



Director of Public Prosecutions
for Western Australia

DIRECTOR OF PUBLIC PROSECUTIONS ACT 1991

STATEMENT OF PROSECUTION POLICY AND GUIDELINES 2005



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GUIDELINES**

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*Statement of Prosecution Policy and Guidelines 2005***TABLE OF CONTENTS**

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INTRODUCTION

1. The office of the Director of Public Prosecutions (ODPP) controlled by the Director of Public Prosecutions (the Director) commenced on 3 February 1992 with the proclamation of the *Director of Public Prosecutions Act 1991* (the Act).
2. The Act effected a number of significant changes to the Western Australian prosecution process. The most significant change was the effective removal of the prosecution process from the political arena by affording the Director an independent status in that process. The Attorney-General is responsible for the Western Australian criminal justice system and remains accountable to Parliament for decisions made in the prosecution process. However those decisions are now made by the Director and prosecutors of the ODPP, subject to any directions which may be given by the Attorney-General pursuant to section 27 of the Act. Such directions may only be issued after consultation with the Director must be in writing and the text of the direction must be included in the annual report of the Director pursuant to section 32 of the Act.
3. The Act has also ensured that there will be a separation of the investigative and prosecutorial functions of the Western Australian criminal justice system. Once a prosecution has been commenced and referred to the ODPP, the decision whether to proceed with that prosecution is made by the Director independently of those who were responsible for the investigation.

APPLICATION

4. This *Statement of Prosecution Policy and Guidelines (Statement)* is issued pursuant to section 24(1) of the Act and will become operative from the date it is Gazetted. The policies expressed by this *Statement* apply to -
 - (a) all prosecutions for offences on indictment;
 - (b) all summary prosecutions;
 - (c) all matters before the Children's Court;
 - (d) all appeals arising out of criminal proceedings;
 - (e) proceedings under the *Criminal Property Confiscation Act 2000*; and
 - (f) extradition proceedings.

THE DECISION TO CHARGE

5. The primary responsibility for investigating and charging offences resides in investigative agencies, such as the Western Australia Police (WAP).

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6. A charge for an offence should not be laid unless there is sufficient credible evidence identifying a person as having committed that offence.
 7. The investigation and prosecution of offences are separate and distinct functions within the criminal justice system. In some cases, whether because of complexity, sensitivity or for some other reason, it will be appropriate for the WAP or investigative agency to seek the opinion of the Director as to whether a charge should be laid. In such cases, the decision to charge will still be one for the WAP or investigative agency, although they will be entitled to act on the recommendation of the Director.
 8. With some statutory exceptions, a member of the public no longer has the power to lay a charge against another person for an offence.

THE ROLE OF THE PROSECUTOR

9. A prosecutor is not entitled to act as if representing private interests in litigation. A prosecutor represents the community and not any private or sectional interest. A prosecutor does not have a "client" in the conventional sense and acts independently, yet in the public interest.
10. State Prosecutors carry out duties which are fundamental in a democratic society. They are entitled to certain rights to enable them to properly perform these duties. The ODPP adopts the International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors which are set out in Appendix 1.

Duty to be Fair

11. The duty of the prosecutor is to act fairly and impartially, to assist the court to arrive at the truth. A prosecutor has the duty of ensuring that the prosecution case is presented properly and with fairness to the accused.
12. A prosecutor is entitled to firmly and vigorously urge the State view about a particular issue and to test and, if necessary, attack the view put forward on behalf of the accused, however this must be done temperately and with restraint.
13. A prosecutor must never seek to persuade a court or jury to a point of view by introducing prejudice or emotion, and must not advance any argument that does not carry weight in his or her own mind or try to shut out any legally admissible evidence that would be important to the interests of the person accused.
14. A prosecutor must inform the court of authorities or trial directions appropriate to the case, even where unfavourable to the prosecution, and must offer all evidence relevant to the State case during the presentation of the State case.

THE DECISION TO PROSECUTE

15. For the purpose of this *Statement*, a prosecution begins when a person appears in court in response to a charge.

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16. The decision to continue a prosecution is at least as important as the decision to charge, but takes into account factors beyond those which influence an investigator. Those factors are set out in this *Statement*.
 17. The fundamental objectives of a criminal prosecution are -
 - (a) to bring to justice those who commit offences;
 - (b) to punish those who deserve punishment for their offences;
 - (c) to facilitate in the provision of expeditious compensation and restitution to victims of crime; and
 - (d) to protect the community.
 18. In pursuit of these objectives it is necessary to consider
 - (a) the rights of the alleged offender;
 - (b) the interests of victims; and
 - (c) the public interest.
 19. Ordinarily, prosecutorial discretion will be exercised so as to recognise the courts' central role in the criminal justice system in determining guilt and imposing appropriate sanctions for criminal conduct.

PRIMA FACIE CASE

20. As early as practicable in the prosecution process, attention should be given to whether the evidence discloses a *prima facie* case.
21. The question whether there is a *prima facie* case is one of law. This involves consideration whether on the available material there is evidence upon which a trier of fact could conclude beyond reasonable doubt that all the elements of the offence have been established.
22. Where the available material does not support a *prima facie* case, the prosecution should not proceed under any circumstances.

THE PUBLIC INTEREST

23. Where a *prima facie* case exists, a prosecution should only proceed where a second test is satisfied, namely whether a prosecution is in the public interest.

