and Ethical Practices. The first session will be conducted in September 2004. All new appointees are given the Code of Conduct.

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

| Goal | Strategy | Outcome |
|--|---|------------------------------|
| I.3 To provide timely prosecution services | I.3.1 Comply with relevant time standards | Speedy resolution of matters |

Performance Indicator

- I.3(a) Percentage of advisings completed in agreed time
- I.3(b) Proportion of trials listed which were adjourned on the application of the Crown
- I.3(c) Average number of days between arrest and committal for trial

Report:

- I.3(a) 80% of advisings were completed within the agreed time. Full compliance was adversely affected in the first part of the year by PSA industrial bans that prohibited the processing of Advising work. The Police Commissioner had been advised of this.
- I.3(b) The proportion of District Court trials vacated in 2003–4 on application of the Crown was 6.58% (14.7% in 2002–03)
- I.3(c) The average number of days between arrest and committal for trial during 2003–4 was 223.

Key Result Area 2: Victim and witness services

| Goal | Strategy | Outcome |
|--|--|--|
| 2.1 To provide assistance and information to victims and witnesses | 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)
- 2.1(b) Number of sustained complaints.

Report:

- 2.1(a) The ODPP biennial survey of victims and witnesses was conducted in 2002–03 and revealed an improvement in customer satisfaction over previous years. Details of the survey results have been included in the Customer Response report at Appendix 38 at page 91.

The ODPP biennial victim and witness survey will be conducted this year and will be reported on in the next annual report. Details of past survey results have been included in the Customer Response Report at Appendix 38 on page 91.

- 2.1(b) No written complaints were received by the Witness Assistance Service during the year.

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) The Annual Report: 2002–03 was completed and submitted to the Attorney General within statutory guidelines.
 The Government Energy Management Plan was completed and submitted to meet the deadline of 31 October 2003.
 The next biennial report on the Waste Reduction and Purchasing Plan is due by 31 August 2005
 The EEO Annual Report was submitted to ODEOPE on 15 October 2003.
 The annual financial statements 2002–03 were completed and submitted to the Auditor General within the set deadline of 11 August 2003.
 The annual FBT return for 2003/04 was submitted on 21 May 2004 before the set deadline of 31 May 2004.
 The monthly BAS returns have been submitted before the set deadlines.
- 3.1(b) The Internal Audit 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

| 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 court day serviced
- 3.2(b) Cost per matter disposed of
- 3.2(c) Expenditure within budget

Report:

- 3.2(a) This indicator is unable to be reported on at this stage. Activity Based Costing, which is being rolled out in the 2004–2005 year will enable such reporting to be included in the next annual report.
- 3.2(b) \$5,229.07. A more accurate calculation of this cost will be available following implementation of the Activity Based Costing System.
- 3.2(c) The office operated within budget for the financial year. Corporate services functions and processes have been further reviewed and efficiencies identified. The emphasis is on retaining the Internal Shared Services Unit model (in accordance with the Government strategy for corporate services reform).

Monthly finance reports are submitted to the Executive Board and Management Committee.

The Integrated Document Management System (IDMS) moved into production on schedule on 23rd June 2004. Phased migration of all relevant documents to the IDMS is expected to be completed by the end of September 2004.

Development of the core functions of the Operational Performance Management System and Activity Based Costing System has been completed. The business areas are determining final specifications for additional reports. Pilot implementation is due to commence in October 2004 after the roll-out of the IDMS is completed for all offices.

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 the period 1 July 03 to 30 June 04 was -5.8% compared with 5.9% for 2002-03. (Total appointments – 104.85; total separations – 68.8). The Australian HR Benchmark 2001 is 15.16%.
- 4.1(b) No salary increments were deferred during the year.

Key Result Area 4: Staff resourcing and development

| Goal | Strategy | Outcome |
|----------------------------------|--|--|
| 4.2 To provide workplace support | 4.2.1 Provide staff with 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) 4 Workers Compensation Claims reported in the Third Quarter of 2003/4 – compared to 5 for the same period in 2002/03. Total Claims for three quarters in 2003/4 is 16 compared to 12 for 2002/3. However, Claim Payments after three Quarters of 2003/4 have decreased by 76% in comparison to the same period in 2002/03.
- 4.2(b) Average sick leave from 1 July 2003 to 30 June 2004 was 5.95 days compared with 5.34 days in 2002–03. According to the Australian HR Benchmarking Report for 2001, the desired range is 6.35 days.

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

Focus groups to identify 'Workplace Health issues' were conducted in January 2004. An action plan has been developed with a working party established, to meet in August 2004.

A "Quality of work life" survey was conducted in April 2004 to June 2004. In total, 348 surveys were completed by staff across the Office and the results finalised in August 2004. These results are currently being released to the Executive and local management, then through group discussions with each Group/Office, for actions to be developed corporately and locally.

Key Result Area 4: Staff resourcing and development

| Goal | Strategy | Outcome |
|---|---|---|
| 4.3 To enhance the skills and knowledge of our people | 4.3.1 Implement training and development according to organisation and individual 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:

- 4.3(a) 100% priority learning needs implemented, including:
- Sex Assault and Management Development modules
 - mentoring program
 - MCLE seminar program
 - general and short matters advocacy workshops
 - committals & sentencing workshops
 - IDMS training
 - Technology Induction
 - Defensive Driving
 - Internal conferences – Solicitors', Managing Lawyers' and Regional MCLE
 - Microsoft training programs

Priority programs identified for 2004–05 include:

- Induction
 - Activities arising out of workplace health committee
 - Activities arising out of quality of worklife survey
 - Changes in technology
 - Organisational/external change
 - Managers support services/managing clerks workshop
 - EEO/OHS workshops
- 4.3(b) The Learning & Development participation rate for staff attending such activities (excluding Crown Prosecutors) was 94%
- 4.3(c) 98% of Performance Management Workplans completed

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 2003–4 was 490.
- 5.1(b) During the past 12 months the Office has completed over 40 submissions on proposals for law reform in New South Wales on subjects which include Part 10A of the Crimes Act, the Coroner's Act, the Jury Act, the Evidence (Audio and Visual Links) Act, the principles of double jeopardy, pre-trial disclosure, access to court records, and workplace surveillance. ODPP Officers have also assisted interstate justice agencies on a wide range of legal and procedural reforms which are being considered in those States.

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 see Appendix.

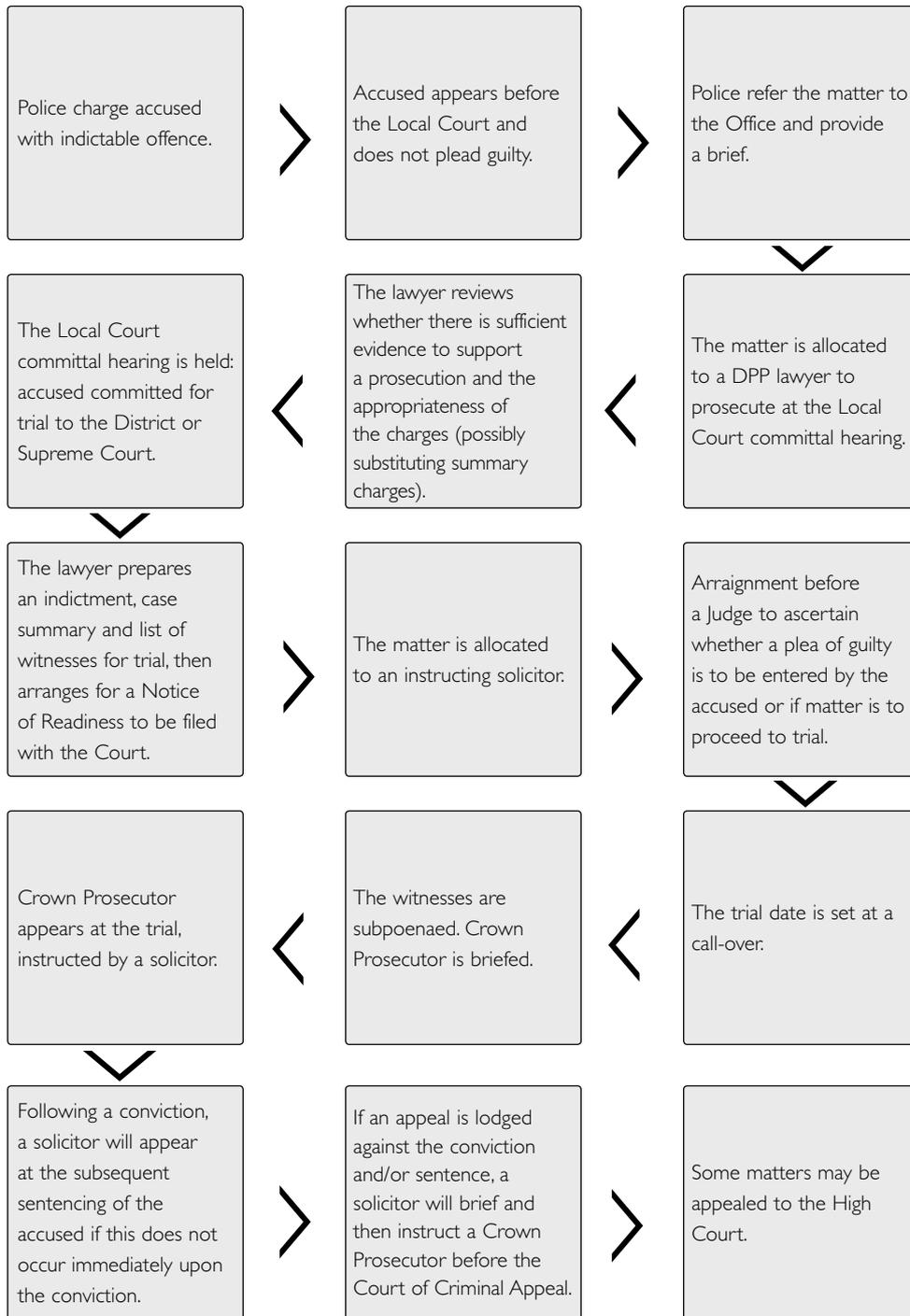
Acronyms

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



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.



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.

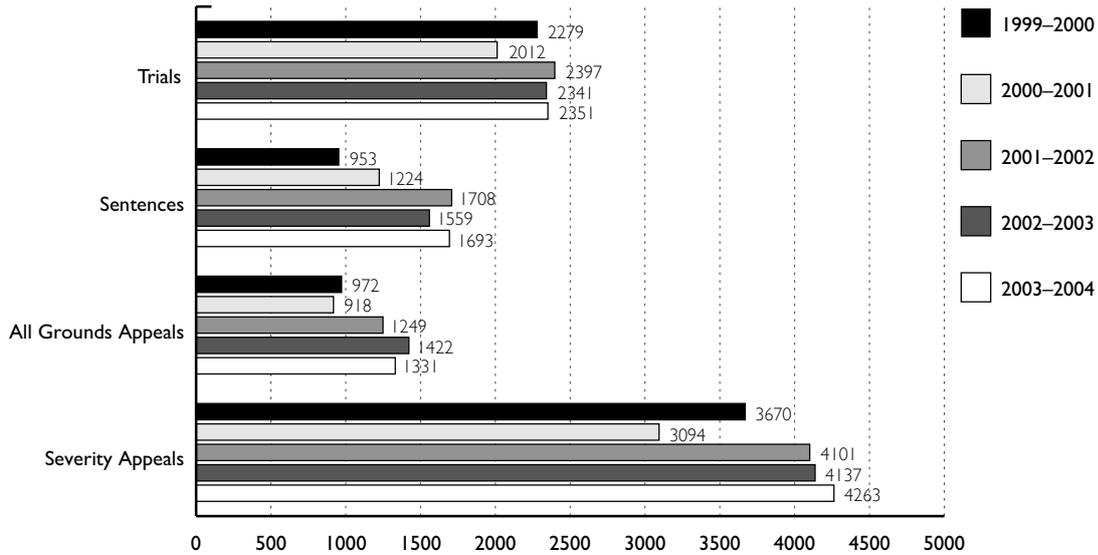


Appendices

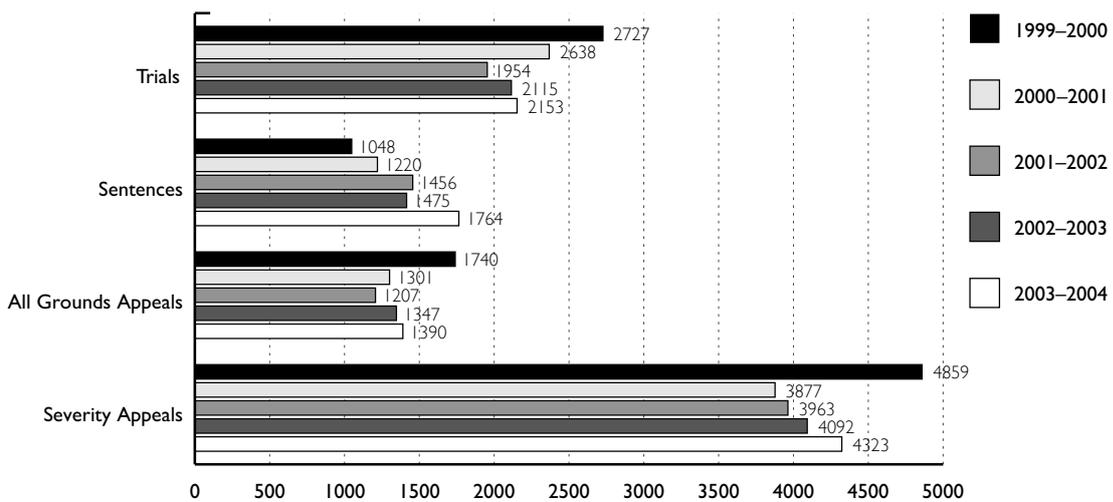
Appendix I

District Court – State Summary

District Court Matters Received – State



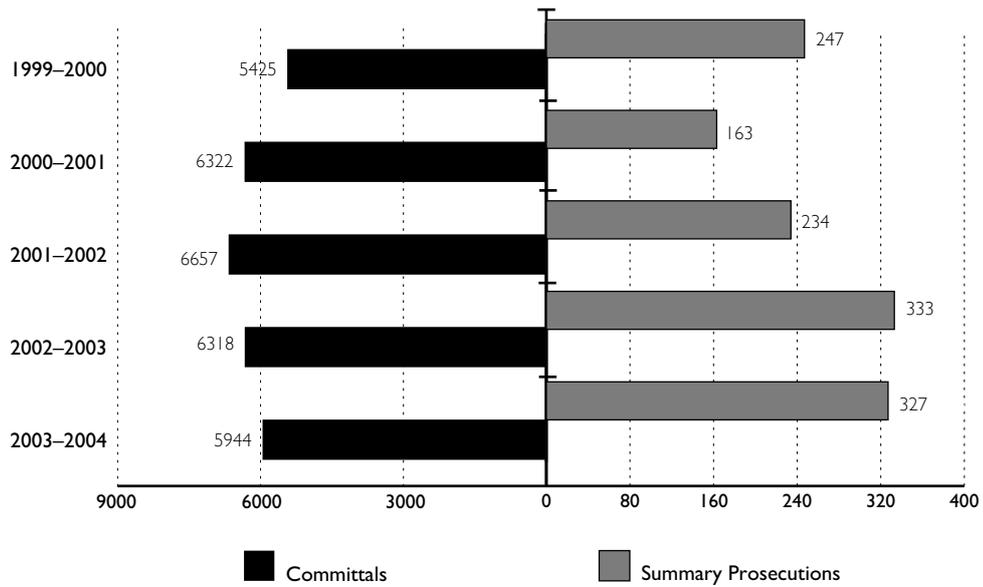
District Court Matters Completed – State



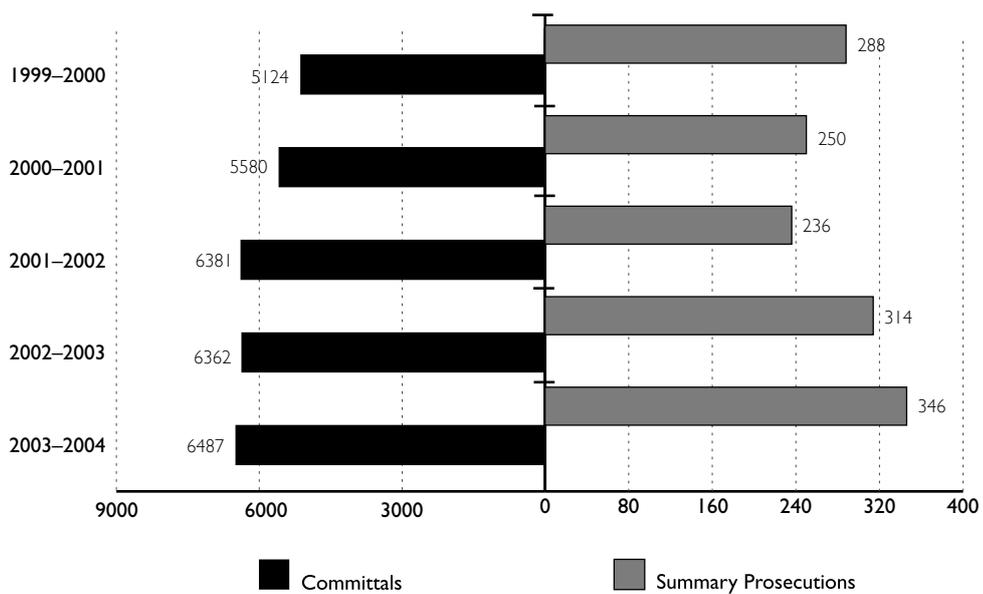
Appendix 2

Local Court – State Summary

Local Court Matters Received – State



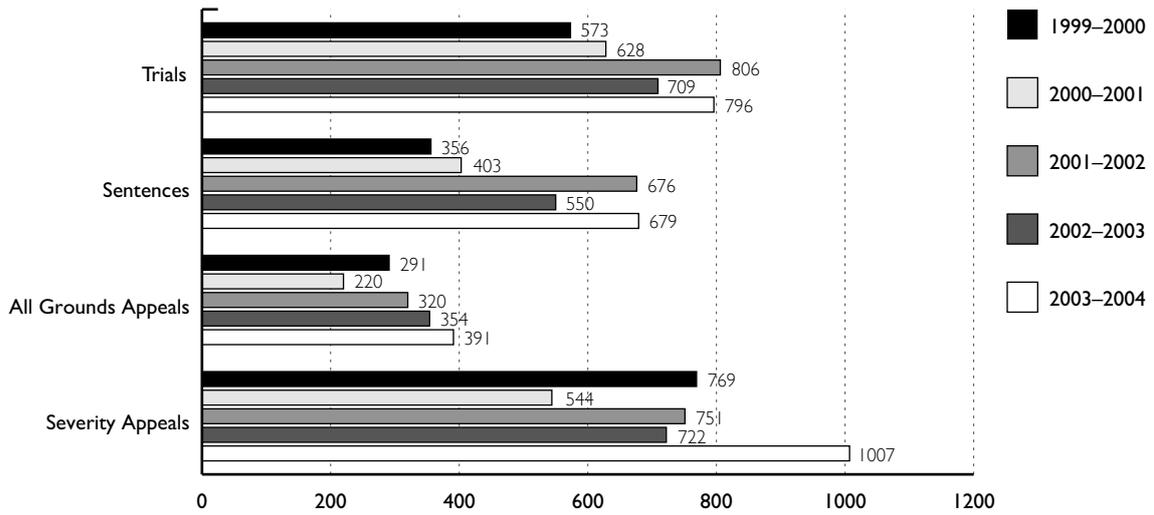
Local Court Matters Completed – State



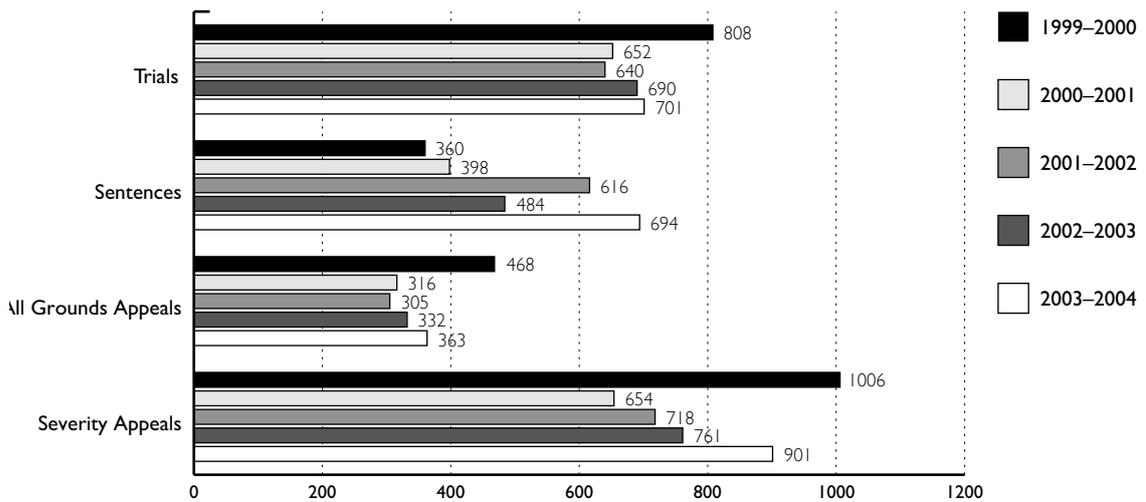
Appendix 3

District Court – Sydney Summary

District Court Matters Received – Sydney



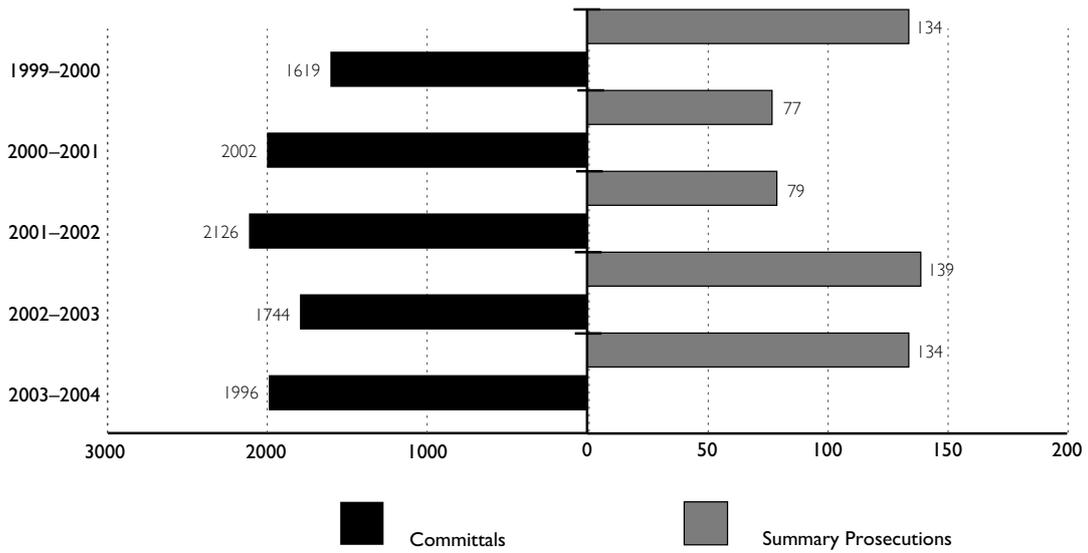
District Court Matters Completed – Sydney



