

Finalisation of Rec 3
From 03/512
(now filed)

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**Officer in Charge,
LEGAL BRANCH.**

**SUBJECT: OPERATION CORMORANT Post Operational Assessment -
Recommendation 3.**

Reference: PCO 512/03

ISSUE:

This recommendation reads:

The Officer in Charge, Legal Branch, reviews the existing JIS linkage between SAPol and the Department of Public Prosecutions in respect to amending/altering charges laid and the issuing of warrants.

BACKGROUND:

The issue relates to the investigation and prosecution of the infamous paedophile Brian Perkins who was charged with sexual offences committed against students of St. Annes Special School between 1986 and 1991, and for offences of possession of child pornography in 1993. When police were investigating the earlier offences in 1991, the accused fled the State and his whereabouts were unknown until he was arrested during 'Operation Deny' in 1993.

For some period following his arrest, the accused was remanded in custody until released on bail by the Court in October 1993. Initially, in addition to the child pornography charges, the accused was charged with 'Indecent Assault' and 'Prurient Interest' involving one victim from St. Annes Special School based on the evidence collected in 1991. These proceedings were being conducted by the ODPP Committal Unit who, at that stage, worked out of the Wright Street Prosecution Premises.

The accused was due to answer the charges in the Adelaide Magistrates Court on 21 January 1994. On that morning, and on behalf of the ODPP Committal Unit prosecutor, now A/Senior Sergeant Mick Harper filed a fresh Information before the Court alleging 'Unlawful Sexual Intercourse'. The accused failed to appear, and a warrant was issued in respect of the offences for which he was on bail, but no action was taken in respect of the fresh Information, and JIS was not updated to reflect the new charges.

The accused was arrested in Queensland in 1998, and the Assistant Commissioner [Crime] was called upon to consider whether an application for extradition of the accused to this State was warranted. As the more serious offences were not recorded on JIS, extradition was not approved. That decision subsequently became the subject

of an investigation by Anti-Corruption Branch due, no doubt, to the high level of media attention the case attracted.

DISCUSSION:

No blame can be attributed to the ODPP prosecutor, nor would they be expected to do anything in the circumstances. The fault lies entirely with the Court because it failed to comply with the law.

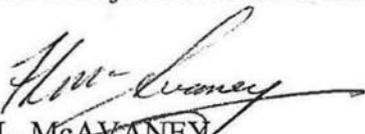
Section 103[1](b) of the *Summary Procedure Act 1921*[SPA] provides, inter alia, that one of two things must happen where an Information is filed in the Court and the accused is not in custody. The Court can either issue a warrant of apprehension or a summons. These are the only options, and in this case, the warrant was the only viable option.

This can be contrasted with the procedures that are available if a charge or charges are laid on Complaint filed in the Court. In that case, in addition to the options listed above, the Court may, pursuant to section 57[2](c) SPA, order that the Complaint 'lay on file' where a warrant of apprehension is already in existence. In those situations the Complaint court file is joined with the warrant file.

CONCLUSION:

Had the legislated requirements been complied with by the Court and a warrant of apprehension issued as that was the only viable alternative, the situation that arose when the Assistant Commissioner [Crime] was called upon to consider the extradition of the accused would not have arisen, as the details of the more serious offending would have been incorporated into JIS through the issue of the warrant and its electronic transfer from the Court into the JIS environment of SAPol.

As there is nothing to indicate that this is anything more than a 'one-off' mistake, there is no justification for taking the matter further.


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Prosecution Support Section.
12 May 2004.