Evaluation Of The Public Interest

Reasonable prospects of conviction

24. It is not in the public interest to proceed with a prosecution which has no reasonable prospect of resulting in a conviction. The term "conviction" in this *Statement* includes, where the context permits, an acquittal on account of unsoundness of mind.

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25. If the prosecutor considers that, on the available admissible evidence, there is no reasonable prospect of conviction by an ordinary jury properly instructed, then unless further prompt investigation will remedy any deficiency in the prosecution case, the prosecution should be discontinued.
 26. The evaluation of prospects of conviction is a matter of dispassionate judgment based on a prosecutor's experience and may, on occasions, be difficult.
 27. However, this does not mean that only cases perceived as 'strong' should be prosecuted. Generally, the resolution of disputed questions of fact is for the court and not the prosecutor. A case considered 'weak' by some may not seem so to others. The assessment of prospects of conviction is not to be understood as an usurpation of the role of the court but rather as an exercise of discretion in the public interest.
 28. A preconception as to beliefs which may be held by a jury is not a material factor. Juries can be presumed to act impartially.
 29. The evaluation of the prospects of conviction includes consideration of –
 - (a) the voluntariness of any alleged confession and whether there are grounds for reaching the view that a confession will not meet the various criteria for admission into evidence;
 - (b) the likelihood of the exclusion from the trial of a confession or other important evidence in the exercise of a judicial discretion. In the case of an alleged confession, regard should be given to whether a confession may be unreliable having regard to the intelligence of the accused, or linguistic or cultural factors;
 - (c) the competence, reliability and availability of witnesses;
 - (d) matters known to the prosecution which may significantly lessen the likelihood of acceptance of the testimony of a witness. Regard should be given to the following:
 - (i) Has the witness made prior inconsistent statements relevant to the matter?;
 - (ii) Is the witness friendly or hostile to the defence?;
 - (iii) Is the credibility of the witness affected by any physical or mental impairment?;
 - (e) the existence of an essential conflict in any important particular of the State case among prosecution witnesses;
 - (f) where identity of the alleged offender is in issue, the cogency and reliability of the identification evidence;
 - (g) any lines of defence which have been indicated by or are otherwise plainly open to the defence;
 - (h) inferences consistent with innocence; and
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- (i) the standard of proof.
30. Evaluation of the prospects of conviction will generally not have regard to -
- (a) material not disclosed to the prosecution by the defence;
 - (b) notification of a defence which purports to rest upon unsubstantiated assertions of fact;
 - (c) assertions or facts upon which a defence or excuse are based which are contentious, or rest on information which would not, in the opinion of the prosecutor, form the basis of credible cogent evidence.

Other Relevant Public Interest Factors

31. Despite the existence of a *prima facie* case and reasonable prospects of conviction, it may not be in the public interest to proceed if other factors, singly or in combination, render a prosecution inappropriate. These factors include -
- (a) the trivial or technical nature of the alleged offence in the circumstances;
 - (b) the youth, age, physical or mental health or special infirmity of the victim, alleged offender or a witness;
 - (c) the alleged offender's antecedents;
 - (d) the staleness of the alleged offence including delay in the prosecution process which may be oppressive;
 - (e) the degree of culpability of the alleged offender in connection with the offence;
 - (f) the obsolescence or obscurity of the law;
 - (g) whether a prosecution would be perceived as counter-productive to the interests of justice;
 - (h) the availability or efficacy of any alternatives to prosecution;
 - (i) the lack of prevalence of the alleged offence and need for deterrence, either personal or general;
 - (j) whether the alleged offence is of minimal public concern;
 - (k) the attitude of the victim of an alleged offence to a prosecution;
 - (l) the likely length and expense of a trial if disproportionate to the seriousness of the alleged offending;
 - (m) whether the alleged offender has cooperated in the investigation and prosecution of others or has indicated an intention so to do;

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- (n) the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the court;
 - (o) the likely effect on public order and morale;
 - (p) whether a sentence has already been imposed on the offender which adequately reflects the criminality of the circumstances;
 - (q) whether the alleged offender has already been sentenced for a series of other offences and the likelihood of the imposition of an additional penalty, having regard to the totality principle, is remote.
32. Against these factors may be weighed others which might require the prosecution to proceed in the public interest. These include -
- (a) the need to maintain the rule of law;
 - (b) the need to maintain public confidence in basic constitutional institutions, including Parliament and the courts;
 - (c) the entitlement of the State or other person to criminal compensation, reparation or forfeiture, if guilt is adjudged;
 - (d) the need for punishment and deterrence;
 - (da) the need to secure appropriate convictions to complement the operation of the *Community Protection (Offender Reporting) Act 2004* and the *Working with Children (Criminal Record Checking) Act 2004*;
 - (e) the circumstances in which the alleged offence was committed;
 - (f) the election by the alleged offender for trial on indictment rather than summarily;
 - (g) the need to ensure consistency in the application of the law.