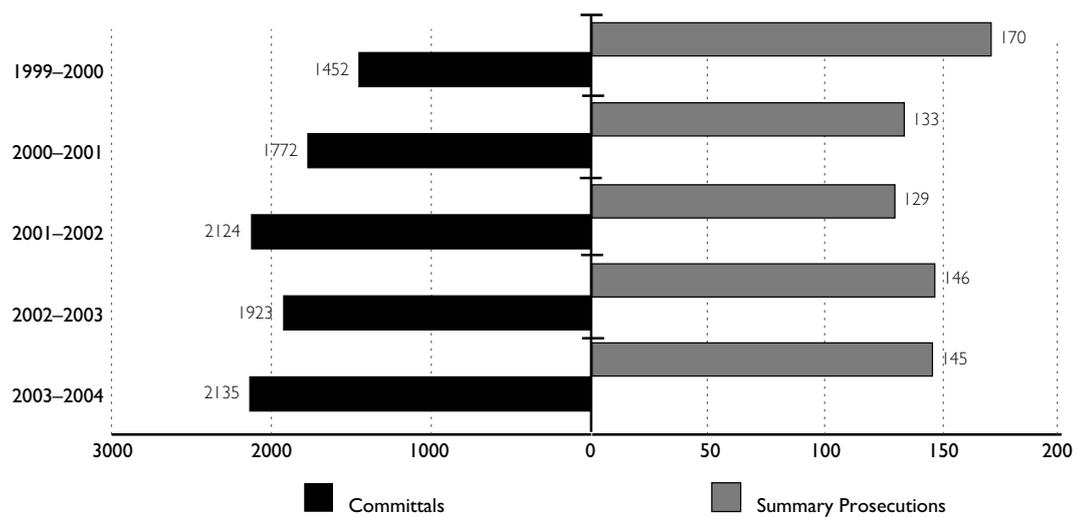
Appendix 4

Local Court – Sydney Summary

Local Court Matters Received – Sydney



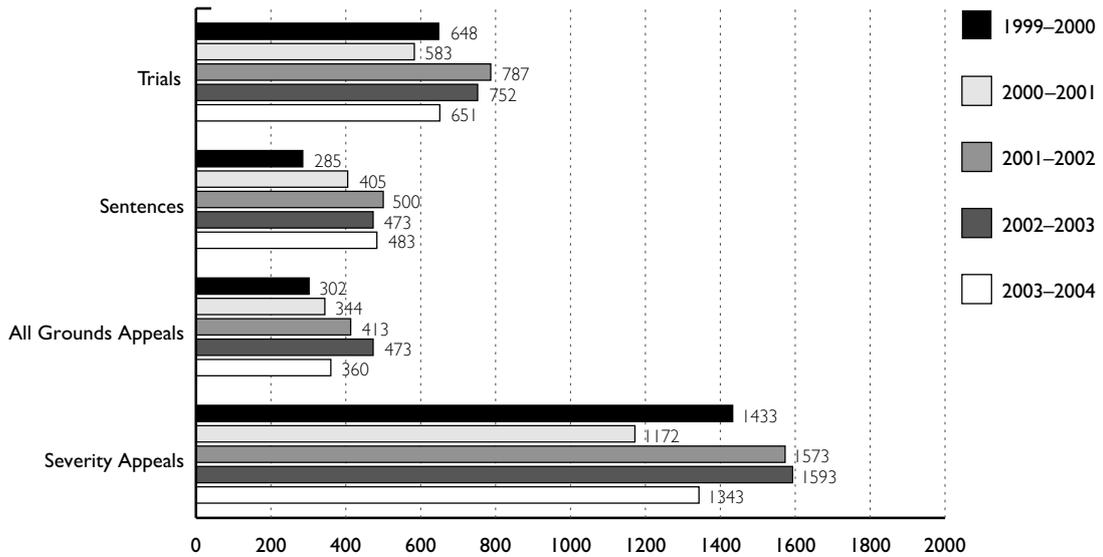
Local Court Matters Completed – Sydney



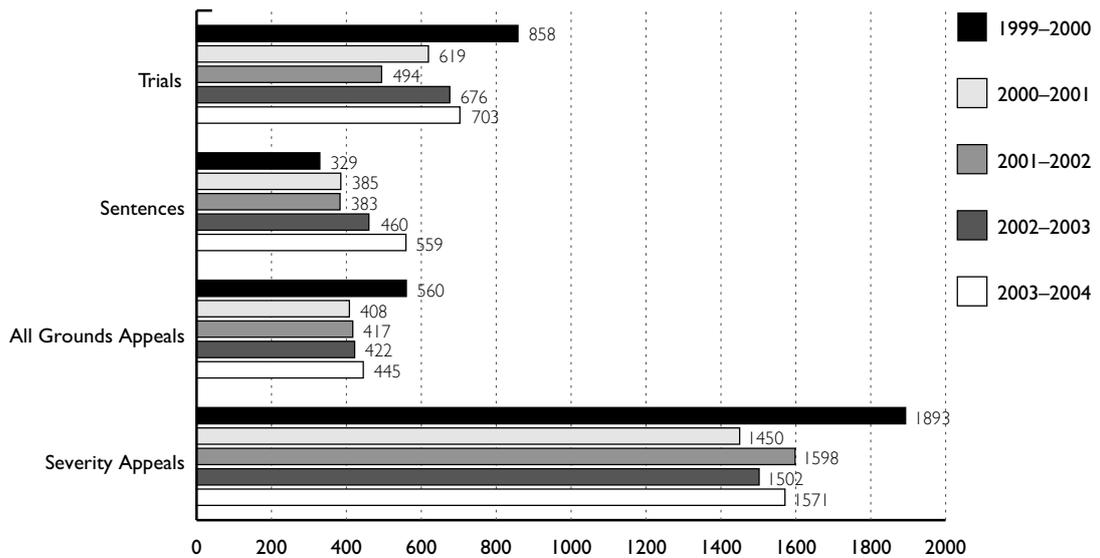
Appendix 5

District Court – Sydney West Summary

District Court Matters Received – Sydney West



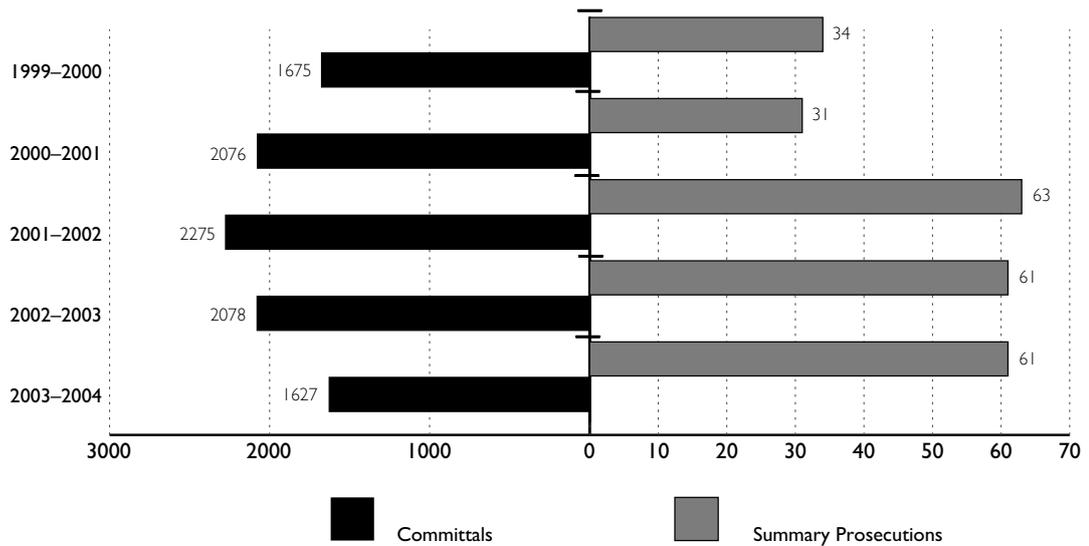
District Court Matters Completed – Sydney West



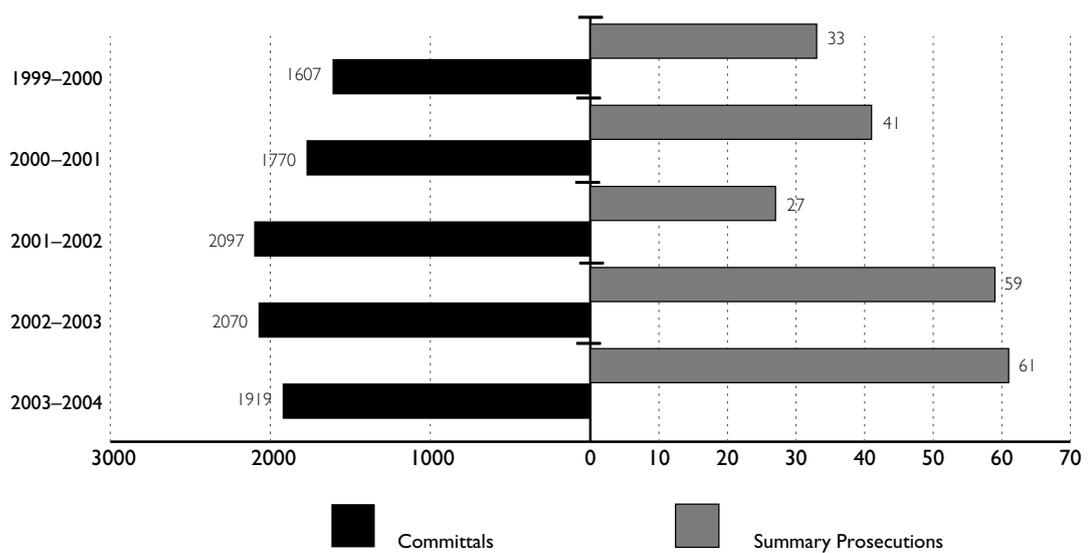
Appendix 6

Local Court – Sydney West Summary

Local Court Matters Received – Sydney West



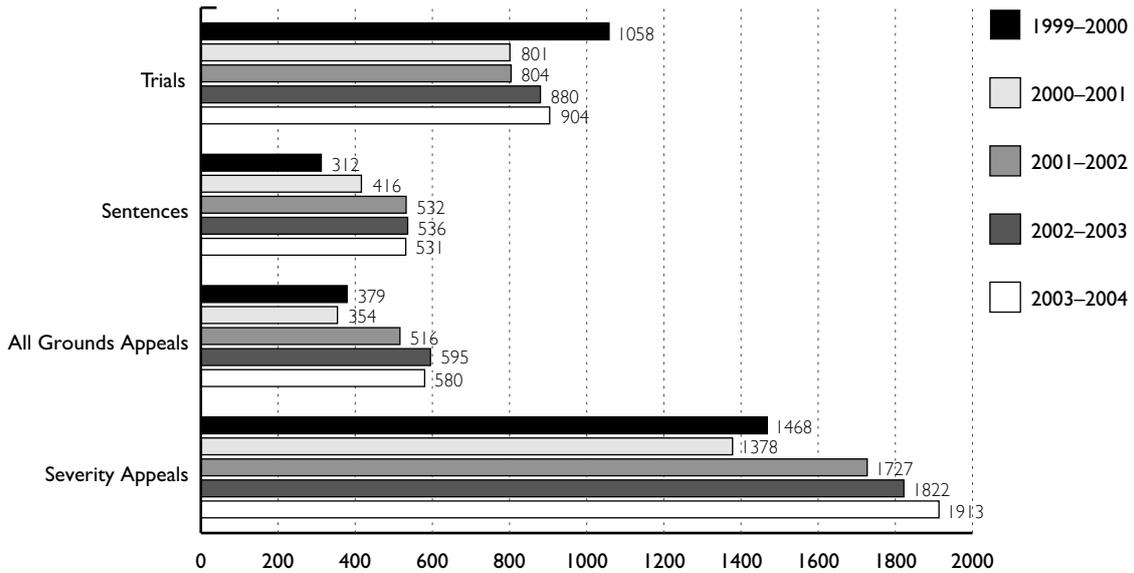
Local Court Matters Completed – Sydney West



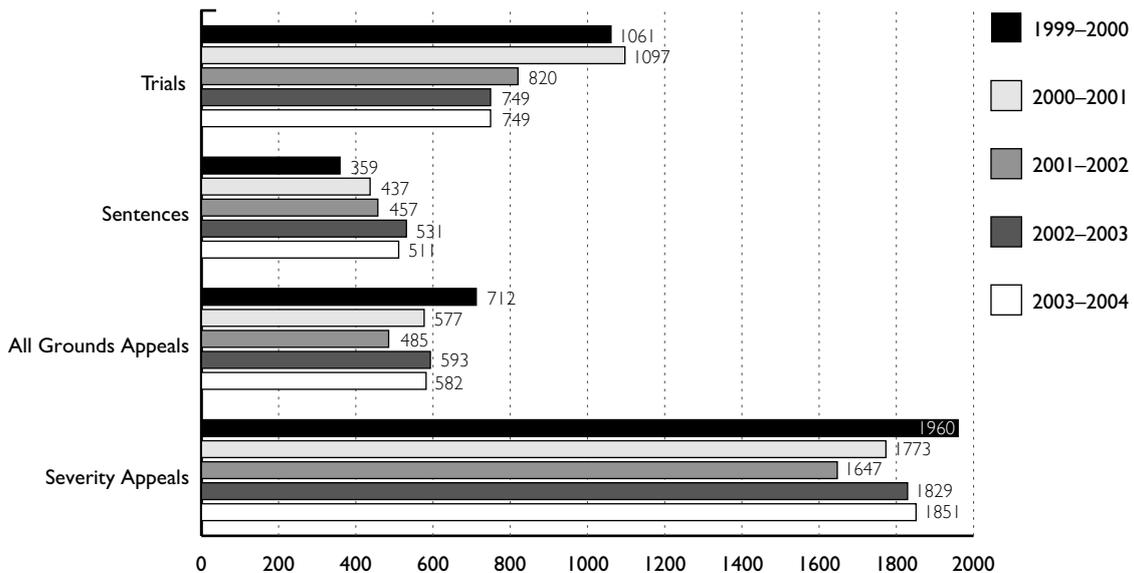
Appendix 7

District Court – Country Summary

District Court Matters Received – Country



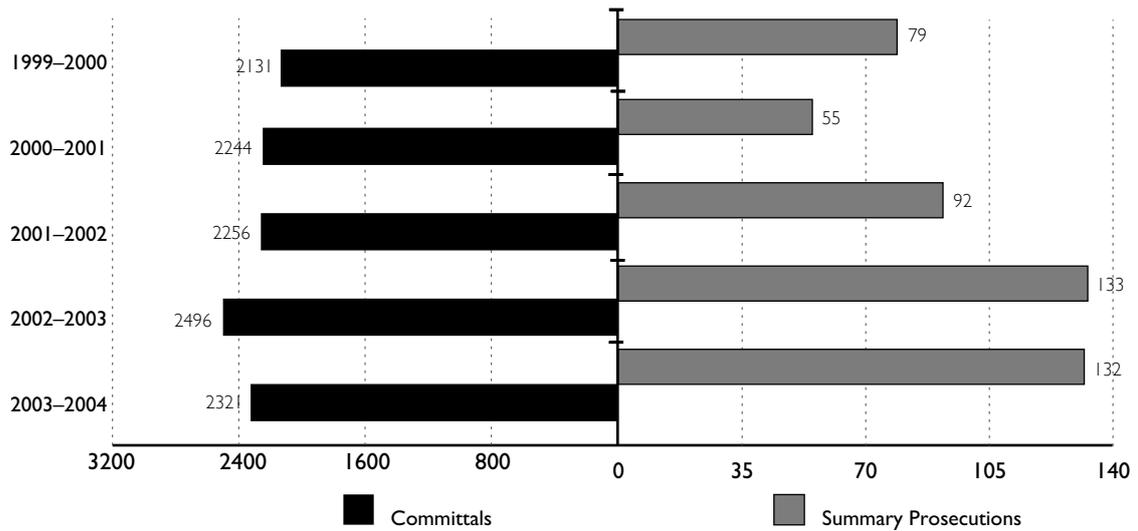
District Court Matters Completed – Country



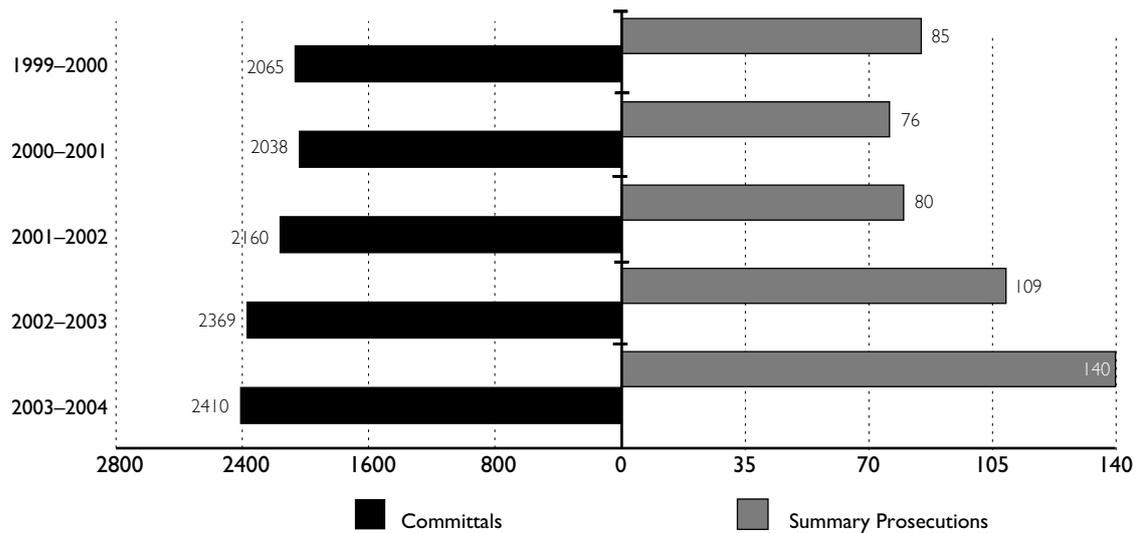
Appendix 8

Local Court – Country Summary

Local Court Matters Received – Country



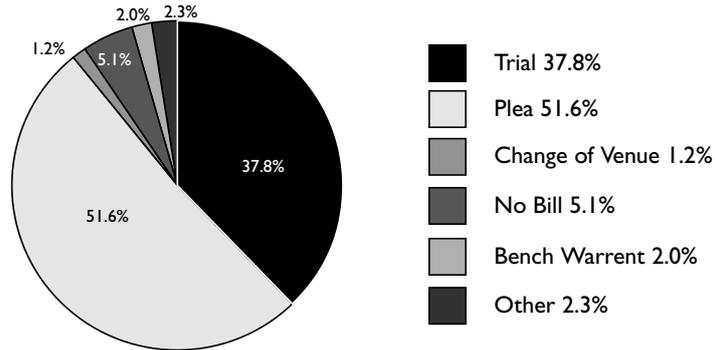
Local Court Matters Completed – Country



Appendix 9

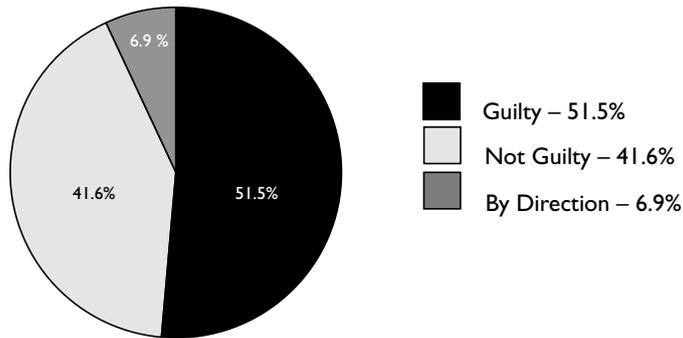
District Court – Trial Statistics

Disposal of Trials Listed

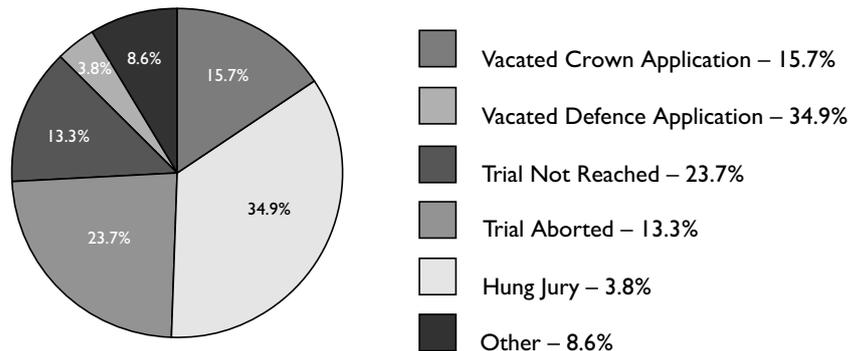


| Trial Verdicts Comparison | 1999–2000 | 2000–2001 | 2001–2002 | 2002–2003 | 2003–2004 |
|---------------------------|-----------|-----------|-----------|-----------|-----------|
| Guilty | 42.8% | 43.7% | 41.4% | 53.2% | 51.5% |
| Not Guilty | 43.9% | 46.7% | 48.8% | 41.4% | 41.6% |
| By Direction | 13.3% | 9.5% | 9.8% | 5.4% | 6.9% |

Trials Verdicts



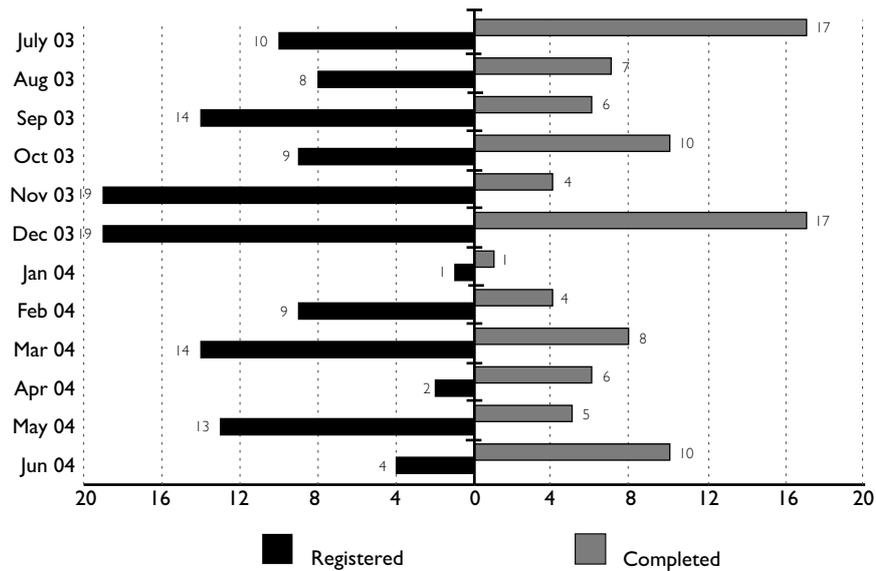
Trials Adjourned



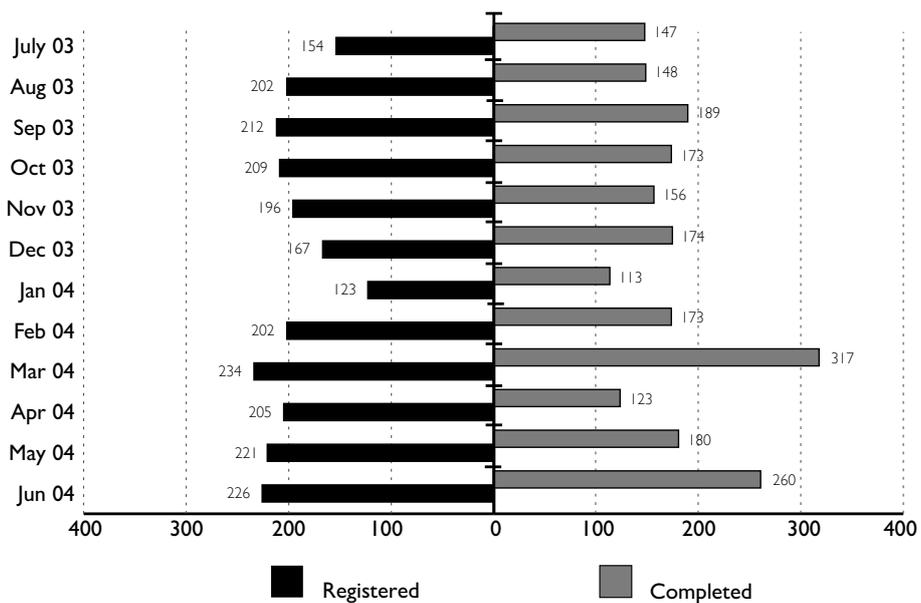
Appendix 10

Trials Registered and Completed

Supreme Court Trials Registered and Completed in 2003–2004



District Court Trials Registered and Completed in 2003–2004



Appendix II

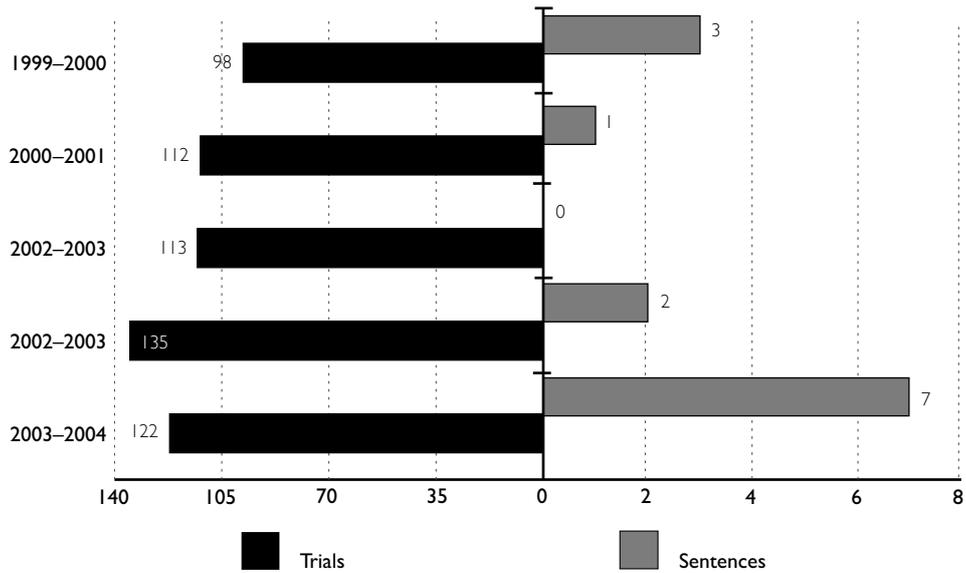
Local Court Committals – July 2003 to June 2004

| Regional Office | Registrations | Disposals | | | | | | On hand at End of June 2004 | |
|----------------------|---------------|---------------------|------------------------|---------------------|------------|------------|-------------|-----------------------------|-------------|
| | | Committed for Trial | Committed for Sentence | Summarily Convicted | Discharged | Discont | Other | | Total |
| Sydney Registrations | 1996 | | | | | | | | |
| Group 1 | | 143 | 171 | 98 | 14 | 26 | 57 | 509 | 215 |
| Group 2 | | 195 | 135 | 65 | 35 | 1 | 63 | 494 | 224 |
| Group 3 | | 175 | 113 | 74 | 23 | 20 | 61 | 466 | 207 |
| Group 4 | | 184 | 140 | 55 | 4 | 16 | 27 | 426 | 218 |
| Group 5 | | 1 | 2 | 1 | 0 | 1 | 1 | 6 | 1 |
| Group 6 | | 63 | 33 | 49 | 22 | 16 | 11 | 194 | 107 |
| Admin Services | | 0 | 0 | 3 | 0 | 0 | 37 | 40 | 16 |
| Sydney Miscellaneous | | 125 | 88 | 67 | 14 | 13 | 75 | 382 | 191 |
| Sydney | 1996 | 761 | 594 | 345 | 98 | 80 | 257 | 2135 | 1179 |
| Parramatta | 554 | 229 | 182 | 87 | 24 | 27 | 118 | 667 | 239 |
| Penrith | 515 | 155 | 95 | 114 | 16 | 39 | 145 | 564 | 214 |
| Campbelltown | 558 | 223 | 80 | 163 | 33 | 45 | 144 | 688 | 232 |
| Sydney West | 1627 | 607 | 357 | 364 | 73 | 111 | 407 | 1919 | 685 |
| Newcastle | 676 | 266 | 128 | 129 | 15 | 42 | 107 | 687 | 233 |
| Lismore | 358 | 146 | 59 | 76 | 13 | 19 | 43 | 356 | 155 |
| Dubbo | 279 | 82 | 25 | 54 | 10 | 12 | 53 | 236 | 101 |
| Gosford | 195 | 67 | 57 | 38 | 8 | 28 | 38 | 236 | 60 |
| Wagga | 200 | 75 | 36 | 45 | 15 | 15 | 24 | 210 | 79 |
| Wollongong | 465 | 175 | 104 | 70 | 11 | 73 | 77 | 510 | 153 |
| Bathurst | 148 | 54 | 44 | 40 | 8 | 14 | 15 | 175 | 64 |
| Country | 2321 | 865 | 453 | 452 | 80 | 203 | 357 | 2410 | 845 |
| State Totals | 5944 | 2233 | 1404 | 1161 | 251 | 394 | 1021 | 6464 | 2709 |

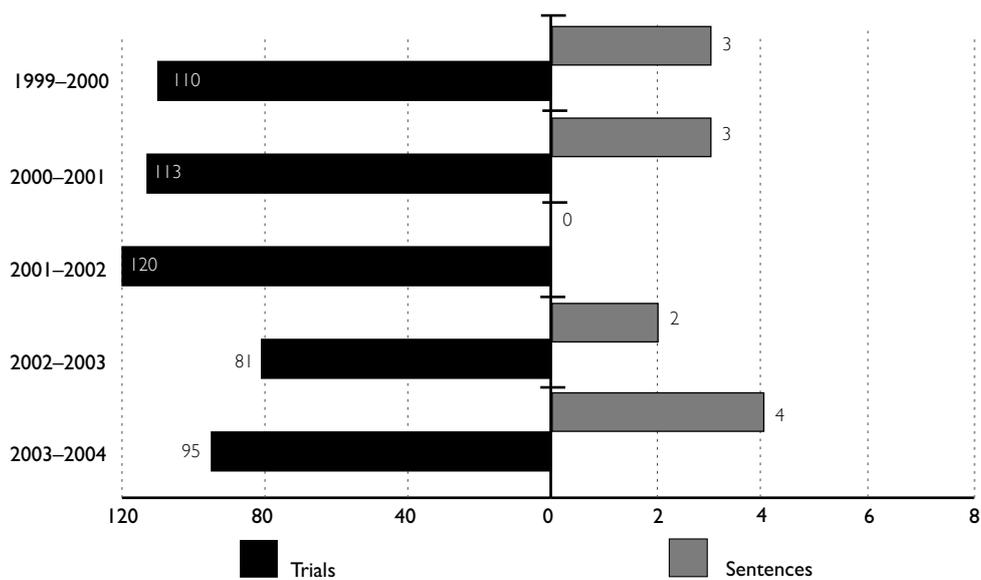
Appendix 12

Supreme Court – State Summary

Supreme Court Matters Received– State



Supreme Court Matters Completed – State



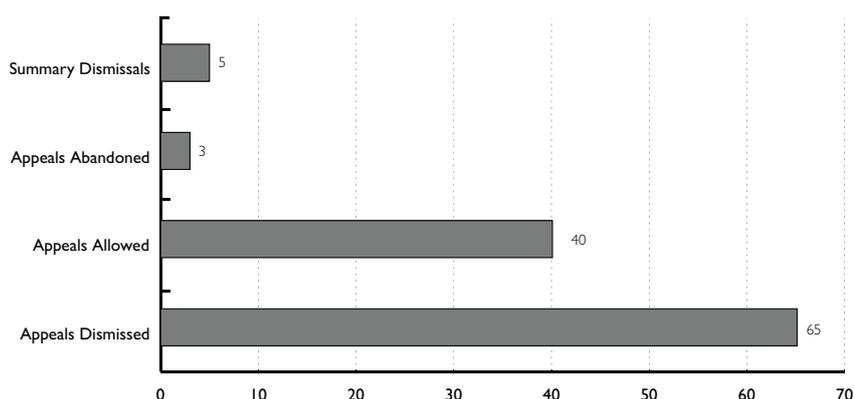
Appendix 13

Court of Criminal Appeal and High Court

| Court of Criminal Appeal | 1999–2000 | 2000–2001 | 2001–2002 | 2002–2003 | 2003–2004 |
|--|------------------|------------------|------------------|------------------|------------------|
| A. Appeals by Offenders finalised | | | | | |
| Conviction and sentence appeals | 125 | 144 | 119 | 154 | 105 |
| Sentence appeals | 146 | 239 | 246 | 185 | 217 |
| Summary dismissals | 85 | 72 | 114 | 71 | 11 |
| Appeals abandoned | 163 | 169 | 212 | 149 | 7 |
| TOTAL | 519 | 624 | 691 | 559 | 340 |
| | 1999–2000 | 2000–2001 | 2001–2002 | 2002–2003 | 2003–2004 |
| B. Crown Inadequacy Appeals finalised | | | | | |
| Abandoned | 4 | 8 | 14 | 16 | 19 |
| Allowed | 25 | 30 | 40 | 32 | 29 |
| Dismissed | 17 | 17 | 33 | 36 | 50 |
| TOTAL | 46 | 71 | 79 | 84 | 98 |
| | 1999–2000 | 2000–2001 | 2001–2002 | 2002–2003 | 2003–2004 |
| C. Appeals against interlocutory judgments or orders (s.5F appeals) | | | | | |
| | 25 | 20 | 14 | 35 | 25 |
| D. Stated cases from the District Court | | | | | |
| | 1 | 6 | 2 | 1 | 4 |
| E. Total of all appeals finalised | | | | | |
| | 591 | 721 | 786 | 679 | 467 |

| High Court matters finalised | 1999–2000 | 2000–2001 | 2001–2002 | 2002–2003 | 2003–2004 |
|--|-----------|-----------|-----------|-----------|-----------|
| Completed applications for special leave to appeal | | | | | |
| Applications by the offender | 33 | 39 | 27 | 22 | 25 |
| Applications by the Crown | 1 | 1 | 0 | 0 | 1 |
| Hearings conducted after grant of special leave to appeal | | | | | |
| Appeal by offenders | 5 | 6 | 6 | 4 | 3 |
| Appeal by the Crown | 1 | 0 | 1 | 0 | 0 |

Conviction and Sentence appeals finalised in 2003–04 in Court of Criminal Appeal – Breakdown by numbers

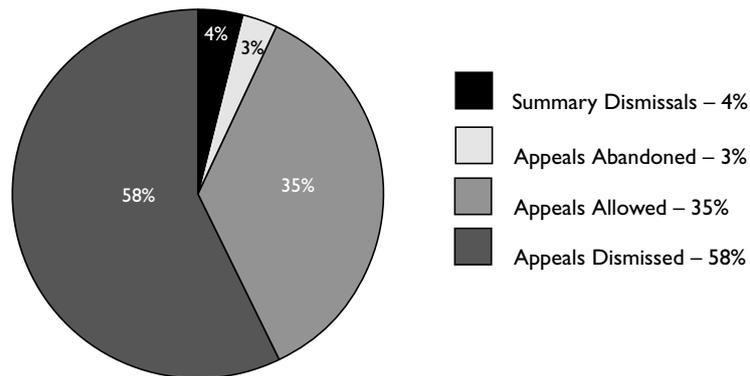


Appendix I3 Continued

Court of Criminal Appeal and High Court

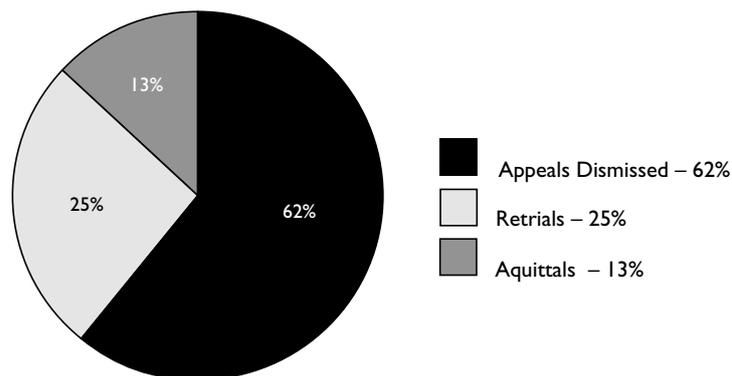
Conviction and sentence appeals finalised in 2003/04 in Court of Criminal Appeal

– Breakdown by percentage



Results of finalised conviction and sentence appeals in 2003/04 in Court of Criminal Appeal

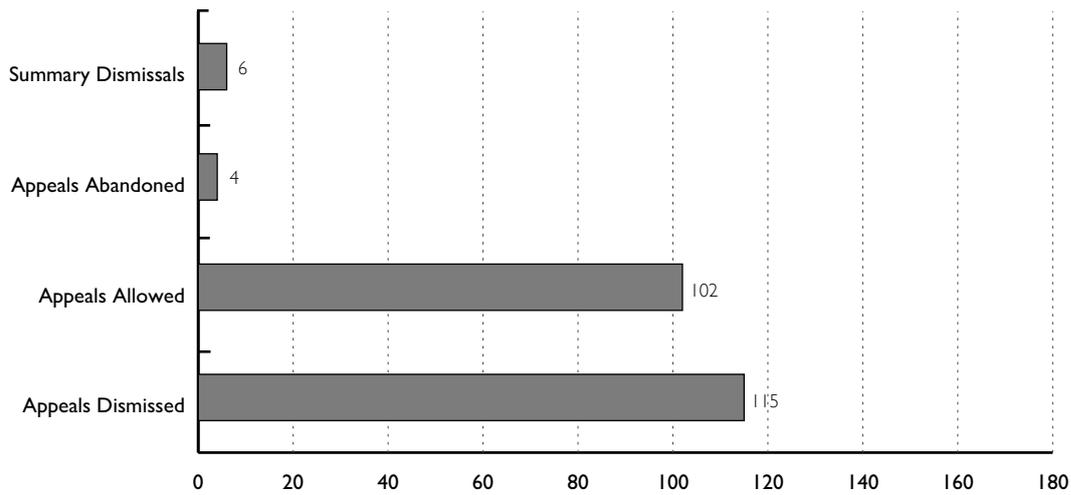
– Breakdown by percentage



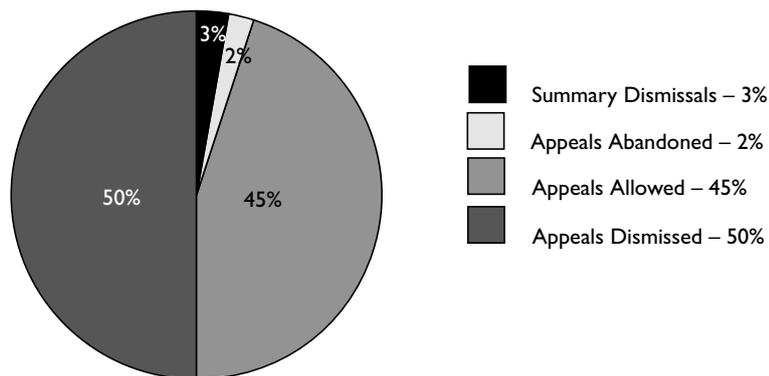
Appendix 13 Continued

Court of Criminal Appeal and High Court

Sentence appeals finalised in Court of Criminal Appeal in 2003/04
– Breakdown by number



Sentence appeals finalised in 2003/04 in Court of Criminal Appeal –
Breakdown by percentage



* A new system for lodging appeals in the CCA commenced on 1 July 2002. Caution should therefore be used when comparing figures for 2003–2004 to previous years.

Appendix 14

Significant Legislative Changes

Crimes Amendment (Sexual Offences) Act 2003 (No 9)

Assent 5/6/2003. Commencement 13/6/2003, Gaz 97, 13/6/2003 p 5621.

This Act amended the **Crimes Act 1900** to provide for the equal legal treatment of sexual offences against males and females, to set a uniform age of consent of 16 years for males and females and to increase the penalties for sexual offences against children. The Act repeals certain provisions that applied solely to male homosexual acts with the result that certain sexual offences by any person, whether male or female, against any other person, whether male or female, are dealt with on the same bases. These bases include the age of the victim, the defences available to the accused and the penalties for the offence. The amending Act also makes minor amendments to the **Criminal Procedure Act 1986** and the **Young Offenders Act 1997**.

Some of the changes made by the Act are outlined below.

Sections 78G, 78J, 78K, 78L, 78N, 78O, 78P, 78Q and 78R of the **Crimes Act** have been repealed to remove a number of separate offences relating to homosexual acts with males between 10 and 18 years of age. The effect of this amendment is to provide a uniform age of consent of 16 years and to further provide that sexual assault and offences against children are dealt with by the same set of provisions that apply irrespective of whether the victim or the perpetrator is male or female.

Sections 73 "Carnal knowledge by teacher", s 74 "Attempts in relation to carnal knowledge" and s 75 "Alternative charge" were repealed and replaced with a new s 73 "Sexual intercourse with child between 16 and 18 under special

care". The new s 73 provides that any person who has sexual intercourse with another person who is under his or her special care and is of or above the age of 16 years and under 17 years is liable to imprisonment for eight years. Further, any person who has sexual intercourse with another person who is under their special care and is of or above 17 years and under 18 years is liable to imprisonment for four years. Section 73(3) defines the circumstances which constitute "special care" and section 73(5) provides that the offence does not apply to persons married to each other.

Section 91D "Promoting or engaging in acts of child prostitution" has been amended to remove the statutory defence of reasonable mistake as to age in relation to the offence of child prostitution. Section 66C "Sexual intercourse — child between 10 and 16" has been replaced with a new s 66C that increases penalties for having sexual intercourse with a child between 10 and 16 years of age and also extends the circumstances of aggravation.

Criminal Procedure (Sexual Offence Evidence) Act 2003 (No 42)

Assent 3/9/2003, Gaz 138, 12/9/2003 p 9213.

This Act protects a complainant in sexual offence proceedings by providing that the accused cannot directly question the complainant and by providing instead for questions asked by an unrepresented accused to be put to the complainant by a person appointed by the court for that purpose. At present, that arrangement applies only to child witnesses under 16 years of age in any criminal proceedings and in certain civil proceedings.

The Act amends the **Criminal Procedure Act** by adding a new s 294A called

"Arrangements for complainant in sexual offence proceedings giving evidence when accused person is unrepresented". The new section applies to sexual offence proceedings during which the accused person is not represented by counsel. It provides that the complainant cannot be examined in chief, cross-examined or re-examined by the accused person, but may be examined instead by a person appointed by the court.

The court does not have discretion to decline to appoint such a person despite anything to the contrary in s 28 of the **Evidence (Children) Act 1997** or any other Act or law. The person so appointed is to ask the complainant only the questions that the accused person requests the person to put to the complainant and must not independently give the accused person legal or other advice.

Section 294A applies whether or not closed-circuit television facilities or other similar technology or alternative arrangements are used by the complainant to give evidence. If such a person is appointed in proceedings before a jury, the judge must under s 294A (7) inform the jury that it is standard procedure in such cases to appoint the person to put the questions to the complainant, and warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of that arrangement.

Police Powers (Drug Detection in Border Areas Trial) Act 2003 (No 28)

Assent 8/7/2003. Commencement 15/1/2004, Gaz 197, 19/12/2003 p 11268.

This Act commenced an 18 month trial of a new police power to stop vehicles for the purposes of using a drug detection dog in certain areas of southern

Appendix 14 Continued

Significant Legislative Changes

New South Wales. The new police power requires the issue of a Supreme Court warrant granted on the basis of information suggesting a certain area is used or will be used for drug trafficking.

The Act adopts the approach taken in the **Police Powers (Drug Detection Dogs) Act 2001**, which permits drug detection dogs to be used under warrant in public places where there is reasonable suspicion that the person in a public place may include persons committing drug offences. The reasonable suspicion is related to a defined public area rather than a specified person.

The legislation creates the power for police to stop vehicles to permit the use of a drug detection dog and the power to permit a dog to enter the non-passenger compartments of commercial and public passenger vehicles. However, for a police officer to search a person or vehicle, the search must be lawful under existing legislation.

The Act defines the terms "border area" "drug detection warrant" and "search area". Section 5 enables a police officer to apply to the Commissioner or a Deputy Commissioner of Police for an authorisation to apply for a drug detection warrant for a search area. Section 6 enables a police officer to apply for a drug detection warrant if the officer suspects on reasonable grounds that part or all of the proposed search area for the warrant is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants. The section requires that the application must be authorised by the Commissioner or a Deputy Commissioner and must contain information specified in the provision.

Section 8 enables an eligible judge to issue a drug detection warrant if he or she is satisfied there are reasonable grounds

for suspecting that the area concerned is being, or is to be, used on a regular basis for or in connection with the supply of indictable quantities of prohibited drugs or prohibited plants. The functions which a police officer may carry out are listed in s 9. These include establishing a check point, stopping vehicles at a check point, using dogs for drug detection in relation to persons in or on, or entering or leaving, vehicles at check points or stopped in the search area, seizing and detaining prohibited drugs and prohibited plants in the possession or under the control of a person contrary to the **Drug Misuse and Trafficking Act 1985** found as a result of general drug detection using a dog or any search of a person that the police officer is entitled to carry out.

The conduct of general drug detection duties by a police officer is regulated by s 11 of the Act which under s 11(2) requires a police officer, among other things, to take all reasonable precautions to prevent the dog touching a person; to keep the dog under control and not to allow the dog to enter any driver or passenger area of a vehicle subject to certain permitted exceptions.

Section 13 requires a police officer exercising a function under a drug detection warrant in relation to a person, to seek the person's co-operation and to exercise it in a way that provides reasonable privacy and as quickly as is reasonably practicable. Section 14 provides that a drug detection warrant must specify when it expires and limits that period to 72 hours. A drug detection warrant ceases to have effect if the time specified in the warrant has expired, the warrant is revoked by the judge who issued it or the relevant authorisation is cancelled. A drug detection warrant cannot be extended, but a further warrant may be issued for the same or part of the

same area.

Under Part 3 of the Act, detailed records of drug detection warrants and drug detection operations are required to be kept. Pursuant to s 21, the Ombudsman is statutorily obliged to keep under scrutiny, the exercise of functions by police officers. The Ombudsman is also required to report on the operation of the Act to the Attorney General, the Minister for Police and the Commissioner of Police and this report is to be placed before both houses of parliament.

Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Act 2004 (No 3)

Assent 17/3/2004. Gaz 63, 26/3/04, p 1503. Commencement 31/7/2004 Gaz 126, 30/7/2004 p 6111.

This Act amends the **Crimes (Sentencing Procedure) Act 1999** to expand the category of offences in relation to which a Local Court may receive and consider victim impact statements.

Section 27(3) of the **Crimes (Sentencing Procedure) Act 1999** is amended to expand the category of offences in relation to which a Local Court may receive and consider a victim impact statement. Under the (then) existing s 27(3), a Local Court could receive and consider a victim impact statement in relation to offences that resulted in the death of a person or offences which had an elevated maximum penalty where the offence resulted in the death of a person.

The offences to which the section is extended to apply are those referred to in Table 1 of Schedule 1 of the **Criminal Procedure Act** which (a) result in actual physical bodily harm to any person, or (b) involve an act of actual or threatened violence or an act of sexual assault. Table 1, Schedule 1 of the **Criminal Procedure Act** relates to indictable offences that are to be

Appendix 14 Continued

Significant Legislative Changes

dealt with summarily unless the prosecutor or person charged elects otherwise.

Section 28, which deals with when victim impact statements may be received and considered, is also amended. Section 28 provides that a court may receive and consider a victim impact statement at any time after it convicts, but before it sentences, an offender. Currently, in relation to victim impact statements that can be received and considered by the Local Court, s 28 refers only to a victim impact statement given by a family victim. The section has been amended so that the provisions dealing with victim impact statements by both primary victims and family victims are extended to include Local Courts.