Irrelevant Factors

33. The following matters are not to be taken into consideration in evaluating the public interest
- (a) the race, colour, ethnic origin, sex, religious beliefs, social position, marital status, sexual preference, political opinions or cultural views of the alleged offender (except where this is an element of the offence);
 - (b) the possible political consequences of the exercise of the discretion;
 - (c) the prosecutor's personal feelings concerning the alleged offender or victim;
 - (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the decision.
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JUVENILES

34. Special considerations may apply to the prosecution of juveniles. The longer term damage which can be done to a juvenile because of an encounter with the criminal law early in his or her life should not be underestimated. Consequently, in some cases prosecution must be regarded as a severe measure with significant implications for the future development of the juvenile concerned. The welfare of the child must therefore be considered when prosecutorial discretion is exercised.
35. Further special considerations apply to the prosecution of juveniles and decisions to continue a prosecution of a juvenile should have regard to -
- (a) the seriousness of the alleged offence;
 - (b) the age and apparent maturity of the juvenile;
 - (c) the available alternatives to prosecution and their efficacy;
 - (d) the juvenile's family circumstances, particularly where the parents of the juvenile appear able and prepared to exercise effective discipline and control over the juvenile;
 - (e) whether a prosecution would be likely to be harmful to the juvenile or be inappropriate, having regard to such matters as the personality of the juvenile and his or her family circumstances;
 - (f) the sentencing options available to the relevant Children's Court if the matter were prosecuted;
 - (g) the interests of the victim and the victim's family;
 - (h) the capacity of the juvenile, if under 14, to know that at the time of doing an act, or making an omission, the juvenile knew that he or she ought not to do the act or make the omission;
 - (i) the capacity of the child at the time of the intended prosecution to have matured;
 - (j) the juvenile's antecedents; and
 - (k) any other special factor.
36. Under no circumstances should a young offender be prosecuted solely to secure access to the welfare powers of the court.

PROSECUTION OF THE MENTALLY IMPAIRED

37. Difficult assessments may sometimes be required in deciding whether to proceed with a prosecution in those cases where it is likely that the defence of insanity under section 27 of the *Criminal Code* will be relied upon.
38. People with a mental impairment should not be prosecuted for trivial offences which pose no threat to the community.

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39. While the appropriate course may usually be to decide not to proceed with the prosecution, in some cases it may nevertheless be appropriate to proceed with the prosecution, for example, where the offence involves violence or there is a danger of the alleged offender re-offending.
 40. Consideration should be given to the willingness of the offender to undergo appropriate treatment (if such treatment is available), and any change in circumstances since the alleged offending.

DOMESTIC VIOLENCE CASES

41. In specific cases there may be a conflict between the principles expounded in the guidelines, which deal with the general criminal prosecution, and those to be applied in domestic violence situations.
42. Special care must be taken in deciding whether to prosecute cases arising out of domestic or family circumstances. Although the attitude of the victim of the alleged offence to a prosecution remains an important factor, it is not to be regarded as decisive.
43. If in such cases there is available evidence (irrespective of the wishes or presence of the victim) which provides a reasonable prospect of a conviction being secured, then the matter should be prosecuted to hearing unless there are exceptional circumstances to suggest otherwise.
44. What might be exceptional circumstances cannot be established in advance. However, the fact that a victim simply does not wish to proceed is not an exceptional circumstance.

CONCESSIONS

45. In rare circumstances it may be necessary to grant concessions to people who have participated in alleged offences, in return for the provision of evidence against others. Such concessions may include -
 - (a) an indemnity against prosecution;
 - (b) an undertaking against the use of a statement in evidence;
 - (c) an acceptance of a plea of guilty to fewer charges or a lesser charge;
 - (d) submissions on sentence which make the extent of the cooperation of the person known to the Court.
 46. A concession will only be given in the interests of justice, and as a last resort.
 47. Normally, an accomplice should be prosecuted and sentenced for the offence that best reflects the criminal conduct before giving evidence against others.
 48. The factors to be considered in deciding whether to grant an indemnity include -
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- (a) whether the person's evidence is reasonably necessary to secure the conviction of the accused person;
 - (b) whether the person is reasonably to be regarded as significantly less culpable than others who may be prosecuted;
 - (c) whether the person agrees to be available to testify at any trial and to honestly answer all such questions as may be asked;
 - (d) the significance and reliability of the person's evidence;
 - (e) whether the person is a witness in another prosecution where the person's evidence significantly strengthens the State case;
 - (f) the risk to the personal safety of the person and the need to provide protection inside or outside prison;
 - (g) any inducement offered to the person;
 - (h) the character, credit and criminal record of the person.
49. An indemnity may be granted in respect of completed criminal conduct but will never be granted to cover future conduct.
 50. Prior to being granted an indemnity, the person seeking it must provide a truthful, full and frank statement in writing or on video tape, detailing all that the person may know concerning the matter without embellishment and withholding nothing of relevance. If necessary, this statement may be made pursuant to an undertaking under s.20(2)(d) of the *Director of Public Prosecutions Act*.
 51. In the course of an investigation, the WAP may identify a participant in the criminal activity under investigation as a person who is likely to be of more value as a prosecution witness than a defendant. Thereafter, the investigation may be directed at constructing a case against the remaining participants based on the evidence it is expected this person will give, unless for some reason it is not practicable to do so. The WAP should always seek advice from the Director as to the appropriateness of such a course. This will minimise the potential for an otherwise meritorious prosecution being abandoned as a consequence of the Director deciding that it would not be in the interests of justice to grant the accomplice an undertaking under the Act in order to secure his or her testimony.
 52. A request from the WAP to the Director to grant an indemnity to a person believed to be involved in criminal conduct, in order to use their assistance to further investigations, will not be acted upon unless approved by the Commissioner, Deputy Commissioner, Assistant Commissioner (Crime), Assistant Commissioner (Professional Standards), or in the case of a request from the Australian Federal Police, their Federal counterparts. Requests for indemnities may also be sought by officers of the Corruption and Crime Commission and approved by the Commissioner.