Appendix 15

Significant Judicial Decisions

High Court of Australia

GAS; SJK [2004] HCA 22

19 May 2004

The appellants, who were 16 and 15 years old at the time of the offence, killed an elderly woman in the course of a robbery at her home. The cause of death was strangulation. The appellants knew the victim lived with her adult handicapped son and that she kept large amounts of cash at home.

The appellants were originally charged with murder. After some negotiation they were re-arraigned and pleaded guilty to manslaughter. The Crown was unable to identify the principal offender and on the basis of **R v Bannon and Calder** (unrep, 21/9/1993, VCA) indicated that each offender should be sentenced as an aider and abettor. Although the sentencing judge did not refer or discuss the reasoning in this case, his Honour sentenced on the basis that an aider and abettor should receive a lesser penalty than that imposed on a principal offender. After conviction, a sentence of six years imprisonment with a non-parole period of four years was imposed.

The Director of Public Prosecutions (Vic) appealed on the basis that the sentences imposed were manifestly inadequate. The Victorian Court of Appeal upheld the appeal, accepting that insufficient weight had been given to the objective gravity of the homicide and the aggravating circumstances in which it occurred, and that undue weight was given to the youth of the offenders and their prospects of rehabilitation. The court increased the sentence to nine years, with a non-parole period of six years.

On appeal to the High Court of Australia, the issue for determination was whether the Victorian Court of Appeal erred in permitting the DPP (Vic) to conduct its

appeal in a manner said to be contrary to a plea agreement reached at first instance, and in dealing with the appeal in a manner contrary to such agreement.

The High Court concluded that the Victorian Court of Appeal was right to treat the case as an extremely serious example of manslaughter. The offence occurred in circumstances of extreme aggravation, which included home invasion, robbery, and a brutal assault on an elderly and vulnerable victim. Although the appellants each denied that they strangled the victim, each admitted to being present at the act causing death and to providing intentional assistance or encouragement to the strangler: **Giorgianni v The Queen** (1985) 156 CLR 473.

The High Court found the Court of Appeal correctly pointed out that it is not a universal principle that the culpability of an aider and abettor is less than that of a principal offender; and that **R v Bannon and Calder** did not decide otherwise. A manipulative or dominant aider and abettor may be more culpable than a principal, and the margin of difference in this case was small. Speculation as to the sentence that one of the co-offenders might have received if sentenced as a principal was of marginal significance.

There was no express submission by the prosecution that a lesser penalty was attracted by reason of the offenders having to be sentenced as aiders and abettors, nor was the conduct of the appeal by the prosecution contrary to the plea agreement reached with the defendants at trial. Plea agreements involve the following fundamental principles. First, it is the prosecutor, alone, who has the responsibility of deciding the charges to be preferred against an accused person; secondly, it is the accused, alone, who decides whether to plead

guilty to the charge preferred; thirdly, it is for the sentencing judge, alone, to decide the sentence imposed; fourthly, although there may be an understanding between the prosecution and defence as to the evidence led or the admissions made, that does not bind the judge except in the practical sense that the judge's capacity to find facts will be affected; and fifthly, an erroneous submission of law may lead a judge into error and the usual means of correcting the error is through the appeal process, where it is the responsibility of the appeal court to apply the law.

Even if the parties had agreed that each accused should have received a lesser sentence than a principal offender; this was a question of sentencing principle and an inappropriate subject for any kind of agreement between counsel. The judge's responsibility to find and apply the law is not circumscribed by the conduct of counsel.

NSW Court of Criminal Appeal

R v Elfar [2003] NSWCCA 358

Andrew Elfar pleaded guilty to conspiracy to dispose of stolen property including the theft and re-birthing of motor vehicles intended for subsequent sale overseas. The overall conspiracy involved motor vehicles worth approximately \$1.2 million. The offender was sentenced to imprisonment for three years and six months, with a non-parole period of eighteen months.

At sentence Andrew Elfar did not give evidence. He did however place before the court a letter he had written about his criminal conduct that contained an apology for his offending to his family and to the community. He also

Appendix 15 Continued

Significant Judicial Decisions

placed psychological reports and other references before the court. At the time this occurred, the Crown made no objection to this material being tendered, despite the fact that it was hearsay and could not be tested.

In a Crown appeal against leniency of sentence to the NSW Court of Criminal Appeal, the Crown submitted that at the sentencing the judge accepted two major aspects of the offender's case on the basis of hearsay material and in circumstances where the offender did not give direct evidence in relation to these matters.

The court held that an omission by the Crown at sentence to object to the admission of, or comment on the weight to be attached to mitigating hearsay material may preclude the facts established by that material being challenged in a Crown appeal against the sentence.

The authorities that deal with the caution which needs to be exercised by a court when dealing with untested or hearsay material tendered by an offender at sentence were examined including **R v McGourty** [2002] NSWCCA 335 at [24] and **R v Quatami** [201] NSWCCA 353 at [79]. The principles enunciated in these decisions concerning the use of untested material at sentence extend to psychological reports and to statements by offenders in pre-sentence reports: **R v Paul** (2002) 134 A Crim R 174 at 185.

The court reiterated that it was not open to the Crown to complain of error if it had not disputed the material when it was tendered or when submissions on sentence were made. This principle applies all the more so when the Crown has raised no objection whatsoever and made no submissions in opposition to the admission of the documentary material

or its hearsay contents. Where there is a consistent body of credible evidence, admittedly of a hearsay kind, supporting the existence of genuine exculpatory factors, it is necessary for the Crown to state that it disputes the position in that material and why.

The NSWCCA also held that the sentence imposed was not manifestly inadequate and that the significant subjective factors concerning the young offender, who had not previously been imprisoned, were appropriately considered on sentence.

R v Ellis [2003] NSWCCA 319

5 November 2003

Ellis was convicted of eleven offences of break, enter and steal from shops in country towns in New South Wales between 1996 and 1999 as well as attempted break, enter and steal offences. Ellis entered the premises in an unusual way that included removal, from the outside, of seals which secured a glass panel in a door or window, removal of the panel without breaking it and leaving it, free of any fingerprints, near the subject premises.

At trial, the judge allowed the Crown to use the evidence that the court had admitted as tendency evidence (relating to the circumstances in which the offences had been committed) for the purpose of coincidence evidence under s 98 of the **Evidence Act**. The coincidence rule under s 98 of the **Evidence Act** precludes the admission of evidence of two or more related events unless certain specified conditions are fulfilled. The judge found that the evidence fulfilled the requirements of s 98 and that under s 101 of the **Evidence Act**, a provision that applies further restrictions on tendency evidence and coincidence evidence adduced by

prosecution, the probative value of the evidence substantially outweighed any prejudicial effect it might have on the accused.

The appellant appealed against conviction, submitting that a miscarriage of justice occurred because the trial judge applied the wrong test for admitting the tendency and coincidence evidence and wrongly admitted that evidence. On appeal the issue was whether s 101(2) of the **Evidence Act** requires the common law test in **Pfennig** (1995) 182 CLR 461 to be applied in determining whether the probative value of evidence outweighs its prejudicial effect. The court made the following findings. First, the **Evidence Act** provisions for the admissibility of tendency and coincidence evidence cover the field to the exclusion of the common law principles which previously applied. It was reasoned that use of the word "substantially", to indicate the extent to which the probative value of tendency or coincidence evidence must outweigh its prejudicial effect in s 101(2), is a legislative formulation not derived from prior case law. Secondly, the continued application of the common law test for the admissibility of tendency and coincidence evidence is inconsistent with the statutory requirement in s 101(2) for a balancing process between probative force and prejudicial effect, during which the court must make a judgment as to whether probative value substantially outweighs prejudicial effect.

Ellis sought special leave to appeal to the High Court of Australia against the decision of the NSW Court of Criminal Appeal and leave was granted on 17 August 2004.

Appendix 15 Continued

Significant Judicial Decisions

Decisions Concerning Standard Non-Parole Periods

On 10 and 11 May 2004 the NSW Court of Criminal Appeal issued judgment in five appeals which dealt with the imposition of standard non-parole periods under the **Crimes (Sentencing Procedure) Act 1999**. These decisions are **R v Way** [2004] NSWCCA 131; **R v Hopkins** [2004] NSWCCA 105; **R v Johnson** [2004] NSWCCA 140; **R v Shi** [2004] NSWCCA 135 and **R v Tuncbilek** [2004] NSWCCA 139

Of these decisions, **R v Way** [2004] NSWCCA 131 contains the most exhaustive consideration of the standard non-parole provisions in the **Crimes (Sentencing Procedure) Act 1999** as added by the **Crimes (Sentencing Procedure) Amendment (Standard Minimum Sentencing) Act 2002**. These provisions were reported on in the ODPP (NSW) Annual Report for 2003.

R v Way [2004] NSWCCA 131

11 May 2004

Way involved an appeal against the severity of a sentence imposed for one count of supplying a commercial quantity of a prohibited drug (count 1) and one count of the ongoing supply of prohibited drugs (count 2). An offence of possessing a prohibited drug was taken into account on a Form 1 in relation to count 1. The count 1 offence was subject to s 54B of the **Crimes (Sentencing Procedure) Act** which relates to standard non-parole period offences.

The sentence appealed against was a term of imprisonment for 13 years 4 months with a non-parole period of ten years in respect of count 1 and a fixed term of three years imprisonment to run concurrently with the sentence imposed on the first count. **Way** deals with a

number of sentencing issues and some of these are outlined below.

Effect of amendment to s 44(2) Crimes (Sentencing Procedure) Act 1999

The court held that s 44 of the **Crimes (Sentencing Procedure) Act 1999**, which now provides that “the court is first required to set a non-parole period for the sentence (that is, the minimum period for which the offender must be kept in detention in relation to the offence)” does not require the court to first set a non-parole period which is thereafter “immutable”. The terms of s 44 need not involve a two-step or sequential process. Section 44(2) is another example of a matter that is “required or permitted to be taken into account by a court under any Act or rule of law” under s 21A(1) of the **Crimes (Sentencing Procedure) Act 1999**. Caution will need to be exercised though, to avoid inappropriate double counting for factors listed in s 21A that have already been taken into account in determining the appropriate non-parole period. The court observed at [109] of the judgment that the newly enacted s 44 “... has reverted to the position which applied under s 5 of the repealed **Sentencing Act 1989**.”

Standard non-parole period provisions

The standard non-parole period provisions of Part 4, Division 1A of the **Crimes (Sentencing Procedure) Act 1999** must be read in the light of ss 3A, 21A, 22, 22A, 23, 44, 45 and 101A of the Act. There is nothing in Division 1A to suggest that the statutory maximum penalty for an offence should cease to be a “benchmark or reference point” in sentencing. The maximum penalty continues to reflect parliament’s intention concerning the seriousness of a particular offence. If the legislature’s intention was that courts impose more severe sentences this would

be reflected in parliament increasing the maximum penalty for an offence. The court stated at [55] that “... there is no basis for assuming that guideline judgments of this court are to have any less relevance, or that there is to be a departure from settled principles of sentencing practice, or an abandonment of the discretion that is essential to any system calling for individualised justice.”

Section 21A(1)(c) preserves the established body of common law principles.

The approach to s 54B of the Crimes (Sentencing Procedure) Act 1999

For the legislation to have “practical utility”, a sentencing judge must ask and answer the question, “are there reasons for not imposing the standard non-parole period?” “That question will be answered by considering (i) the objective seriousness of the offence, considered in the light of the facts, which relate directly to its commission, including those which may explain why it was committed, so as to determine whether it answers the description of one that falls into the mid range of seriousness for an offence of the relevant kind; and (ii) the circumstances of aggravation, and of mitigation, which are present in the subject case, or which apply to the particular offender; as listed in s 21A(2) and (3), and as incorporated by the general provisions in s 21A(1)(c) and by the concluding sentence to s 21A(1).”

If that question is answered in the affirmative, then “... the court should exercise its sentencing discretion in accordance with established sentencing practice and by reference to the matters identified in sections 3A, 21A, 22, 22A and 23 of the Act. The ultimate objective remains one of imposing a sentence that is just and appropriate, having regard to all of the circumstances of the offence and

Appendix 15 Continued

Significant Judicial Decisions

of the offender; and so as to give effect to the purposes mentioned in s 3A of the **Sentencing Procedure Act**".

One reason for departing from the standard non-parole period is that the offence falls outside the middle range of objective seriousness. The standard non-parole periods in the Table immediately following s 54D of the **Crimes (Sentencing Procedure) Act 1999** must also be taken as having been intended for an offence in the middle range of objective seriousness where the offender was convicted after trial.

Assessment of the "middle range" of objective seriousness?

To enable a meaningful comparison between the offence being sentenced and the offence for which the standard non-parole period is prescribed a sentencing judge should determine, in any given case, what constitutes an abstract offence in the middle of the range of objective seriousness. Such an exercise will not differ from that which has always been necessary in evaluating the objective seriousness of an offence. Judges frequently make an intuitive assessment of where an offence before the court sits in terms of objective seriousness. For example in determining whether a particular case falls into the worst category or into a category at the lower level of objective seriousness.

Section 54B(3)

Section 54B(3) provides that "the reasons for which the court may set" a non-parole period other than the standard non-parole period are only those referred to in s 21A. The s 21A factors are not however confined to those specifically identified in s 21A (2) and (3). Section 21A(1)(c) specifically requires the court to take other subjective or objective factors

which affect the relative seriousness of the offence into account. Further, the concluding paragraph in s 21A(1) makes it clear that other existing statutory and common law factors may still properly be taken into account in determining a sentence. Hence consideration can still be given, for example, to questions of parity in sentencing and totality, or to exceptional hardship caused by a sentence or to matters which may cause a sentence to be unduly onerous.

NSW Court of Appeal

DPP v A Magistrate and Another [2003] NSWSC 1157

29 August 2003

This case concerned the circumstances in which a magistrate was required to disqualify himself from further hearing proceedings due to the possibility of an apprehension of judicial bias arising in the mind of an informed lay observer.

During the hearing of criminal proceedings in the Local Court, the presiding magistrate made notes in which he expressed views as to weaknesses in the prosecution case. The magistrate sent these notes by email from his home computer to his work computer. In the process, a copy was also sent to the home computer of a clerk employed by the NSW Police who had the same surname as the defendant. A complaint by police to the Judicial Commission, in relation to the magistrate's conduct, was dismissed on the basis that there was no evidentiary basis for a finding of impropriety.

The DPP then sought that the magistrate disqualify himself from further hearing the matter on the basis of the possibility of apprehension of bias arising in the mind of an informed lay observer. The magistrate refused the application, holding that an "informed bystander" would readily accept

the explanation he had given in court, which was to the effect that a deficiency in the program on his computer caused the accidental transmission of the email. The DPP then sought prerogative relief in the Supreme Court.

The Supreme Court noted that the relevant test which was set out in **Livesey v NSW Bar Association** (1983) 151 CLR 288 at 293–295 was whether a fair-minded, informed lay observer might reasonably apprehend that the judge might not bring an impartial and unprejudiced mind to the resolution of the question. The court noted that while it was of the view that a reasonable bystander would be likely to accept the magistrate's explanation, such a reasonable bystander might still have an apprehension about the alternative view that the actions of the magistrate may have been intentional.

The court further noted that quite apart from the question of apprehension of bias, the integrity of the proceedings had been so compromised by the disclosure of the notes that the proceedings should be discontinued before the magistrate and commenced before another magistrate.

Cran v State of New South Wales [2004] NSWCA 92

29 March 2004

The appellant was charged with the deemed supply of a prohibited drug in relation to some paper stickers found in his possession which police suspected contained LSD. Bail was refused. On the day after the arrest a magistrate ordered that a brief of evidence be served within three weeks. The following day police delivered the suspect stickers to the DAL for analysis. The request for analysis form filled out by police and delivered to DAL with the suspect stickers made provision for police to enter the date by which the analysis was required, and the court

Appendix 15 Continued

Significant Judicial Decisions

date, but neither of these details was completed. The matter was listed before the court on three subsequent occasions, but each time adjourned due to the absence of the DAL certificate. Although the appellant was granted conditional bail he was unable to meet the conditions set. It was not until nearly two months after the appellant's arrest that police informed DAL that the analysis was required for court. A few days later a certificate was provided, which indicated that no drug had been detected. The appellant was released pursuant to unconditional bail, and the charge was later dismissed.

The appellant sought damages from the State of NSW for false imprisonment, claiming that the State breached its duty of care by unnecessarily prolonging his detention in custody. Specifically the appellant relied on (a) the failure of police to properly fill out the analysis request form and (b) the failure of the ODPP prosecutors to request that the magistrate order priority analysis.

The appellant was unsuccessful before the District Court, and appealed to the Court of Appeal. The Court of Appeal held that (a) the police owed no duty of

care to the appellant in relation to the performance of an investigative task such as the completion of the analysis request form and (b) no duty of care could arise from the failure of ODPP prosecutors to request priority analysis because the ODPP prosecutors were entitled to rely on advocate's immunity.

An application for leave to appeal to the High Court against this decision is currently pending.

Supreme Court

DPP v Weightman 2004 NSWSC

23 June 2004

The defendant was charged with the murder of his adoptive parents. The defendant as executor had been granted probate of his mother's estate valued at over \$770,000 with which he admitted having purchased real estate. The Supreme Court made an order pursuant to the **Confiscation of Proceeds of Crime Act 1989** restraining dispositions and dealings in the defendant's property other than the sale of the real estate, with the proceeds (some \$300,000) to be held by the Public Trustee. These proceeds represented all

that was left of the defendant's mother's estate.

The defendant then sought a variation of the restraining order so that the funds held by the Public Trustee could be used by him to pay the reasonable legal expenses of defending the committal proceedings against him.

The court refused the application, applying the decision in **NSW Crime Commission v Younan (1993) 31 NSWLR 44**, and noting that relevant factors to be considered in determining such an application were the apparent strength of the prosecution case, the size of the fund involved, the probable amount of the legal expenses and the effect of any exemption upon the achievement of the purposes of the Act. In addition the court held that the source of the funds the subject of the restraining order was a relevant factor.

The court noted that the case against the defendant appeared to be particularly strong, and that, taking into consideration the relevant factors identified, it would be highly objectionable to permit the depletion of the funds held by the Public Trustee.

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 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.

ODPP (NSW) Prosecution Policy and Guidelines

The ODPP (NSW) Prosecution Policy and Prosecution Guidelines were first issued in March 1998. These guidelines were revised and re-published in October 2003 as the **ODPP (NSW) Prosecution Guidelines**. These principles 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.

Legal Research Publications

Advance Notes

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

Access: **Advance Notes** are available through the Legal Information Access Centre at the State Library of NSW or 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 High 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 8761 between 9.00 – 5.00 pm weekdays.

Cost: \$75 incl GST.

Appendix 16 Continued

Publications of the ODPP (NSW)

Information to Assist Witnesses and Victims of Crime

Your Rights as a Victim

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

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

Cost: No charge.

Being a Witness

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

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

Cost: No charge.

Information for Court Support Persons

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

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

Cost: No charge.

About the ODPP (NSW)

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

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

Cost: No charge.

Victim Impact Statement Information Package

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

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

Cost: No charge.

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 16 Continued

Publications of the ODPP (NSW)

ODPP (NSW) 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.

Equal Employment Opportunity

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.

Appendix 17

2003–2004 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 365 to 403 and the number of men employed decreased from 288 to 287.

The number of women earning salaries above \$72,434 (non-SES) increased from 106 to 115 and the number of men in the same salary band increased from 189 to 203.

The Office continued to employ two cadets under the Aboriginal and Torres Strait Islander Cadetship Program one of whom was permanently appointed.

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

- Recruitment and Employment (Merit Selection);
- Employee Assistance.

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 |
| < \$30,146 | 1 | 100% | | 100% | 100.0% | | | | |
| \$30,146 – \$39,593 | 20 | 70% | 45% | 55% | | 29% | 21% | 21% | 7.1% |
| \$39,594 – \$44,264 | 82 | 89% | 12% | 88% | 2.7% | 37% | 29% | 8% | 4.1% |
| \$44,265 – \$56,012 | 146 | 79% | 18% | 82% | 1.7% | 27% | 13% | 9% | 0.9% |
| \$56,013 – \$72,434 | 123 | 72% | 31% | 69% | 1.1% | 22% | 16% | 3% | 2.2% |
| \$72,435 – \$90,543 | 186 | 89% | 57% | 43% | | 20% | 11% | 6% | 2.4% |
| > \$90,543 (non SES) | 30 | 93% | 70% | 30% | | 14% | 11% | 7% | 3.6% |
| > \$90,543 (SES) | 5 | 100% | 60% | 40% | | 20% | 20% | 20% | 20% |
| TOTAL | 593 | 83% | 36% | 64% | 1.2% | 24% | 15% | 7% | 2.6% |

A total of 97 statutory appointees have been excluded for these reports.

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 | 435 | 83% | 42% | 58% | 0.6% | 25% | 16% | 7% | 3.3% |
| Part-Time | 54 | 96% | 9% | 91% | | 23% | 15% | 4% | |
| Temporary Full-Time | 87 | 72% | 25% | 75% | 3.2% | 27% | 14% | 10% | |
| Part-Time | 11 | 82% | 18% | 82% | 11.1% | | | | |
| Contract SES | 6 | 100% | 50% | 50% | 16.7% | 17% | 17% | 17% | 16.7% |
| Non SES | | | | | | | | | |
| Training Positions | | | | | | | | | |
| Retained Staff | | | | | | | | | |
| Casual | | | | | | | | | |
| TOTAL | 593 | 83% | 36% | 64% | 1.2% | 24% | 15% | 7% | 2.6% |

Appendix 19

Government Energy Management Plan (GEMP)

During the reporting period 2003–2004 and as will be reported in the Office of the Director of Public Prosecution's (ODPP) GEMP Report 2004, the ODPP continues in its endeavours and commitment to reduce energy consumption. The ODPP is contracted to Energy Australia for the supply of at least 5% Green Power. Currently the supply and usage of Greenpower is in the vicinity of 6.5%

The Office continues to assist in the effort to reduce power wastage by incorporating energy management methodology in all construction works undertaken, purchase in-contract electricity, including Green Power and purchase of energy efficient star rated equipment, engagement of power-save facilities on equipment (where those facilities are available); are the methods the ODPP utilises to realise this commitment.

The ODPP's 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, Properties & Services.

The ongoing goals of the ODPP under the GEMP include:

1. Assisting the Government to achieve a reduction of the statewide total energy consumption for government buildings of 25% of the 1995 level for 2005.

This has been a real challenge for the ODPP because of increasing accommodation needs as a result of growth.
2. Upgrading to energy efficient facilities within Head Office and Regional Offices particularly those offices that have been refurbished.

3. Purchasing electricity within Government contracts to ensure the minimum 5% Green Power content is obtained.
4. Continuing to purchase equipment that complies with SEDA's energy star rating requirements.
5. Acquiring fuel-efficient diesel and gas powered vehicles where opportunities exist.
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 Achievements Report in this Annual Report.

7. The ODPP has engaged its ABGR Assessor and will have its Greenhouse Rating assessment completed by late November 2004.

The ODPP has achieved a 23.45% saving this financial year on electricity costs.

Future Direction

The ODPP continues to introduced energy efficiencies through the introduction of Office policy; by complying with Government direction in respect to purchasing Green Power and in-contract energy and equipment and by educating staff to use energy efficient methodologies and 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 continue to make savings in energy usage.

Appendix 20

Waste Reduction and Purchasing Plan and Recycling

The Office of the Director of Public Prosecutions (ODPP) is committed to the responsibility of introducing waste reduction mechanisms and pursuing recycled products for use in the Office providing the short and long term operational needs of the Office are met.

The key reporting areas from the Office's latest produced WRAPP 2003 are reproduced below.

Inclusion of WRAPP principles in corporate plans and operational policies and practices

The Office's Corporate Plan 2004–2007, 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 that has not been available in the past via desk top printers. Efficiencies have been realised in printing time.