SUMMARY TRIAL FOR INDICTABLE OFFENCES

53. Summary trial generally provides the speediest and least costly disposition of justice.

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54. The *Criminal Code* allows for a range of offences to be dealt with summarily. When the conditions are met, that mode of trial should be preferred to trial on indictment.
55. There will be occasions when a prosecutor may submit that it is appropriate for the court to refrain from exercising its powers of summary disposition. The factors relevant to this decision include -
- (a) whether the circumstances of the alleged offence, especially any aggravating circumstances, render it so serious that if the accused were convicted of the offence, the court would not be able to adequately punish the offender;
 - (b) the charge forms part of a course of conduct during which other offences were allegedly committed by the accused, and the accused is to be tried on indictment for these offences; or
 - (c) the interests of justice.

THE INDICTMENT

56. The indictment is the written charge preferred against an accused in superior courts and may be presented whether or not there has been a committal for trial. In special circumstances, an indictment may be presented by the Attorney General or the Director, where there has been no committal for trial.
57. A decision made by the magistrate as to whether to commit an accused person for trial cannot absolve a prosecutor from independently reviewing the available evidence and deciding, in accordance with this *Statement*, whether to indict and for what charge.
58. While the circumstances which govern particular indictments are infinitely variable, the following guidelines should always be considered:
- (a) The indictment should best express the nature and extent of the alleged criminal conduct. In the ordinary course the charge or charges laid or proceeded with will be the most serious disclosed by the evidence. Nevertheless, when account is taken of such matters as the strength of the available evidence, the probable lines of defence to a particular charge and the appropriate sentence for the conduct disclosed by the evidence, it may be appropriate to lay or proceed with a charge which is not the most serious revealed by the evidence.
 - (b) Where evidence discloses a large number of offences of a similar nature, and a victim will not be disadvantaged in a claim for restitution or compensation, the use of representative counts should be carefully considered and is encouraged. A multiplicity of charges can impose an unnecessary burden on the criminal justice system.
 - (c) Multiplicity of charging should never be used in order to simply provide scope for plea negotiation.
 - (d) The offence of conspiracy should be charged sparingly. Wherever possible substantive charges should be laid. When a conspiracy charge
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is the only appropriate charge on the evidence then the indictment must ensure that a trial will not become unduly complex, lengthy or otherwise cause unfairness to the persons accused.

INDICTMENTS *EX OFFICIO*

59. An indictment where the person has not been committed on that offence should only be presented in one of the following circumstances -
- (a) the defence has consented in writing; or
 - (b) the counts on the indictment and the charges committed up are not substantially different in nature or seriousness; or
 - (c) the person accused has been committed for trial or sentence on some charges, and in the opinion of the Director, the evidence is such that some substantially different offence should be charged.
60. In all other circumstances, namely where a matter has not been committed to a superior court on any charge and the defence has not consented, an indictment should not be presented without consultation with a Consultant State Prosecutor. Where an accused has not been committed the accused must be advised in writing when an indictment is under consideration and, where appropriate, should be given an opportunity to make a submission.
61. (deleted)
62. (deleted)
63. (deleted)
64. (deleted)
65. (deleted)

SUMMARY PROSECUTIONS

66. Since 8 October 2004 it has become a function of the Director of Public Prosecutions to commence, conduct and take over the prosecution of summary matters ("the summary jurisdiction function"). Summary matters have previously been prosecuted by the WAP, the State Solicitor's Office, solicitors in private practice and private citizens.
67. The extent of the exercise by the Director of the summary jurisdiction function is dependent on resources. In the absence of resources to facilitate the conduct of summary matters, the Director will not exercise the summary jurisdiction function unless it is overwhelmingly in the public interest that the Director commence, conduct or take over the particular summary matter.
68. The assessment that it is overwhelmingly in the public interest can only be made by the Director or a Consultant State Prosecutor.

NOTICE OF DISCONTINUANCE – PUBLICATION OF REASONS

69. After the defendant has been committed for trial the question may arise, either on the initiative of the State Prosecutor or as a result of an application by the defence, whether the defendant should be indicted, or if an indictment has already been presented, whether the trial on that indictment should proceed.
70. Notwithstanding that a committal order has been made, events may have occurred after the committal that make it no longer appropriate for the prosecution to proceed. Where a question arises as to whether a notice of discontinuance should be tendered it is determined on the basis of the criteria governing the decision to prosecute set out earlier in this *Statement*.
- 70A. Where reasonably practicable, the police officer-in-charge of the investigation or other relevant department or agency (“the investigator”) and the victim, must be advised whenever the ODPP is considering whether or not to discontinue a prosecution. The investigator should be consulted on any relevant matters, including perceived deficiencies in the evidence and any matters raised by the accused person. The victim’s views on the proposed course of action should also be sought.

Consultations with the investigator and victim must be recorded prior to any decision.

While the views of the victim and the investigator must be properly considered before a final decision, the overriding consideration is the public interest.

71. Where a decision has been made not to proceed with a trial on indictment, that decision will not be reversed unless:
- (a) significant fresh evidence has been produced that was not previously available for consideration;
 - (b) the decision was obtained by fraud; or
 - (c) the decision was based on a mistake of fact or law;

and in all the circumstances it is in the interests of justice that the decision be reversed.

72. Generally, reasons for discontinuance of a prosecution will be given to an enquirer who has a legitimate interest in the proceedings, including representatives of the media. Reasons will not be given if to do so would prejudice the administration of justice or would cause significant harm to a victim, witness or accused person.

CHARGE NEGOTIATION

73. The law recognises that 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.

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74. 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. A written record of the charge negotiation must be kept in the interests of transparency and probity.
75. Where the appropriate authority has been obtained 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) where the plea reasonably reflects the essential criminality of the conduct and provides an adequate basis for sentencing;
 - (b) where the evidence available to support the State case may be weak in a particular area, or the State case may be fraught with difficulty, and the public interest will be satisfied with an acknowledgment of guilt to certain criminal conduct;
 - (c) when the saving of cost and expense to the community is great when weighed against the likely disposition if the matter proceeded to trial without acceptance of the plea;
 - (d) where there has been a financial loss, whether the accused person has made, or made arrangements for, restitution or compensation;
 - (e) when to do so will save witnesses, particularly vulnerable and other special witnesses, from the trauma of a court appearance.
76. A plea will not be accepted if –
- (a) to do so would distort the facts disclosed by the available evidence and result in an artificial basis for sentence;
 - (b) the accused person intimates that he or she is not guilty of any offence.
77. In considering whether to accept a plea the investigator and victim should be consulted. Consultations with the investigator and victim must be recorded prior to any decision.
- If reference to any substantial and otherwise relevant and available evidence is omitted from a negotiated statement of facts, whether negotiated before or after a plea of guilty is entered, the views of the investigator and the victim should be sought about the statement of agreed facts before it is adopted, unless it is not reasonably practicable to do so.
- While the views of the victim and the investigator must be properly considered before a final decision, the overriding consideration is the public interest.
78. When a plea is offered by a person who may later give evidence for the State against other alleged offenders in the same criminal enterprise, regard shall be had to –
- (i) the strength of the State case without such evidence;
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- (ii) the culpability of that person compared with others.
79. It will not be in the public interest to accept a plea to a lesser offence from a principal offender in order to use that person's evidence to convict less culpable offenders of the major offence.
80. Acceptance of a plea to a lesser offence or to part only of an indictment may only be approved by the Director, the Deputy Director, Director of Legal Services, Consultant State Prosecutor or a duly authorised State Prosecutor.
81. Acceptance of a plea to a lesser offence for a homicide may only be approved by the Director.

STATE APPLICATION FOR 'TRIAL BY JUDGE ALONE'

82. The State's ability to apply to a court for an order that a matter be conducted by judge alone pursuant to s.118 of the *Criminal Procedure Act 2004* should be exercised with due regard to the accused's choice of manner of trial, while recognising that the community has an important and continuing role to play in the administration of justice by serving as jurors in criminal trials.
83. Each case is to be considered on its merits with a view to achieving justice by the fairest and most expeditious means. There is no presumption in favour of, or against, consent to trial by judge alone.
84. In making an application for trial by judge alone, predictions as to the likelihood of conviction by either trial by jury or trial by judge alone, or as to the possibility of a jury failing to agree a verdict, will not be a consideration.
85. Consent to make an application for a trial by judge alone may only be given by a person authorised to sign and present indictments.

Factors Operating in Favour of Trial by Jury

88. Trials in which judgment is required on issues raising community values – for example: the reasonableness, dangerousness, honesty or dishonesty of particular conduct, or whether conduct was provocative, indecent or obscene – should ordinarily be heard by a jury.
89. Cases where the interests of a victim require a decision by representatives of the community may be better suited to trial by jury.

Factors Operating in Favour of Trial by Judge Alone

90. Cases where the evidence is of a technical or complex nature may be better suited to trial by judge alone.
91. Cases in which there is a real and substantial risk that directions by a trial judge or other measures will not be sufficient to overcome prejudice arising from pre-trial publicity may be better suited to trial by judge alone.

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92. Cases which are likely to continue over a long period of time may be better suited to trial by judge alone.
 93. Other cases which may be better suited to trial by judge alone include those where -
 - (a) the facts are not substantially in issue or the only issue is a matter of law;
 - (b) factors, such as the likely conduct of witnesses or the accused, may cause a trial before a jury to be aborted; or
 - (c) significant hurt or embarrassment to any alleged victim may be reduced.
 94. Consideration will be given to any other sufficient factor arising from the nature and circumstances of the particular case.

THE TRIAL

Expedition

95. It is in the interests of justice that matters are brought to trial expeditiously. The State should actively assist in attaining this objective. As far as practicable adjournments after a matter has been allocated a trial date should be avoided by prompt attention to the form of indictment, the availability of witnesses and any other matter which may cause delay.
96. There are certain trials which by nature require expedition. Whilst the list is not exhaustive this would include sexual offences especially against children and other vulnerable complainants, trials of accused persons in custody and accused persons identified by the WAP as being subject to the Primary Brief Management Model.