Paper and consumables consumption and subsequent costs have not realised savings as expected and this is being further investigated. It is anticipated that electronic mail is one unpredicted reason for the additional printing requirements of the Office.

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 the ODPP complies with this key reporting area.

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.

Establishing data collection systems to report agency progress

Purchase orders, invoices, statistics recorded by equipment, 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

The situation has changed markedly over the previous 12 months with the ODPP Sydney office now purchasing 100% recycled copy paper products for all its copy and printing needs. Recycled copy paper is now on the ODPP's agenda due to the improved stability of the paper and the guarantee of longevity of the paper in archives. The purchase of 100% recycled copy paper will be extended to the ODPP's regional offices in 2005. The ODPP continues to pursue the purchase and use of other recycled products such as envelopes, post-it-notes etc.

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

The Office's WRAPP has been published on the ODPP's internet.

Recycling advertising has been placed on every floor of the Office and on Office notice boards.

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.

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 |
|-------------------------------------|---------------|---------------|---------------|---------------|
| Level: | 30 June 2001 | 30 June 2002 | 30 June 2003 | 30 June 2004 |
| SES Level 1 | 3 | 3 | 3 | 3 |
| SES Level 2 | 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 |
| Number of positions filled by women | 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 2001 | 30 June 2002 | 30 June 2003 | 30 June 2004 |
|-----------------------------------|--------------|--------------|--------------|--------------|
| Statutory Appointed and SES | 85 | 100 | 104 | 100 |
| Lawyers | 268 | 280 | 282 | 303 |
| Administration and Clerical Staff | 189 | 193 | 199 | 221 |
| Total | 542 | 573 | 585 | 624 |

| Recruitment Statistics | 2000/01 | 2001/02 | 2002/03 | 2003/04 |
|--------------------------------------|---------|---------|---------|---------|
| Senior Executive Service | 0 | 1 | 0 | 0 |
| Statutory Appointments | 0 | 1 | 0 | 2 |
| Crown Prosecutors | 5 | 19 | 14 | 1 |
| Prosecution Officer (Lawyers) | 30 | 74 | 33 | 27 |
| Prosecution Officer (Administrative) | 75 | 64 | 70 | 76 |
| Total | 110 | 159 | 117 | 106 |

Appendix 22

Report of the Chief Information Officer on Major IM&T Projects During 2003–04

Integrated Document Management System (IDMS)

This is an office wide system for the electronic classification, management storage and retrieval of all document types, whether electronic or paper. It will also deliver significantly improved document control and information sharing both within the Office and with other criminal justice agencies.

The system has been rolled out to all staff in the Solicitor's office and user training was completed in June 2004. The system is expected to be in full production by 2005.

Electronic Briefs Project (e-Briefs)

This was an interagency project led by the ODPP to make briefs of evidence available to stakeholders in electronic form. The e-Briefs project was piloted in Sydney, Sydney West and Newcastle. Funding has not been provided for the final stage of the pilot (the full implementation of e-briefs across the criminal justice sector). Although the project ended at the end of the 2003–4 financial year, the ODPP and Legal Aid Commission have modified their software to enable solicitors to continue to receive and process electronic briefs, with a view to being able to tender those briefs electronically at court in the future, particularly with the upcoming implementation of CourtLink in three court jurisdictions.

Disaster Recovery Plan and Business Continuity Plan

A disaster recovery plan and business continuity plan have been developed. This contingency planning provides detailed procedures for the recovery of ODPP systems in the case of hardware, software or application failure, allowing the delivery of more robust and resilient technology systems.

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

The OPMS project has been developed to capitalise on the improved reporting capacity of CASES 2 (the Office's case tracking system) to deliver better systems for the ongoing collection, analysis and reporting on the Office's performance against Performance Indicators in the 2002–2005 Corporate Plan. The Activity Based Costing project has been initiated to capture critical data regarding the cost of each prosecution activity initiated. The project will provide important management information for more informed resource allocation, budgeting and accountability.

SUN Financial and Business System

The SUN financial system (providing direct access to financial management information and self-service facilities to cost centre managers) was upgraded during the year. This included the development of a new report server. Development and testing was completed in June 2004 and live data migration is scheduled for August 2004, with production rollout in September 2004. Financial Services staff participated in training during May 2004. User training and implementation is scheduled for September 2004.

Employee Self Service

The Employee Self Service initiative has resulted in the implementation of the first stage of the DPP Kiosk software. The CHRIS personnel system has been updated to allow staff to access their personnel details directly over the intranet.

Appendix 23

Freedom of Information Act 1989 (NSW)

Name of Agency

Office of the Director of Public Prosecutions (ODPP).

Period

1 July 2003 to 30 June 2004

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 2004 under the FOI Act is included at the end of this **Appendix**.

In the period 1 July 2003 to 30 June 2004 the ODPP received 16 applications under the FOI Act for access to documents. The documents requested in six applications

were determined to be exempt because all of the documents related to the prosecuting function of the ODPP. One application was refused on the basis that the documents sought were exempt pursuant to Schedule 1 of the Act.

In relation to one application, all of the documents sought were provided. In relation to one application, none of the documents sought were held by the ODPP.

In relation to seven applications, some documents were produced in response to the application, while the balance of the documents sought were determined to be exempt because they related to the prosecuting function of the ODPP.

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.

- Three requests for internal review were received and determined.
- No inquiry under the FOI Act was made or is pending by the Ombudsman.
- 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 | |
|-------------------|----------|---------|---------|---------|---------|---------|
| | 2002-03 | 2003-04 | 2002-03 | 2003-04 | 2002-03 | 2003-04 |
| Number Received | 5 | 7 | 0 | 9 | 5 | 16 |
| Number Completed | 5 | 7 | 0 | 9 | 5 | 16 |
| Transferred Out | 0 | 0 | 0 | 0 | 0 | 0 |
| Total Processed | 5 | 7 | 0 | 9 | 5 | 16 |
| Results* | | | | | | |
| Granted in Full | 1 | 1 | 0 | 0 | 1 | 1 |
| Granted in Part | 0 | 3 | 0 | 4 | 0 | 7 |
| Refused | 3 | 3 | 0 | 4 | 3 | 7 |
| No Documents Held | 0 | 0 | 0 | 1 | 0 | 1 |
| Completed | 5 | 7 | 0 | 9 | 5 | 16 |

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

Appendix 23 Continued

Summary of Affairs as at 30 June 2004

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 was last issued in October 2003. A copy of the Guidelines can be obtained from the ODPP web site, 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 2004.

A copy of the Statement of Affairs and/or a copy of the Summary of Affairs can be obtained from the ODPP website (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 2004

Appendix 24

Risk Management and Insurance

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

In the 2003–2004 reporting period the Office's motor vehicle claims as at 30 June 2004 numbered twenty, representing an average cost per vehicle of \$1,300.00. This compares with twenty one claims received during 2002–2003 at an average cost per vehicle of \$3,000.00.

In the 2003/2004 reporting period, the Office's workers compensation claims as at 30 June 2004 numbered twenty-four, representing a total claim payments cost of \$24,000.00. This compares with seventeen claims received during 2002/2003 (as at 30 June 2003), representing a total claim payments cost of \$73,000.

Appendix 25

Occupational Health and Safety

A revised Occupational Health and Safety Policy has been implemented and published, together with an Action Plan that sets targets to be achieved in all significant OH & S areas.

Following industrial action by the Public Service Association, an agreement has been reached with the union on workload management and attendance. The agreement has as its basis, limits on the amount of matters in a lawyer's practice and the goal of eliminating forfeited flex time. This agreement was achieved in recognition of the adverse health effects that could result if workload and hours of work are not managed effectively.

Other issues:

- Draft Motor Vehicle Policy (to be released in September 2004) with a greater focus on driver safety awareness;
- Workplace Safety training courses during the 2003/04 – focussing on office ergonomics, manual handling, personal security etc);
- Regular workplace assessments both one on one and in group settings.
- Ongoing research into appropriate equipment;
- Ongoing review of court access & security through liaison with ODPP & Attorney Generals Department OHS co-ordinators;
- 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;
- Effective workplace rehabilitation and worker's compensation service through ongoing direct involvement in rehabilitation programs.

Appendix 26

Witness Assistance Service Report

Developments of the Witness Assistance Service

November 2003 marked the 10th Anniversary of the establishment of the Witness Assistance Service (WAS) within the Office of the Director of Public Prosecutions (ODPP). The Witness Assistance Service was piloted for 12 months during 1994 and was made a permanent unit within the ODPP in 1995.

Since that time the service has been enhanced on a number of occasions. The service was piloted in Dubbo and Penrith regional offices and following successful lobbying by the Women's Electoral Lobby and victim groups in 1996, funding was received to enable the service to be expanded so that at least one WAS Officer could be located in each ODPP office. In June 2000 the ODPP opened a new regional office at Bathurst and an additional WAS Officer position was created for that office. Following an initial Aboriginal needs analysis project and then an Aboriginal liaison project, the first permanent Aboriginal WAS Officer was appointed in May 2001.

As mentioned in the last Annual Report, the Samuels Report 2002 indicated that the WAS is an important and integral professional arm of the Office to ensure that the rights and needs of victims of crime and vulnerable prosecution witnesses are met. In response to the recommendations of the Samuels Report the ODPP made a submission to the Attorney General's Department in July 2002 for additional funding to further expand the WAS by a substantial number of positions. This submission was also included as part of the ODPP base budget review report dated 4 June 2003 which outlined the base level funding requirements of the ODPP. In early 2003 the government made it an election commitment to expand the WAS. That

election commitment was honoured and in September 2003 Treasury provided the ODPP with additional funding including funding specifically to expand the WAS.

While 26 positions had been identified as necessary to fully expand service delivery to the larger cohort of victims in "matters of substance", the funding allocated to WAS enabled 16 new positions to be established. The 16 positions included: 4 Senior WAS Officers, 2 additional Aboriginal WAS Officers and 10 generalist WAS Officers located in different offices in NSW. That expansion, recently completed, was our biggest phase of development to date involving a doubling of the Service.

To mark the 10th Anniversary of WAS, and in recognition of the high quality services provided over the past 10 years, the service was nominated for and was awarded the Director's Team Excellence Award for 2003.

The WAS is being copied – the greatest flattery, of course – in other places, including England and Wales and we continue to assist other Australian States and Territories in building similar services.

Service Structure and Staffing for the Witness Assistance Service

There are now a total of 34.6 WAS staff located across NSW.

Sydney Head Office (12.6):

- WAS Manager;
- Sexual Assault Liaison Officer (Senior Lawyer);
- Administrative Assistant;
- Senior WAS Officer;
- Aboriginal WAS Officer;
- 7 full-time and one part-time generalist WAS Officers.

Sydney West (7):

- Senior WAS Officer at Parramatta;
- 2 WAS Officers located at each office – Parramatta, Penrith and Campbelltown.

Country (15):

- Senior WAS Officer at Newcastle;
- Senior WAS Officer at Wollongong;
- 2 WAS Officers at each of Newcastle, Wollongong, Wagga and Lismore;
- 1 WAS Officer at each of Gosford, Bathurst and Dubbo;
- 2 Aboriginal WAS Officers – one at Dubbo and one at Newcastle.

The WAS Manager and the Sexual Assault Liaison Officer (Senior Lawyer) have state-wide briefs and are located at Sydney Head Office. There is 1 Administrative Officer located at Sydney Office.

The WAS Manager has line management for staff at Sydney Head Office and Managing Lawyers have line management for WAS Officers in the regions. The WAS Manager reports to the Assistant Solicitor (Sydney) and liaises with Managing Lawyers, Assistant Solicitors and the ODPP Solicitors Executive in ensuring that the WAS provides a consistent service across NSW.

The four Senior WAS Officers provide professional and clinical supervision for WAS Officers and have regional responsibilities. They are located at Sydney, Parramatta, Newcastle and Wollongong. The three Aboriginal WAS Officers have regional briefs and are located in Sydney, Dubbo and Newcastle each covering approximately a third of the State.

Current role and functions of the WAS

WAS aims to minimise the stress, anxiety and re-traumatisation that can occur for victims of crime when matters progress

Appendix 26 Continued

Witness Assistance Service Report

through the criminal justice system and to assist witnesses in being able to give their evidence to the best of their ability. By increasing the number of staff at the Witness Assistance Service, WAS is better able to assist the ODPP in meeting the needs and rights of victims and witnesses.

A range of services are available to victims of crime and vulnerable witnesses through WAS:

- Information about the legal process, general updates on the progress of the matter; services available, victims rights and witness entitlements;
- Psychosocial assessment and case planning for special needs and support needs at court;
- Referral for counselling, practical assistance and support;
- Liaison with ODPP Lawyers and Crown Prosecutors;
- Support during conferences with ODPP Prosecutors for vulnerable victims and witnesses when required;
- Court preparation and court familiarisation;
- Coordination and/or provision of court support;
- Providing information about victim impact statements;
- Crisis counselling and intervention related to the impact of the legal process;
- Debriefing in relation to the legal process and outcomes;
- Post-court follow-up;
- Inter-agency liaison and policy advice.

The WAS is available for all ODPP victims and witnesses. However due to the large number of prosecution witnesses and high demand on the service WAS has

found it continues to have to prioritise services for early referral and some groups of victims and witnesses receive a more comprehensive service than others. During 2003–2004 WAS has continued to prioritise its services in the following ways:

1. Priority matters prosecuted by the DPP include:

- Child sexual assault (CSA) and other crimes against children;
- Matters involving death including homicide, manslaughter and dangerous driving causing death;
- Adult sexual assault and historical child sexual assault matters;
- Domestic violence offences, which are serious indictable offences or all ground appeals.

Crimes such as serious physical assault/grievous bodily harm/malicious wounding/attempted murder/armed robberies and home invasions do not generally come under the WAS early referral priority scheme. However victims in these matters are increasingly being referred to WAS by ODPP lawyers and external agencies on a needs basis.

2. Priority is also given to certain vulnerable and special needs groups:

- Children and young people under 18 years (and their carers);
- People with disabilities (intellectual, psychiatric, physical, sensory);
- Aboriginal and Torres Strait Islander people;
- Older people especially those who are frail or disabled;
- People experiencing severe trauma in relation to being a victim;
- People who experience particular

difficulty with cultural or language barriers;

- People who are experiencing other disadvantage, hardship or health problems.

Service Delivery 2003–2004

WAS registrations have been increasing every year. New registrations recorded during 2003–2004 totalled 2554. This represents an increase of 336 from the previous year 2002–2003 and 757 more registrations than for the previous 2 years since 2001–2002.

The increase in referrals for 2003–2004 have generally resulted from consolidation of the WAS early referral protocol and an increase in referrals from ODPP Lawyers and Crown Prosecutors. There is now greater confidence that with increased staffing the WAS is in a better position to provide a service in a greater number of matters.

During 2002–2003, 66% of contact service delivery hours were provided to victims and witnesses within the current WAS priority categories as listed above, excluding domestic violence, which is categorised within other matters types such as physical assault. There has been a 22% increase since 2002–2003 in services being able to be provided to non-priority victim matters and many of these are domestic violence related matters.

Currently there are 2676 open files on the WAS database. In 2002–2003 WAS Officers' caseloads averaged 150 open files for full-time staff. One of the benefits of the enhancement has been that WAS Officers caseloads are now much more manageable with an average caseload of approximately 90–95 open WAS files per full-time WAS Officer (with smaller caseloads for senior WAS

Appendix 26 Continued

Witness Assistance Service Report

staff). While caseloads remain high, WAS Officers are now able to offer a more proactive service and have also been able to slightly expand the cohort of victims of crime, although this has been limited because full funding was not received. The enhancement has also meant there is better coverage for those occasions when WAS Officers are on extended leave.

Child Sexual Assault

The WAS Manager, Sexual Assault Liaison Officer (SALO) and Assistant Solicitor (Sydney) have continued to participate on the Attorney General's Department CSA Jurisdiction Pilot Project Team. During the past year the project has been expanded to now include Parramatta, Campbelltown, Penrith and Dubbo. The WAS Manager and SALO facilitated a meeting for staff at Dubbo ODPP with representatives from the Attorney General's Department to discuss the establishment of the pilot in Dubbo. Sexual assault counsellors based in Dubbo were also invited to this meeting.

WAS Officers have continued to assist with the development of the pilot project by providing feedback on identified operational and support issues to both the ODPP and the CSA Jurisdiction Project Team. The WAS Officers in Sydney West and Sydney are also assisting researchers from the Bureau of Crime Statistics and Research in informing victims and their parents/carers about the evaluation research for the project.

Much is being learnt from this pilot project and there have been benefits and progress arising from the project that impact on all child witnesses. However there remain many areas for improvement in the criminal justice system to enable children to effectively participate as prosecution witnesses. These include a need to review court support guidelines,

reviewing court listings for CSA matters and addressing ongoing delays for children due to lengthy legal arguments and adjournments, which could be avoided through pre-trial hearings.

Vulnerable Witnesses

A number of victims of crime and prosecution witnesses have particular needs related to either a disability or the trauma associated with the nature of the crime. WAS Officers are involved in the assessment of the special needs of vulnerable witnesses who are required to come to court to give evidence. The WAS Officers liaise closely with ODPP solicitors and Crown Prosecutors and external agencies as to a witness's special needs.

An effective case management approach and interagency collaboration can assist in addressing barriers to the criminal justice system for witnesses with disabilities. WAS Officers often work at an interagency level to ensure holistic responses and innovative approaches to meeting the special needs of witnesses who have a disability. Such work was recognised in December 2003 when one of our WAS Officers was included in the group of workers from the Attorney General's Department to receive an award for innovation at the Department's inaugural Annual Achievement Awards.

At the end of the financial year, the Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2004 was introduced into the NSW parliament (since commenced) which is aimed at enabling adult victims of sexual assault to have an opportunity to utilise alternative provisions such as CCTV while giving evidence. To date these provisions have only been available to child witnesses. However there is still a need for legislation to be introduced in the future

to enable a broader group of vulnerable witnesses to have the option of using these alternative provisions.

Aboriginal Victims and Witnesses

Since May 2004 there have been three Aboriginal WAS Officers providing services for Aboriginal victims of crime and witnesses in NSW as well as carrying generalist caseloads. These are regional positions each covering a third of the state. The Aboriginal WAS Officers have been liaising closely with police and other external agencies to promote the positions. The Aboriginal WAS Officers are currently planning educational forums for aboriginal communities regarding the role of the ODPP and WAS and to further promote the service state-wide.

A referral protocol exists with both ODPP Lawyers and WAS Officers providing monthly reports of matters involving Aboriginal victims and witnesses to the Aboriginal WAS Officers. This protocol has resulted in an increase in the number of Aboriginal victims and witnesses being referred to WAS. New referrals to WAS for Aboriginal victims and witnesses increased from 86 in 2002–2003 to 127 in 2003–2004. However this figure is considered conservative due to the difficulties related to identification of Aboriginal victims and witnesses, and the fact that some people choose not to identify as Aboriginal.

The above statistics represent the number of Aboriginal victims and witnesses utilising both the specialist Aboriginal WAS Officers and generalist WAS Officers, as Aboriginal victims and witnesses have a choice in relation to the type of assistance they require to best meet their needs.

There remains a need to establish better ways of identifying Aboriginal victims and witnesses when matters are referred

Appendix 26 Continued

Witness Assistance Service Report

from the police to the ODPP. Progress in this area would enable the earlier referral of these matters to WAS and more proactive services to be provided, and would ensure more effective case management and support for Aboriginal victims and witnesses in the future.

State-wide Operations and Standards

Following the enhancement to WAS and recruitment of new staff, WAS has been working towards consolidating the best practice early referral protocol and establishing a standardised proactive service delivery model focussed on early contact and conferencing, identifying special needs, case management and court preparation.

A major challenge associated with the enhancement to WAS has been the restructure of communication, training and support for WAS staff. Due to the increased number of staff, state-wide meetings have been reduced to two per year where planning, and standard operational and policy areas are addressed. There is now a greater focus on regular individual and small group clinical supervision and support from Senior WAS Officers. The WAS Manager currently provides individual supervision for the Senior WAS Officers, the Sydney-based Aboriginal WAS Officer and one WAS officer based at Wollongong.

In addition, WAS Officers meet at a regional level for Sydney, Sydney West and the two country regions and the Aboriginal WAS Officers also meet a couple of times a year as well as holding teleconferences and e-mail and telephone consultations.

Victim Impact Statements

WAS Officers provide information, assistance and referral for victims of crime who wish to prepare a victim impact statement. This is an increasing component of the WAS role as many more victims take up this right under the Charter of Victims Rights.

In addition there have been some recent legislative changes relating to victims impact statements. A victim or their representative can now read out their victim impact statement to the court, once the court has accepted the statement. WAS Officers have assisted in informing victims of this new right and have supported a number of victims wishing to read out their victim impact statement. From August 2004 victims will also be able to make victim impact statements in certain types of local court matters. The WAS Manager has been a member of the Victims of Crime Interagency Victim Impact Statement Working Group that has been revising the Victim Impact Statement Information package to accommodate these changes in legislation.

Professional Development

During 2003–2004, WAS staff attended various professional development seminars, forums, roundtables and training workshops to enhance knowledge and skills, to keep abreast of research and developments in a number of related fields and to promote interagency collaboration, networking and liaison. These have included:

- Victims Services and Victims Compensation Tribunal – presentation by Claire Vernon then Director of Victims Services.

- Counselling Services at the Victims of Crime Bureau – presentation by Charlie Stanfield Coordinator of Counselling Services.
- Joint Investigation and Response Team NSW Forum, Sydney 2003.
- Post Traumatic Stress Disorder presented by Dr Steve Allnut – Forensic Psychiatrist 2003.
- Cultural Awareness Training – “Working with Indigenous People” presentation by Dennis McDermott, Psychologist and Senior Lecturer in Indigenous Studies from UNSW 2003.
- Grief and Loss Workshop for WAS State-wide presented by Psychologist Julie Dunsmore 2003.
- Vicarious Trauma day workshop for Northern and Central Coast WAS 2003.
- WAS Orientation and Training Week for new WAS Officers 2004 with presentations by many ODPP staff; external agencies and victims support services and groups.
- Seminar on “ Prosecuting Child Abuse Cases in a Specialised Family Violence Court: A Canadian Experience” by Dr Jane Ursel 2004.
- Seminar on Dynamics of Sexual Assault and Child Sexual Assault by Dr Carolyn Quadrio as part of a 2 day ODPP Sexual Assault workshop 2004.
- Discovering strengths and constructing possibilities when working with trauma and abuse – 2 day ECAV workshop 2004.
- Seminar on Adult Sexual Assault presented by Prof. Mary P. Koss 2004.
- Working with Adolescent Violence in Families Workshop; Sydney 2004.

Appendix 26 Continued

Witness Assistance Service Report

- AIC /OSW Sexual Assault Roundtable: Improving Criminal Justice Responses to Sexual Assault 2004.
- OSW Consultation Workshop on Developing a National Framework for Sexual Assault Prevention, National Initiative to Combat Sexual Assault 2004.
- Circle Sentencing Education Forum 2004.
- Norimbah Aboriginal Support Unit and Network Conference 2003.
- Management Communication – 2-day workshop 2004.

Conferences attended include:

- ODPP Solicitors Conference 2003.
- 9th Australasian Conference on Child Abuse and Neglect – “Many Voices, Many Choices”, Sydney 2003.
- International Victims of Crime Conference – “Innovations”, Canberra 2003.
- National Social Work Conference “Cooperating for Social Justice”, Canberra 2003. Conference workshop presentation by WAS Manager.
- Australian and New Zealand Society of Criminology Conference, Sydney 2003.
- National Victims of Crime Conference – “Bringing Healing to Victims of Crime: Restoration and Transformation”, Sydney 2004. Conference paper presentation by WAS Manager.
- Indigenous Legal Services Conference, Sydney 2004.

WAS Officers have been provided with regular policy and legislative updates by the Assistant Solicitor (Sydney), WAS Manager, the Sexual Assault Liaison Officer and ODPP Research Unit.