Jury Selection

97. Selection of a jury is within the general discretion of prosecuting counsel. However, no attempt should be made to select a jury that is unrepresentative as to race, age or sex.
98. The prosecution's right of challenge should only be exercised if there is reasonable cause for doing so. It is reasonable to challenge in order to ensure that the jury is properly representative of the community or because there are grounds to believe that the prospective juror may not be impartial.

Submissions

99. Any submission to the Director from the defence must be dealt with expeditiously.
100. If the matter is complex or sensitive, the defence should be asked to put the submission in writing.

Disclosure of State Case

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101. The State has a general duty to disclose the case-in-chief for the prosecution to the defence.
 102. Normally full disclosure of all relevant evidence will occur unless in exceptional circumstances full disclosure prior to the trial will undermine the administration of justice, or when such disclosure may endanger the life or safety of a witness.

Disclosure of Information to the Defence

103. The prosecution is required to disclose to the defence a copy of every statement or deposition, obtained by the prosecution, of any person who may be able to give relevant evidence at the trial.
104. If a prosecutor knows of a person whom they believe may be able to give relevant evidence who has not yet provided a statement, report or deposition, the prosecutor must disclose to the defence the name and, if known, the address of that person, and a description of the relevant evidence concerned.
105. The prosecutor is required to notify the defence of any person whom they propose to call as witnesses at the trial.
106. The prosecutor is required to provide to the defence a copy of every document or exhibit that the prosecution proposes to adduce at the trial, or if it is not practicable to copy the document or exhibit, a description of it and when it can be inspected.
107. The prosecution is required to provide to the defence a copy of the criminal record of the accused.
108. When the prosecutor knows that a State witness is indemnified or has been offered or granted a concession in respect of the matter before the court, that shall be revealed to the defence.
109. These details should be disclosed in good time.

Disclosure of Inconsistent Statement of Witness

110. Where a witness called by the prosecution gives evidence on a material issue and the prosecutor has an earlier statement that may be inconsistent with the present testimony, the prosecutor should inform the defence of that fact and make available the statement.

Disclosure of Material Additional to the State Case Generally

Duties of WAP

111. In all matters following a committal for trial on indictment, the WAP must deliver to the ODPP, as soon as possible after committal, all other documentation, material, and any other information held by any police officer concerning any proposed prosecution witness, which might be of assistance or interest to either the prosecution or the defence.
112. A police officer shall certify that to the best of that officer's knowledge or belief, all such documentation material or information has been disclosed.

Obligations of the Prosecution

113. Unless an order has been made pursuant to section 138 of the *Criminal Procedure Act 2004* the prosecution shall disclose all such documentation, material or information referred to in section 95 of the *Criminal Procedure Act 2004* by making copies available or allowing inspection.
114. Some material however may raise for consideration the need to balance competing public interests. On the one hand there is a public interest in full disclosure to assist the attainment of justice. On the other hand there is also a public interest in maintaining the confidentiality of certain material, particularly material not directly relevant to the case.
115. A prosecutor may seek an order pursuant to section 138 of the *Criminal Procedure Act 2004* to withhold or delay disclosure of specific material where the prosecutor is of opinion that, in the public interest, the material should be immune from disclosure. Generally such applications should be made upon notice to the defence, unless the particular circumstances of the case require an ex parte application.
116. The court may make an order dispensing with all or part of the disclosure requirement if it is satisfied that there is a good reason to do so, and no miscarriage of justice will result.
117. Pursuant to section 138(5) an order made in the absence of the accused must not be given or disclosed to the accused without the permission of the court.
118. The State's duty of disclosure is a continuing obligation.

UNREPRESENTED ACCUSED

119. 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.
120. 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.
121. 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.

VICTIMS

122. A victim of crime is a person who suffers harm as a direct result of an act committed, or allegedly committed by another person in the course of a

criminal offence and includes a member or nominated representative 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.

123. Victims must be treated with courtesy, compassion and respect, in a manner that is responsive to their age, gender, background or other special need.
124. 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. State Prosecutors are required to make contact with the victim and provide ongoing information about the progress of the case.
- 124A. Where practicable, victims of crime should be consulted in a timely manner regarding a decision to discontinue or to change substantially the charges laid and any decision to accept a plea to a lesser or alternative charge or charges.
125. Victims of crime should be informed in a timely manner of -
- (a) charges laid or reasons for not laying charges;
 - (b) any decision to discontinue or to change substantially the charges laid and any decision to accept a plea to a lesser or alternative charge or charges;
 - (c) the date and place of hearing of any charge laid; and
 - (d) the outcome of proceedings, including appeal proceedings, and any sentence imposed.
126. The obligations under paragraph 124A do not apply where the victim has indicated that he or she does not want to be consulted or his or her whereabouts cannot be ascertained after reasonable inquiry.
127. Regard shall be had to the views of the victims 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.
128. Subject to the considerations listed under the heading 'The Decision to Prosecute' careful consideration should be given to any request by a victim that proceedings be discontinued. In sexual offence matters 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.

Protection of Victims

129. The ODPP must assist victims to seek all necessary protection from violence and intimidation by a person accused of a crime during the course of a prosecution or the prosecution process. Victims may be assisted through bail directions, sentencing and violence restraining orders. The procedure

for applying for a restraining order pursuant to the *Restraining Orders Act 1997* is contained in Appendix 2.