Interagency Liaison and Policy Development

At an Interagency level, the WAS Manager has represented WAS on the ODPP Sexual Assault Review Committee, at the Victims of Crime Interagency Meetings and the CSA Jurisdiction Pilot Committee and various subcommittees. The Assistant Solicitor (Sydney) is the ODPP representative on the Victims Advisory Board.

There has been liaison and consultation with services such as Mission Australia Court Support Service, Victims of Crime Bureau, NSW Health Sexual Assault Services, CASAC services, Intellectual Disability Rights Service, Department of Corrective Service, and victim groups such as Homicide Victims Support Group, VOCAL and Enough-is-Enough. A number of regional liaison forums for Sexual Assault and Child Protection workers have been organised by WAS to enhance interagency liaison with between WAS and the DPP and these services.

During 2003–2004 the WAS Manager and Sexual Assault Liaison Officer have provided consultation on draft documents, and have assisted the ODPP provide comment on policy, legislative or systemic reform in a number of areas pertaining to victims of crime.

Sexual Assault Liaison Officer

During 2003–2004 the Sexual Assault Liaison Officer has represented the ODPP on several committees pertaining to sexual assault issues:

- JIRT State Management Group;
- JIRT State Management Group Training Subcommittee;
- NSW Police Adult Sexual Assault Interagency;

- New South Wales Police Adult Sexual Assault Interagency Legal Issues Subcommittee;
- NSW Interagency Guidelines for Responding to Adult Sexual Assault;
- CSA Jurisdiction Pilot and various subcommittees;
- Victims of Crime Interagency Group;
- ODPP Sexual Assault Review Committee;
- Child Protection Senior Officers Group;
- NSW Health Sexual Assault Investigation Kit Working Group.

The Sexual Assault Liaison Officer has provided presentations to regional sexual assault forums in Sydney and Gosford. Training has also been provided for the ODPP at Foundation Skills for Lawyers, the WAS orientation training and a sexual assault workshop for lawyers. The Sexual Assault Liaison Officer provides consultation and advice to WAS Officers and ODPP lawyers on legislation pertaining to sexual assault prosecutions and other victim related legislation.

Community Education, Training and Consultation

The WAS has again provided education and training for a number of organisations and groups over the past year; including NSW Health Specialist Sexual Assault Training for New Workers and Mission Australia volunteer telephone counsellors and court support workers.

WAS has provided service orientation and familiarisation to the courts, remote witness facilities and CCTV for new child protection and sexual assault counsellors on request. The service has also provided case consultation for external agencies with the permission of victims or witnesses.

Appendix 26 Continued

Witness Assistance Service Report

The WAS has not been in a position to provide many student placements over the last 12 months due to the demand on the service, structural changes with the enhancement and relocation or refurbishment activities in many offices. It is hoped that more student placements can be provided during the next year. However a number of students have attended the service for shorter-term orientation programs about the WAS role.

Future developments and challenges

With the expansion of the WAS, a more proactive and comprehensive service can now be provided to victims of crime and vulnerable witnesses, however there will always be a need to prioritise services.

Considerable energy has gone into lobbying for increased staffing for WAS and WAS Officers coping with very high caseloads over the past year. More recently there has been a period of adjusting to new structures, new roles and new workplace environments. The next year will see an opportunity to review and consolidate service delivery and to ensure resources are utilised in the most effective way to provide quality services victims and witnesses.

We could of course do more if we had more and we will continue to seek funding to develop and expand the service further.

Appendix 27

Overseas Travel Information

1 JULY 2003 – 30 JUNE 2004

| Staff Member | Dates and Travel Details | Total Costs |
|-------------------------------|---|--|
| Lamprati Luigi SC | 30 June 2003 to 19 December 2003. <u>Exchange</u> with Crown Law Office of New Zealand, Wellington | Attorney informed 21 May 2003 No travel costs |
| Tedeschi Mark QC | 10–14 August 2003. | Approved 21 July 2003 |
| Howard Dan | 8 th Annual Conference of the International Association of Prosecutors, Washington DC, USA | Tedeschi – Registration – \$A1,192.69; Accommodation – \$A921.62 Howard – Registration – \$A1,109.87; Accommodation – \$A924.66 |
| Hobart Mark | 8–12 December 2003 Assisting with Annual Prosecutors' Conference, Fiji | Approved 25 November 2003 No travel costs |
| Knox Brian SC | 14–19 December 2003 Workshop for provision of a strategic advocacy workshop for the AG's Chambers in Kuala Lumpur, Malaysia | Approved 28 November 2003 No travel costs |
| Diggins Brett | 24 May 2004 for 12 months <u>Exchange</u> with CPS Liverpool, England | No travel costs |
| Denes Robyn | 17 May 2004 for 12 months. <u>Exchange</u> with CPS, Nottingham, England | No travel costs |
| Bailey Trevor | 25–27 February 2004 IAP Regional Conference, Bangkok, Thailand | Approved 27 January 2004 No travel costs |
| Cowdery Nicholas AM QC | 10–17 May 2004 Human Rights Workshops with Prosecutors & others involved in the criminal justice process. Xi'an, Shaanxi Province, China | Approved 13 April 2004 No travel costs |

Appendix 27 Continued

Overseas Travel Information

1 JULY 2003 – 30 JUNE 2004

| Staff Member | Dates and Travel Details | Total Costs |
|------------------|--|------------------------|
| Tedeschi Mark QC | Prosecution in Fiji | Approved 13 April 2004 |
| | Pre trial visit 5 days in May. Trial started on 28 June 2004 | No travel costs |
| Davies Gayle | 6–10 June 2004 | Approved 17 March 2004 |
| | 8th Meeting of World Criminal Justice Library Network, Ljubljana, Slovenia | No travel costs |
| Knox Brian SC | 13–19 June 2004 | Approved 26 May 2004 |
| | Pacific Island Law Officers' Meeting, Fiji | No travel costs |

Appendix 28

Internal Audit

The Internal Audit Committee comprises: Manager, Service Improvement

2 Deputy Directors (Alternate Chairs)

Senior Crown Prosecutor

Solicitor for Public Prosecutions

Manager, Corporate Services

The following Audits were conducted:

- Fleet Management review
- Systems Integrity/Network Controls review

The Committee meets to review audit reports and monitors management responses to those reports. The Office's internal audit providers and representatives of the NSW Audit Office attend meetings by invitation. The Committee reports to the Executive Board.

Appendix 29

System Reviews and Program Evaluations

- Operational reviews of the Lismore Region Office and Group 1 were completed. These reviews assessed numerous matters against the identified critical issues in the prosecution process to identify best practice and improve systems.
- Security Reviews – Gosford, Newcastle, Bathurst, Dubbo, Wollongong and Wagga Region Offices were conducted to identify and minimise risk to DPP operations and staff.
- A DPP wide 'climate survey' was completed to assist in future planning within the Office.
- A Fraud and Corruption Risk Management Action Plan was developed and implemented.
- The 2004/2007 Business Assurance Plan was developed.
- Reviews were completed to improve:
 - The Management and Accountability of the Crown Prosecutors' Chambers, and
 - Administrative Support provided to the Crown Prosecutors.

Appendix 30

Consultants 2003–2004

| PAYEE | CATEGORIES | Paid (GST exclusive) |
|---|------------------------|----------------------|
| Storage Technology of Australia Pty Limited | Information Technology | \$5,400 |
| Kemp Consultling Group | Management Services | \$28,800 |
| TOTAL | | \$34,200 |

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 continues to strive to increase satisfaction among our stakeholders and to ensure access to the criminal justice system for those from non-English speaking backgrounds. Two important developments this financial year were the entry and implementation of a Memorandum of Understanding with the Community Relations Commission and the NSW Attorney General's Department, and the enhancement of the ODPP Witness Assistance Service.

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 speaking background have access to interpreter services on a fee-exempt basis:

- The accused in all criminal matters (adults and juveniles) including appellants in appeal courts.
- Prosecution witnesses for the ODPP when appearing as witnesses at court.
- Defence witnesses in all criminal matters.
- The parents, guardians or primary carers of juvenile accused.
- The immediate family members of deceased persons (and/or persons able to demonstrate a direct interest) giving evidence or providing information at coronial hearings.
- Persons attending interviews conducted by court staff in relation to criminal, apprehended and personal violence, family law and care matters.

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

The ODPP Witness Assistance Service (the WAS) gives priority to certain vulnerable and special needs groups, including people who experience cultural or language barriers. The WAS received a further significant staffing enhancement during this financial year as a result of the recommendations of the Samuel Report and the review of the ODPP Base Budget. There are now 34.6 positions in the WAS, including 4 senior WAS officers and 3 indigenous identified 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 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 on the ODPP website.

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. This year WAS has assisted the Branch in a re-write of the ODPP Guidelines for the conferencing of witnesses. The Service assists in interagency liaison, and in identifying areas for legislative reform and improvement in the criminal justice system.

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 Working Group overseeing the implementation of victim impact statement in the Local Court
- The Child Sexual Assault Jurisdiction Pilot Project Interagency Committee

The ODPP participates in a number of committees and consultation processes in which ethnic communities are also

Appendix 3I Continued

Ethnic Affairs Priority Statement

involved, including User group forums in NSW courts and the Forum referred to above.

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.

During this financial year, the ODPP received visits from 7 official delegations of Chinese prosecutors and one delegation of Korean prosecutors. Each group was provided with formal information and instruction about the activities of the ODPP in programs ranging in length from two hours to two days. The ODPP also received visits from the President, Court of Appeal, Sri-Lanka, the DPP of Barbados, the DPP of Fiji and officers of the New Zealand Serious Fraud Office. DPP prosecutors participated in the training of prosecutors in Vanuatu, Fiji, Malaysia, China, Japan and New Zealand. The Senior Crown Prosecutor, Mark Tedeschi QC, prosecuted a treason trial at the request

of the Government of Fiji.

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 (which were revised and republished in October 2003) 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.

The ODPP will continue to implement the MOU, to participate in the 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

Director's Service Excellence 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.

Recipients

2000

Team Recipients

1. The Sydney Centralised Committals Team

Jane Culver, Rhonda Ianna, Peter Bugden, Peter Burns, Laurie Gray, Michael Crowe, Terry Heavener, Tim Macintosh, Geoffrey Denman, Patrick Broad, Bruce Love, Lynne MacDonald.

2. The "Cosmo" Team

Dominique Kelly and Huw Baker.

3. The Research Unit

Hugh Donnelly, Rowena Johns, Angela Voukelatos, Marta Jankovic, Michelle Pratley, Natalie Sheridan-Smith, Prita Supomo.

4. The Guideline Judgements Team

Sashi Govind, Hugh Donnelly, Carolyn Griffiths, Kimberly Sobb, Cathie Williams, George Galanis, Richard Stride, Rosa Ranieri, Natalie Sheridan-Smith

5. Drug Court

Johanna Pheils and Peter Stanhope

Individual Recipients

1. Leader Shrestha
2. Elizabeth Walker
3. Katie Singh

2001

Team Recipients

1. The Campbelltown Office of the ODP

Individual Recipients

1. Gareth Christofi
2. Sheelagh Stone

2002

Team Recipients

CASES2 Development & Implementation Team

Michael Sands, Lorie Parkinson, Patrick Quill, and Peter Low

Individual Recipients

1. Peter Bridge
2. Margaret Cunneen
3. Terry Thorpe
4. Helen Langley

'Corporate Services Staff Recognition Awards':

Awards have been introduced to acknowledge outstanding work within the Corporate Services Division of the Office. During 2002–03, awards were made to the following members of staff:

- Leader Shrestha (Information Management & Technology Branch)
- Kirrely Perry (Group 1, Solicitor's Office)
- Malcolm Young (Solicitor's Office)
- Peter Low (Information Management & Technology Branch)
- Bill Gibson (Financial Services Branch)
- Nigel Richardson (Personnel Services Branch)
- Scott Sigmond (Personnel Services Branch)
- Diane Keelan (Corporate Services Executive)

2003

Team Recipients

The Witness Assistance Service

Phil Dart, Lee Purches, Amy Watts, Norma Whelan, Samantha Smith, Hanan Amer, Eleanor Beagley, Brenda Carrig, Martine Cosgrove, Kim Coshaw, Rhonda Dodd, Lee Hartwig, Davida Hinchliffe, Helen Jones, Allison Johnson, Annabelle Loew, Rebekah Lucas, Gina Parker, Catherine Peters, Debbie Scott, Michael Spiteri, Suzie Stoyanovski, Paula Whitsed and Simone Zai.

Individual Recipients

1. Natalie Gouda
2. David Stewart

Corporate Services Staff Recognition Awards

Awards to acknowledge outstanding work within the Corporate Services Division of the Office

During 2003–2004 awards were made to the following members of staff:

- Michael Keating (Personnel Services Branch)
- Hatphachan Boualywath (Financial Services Branch)
- Natasha Reddrop-Bekes (Learning and Development Branch) – two awards
- Matthew Crampton (Information Management and Technology Branch)
- Christine Wasson (Information Management and Technology Branch)
- Jaspreet Gill (Personnel Services Branch)
- Leader Shrestha (Information Management and Technology Branch)
- Mary Tang (Personnel Services Branch) – two awards
- Lorie Parkinson (Learning and Development Branch)
- Kanchana Attanayake (Information Management and Technology Branch)

Appendix 33

Some Cases Dealt With During The Year

R v M.J. – Use of a crossbow in school grounds

The accused purchased a crossbow and bolts over the Internet and took them to school. He approached the first victim who was a fellow student and ex-girlfriend, aimed the crossbow at her and fired a bolt. The bolt made a clean, straight wound through the victim's chest and lodged itself in the second victim's legs, pinning her legs together. The accused then lit a homemade incendiary bomb and threw it in the direction of the two victims. The bomb smashed on the ground however its contents did not ignite. The accused attempted to light a second homemade bomb but was tackled to the ground by other students.

The accused was charged with wounding with intent to murder the first victim. The trial proceeded by judge alone who found the accused not guilty of this charge but guilty of the alternative charge of malicious wounding with intent to cause grievous bodily harm. The accused was sentenced to nine years imprisonment with a four year non-parole period.

In relation to the second victim the accused was charged with the maliciously throwing an explosive substance with intent to cause grievous bodily harm. The judge found him not guilty of this charge but guilty of the alternative charge of malicious wounding with intent to cause grievous bodily harm. The accused was sentenced to eight years imprisonment with a four year non-parole period.

The accused was also charged with using a prohibited weapon for which he pleaded guilty and received a fixed term of one year.

R v Sef GONZALES – Murder of immediate family

The parents and 18 year-old sister of the accused were stabbed a number of times in the family home. Each murder took place some hours apart. The accused had organised to go out with a friend shortly after the homicides to provide himself with an alibi. To divert suspicion from himself, he sprayed a racial slur on the wall to suggest that the murders were motivated by hate. On returning home that night he called '000' and told the operator that his father was dead. When police arrived he informed them he had chased the person or persons who had fled the home upon his entry.

At trial, the accused stated that he was with a prostitute at the times of death, and admitted to lying to police when he had told them earlier that he was trying to locate a friend's address in the Blacktown area. The prostitute gave evidence that she was not working that day, and for several months had been persistently harassed by the accused to say she was with him.

The Crown led evidence at trial that an amount of blue paint that matched the spray paint on the wall was found on the offender's jumper.

Following a lengthy trial the jury returned verdicts of guilty for each of the murders. During the sentence proceedings, the accused maintained his innocence. The accused was sentenced to three concurrent life sentences.

R v M.S.K, M.A.K, M.M.K. M.R.K and R.S – Gang rapes

This matter was part of Strike Force Westward, a police task force set up to investigate a series of rapes committed upon various victims by members of the K. family during 2001–2002.

Shortly after midnight on 27 July 2002, two girls, LS and HG aged 17 and 16 years were picked up by the brothers at East Hills Railway Station and taken back to the family home. LS was taken into one room where she was raped by M.S.K using a knife, followed by M.A.K. H.G was taken into another room where she was raped at knifepoint by M.M.K followed by R.S, and another who she could not identify as she had her eyes closed.

All accused were indicted on 9 counts of Aggravated Sexual Assault in Co (pursuant to 61 JA *Crimes Act 1900*). This was the first time this new charge had been used; it carries a maximum penalty of life imprisonment. The Crown case comprised DNA evidence against M.S.K, M.A.K and R.S, CCTV footage, admissions, conflicting alibis and call charge records.

The trials were heard in the Supreme Court because of their complexity and the available life penalty. Shortly prior to the trials commencing legislation was passed preventing unrepresented accused from cross-examining complainants in person (*s294A Criminal procedure Act 1986*). On 11 September 2003 the trial judge ordered two separate trials, one against M.M.K, M.R.K and R.S (as they were represented) and one against M.A.K and M.S.K who were self represented. M.R.K, M.M.K. and R.S were convicted on 13 October 2003. M.A.K and M.S.K were convicted on 27 November 2003. All were sentenced to terms of imprisonment.

On Monday 6 September 2004 the first of the appeals against conviction was heard before the full court of the CCA. The basis of the appeal, by M.A.K and M.S.K, was the unfairness created by *s294A Criminal Procedure Act*. All three Judges dismissed the appeal.

Appendix 33 Continued

Some Cases Dealt With During The Year

R v Robert BURGESS and Will SAUNDERS – Malicious damage to the Opera House

At around 8:00am in the morning of the 18th March 2003 the accused climbed up on the roof of the Sydney Opera House. They took with them paint rollers and a tin of bright red 'Quick Dry, Extra Heavy Duty' paving paint. They then painted the words 'No War' on the western side of the Opera House concert hall sail. Both were arrested shortly thereafter. The paint used was highly adhesive and difficult to remove. It took nearly four days to remove the paint and several more days to complete the restoration.

The accused were charged with causing Malicious Damage to the Opera House.

The accused were motivated to write the words 'No War' due to their opposition of the impending war in Iraq and the likely participation of the Australian Government in it.

At trial the accused sought to raise self-defence. They contended that they had formed a belief that the Government of Australia, along with the US and other countries, was about to engage in an unlawful war against Iraq, with the attendant loss of life and destruction of property in Iraq. Accordingly, they believed that some action was necessary to defend such persons and property. They argued that their act of painting 'No War' on the Sydney Opera House was a reasonable response to that perceived danger.

After hearing submissions from both sides the trial judge ruled that the accused could not raise self defence as the danger they sought to defend against was far too remote, both geographically and in causal nexus.

The Jury convicted both accused. They were each sentenced to 9 months periodic detention. They were also ordered to pay compensation to the Opera House for the cost of the clean up bill. The amount of compensation was \$110,000.00. The accused have appealed to the Court of Criminal Appeal, judgement has been reserved.

R v LAGI, PENISINI, M.T & S.T – Murder of Police Officer

Constable Glen McEnally was shot at point blank range on 27 March 2002 as he performed his duties. During his routine patrols Constable McEnally received information from two other Officers relating to a stolen green Commodore. Soon after, he came across this vehicle, called for back up and began to pursue this vehicle. Unknown to Constable McEnally, the vehicle contained the four co-accused in this matter who had 4 loaded firearms. As Constable McEnally pursued the stolen car, it hit the gutter and came to halt. Penisini alighted from the stolen vehicle, approached Constable McEnally, who was still seated in his car and fatally shot him 5 times at point blank range. All occupants of the car fled the scene.

All accused were charged with the murder of Constable McEnally, the Crown relying on the doctrine of joint criminal enterprise. Penisini ultimately entered a plea of guilty to shooting all five shoots. He was sentenced to 34 years imprisonment with a non-parole period of 23 years. The Crown has appealed this sentence. M.T and S.T both pleaded not guilty and were convicted of murder. Both were sentenced to 21 years imprisonment with a non-parole period of 14 years. Lagi was acquitted of murder.

All offenders were also sentenced on charges relating to the possession of unauthorised firearms and their use to avoid lawful apprehension.

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
- 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 the ODPP Policy and Guidelines on the Use of Email;
- not create, knowingly access, download or transmit pornographic, sexually explicit, offensive or other inappropriate material, using email, or the internet (examples of such material include offensive jokes or cartoons (sexist/racist/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 office. In relation to a Director, a Deputy Director and the Solicitor for Public Prosecutions, the consent of the Attorney

Appendix 34 Continued

Code of Conduct

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/Publnt_pdf/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.

Appendix 34 Continued

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

The main requirements, obligations and duties are given effect to, explained or contained in the following policies, rules, guidelines and manuals:

- Director's Prosecution Policy and Guidelines
- Professional Conduct and Practice Rules, Law Society of NSW
- NSW Bar Rules

- AASW Code of Ethics and NSW Psychologists Board Code of Ethical Conduct
- Solicitors Manual
- Sentencing Manual
- Child Sexual Assault Manual
- Witness Assistance Service Manual
- NSW Solicitors Manual (Riley)
- Personnel Handbook
- ODPP Policies (refer to DPPNet)
- Protected Disclosures Procedures
- Guarantee of Service
- Corporate Plan
- Charter of Principles for a Culturally Diverse Society

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 continues to participate in the development of a Justice Portfolio 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. The primary objective of the Plan is to ensure

that people with disabilities have access to the NSW justice system fairly and easily while their legal rights and individual needs are respected and addressed.

Appendix 36

Director of Public Prosecutions' Prosecution Guidelines

New Prosecution Guidelines were published in October 2003. The Guidelines are reproduced in full in this Report in accordance with the requirements of sections 15 and 34 of the Director of Public Prosecutions Act 1986.

Please refer to the Director of Public Prosecutions' Prosecution Guidelines at the end of this document, page 117.

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 |
| Attorney General's Inter-Departmental Committee on Mental Health (Criminal Procedure) Act | Daniel Howard |
| Apprehended Violence Legal Issues Coordination Committee (reviews problems associated with apprehended violence orders) | Philip Dart |
| Audio/Visual Conferencing Committee | Craig Hyland |
| Bail Act Working Group | Michael Day |
| Bar Association: Criminal Law Committee | Paul Conlon SC Jim Bennett SC Brian Knox SC Sally Dowling |
| Bar Association: Professional Conduct Committees | Frank Veltro Paul Conlon SC Jim Bennett SC Virginia Lydiard |
| Bar Association: Various other Committees | Gordon Lerve (Bar Exams) David Frearson (Indigenous Barristers Strategy Working Party) Mark Hobart (Voluntary Membership 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 |
| Child Sexual Assault Jurisdiction Interagency Project Team | Philip Dart Lee Purches Amy Watts |
| Community Justice Conferencing Pilot Scheme for Young Adult Offenders Working Party | Philip Dart |
| Conference of Australian Directors of Public Prosecutions | Nicholas Cowdery AM QC |
| Courtlink Inter-agency Group | Craig Hyland Claire Giroto Diane Harris |
| Court of Criminal Appeal/Supreme Court Crime Users Group | Dominique Kelly Michael Day David Frearson |
| Court Security Committee | John Kiely SC |

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

| Committee/Steering Group | ODPP Representative |
|--|---|
| Criminal Case Processing Committee | Claire Giroto |
| Criminal Justice System Chief Executive Officers' Standing Committee | Nicholas Cowdery AM QC |
| Criminal Law Committee of the Law Society of NSW | Robyn Gray |
| Criminal Law Accreditation Committee of the Law Society of NSW (Mr Favretto is also a member of the Specialist Accreditation Board of the Law Society of NSW) | John Favretto (Chair) |
| Criminal Listing Review Committee (reviewing listings in the District Court) | Claire Giroto Wendy Robinson QC William Dawe QC |
| Drug Misuse and Trafficking Act Working Group | Janis Watson-Wood |
| Government Chief Executive Officers Network | Nicholas Cowdery AM QC |
| Government Lawyers Committee of the Law Society of NSW | Janis Watson-Wood |
| Heads of Prosecuting Agencies Conference | Nicholas Cowdery AM QC |
| Homicide Squad Advisory Committee | Patrick Barrett |
| Innocence Panel | Nicholas Cowdery AM QC |
| Inter-agency Exhibit Management Committee | Claire Giroto |
| Inter-agency Guidelines for Responding to Adult Sexual Assault Committee | Amy Watts |
| Inter-departmental Committee on the Crimes (Forensic Procedures) Act 2000 | Nicholas Cowdery AM QC |
| Inter-departmental Committee to review the Mental Health (Criminal Procedure) Act 1990 | Craig Williams |
| Internal Affairs Liaison Group | Janis Watson-Wood |
| International Association of Prosecutors | Nicholas Cowdery AM QC |
| Joint Investigation Response Teams State Management Group and Training Sub-Committee | 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 |
| National Sexual Assault Reform Committee | Nicholas Cowdery AM QC |
| NSW Sentencing Council | Nicholas Cowdery AM QC |
| NSW Strategy to Reduce Violence Against Women – Senior Officers Group | Philip Dart |

Appendix 37 Continued

ODPP Representatives on External Committees/Steering Groups

| Committee/Steering Group | ODPP Representative |
|---|---|
| Police Adult Sexual Assault Interagency Committee and Legal Issues and Drug Facilitated Sexual Assault Sub-Committees | Amy Watts |
| Police Forensic Services/DAL/ODPP Liaison Committee | Paul Conlon SC Greg Smith |
| Police Integrity Commission Liaison Group | Janis Watson-Wood |
| Police–ODPP Prosecution Liaison Standing Committee | Graham Bailey Gordon Lerve David Frearson SC Claire Giroto Stephen Kavanagh |
| Sentencing Council Sub-Committee on Abolition of Short Sentences | Robyn Gray |
| Sexual Assault Review Committee | Philip Dart (Chair) Julie Lannen Lee Purches Samantha Smith Amy Watts |
| Standing Inter-agency Advisory Committee on Court Security | Stephen Kavanagh Claire Giroto |
| Supreme Court Criminal Law Users' Committee | Patrick Barrett Greg Smith |
| 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 Lee Purches Amy Watts |

Appendix 37 Continued

State-Wide Prosecution Liaison Groups

| Prosecution Liaison Group | ODPP Representative |
|----------------------------------|--|
| North Region | Graham Bailey Colin Cupitt Julie Lannen Janet Little Vicki Weldon Graeme Roxby Chris Smith |
| Southern | Graham Bailey Peter Burns Alison Dunn |
| South-West | Susan Ayre Graham Bailey Susan Maxwell |
| Sydney East | Geraldine Beattie Robert Heanes |
| Sydney North | Craig Hyland |
| Sydney South West | Judith Nelson Philippa Smith |
| Sydney West | Wendy Carr Claire Girotto Sashi Govind Sharon Holdsworth Jim Hughes Clare Partington |
| Western | Graham Bailey Matthew Coates Ron England Roger Hyman |

Appendix 38

Consumer Response

This Office undertakes a comprehensive victim and witness satisfaction survey biennially, as the main qualitative measure of our service. The following table shows the percentage of respondents who rated the overall level of service provided by the ODPP as "good" or "very good" in surveys conducted since 1994.

A survey will be undertaken this year and reported on in the next annual report.

It has been clear from comments made by respondents in surveys that the defining issue in relation to satisfaction with the service provided by this Office is the level of communication received from the Office. Positive comments refer to our staff as "professional", "informative", "supportive", "helpful", "courteous" and "polite". Negative comments included "uncommunicative", "overall lack of

communication and information", "no explanation of what was expected", "no contact".

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

| Region | 1994 | 1996 | 1998 | 2000 | 2002 |
|----------------------|-----------|-----------|-----------|-------------|-------------|
| Sydney | 42 | 53 | 39 | 50 | 60 |
| Sydney West | 50 | 40 | 47 | 57.5 | 88.8 |
| Country | 32 | 52 | 45 | 56.9 | 58.9 |
| State Average | 41 | 48 | 44 | 55.2 | 60.8 |



Audited Financial Statements 2003–2004

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Financial Statements for the Year Ended 30 June 2004

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

18 October 2004



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 (the Office):

- (a) presents fairly the Office's financial position as at 30 June 2004 and its financial performance and cash flows for the year ended on that date, in accordance with applicable Accounting Standards and other mandatory professional reporting requirements in Australia, and
- (b) complies with section 45E of the *Public Finance and Audit Act 1983* (the Act).

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

The Director's Role

The financial report is the responsibility of the Director of Public Prosecutions. It consists of the statement of financial position, the statement of financial performance, the statement of cash flows, the summary of compliance with financial directives and the accompanying notes.

The Auditor's Role and the Audit Scope

As required by the Act, I carried out an independent audit to enable me 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 and Assurance Standards and statutory requirements, and I:

- evaluated the accounting policies and significant accounting estimates used by the Director in preparing the financial report, and
- examined a sample of the evidence that supports the amounts and other 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.

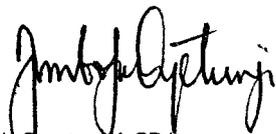
My opinion does *not* provide assurance:

- about the future viability of the Office,
- that the Office 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.



A Oyetunji CPA
Assistant Director of Audit

SYDNEY
20 October 2004

Statement of Financial Performance

for the Year Ended 30 June 2004

| | Notes | Actual 2004 \$'000 | Budget 2004 \$'000 | Actual 2003 \$'000 |
|---|-------|--------------------------|--------------------------|--------------------------|
| Expenses | | | | |
| Operating expenses | | | | |
| Employee related | 2(a) | 62,220 | 55,614 | 58,564 |
| Other operating expenses | 2(b) | 10,491 | 10,311 | 9,318 |
| Maintenance | 2(c) | 656 | 561 | 503 |
| Depreciation and amortisation | 2(d) | 1,911 | 2,430 | 2,502 |
| Other expenses | 2(e) | 2,724 | 3,133 | 3,005 |
| Total Expenses | | 78,002 | 72,049 | 73,892 |
| Less: | | | | |
| Retained Revenue | | | | |
| Sale of goods and services | 3(a) | 37 | 77 | 155 |
| Investment income | 3(b) | 68 | 36 | 38 |
| Grants and contributions | 3(c) | – | – | 40 |
| Other revenue | 3(d) | 252 | 263 | 313 |
| Total Retained Revenue | | 357 | 376 | 546 |
| Gain/(Loss) on disposal of non-current assets | 4 | (38) | 5 | 6 |
| Net Cost of Services | 19 | 77,683 | 71,668 | 73,340 |
| Government Contributions | | | | |
| Recurrent appropriation | 5 | 70,976 | 61,832 | 61,512 |
| Capital appropriation | 5 | 3,809 | 1,809 | 5,184 |
| Acceptance by the Crown Entity of employee benefits and other liabilities | 6 | 8,084 | 7,334 | 8,856 |
| Total Government Contributions | | 82,869 | 70,975 | 75,552 |
| SURPLUS/(DEFICIT) FOR THE YEAR FROM ORDINARY ACTIVITIES | | 5,186 | (693) | 2,212 |
| TOTAL REVENUES, EXPENSES AND VALUATION ADJUSTMENTS RECOGNISED DIRECTLY IN EQUITY | | | | |
| | | – | – | – |
| TOTAL CHANGES IN EQUITY OTHER THAN THOSE RESULTING FROM TRANSACTIONS WITH OWNERS AS OWNERS | | | | |
| | 15 | 5,186 | (693) | 2,212 |

The accompanying notes form part of these statements.

Statement of Financial Position

as at 30 June 2004

| | Notes | Actual 2004 \$'000 | Budget 2004 \$'000 | Actual 2003 \$'000 |
|--------------------------------------|-------|--------------------------|--------------------------|--------------------------|
| ASSETS | | | | |
| Current Assets | | | | |
| Cash | 8 | 1,880 | 1,292 | 732 |
| Receivables | 9 | 1,224 | 753 | 758 |
| Inventories | 10 | 2 | 2 | 2 |
| Total Current Assets | | 3,106 | 2,047 | 1,492 |
| Non-Current Assets | | | | |
| Plant and Equipment | 11 | 15,171 | 12,695 | 13,316 |
| Total Non-Current Assets | | 15,171 | 12,695 | 13,316 |
| Total Assets | | 18,277 | 14,742 | 14,808 |
| LIABILITIES | | | | |
| Current Liabilities | | | | |
| Payables | 12 | 1,970 | 4,616 | 3,606 |
| Provisions | 13 | 4,067 | 3,833 | 3,998 |
| Other | 14 | 220 | 220 | 220 |
| Total Current Liabilities | | 6,257 | 8,669 | 7,824 |
| Non-Current Liabilities | | | | |
| Provisions | 13 | 1,218 | 1,148 | 1,148 |
| Other | 14 | 897 | 899 | 1,117 |
| Total Non-Current Liabilities | | 2,115 | 2,047 | 2,265 |
| Total Liabilities | | 8,372 | 10,716 | 10,089 |
| Net Assets | | 9,905 | 4,026 | 4,719 |
| EQUITY | | | | |
| Reserves | 15 | 551 | 551 | 551 |
| Accumulated funds | | 9,354 | 3,475 | 4,168 |
| Total Equity | | 9,905 | 4,026 | 4,719 |

The accompanying notes form part of these statements.

Statement of Cash Flows

for the Year Ended 30 June 2004

| | Notes | Actual 2004 \$'000 | Budget 2004 \$'000 | Actual 2003 \$'000 |
|---|-------|--------------------------|--------------------------|--------------------------|
| CASH FLOWS FROM OPERATING ACTIVITIES | | | | |
| Payments | | | | |
| Employee related | | (56,650) | (50,345) | (50,731) |
| Other | | (17,186) | (14,418) | (14,763) |
| Total Payments | | (73,836) | (64,763) | (65,494) |
| Receipts | | | | |
| Sale of goods and services | | 37 | 77 | 149 |
| Interest Received | | 41 | 45 | 31 |
| Other | | 1,604 | 1,164 | 2,298 |
| Total Receipts | | 1,682 | 1,286 | 2,478 |
| Cash Flows from Government | | | | |
| Recurrent appropriation | | 70,976 | 61,832 | 61,512 |
| Capital appropriation | | 3,809 | 1,809 | 5,184 |
| Cash reimbursements from the Crown Entity | | 2,321 | 2,200 | 2,047 |
| Net Cash Flows from Government | | 77,106 | 65,841 | 68,743 |
| NET CASH FLOWS FROM OPERATING ACTIVITIES | 19 | 4,952 | 2,364 | 5,727 |
| CASH FLOWS FROM INVESTING ACTIVITIES | | | | |
| Proceeds from sale of plant and equipment | | 7 | 5 | 6 |
| Purchases of plant and equipment | | (3,811) | (1,809) | (5,191) |
| NET CASH FLOWS FROM INVESTING ACTIVITIES | | (3,804) | (1,804) | (5,185) |
| NET INCREASE/(DECREASE) IN CASH | | 1,148 | 560 | 542 |
| Opening cash and cash equivalents | | 732 | 732 | 190 |
| CLOSING CASH AND CASH EQUIVALENTS | 8 | 1,880 | 1,292 | 732 |

The accompanying notes form part of these statements.

Supplementary Financial Statements

Summary of Compliance with Financial Directives

for the Year Ended 30 June 2004

| | 2004 | | | | 2003 | | | |
|---|----------------------------|--|--------------------------|--|----------------------------|-------------|--------------------------|-------------|
| | 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 | 61,832 | 61,832 | 1,809 | 1,809 | 57,777 | 57,777 | 4,914 | 4,914 |
| | 61,832 | 61,832 | 1,809 | 1,809 | 57,777 | 57,777 | 4,914 | 4,914 |
| OTHER APPROPRIATIONS/ EXPENDITURE | | | | | | | | |
| • Treasurer's Advance | 9,144 | 9,144 | 2,000 | 2,000 | 3,735 | 3,735 | 740 | 270 |
| | 9,144 | 9,144 | 2,000 | 2,000 | 3,735 | 3,735 | 740 | 270 |
| Total Appropriations Expenditure/Net Claim on Consolidated Fund (includes transfer payments) | 70,976 | 70,976 | 3,809 | 3,809 | 61,512 | 61,512 | 5,654 | 5,184 |
| Amount drawn down against Appropriation | | 70,976 | | 3,809 | | 61,512 | | 5,184 |
| Liability to Consolidated Fund | | – | | – | | – | | – |

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

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

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Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

(a) Reporting Entity

The Office of the Director of Public Prosecutions (the Office), as a reporting entity, comprises all the operating activities under the control of the Office.

The reporting entity is consolidated as part of the NSW Total State Sector and as part of the NSW Total State Sector Accounts.

(b) Basis of Accounting

The Office's financial statements are a general purpose financial report which has been prepared on an accruals basis and in accordance with:

- applicable Australian Accounting Standards;
- other authoritative pronouncements of the Australian Accounting Standards Board (AASB);
- Urgent Issue Group (UIG) Consensus Views;
- the requirements of the Public Finance and Audit Act and Regulations; and
- the Financial Reporting Directions published in the Financial Reporting Code for Budget Dependent General Government Sector Agencies or issued by the Treasurer under section 9(2)(n) of the Act.

Where there are inconsistencies between the above requirements, the legislative provisions have prevailed.

In the absence of a specific Accounting Standard, other authoritative pronouncements of the AASB or UIG Consensus View, the hierarchy of other pronouncements as outlined in AAS 6 "Accounting Policies" is considered.

Except for certain plant and equipment, which are recorded at valuation, the financial statements are prepared in accordance with the historical cost convention. All amounts are rounded to the nearest one thousand dollars and are expressed in Australian currency.

AASB 1047 "Disclosing the impact of adopting Australian Equivalents to International Financial Reporting Standards" (AIFRS):

The Office will apply the Australian Equivalents to International Financial Reporting Standards (AIFRS) from the reporting period beginning 1 July 2005.

The Office is managing the transition to the new standards by allocating internal resources and/or engaging consultants to analyse the pending standards and Urgent Issues Group Abstracts to identify key areas regarding policies, procedures, systems and financial impacts affected by the transition.

As a result of this exercise, the Office has taken the following steps to manage the transition to the new standards:

The Office's Audit Committee is overseeing the transition. The Manager, Financial Services is responsible for the project and reports regularly to the Committee on progress against the plan.

The following phases that need to be undertaken have been identified:

- The Office has to retrospectively account for change in accounting policy and correction of errors by restating comparatives and adjusting the opening balance of accumulated funds for the first time adoption of AIFRS as required by AASB 1.
- The Inventories are to be valued at the lower of cost and current replacement cost rather than lower of cost and net realisable value to comply with AASB 102.
- The Property Plant and Equipment (PP&E) are to be included at cost and fair value inclusive of restoration and inspection cost and depreciation reallocated to the related assets to comply with AASB 116.
- The operating lease contingent rentals are to be recognised as an expense on a straight-line basis over the lease term rather than expensing in the financial year incurred, to comply with AASB 117.

Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

- The defined employee benefits are to be discounted, using the Government Bond Rate as at each reporting date rather than the long-term expected rate of return, to comply with AASB 119.
- The Grants are to be recognised on receipt and alternatively when conditions are satisfied for the supply of related goods and services.

NSW Treasury is assisting agencies to manage the transition by developing policies, including mandates of options; presenting training seminars to all agencies; providing a website with up-to-date information to keep agencies informed of any new developments; and establishing an IAS Agency Reference Panel to facilitate a collaborative approach to manage the change.

(c) Revenue Recognition

Revenue is recognised when the Office has control of the good or right to receive, it is probable that the economic benefits will flow to the Office and the amount of revenue can be measured reliably. Additional comments regarding the accounting policies for the recognition of revenue are discussed below.

(i) *Parliamentary Appropriations and Contributions from Other Bodies*

Parliamentary appropriations and contributions from other bodies (including grants and donations) are generally recognised as revenues when the office obtains control over the assets comprising appropriations/contributions. Control over appropriations and contributions 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.

(ii) *Sale of Goods and Services*

Revenue from the sale of goods and services comprises revenue from the provision of products and services i.e. user charges. User charges are recognised as revenue when the Office obtains control of the assets that result from them.

(iii) *Investment income*

Interest revenue is recognised as it accrues.

(d) Employee Benefits and other provisions

(i) *Salaries and Wages, Annual Leave, Sick Leave and On-Costs*

Liabilities for salaries and wages (including non-monetary benefits), annual leave and vesting sick leave are recognised and measured in respect of employees' services up to the reporting date at nominal 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.

Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

Treasury Managed Fund calculates hindsight premiums each year. However in regard to workers compensation the final hindsight adjustment for the 1997/1998 fund year and an interim adjustment for the 1999/2000 fund year were not calculated until 2003/2004. As a result, the 1998/1999 final and 2000/2001 interim hindsight calculation adjustments will be paid in 2004/2005.

(ii) *Accrued salaries and wages – reclassification*

As a result of the adoption of Accounting Standard AASB 1044 "Provisions, Contingent Liabilities and Contingent Assets", accrued salaries and wages and on-costs has been reclassified to "payables" instead of "provisions" in the Statement of Financial Position and the related note disclosures, for the current and comparative period. On the face of the Statement of Financial Position and in the notes, reference is now made to "provision" in place of "employee entitlements and other provisions". Total employee benefits (including accrued salaries and wages) are reconciled in Note 13 "Provisions".

(iii) *Long Service Leave and Superannuation*

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

Long service leave is measured using present value methodology. In the past, as permitted in AASB 1028, the Crown has relied on the short-hand method to approximate the present value of long service leave, based on the remuneration rates at year-end for all employees with five or more years of service. However, recent calculations by the Government Actuary indicate that this approach for budget dependant agencies resulted in liabilities that are lower than what would have been calculated by more accurate present value calculations. As long service leave is assumed by the Crown, the only effects on the Office's operating results of this changed methodology will be in respect of those on-costs not assumed by the Crown.

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.

(iv) *Other Provisions*

Other provisions exist when the entity has a present legal, equitable or constructive obligation to make a future sacrifice of economic benefits to other entities as a result of past transactions or other past events. These provisions are recognised when it is probable that a future sacrifice of economic benefits will be required and the amount can be measured reliably.

(e) **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 experience.

(f) **Accounting for the Goods and Services Tax (GST)**

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

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

Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

(g) 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 determined as the fair value of the assets given as consideration plus the costs incidental to the acquisition.

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

Fair value means the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value at the acquisition date. The discount rate used is the incremental borrowing rate, being the rate at which a similar borrowing could be obtained.

(h) Plant & Equipment

Plant and equipment costing \$5,000 and above individually are capitalised unless they form part of an overall limit are capitalised at below the threshold level.

(i) *Revaluation of Physical Non-Current Assets*

Physical non-current assets are valued in accordance with the "Guidelines for the Valuation of Physical Non-Current Assets at Fair Value" (TPP 03-02). This policy adopts fair value in accordance with AASB 1041 from financial years beginning on or after 1 July 2002. There is no substantive difference between the fair value valuation methodology and the previous valuation methodology adopted in the NSW public sector:

Where available, fair value is determined having regard to the highest and best use of the asset on the basis of current market selling prices for the same or similar assets. Where market selling price is not available, the asset's fair value is measured as its market buying price i.e. the replacement cost of the asset's remaining future economic benefits. The Office is a not profit entity with no cash generating operations.

Each class of physical non-current assets is revalued every 5 years and 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 assets was completed on 30 June 2001 and was based on 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 is separately restated.

Otherwise, any balances of accumulated depreciation existing at the revaluation date in respect of those assets are credited to the asset account 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.

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.

Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

I SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (cont.)

(j) Depreciation of Non-Current Physical Assets

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 entity.

All material separately identifiable component assets are recognised and depreciated over their shorter useful lives, including those components that in effect represent major periodic maintenance.

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

| | |
|----------------------|----------|
| Office Equipment | 7 years |
| Computer Equipment | 4 years |
| Library Books | 15 years |
| Furniture & Fittings | 10 years |
| Software | 4 years |

(k) Maintenance and repairs

The costs of maintenance are charged as expenses as incurred, except where they relate to the replacement of a component of an asset, in which case the costs are capitalised and depreciated.

(l) Leased Assets

Operating lease payments are charged to the Statement of Financial Performance in the periods in which they are incurred.

(m) 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.

(n) Inventories

The Office holds a small number of corporate wardrobe items for resale to staff at "cost recovery" price only. The inventories are stated at cost value.

(o) Other Assets

Other assets including prepayments are recognised on a cost basis.

(p) Payables

These amount represent liabilities for goods & services provided to the Office.

(q) Interest Bearing Liabilities

The Office does not have any interest bearing liabilities.

(r) 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, s24 and/or s 26 of the Public Finance and Audit Act 1983.

The budgeted amounts in the Statement of Financial Performance and the Statement of Cash Flows are generally based on the amounts disclosed in the NSW Budget Papers (as adjusted above). However, in the Statement of Financial Position, 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).

(s) 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.

Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

2 EXPENSES

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| (a) Employee related expenses | | |
| Salaries and wages (including recreation leave) | 50,143 | 45,760 |
| Superannuation | 5,210 | 5,251 |
| Long service leave | 2,561 | 3,605 |
| Workers' compensation Insurance | 345 | 345 |
| Payroll tax and fringe benefit tax | 3,711 | 3,020 |
| On-cost on Long Service Leave | 83 | 388 |
| Temporary Staff | 167 | 195 |
| | 62,220 | 58,564 |
| (b) Other operating expenses | | |
| Auditor's remuneration – audit of the financial reports | 29 | 56 |
| Operating lease rental expense – minimum lease payments | 4,899 | 4,247 |
| Outgoings | 201 | 172 |
| Insurance | 140 | 103 |
| Books | 305 | 262 |
| Cleaning | 165 | 173 |
| Consultants | 34 | 191 |
| Fees – Private Barristers | 459 | 161 |
| Fees – Practising Certificates | 206 | 190 |
| Fees – Security | 120 | 132 |
| Gas & Electricity | 145 | 179 |
| Motor Vehicles | 289 | 180 |
| Postal | 106 | 107 |
| Courier | 32 | 22 |
| Printing | 64 | 101 |
| Stores and equipment | 479 | 470 |
| Telephones | 924 | 925 |
| Training | 116 | 178 |
| Travel * | 881 | 908 |
| Other | 897 | 561 |
| | 10,491 | 9,318 |
| (c) Maintenance | | |
| Repairs and maintenance | 656 | 503 |
| | 656 | 503 |

* Travel expenses represent expenditure incurred by all staff of the Office for 2003–2004.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

2 EXPENSES (cont.)

| | 2004 \$'000 | 2003 \$'000 |
|--|----------------|----------------|
| (d) Depreciation | | |
| Computer Equipment | 803 | 1,221 |
| General Plant and Equipment | 1,002 | 1,160 |
| Library Collection | 106 | 121 |
| | 1,911 | 2,502 |
| (e) Other expenses | | |
| Allowances to Witnesses | 2,688 | 2,932 |
| Ex-gratia payments | 34 | 73 |
| Maintenance Costs of Non Australian Citizens | 2 | – |
| | 2,724 | 3,005 |

3 REVENUES

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| (a) Sale of goods and services | | |
| Sale of goods | 5 | 6 |
| Rendering of services | | |
| Commissions – Miscellaneous Deductions | 5 | 6 |
| Costs Awarded | 17 | 48 |
| On-cost – Officers on loan | 4 | 12 |
| Appearance Fees | 6 | 82 |
| Training fees | – | 1 |
| Total sale of goods and rendering of services | 37 | 155 |
| (b) Investment Income | | |
| Interest | 68 | 38 |
| | 68 | 38 |
| (c) Grants and contributions | | |
| Grants from other agencies | – | 40 |
| | – | 40 |
| (d) Other revenue | | |
| Lease Incentive | 220 | 220 |
| Other revenue | 32 | 93 |
| | 252 | 313 |

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

4 GAIN/(LOSS) ON DISPOSAL OF NON-CURRENT ASSETS

| | 2004 \$'000 | 2003 \$'000 |
|--|----------------|----------------|
| Proceeds from disposal | 7 | 6 |
| Written down value of assets disposed | (45) | – |
| Net gain/(loss) on disposal of plant and equipment | (38) | 6 |

5 APPROPRIATIONS

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| Recurrent appropriations | | |
| Total recurrent drawdowns from Treasury (per Summary of Compliance) | 70,976 | 61,512 |
| Less: Liability to Consolidated Fund (per Summary of Compliance) | – | – |
| Total | 70,976 | 61,512 |
| Comprising: | | |
| Recurrent appropriations (per Statement of Financial Performance) | 70,976 | 61,512 |
| Total | 70,976 | 61,512 |
| Capital appropriations | | |
| Total capital drawdowns from Treasury (per Summary of Compliance) | 3,809 | 5,184 |
| Less: Liability to Consolidated Fund (per Summary of Compliance) | – | – |
| Total | 3,809 | 5,184 |
| Comprising: | | |
| Capital appropriations (per Statement of Financial Performance) | 3,809 | 5,184 |
| Total | 3,809 | 5,184 |

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

| | 2004 \$'000 | 2003 \$'000 |
|--|----------------|----------------|
| The following liabilities and/or expenses have been assumed by the Crown Entity or other government agencies: | | |
| Superannuation | 5,210 | 4,870 |
| Long Service Leave | 2,561 | 3,605 |
| Payroll Tax on Superannuation | 313 | 381 |
| Total | 8,084 | 8,856 |

7 PROGRAMS/ACTIVITIES OF THE OFFICE

The Office operates on one program "25.1.1 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.