Secondary Victims of Homicide

130. The ODPP along with other relevant agencies recognises the special needs of secondary victims of homicide. The procedure for dealing with secondary victims of homicide is outlined in Appendix 3.

WITNESSES

Victims as Witnesses

131. A victim of crime when called to testify may need to relieve the emotional and physical distress suffered from the offence. A prosecutor should pay due regard to this fact.
132. The ODPP recognises that victims and witnesses need to be informed about court processes, and often require professional support. The ODPP will refer victims and witnesses to the Victim Support Service and Child Witness Service in order for that support to be provided.

Calling of Witnesses

133. The following general propositions which relate to a prosecutor's duty as to calling of witnesses are taken from *R v. Apostilides* (1984) 154 CLR 563 and are still applicable to the conduct of criminal trials in Western Australia -
- (a) The prosecutor alone bears the responsibility of deciding whether a person will be called as a witness for the State.
 - (b) The trial judge may but is not obliged to question the prosecutor in order to discover the reasons which lead the prosecutor to decline to call a particular person. The judge is not called upon to adjudicate the sufficiency of those reasons.
 - (c) Whilst at the close of the State case the trial judge may properly invite the prosecutor to reconsider such a decision and to have regard to the implications as then appear to the judge at that stage of the proceedings, the judge cannot direct the prosecutor to call a particular witness.
 - (d) When charging the jury, the trial judge may make such comment as is then thought appropriate with respect to the effect which the failure of the prosecutor to call a particular person as a witness would appear to have had on the course of the trial. No doubt that comment, if any, will be affected by such information as to the prosecutor's reasons for the decision as the prosecutor thinks is proper to divulge.
134. The discretion not to call a witness should be exercised only where the prosecutor has a bona fide belief (which should include a proper inquiry of the witness) based on reasonable information that the witness lacks credibility or is otherwise unreliable.

RETRIALS

135. If a jury fails to reach a verdict in a particular case or the trial ends for other reasons, consideration should be given to whether or not a retrial is required. Factors to consider include:
- (a) whether the public interest requires a second trial of the issues;
 - (b) whether or not another jury would be in any better or worse position to reach a verdict;
 - (c) the cost to the community;
 - (d) the cost to the accused;
 - (e) the seriousness of the alleged offence;
 - (f) whether the accused has already spent time in custody.
136. The considerations listed in paragraph 135 also apply where a retrial is ordered after an appeal.
137. Where a second jury disagrees the public interest would rarely require a third trial of the accused person and special reasons to justify that course will be necessary.

SENTENCE

138. It is the duty of the prosecutor to make submissions on sentence to –
- (a) assist in the attainment of an appropriate disposition;
 - (b) prevent the judge from falling into appealable error;
 - (c) put before the court such information as may be necessary to decide an appropriate disposition.
139. Where facts are asserted on behalf of an offender which are contrary to the prosecutor's instructions or understanding, the prosecutor should press for a trial of the disputed issues if the resolution of such disputed facts is in the interests of justice or is material to sentence.
140. Where an offender is unrepresented, the prosecutor should, as far as practicable, assist the court by putting all known relevant matters before the court, including such matters as may amount to mitigation.
141. 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 the defence 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.

Victim Impact Statements

142. A victim should be offered the opportunity of presenting an oral or written statement to the court particularising any injury, loss or damage suffered by the victim as a direct result of the offence, and describing the effects on the victim of the commission of the offence.
143. The procedure for compiling and submitting victim impact statements to the court is outlined in Appendix 4.

Reparation

144. The ODPP will seek an order for restitution or compensation on behalf of victims where requested to do so and where the victim is entitled to such an order.
145. Factors to be considered when determining whether to seek an order for restitution or compensation include:
- (a) whether the offender is capable of making reparation; and
 - (b) whether civil proceedings have already been commenced.

Offenders - Cooperation With Authorities

146. On occasions, an offender will have rendered such significant assistance to the WAP in an investigation as to warrant a letter from the WAP to the court advising the nature of the assistance.
147. In order to have substantial mitigating effect, the assistance should extend beyond the investigation of the criminal enterprise in respect of which the person has been convicted.
148. To ensure that the assistance merits the unusual action of a letter to the court, and the consequent effect on sentence, such letters may only be presented when sanctioned by the Director or Deputy Director who in turn will only accept such letters from the Commissioner, Deputy Commissioner, Assistant Commissioner (Crime) or District Superintendent or Assistant Commissioners North Metropolitan, South Metropolitan and Regional Western Australia, or their Federal counterparts.

STATE APPEALS AGAINST JURY ACQUITTALS

- 148A. The State's right to appeal against a judgment of acquittal entered after a jury's verdict of not guilty is only to be exercised in circumstances
- (a) where a substantial error is likely to have affected the verdict;
 - (b) where there are reasonable prospects that the appeal will be allowed;
 - (c) where, on a retrial, there are reasonable prospects of conviction on the basis of the evidence available in relation to the charge; and
 - (d) where it is in the public interest to continue the prosecution.

148B. The following additional factors are relevant to whether or not to institute an appeal against an acquittal –

- (a) whether the error amounts to an inconsistent application of the law;
- (b) whether the verdict of acquittal is so significant as to shock the public conscience; and
- (c) whether there is a public interest in correcting the error.