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

8 CURRENT ASSETS – CASH

| | 2004 \$'000 | 2003 \$'000 |
|---------------------------|----------------|----------------|
| Cash at bank and on hand | 1,700 | 552 |
| Permanent Witness Advance | 180 | 180 |
| | 1,880 | 732 |

Cash comprises cash on hand and bank balances within the 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 Treasury. The Office does not have any bank overdraft facility.

Cash assets recognised in the Statement of Financial Position are reconciled to cash at the end of the financial year as shown in the Statement of Cash Flows as follows:

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| Cash on hand and cash at bank (per Statement of Financial Position) | 1,880 | 732 |
| Closing Cash and Cash Equivalents (per Statement of Cash Flows) | 1,880 | 732 |

9 CURRENT ASSETS – RECEIVABLES

All trade debtors are recognised as amounts receivable at balance date. Collectability of trade debtors is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. A provision for doubtful debts is raised when some doubt as to collection exists. The credit risk is the carrying amount (net of any provision for doubtful debts). No interest is earned on trade debtors. The carrying amount approximates net fair value. Sales are made on 30day terms. Receivables are stated with the amount of GST included.

| | 2004 \$'000 | 2003 \$'000 |
|------------------------------------|----------------|----------------|
| Sale of Goods & Services | 32 | 92 |
| Prepayments | 711 | 371 |
| Interest | 46 | 20 |
| Advances | 56 | 23 |
| GST Recoverable from ATO | 379 | 252 |
| Total Current Assets – Receivables | 1,224 | 758 |

10 CURRENT ASSETS – INVENTORIES

| | 2004 \$'000 | 2003 \$'000 |
|-------------------------------|----------------|----------------|
| Corporate Wardrobe At Cost | 2 | 2 |
| | 2 | 2 |

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

11 NON-CURRENT ASSETS – PLANT AND EQUIPMENT

| | 2004 \$'000 | 2003 \$'000 |
|--|----------------|----------------|
| Plant and Equipment | | |
| At Fair Value | 31,219 | 27,545 |
| Less: Accumulated Depreciation | 16,048 | 14,229 |
| Total Plant and Equipment at Net Book Value | 15,171 | 13,316 |

The Office considers that the written down value approximates to the fair value.

Reconciliations

Reconciliation of the carrying amounts of plant and equipment at the beginning and end of the current and previous financial year is set out below.

| | 2004 \$'000 | 2003 \$'000 |
|----------------------------------|----------------|----------------|
| Carrying amount at start of year | 13,316 | 10,626 |
| Additions | 3,811 | 5,191 |
| Disposals | (45) | (6) |
| Depreciation expense | (1,911) | (2,495) |
| Carrying amount at end of year | 15,171 | 13,316 |

12 CURRENT LIABILITIES – PAYABLES

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 2003: \$nil). The carrying amount approximates net fair value.

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| Accrued salaries and wages and on-costs | 1,220 | 1,552 |
| Creditors | 183 | 1,383 |
| Accruals | 567 | 671 |
| | 1,970 | 3,606 |

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

13 CURRENT/NON-CURRENT LIABILITIES – PROVISIONS

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| CURRENT | | |
| Employee benefits and related on-costs | | |
| Recreation leave | 3,931 | 3,655 |
| On-cost on Long Service Leave | 41 | 39 |
| Payroll Tax on-cost for recreation leave and long service leave | 95 | 304 |
| Total Provisions – Current | 4,067 | 3,998 |
| NON-CURRENT | | |
| Employee benefits and related on-costs | | |
| On-cost on Long Service Leave | 366 | 349 |
| Payroll Tax on-cost for long service leave | 852 | 799 |
| Total Provisions – Non-Current | 1,218 | 1,148 |
| Aggregate employee benefits and related on-costs | | |
| Provisions – current | 4,067 | 3,998 |
| Provisions – non-current | 1,218 | 1,148 |
| Accrued salaries, wages and on-cost (Note 12) | 1,220 | 1,552 |
| Total Provisions | 6,505 | 6,698 |

14 CURRENT/NON-CURRENT LIABILITIES – OTHER

| | 2004 \$'000 | 2003 \$'000 |
|---------------------------------|----------------|----------------|
| CURRENT | | |
| Deferred Income | 220 | 220 |
| Total Liabilities – Current | 220 | 220 |
| NON-CURRENT | | |
| Deferred Income | 897 | 1,117 |
| Total Liabilities – Non-Current | 897 | 1,117 |

Notes to and Forming Part of the Financial Statements for the Year Ended 30 June 2004

15 CHANGES IN EQUITY

| | Accumulated Funds | | Asset Revaluation Reserve | | Total Equity | |
|--|-------------------|----------------|---------------------------|----------------|----------------|----------------|
| | 2004 \$'000 | 2003 \$'000 | 2004 \$'000 | 2003 \$'000 | 2004 \$'000 | 2003 \$'000 |
| Balance at the beginning of the financial year | 4,168 | 1,956 | 551 | 551 | 4,719 | 2,507 |
| Changes in equity – other than transactions with owners as owners | | | | | | |
| Surplus/(deficit) for the year | 5,186 | 2,212 | – | – | 5,186 | 2,212 |
| Total | 5,186 | 2,212 | – | – | 5,186 | 2,212 |
| Balance at the end of the financial year | 9,354 | 4,168 | 551 | 551 | 9,905 | 4,719 |

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(i).

16 COMMITMENTS FOR EXPENDITURE

Operating Lease Commitments

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| Future non-cancellable operating lease rentals not provided for and payable | | |
| Not later than one year | 5,281 | 5,179 |
| Later than one year and not later than 5 years | 15,631 | 14,247 |
| Later than 5 years | 1,364 | 3,800 |
| Total (including GST) | 22,276 | 23,226 |

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 \$2.027 m (30 June 2003 : \$2.081 m) that are expected to be recoverable from the Australian Taxation Office.

17 CONTINGENT LIABILITIES

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| Possible claims arising from litigation | – | 22 |
| | – | 22 |

Notes to and Forming Part of the Financial Statements

for the Year Ended 30 June 2004

18 BUDGET REVIEW

Net Cost of Services

The actual net cost of services was higher than the budget by \$6.015 million, primarily due to the additional funding provided from the Treasurer's Advance Account and not original budget, for the increased work load within the Office \$5.9 m and the salary increase awarded by SOORT \$0.532 m.

Assets and Liabilities

Total current assets were \$1.059 m higher than budget, due to increased quantum of prepayments, GST refund collectable from the Australian Taxation Office and the increased cash balance of \$0.588 m.

Total non-current assets were higher than budget by \$2.476 m, due to additional funding of \$2.m received from Treasurer's Advance Account (for increased accommodation requirements of the Office) and not original budget for capital expenditure.

Total liabilities were \$2.344 m lower than budget due to the additional funds were used to reduce the payables but not considered in the budget.

Cash Flows

Net cash flow from operating activities was higher than budget by \$2.588 m, due to receipt of additional capital funding of \$2.m and \$0.6 m cash balance reserved to pay accrued salaries.

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

| | 2004 \$'000 | 2003 \$'000 |
|---|----------------|----------------|
| Net cash used on operating activities | 4,952 | 5,727 |
| Cash flows from Government/Appropriations | (77,106) | (68,743) |
| Acceptance by the Crown Entity of employee benefits and other liabilities | (5,763) | (6,808) |
| Depreciation | (1,911) | (2,502) |
| Decrease/(Increase) in provisions | (139) | (835) |
| Increase/(decrease) in prepayments and other assets | 466 | (479) |
| (Increase)/decrease in Creditors | 1,636 | (212) |
| Net (loss)/gain on sale of plant and equipment | (38) | 6 |
| Increase/(Decrease) in deferred income | 220 | 220 |
| Liability to con fund | - | 286 |
| Net cost of services | (77,683) | (73,340) |

20 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 2002 to 30 June 2004

To facilitate comparison against actual performance, an internal target level of 98% was set for the financial year 2003/2004

| | Current Year | Previous Years | |
|-------------------------------------|--------------|----------------|--------------|
| | 2003/2004 | 2002/2002 | 2001/2002 |
| Aging of Accounts Paid: | | | |
| Current (ie. within due date) | \$18,209,525 | \$15,309,996 | \$15,862,266 |
| Less than 30 days overdue | \$923,145 | \$2,135,236 | \$2,265,752 |
| Between 30 and 60 days overdue | \$87,070 | \$874,467 | \$344,262 |
| Between 60 and 90 days overdue | – | \$326,501 | \$95,385 |
| More than 90 days overdue | \$181 | \$2,822 | \$69,718 |
| Accounts Paid on Time: | | | |
| Percentage of accounts paid on time | 95% | 82% | 85% |
| Total of accounts paid on time | \$18,209,525 | \$15,309,995 | \$15,862,266 |
| Total of account paid | \$19,219,921 | \$18,649,022 | \$18,637,383 |

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.

Initiatives Implemented to Improve Payment Performance:

Cost Centre Managers have been requested to liaise with suppliers to obtain invoices on time.

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Prosecution Guidelines

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

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

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 incompatible 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

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

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

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

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

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

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

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

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

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

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

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

The Director prosecutes. The police (and some other agencies) investigate. The Director has no investigative function and 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

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

A matter may only be referred by police for advice as to the sufficiency of evidence or the appropriateness of charges where:

- a. the Local Area Commander (or equivalent) considers that the evidence is sufficient and a charge is appropriate, but the evidence, circumstances or legal issues are such that there is a reasonable prospect that the ODPP may take a different view or exercise a discretion not to prosecute; or
- b. the Local Area Commander (or equivalent) makes an arrangement in a particular case with the Solicitor for Public Prosecutions, any such arrangement being consistent with these guidelines.

A full police brief of evidence must be provided before advice is given. A full brief will contain all available relevant evidence

in admissible form and in accordance with the requirements of Part 2 Division 3 of Chapter 3 of the *Criminal Procedure Act* 1986. There is no distinction to be drawn between “formal” and “informal” advice and “provisional” advice should not be given.

Any time limits or reasons for urgency are to be brought to the attention of the ODPP at the time the advice is sought.

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. Where the material provided by police is incomplete or further investigation is needed, the brief will be returned to police who will be advised that they may resubmit the brief for further advice when the additional information is obtained. For example, this may include requiring police to give an alleged offender an opportunity to answer or comment upon the substance of the allegations.

Motor vehicle incidents involving death or serious injury

The investigating police officer of a fatal or serious injury motor vehicle crash/collision/incident is to seek advice from the Sydney office of the ODPP through the Manager, Operational Legal Advice Unit, Police Legal Services without delay, as to the appropriateness of indictable charge(s) (including table offences) against the driver/rider who has caused death or grievous bodily harm, if the investigating officer:

- considers it would be inappropriate to instigate proceedings against the relevant driver/rider for an indictable offence; and
- has commenced proceedings against the driver/rider for summary offence(s), or such proceedings were appropriate but have become statute-barred.

The investigating officer need not seek advice from the ODPP if no charges are to be preferred at all. The preferment of summary charges is not to be deferred. Summary charges are to be adjourned until advice is received from the ODPP. The ODPP will not provide advice as to the appropriateness of summary charges or their conduct.

14 Advice to Police Continued

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);
- (iv) whether or not a police officer should be prosecuted;
- (v) whether or not an *ex officio* indictment should be filed or an *ex officio* count included on an indictment;
- (vi) where the Director's sanction or approval is required for the commencement of proceedings (eg. perjury, certain sexual offences, *Listening Devices Act* prosecutions);
- (vii) matters of particular sensitivity, including allegations of corruption or serious misconduct by any public official and allegations of criminal conduct by persons in the practice of professions.

In cases of homicide (including murder, manslaughter, infanticide) or dangerous driving causing death, the recommendation is to be referred to the Director's Chambers for final consideration.

Advisings Generally

All requests by police for advice, including requests concerning:

- (a) the availability of criminal charges, involving:
 - (i) a question of the sufficiency of evidence;
 - (ii) a consideration of the admissibility of evidence; and/or
 - (iii) a view as to the appropriateness of preferring a particular charge or of proceeding in a particular court;
- (b) the present state of law with respect to a certain subject matter (where this requires detailed evaluation);
- (c) the merits of dealing with a matter summarily rather than on indictment, by means of preferring a less serious charge;
- (d) the availability of:
 - an *ex officio* indictment or count;
 - an appeal to the District Court on sentence;
 - an appeal pursuant to the *Criminal Appeal Act 1912*;
 - a stated case; or
 - prerogative relief;
- (e) the discontinuance of Local Court proceedings;
- (f) matters relating to whether or not an individual is to be charged or the form of the proceedings and, if requested, the ultimate venue of any such proceedings;

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

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.

In the case of child sexual assault offences, all requests for advice must be referred to the Assistant Solicitor (Sydney). 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).

Subject to the above, where the request relates to a matter which is currently being prosecuted by the ODPP, it should be addressed to the relevant Managing Lawyer.

All requests for advice are to be registered on CASES and answered within one month of receipt of a complete brief or set of the relevant material.

15 Induced Statements

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

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)

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

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

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

19 Victims of Crime; Vulnerable Witnesses; Conferences Continued

the *Evidence (Children) Act 1997* and the provisions available for children to give evidence at court. Children's statements are electronically recorded and may be tendered as all or part of their evidence-

in-chief. Procedural rules in relation to the tendering of the evidence should be followed and early conferences with children in relation to their electronic statements are recommended.

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

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 appropriate disposition of the matter:

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

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

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

against police officers, breaches of apprehended domestic violence orders, offences committed while on bail or while on probation/parole, offences in relation to the administration of justice, or traffic offences where the offender has a poor traffic record should not generally be placed on a Form 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

Special considerations may apply to the prosecution of children. The longer term damage which can be done to a child because of an encounter with the criminal law early in his or her life should not be underestimated and consequently in some cases prosecution must be regarded as a severe measure with significant implications for the future development of the child concerned. Whilst each situation must be assessed on its merits, frequently there will be a stronger case for dealing with the situation by some means other than prosecution, such as by way of caution or youth justice conference under the *Young Offenders Act 1997*. On the other hand, the seriousness of the alleged offence, harm to any victim and the conduct, character and general circumstances of the child concerned may require that prosecution be undertaken.

The public interest will not normally require the prosecution of a child who is a first offender where the alleged offence is not a serious one.

Different considerations may apply in relation to traffic offences where infringements may endanger the lives of the young driver and other members of the community.

The factors set out in Guideline 4 are also relevant to any consideration as to whether a child should be prosecuted; however, the following matters are particularly important:

- the seriousness of the alleged offence;
- the age, apparent maturity and mental capacity of the child;
- the available alternatives to prosecution and their likely efficacy;
- the sentencing options available to the court if the matter were to be prosecuted;

- the family circumstances and, in particular, whether the parents appear willing and able to exercise effective discipline and control of the child;
- the child's antecedents, including the circumstances of any relevant past behaviour and of any previous cautions or youth justice conferences; and
- whether a prosecution would be likely to cause emotional or social harm to the child, having regard to such matters as his or her personality and family circumstances.

It should be noted that in 1990 the Australian Government agreed to be bound by the United Nations Convention on the Rights of the Child (see **Appendix G**), article 3.1 of which states:

"In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

22 Mental Health Issues

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

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

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

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

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

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

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

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

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

- prosecution/Crown appeals are and ought to be rare, as an exception to the general conduct of the administration of criminal justice. They should be brought to enable the courts to establish and maintain adequate standards of punishment for crime, to enable idiosyncratic approaches to be corrected and to correct sentences that are so disproportionate to the seriousness of the crime as to lead to a loss of confidence in the administration of criminal justice;
- the appellate court will intervene only where it is clear that the sentencer has made a material error of fact or law or has imposed a sentence that is manifestly inadequate (which in the exercise of discretion may still not be sufficient cause);
- the appellate court will take into account the advantages enjoyed by the sentencer which are denied to it;
- the appellate court will not be concerned whether or not it would have found the facts differently, but will consider whether or not it was open to the sentencer to find the facts as he or she did;
- a respondent to a prosecution/Crown appeal suffers a species of double jeopardy which is undesirable;
- apparent leniency or inadequacy alone may not be enough to justify appellate correction;
- scope must remain for the exercise of mercy by the primary sentencer;
- the range of appropriate sentences with respect to a particular offence is a matter on which reasonable minds may differ; and

- if an appeal is to be instituted, it must be done promptly.

Prosecutors should refer also to **Guideline 28** (Sentence).

When a Crown appeal against sentence is being considered, the offender should be so advised if time reasonably permits and again when a direction has been given. Such advice should be given before any information about the appeal or the process is released publicly.

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

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

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

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 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

32 Media Contact Continued

- (b) *the barrister, with the consent of the instructing solicitor or the client, as the case may be, is answering unsolicited questions from journalists concerning proceedings in which there is no possibility of a jury ever hearing the case or any re-trial and:*
- (i) *the answers are limited to information as to the identity of the parties or of any witness already called, the nature of the issues in the case, the nature of the orders made or judgment given including any reasons given by the court;*
 - (ii) *the answers are accurate and uncoloured by comment or unnecessary description; and*
 - (iii) *the answers do not appear to express the barrister's own opinions on any matters relevant to the case."*

This rule should be read carefully and understood.

For the purposes of Rule 59, in proceedings in which ODPP lawyers, Crown Prosecutors or private counsel appear, the Director is the "client". 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

32 Media Contact Continued

first court appearances and/or bail applications if they have already been served on the defence.

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

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

[Guidelines 1,33]

International Association of Prosecutors

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

1. Professional Conduct

Prosecutors shall:

- a) at all times maintain the honour and dignity of their profession;
- b) always conduct themselves professionally, in accordance with the law and the rules and ethics of their profession;
- c) at all times exercise the highest standards of integrity and care;
- d) keep themselves well-informed and abreast of relevant legal developments;
- e) strive to be, and to be seen to be, consistent, independent and impartial;
- f) always protect an accused person's right to a fair trial, and in particular ensure that evidence favourable to the accused is disclosed in accordance with the law or the requirements of a fair trial;
- g) always serve and protect the public interest;
- h) respect, protect and uphold the universal concept of human dignity and human rights.

2. Independence

- 2.1 The use of prosecutorial discretion, when permitted in a particular jurisdiction, should be exercised independently and be free from political interference.
- 2.2 If non-prosecutorial authorities have the right to give general or specific instructions to prosecutors, such instructions should be:
 - transparent;

- consistent with lawful authority;
- subject to established guidelines to safeguard the actuality and the perception of prosecutorial independence.

2.3 Any right of non-prosecutorial authorities to direct the institution of proceedings or to stop legally instituted proceedings should be exercised in similar fashion.

3. Impartiality

Prosecutors shall perform their duties without fear, favour or prejudice.

In particular they shall:

- a) carry out their functions impartially;
- b) remain unaffected by individual or sectional interests and public or media pressures and shall have regard only to the public interest;
- c) act with objectivity;
- d) have regard to all relevant circumstances, irrespective of whether they are to the advantage or disadvantage of the suspect;
- e) in accordance with local law or the requirements of a fair trial, seek to ensure that all necessary and reasonable enquiries are made and the result disclosed, whether that points towards the guilt or the innocence of the suspect;
- f) always search for the truth and assist the court to arrive at the truth and to do justice between the community, the victim and the accused according to law and the dictates of fairness.

4. Role in criminal proceedings

- 4.1 Prosecutors shall perform their duties fairly, consistently and expeditiously.
- 4.2 Prosecutors shall perform an active role in criminal proceedings as follows:
 - a) where authorised by law or practice to participate in the investigation of crime, or to exercise authority over the police or other investigators, they will do so objectively, impartially and professionally;
 - b) when supervising the investigation of crime, they should ensure that the investigating services respect legal precepts and fundamental human rights;
 - c) when giving advice, they will take care to remain impartial and objective;
 - d) in the institution of criminal proceedings, they will proceed only when a case is well-founded upon evidence reasonably believed to be reliable and admissible, and will not continue with a prosecution in the absence of such evidence;
 - e) throughout the course of the proceedings, the case will be firmly but fairly prosecuted; and not beyond what is indicated by the evidence;
 - f) when, under local law and practice, they exercise a supervisory function in relation

APPENDIX A Continued

[Guidelines I, 33]

International Association of Prosecutors

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

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, 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

[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.
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

APPENDIX B Continued

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

The New South Wales Barristers' Rules 62 to 72

- 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:
- (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.
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

- (j) 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:
- (a) inform the opponent if the prosecutor intends to use the material; and
 - (b) make available to the opponent a copy of the material if it is in documentary form;
 - (c) inform the opponent of the grounds for believing that such material was unlawfully or improperly obtained.

APPENDIX C

[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

[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

[Guidelines 18, 19]

New South Wales Charter of Victims Rights – Victims Rights Act 1996

1. Courtesy, compassion and respect

A victim should be treated with courtesy, compassion, and respect for the victim's rights and dignity.

2. Information about services and remedies

A victim should be informed at the earliest practical opportunity, by relevant agencies and officials, of the services and remedies available to the victim.

3. Access to services

A victim should have access where necessary to available welfare, health, counselling and legal assistance responsive to the victim's needs.

4. Information about investigation of the crime

A victim should, on request, be informed of the progress of the investigation of the crime, unless the disclosure might jeopardise the investigation. In that case, the victim should be informed accordingly.

5. Information about prosecution of accused

1. A victim should be informed in a timely manner of the following:
 - (a) the charges laid against the accused or the reasons for not laying charges,
 - (b) any decision of the prosecution to modify or not to proceed with charges

laid against the accused, including any decision to accept a plea of guilty by the accused to a less serious charge in return for a full discharge with respect to the other charges,

- (c) the date and place of hearing of any charge laid against the accused,
- (d) the outcome of the criminal proceedings against the accused (including proceedings on appeal) and the sentence (if any) imposed.

2. A victim should be consulted before a decision referred to in paragraph 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 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.

APPENDIX D Continued

[Guidelines 18, 19]

New South Wales Charter of Victims Rights – Victims Rights Act 1996

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

[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 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.
 - 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 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.

APPENDIX E Continued

[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

[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.

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 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.

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

[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

[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 account his or her age or situation, his or her parents or legal guardians;

Appendix G Continued

[Guidelines 19, 21, 26]

United Nations Convention On The Rights Of The Child (Excerpts)

- (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

[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.

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.

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

shall always conduct themselves in accordance with the law and the recognised standards and ethics of their profession.

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;

Appendix H Continued

[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

[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

[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, 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

Appendix I Continued

[Guideline 33]

United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power

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.
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.
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.

B. Victims Of Abuse Of Power

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.
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.

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