STATE APPEALS AGAINST DIRECTED ACQUITTALS

149. In considering whether to institute an appeal against a directed acquittal, the State must have regard to the exceptional nature of the procedure.

150. The power to institute such an appeal is given by section 24 of the *Criminal Appeals Act 2004*. It is generally used to clarify the law in a certain area or where the interests of justice require.

STATE APPEALS AGAINST SENTENCE

151. The purpose of State appeals against sentence is to ensure that there are established and maintained adequate, just, and proportionate standards of punishment for crime. State appeals have been held by the courts to raise considerations not present in an appeal by a defendant seeking a reduction in sentence. They have been described as cutting across time-honoured concepts of criminal administration and as putting the convicted person in jeopardy a second time.

152. The following factors are relevant in considering whether or not to institute an appeal –

- (a) whether a sentence is so disproportionate to the seriousness of the crime as to reflect error in sentencing principle by the trial judge;
- (b) whether a sentence is so disproportionate to the seriousness of the crime as to shock the public conscience;
- (c) whether a sentence is so out of line with other sentences imposed for the same or similar offences without reasonable cause for that disparity;
- (d) whether the idiosyncratic views of individual judges as to particular crimes or types of crimes require correction;
- (e) whether disputed points of sentencing principle are giving, or are likely to give, rise to disparity of sentences imposed for crimes of the same or similar type;
- (f) whether existing sentences are already subject to wide and inexplicable variations and the need to reduce this disparity and variability in order to promote uniform standards of sentencing.

153. A State appeal against sentence will not be initiated simply because it is perceived as inadequate or inappropriate in a particular case. State appeals

must be considered against the background of many complex circumstances and legal principles. For any offence there is a range of sentencing options and a court must have regard, in choosing which option seems appropriate, to the principles laid down by Parliament and in other cases. For any offence there may be a number of different dispositions none of which are necessarily wrong.

EXTRADITION AND INTERSTATE TRANSFER OF PRISONERS

154. The extradition of persons required to answer any charge of an offence or to serve a sentence imposed in Western Australia will always involve expense to the State. It will generally be appropriate to incur that expense where there are reasonable prospects of conviction, in order to maintain confidence in the administration of the law and to deter offenders fleeing from justice.
155. When application is made to take steps to secure extradition, in addition to the assessment of the prosecution case in accordance with these guidelines, the following factors will be relevant -
- (a) any delay after discovery of the suspected offender;
 - (b) any compensation or resolution which might be ordered following conviction;
 - (c) the likely disposition following conviction. Where the person to be extradited is already serving a sentence in another jurisdiction this factor will have greater weight;
 - (d) the likely cost to the State.
156. The following factors, if applicable, will be taken into consideration in deciding whether approval is given -
- (a) the country or state from which the fugitive is to be extradited.
 - (b) the nationality of the fugitive.
 - (c) whether the fugitive is to be charged with an offence or, having been charged, has absconded.
 - (d) the nature and gravity of the offence or offences alleged against the fugitive.
 - (e) the existence of reasonable prospects of conviction.
 - (f) any delay after discovery of the fugitive's whereabouts.
 - (g) the likely disposition following conviction.
 - (h) where a person is in custody, whether the provisions of the *Prisoners (Interstate Transfer) Act 1983* should be utilised.
 - (i) the likely cost of extradition or transfer.

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- (j) the existence of assets held by the fugitive that could satisfy an order in relation to breach of bail or a confiscation order and where such assets are to be found.
- (k) whether the victim has expressed a wish for the matter to proceed.
157. Approval for extradition or the interstate transfer of prisoners may be sought by the WAP, the Department of Justice or other relevant government agency.
158. Before determining such a request, the Director may consult with and require information from a relevant agency.
159. Applications for approval should be in writing, presenting reasons for the extradition or transfer of a particular fugitive offender.
160. In urgent cases, approval may be sought and given orally. An oral approval must be followed by a full report of the circumstances from the requesting agency as soon as possible.
161. In seeking approval for extradition in providing information, the Director should be advised if and to what extent the fugitive might reasonably constitute a risk to the public, either at large or for the purposes of transportation to Western Australia. Advice to the Director should include recommendations as to whether the fugitive should be extradited on bail or in custody. If in custody advice should include information on the number of officers required to effect extradition, cost of economy airfare for the fugitive and officer(s).
162. Approval for the extradition or interstate transfer of a prisoner may be given by the Director, the Deputy Director, or any duly authorised State Prosecutor.

FORFEITURE, CONFISCATION OF ASSETS AND RESTITUTION OF PROPERTY

163. The procedure for prosecutors dealing with the forfeiture, confiscation and restitution of property is contained in Appendix 5.

MEDIA POLICY

164. The procedure for interaction between the ODPP and the media is contained in Appendix 6.

EFFECT OF POLICY AND GUIDELINES

165. An act or omission of the Director or a person acting on behalf of the Director shall not be called into question or held to be invalid on the grounds of a failure to comply with this *Statement (Director of Public Prosecutions Act 1991, s.24(3))*.
166. While this *Statement* is intended to guide and assist prosecutors in the performance of their function, prosecutors must at all times have regard to

their role as ministers of justice, and exercise their professional judgment and common sense in their decision-making consistent with that role.

ROBERT COCK QC
DIRECTOR OF PUBLIC PROSECUTIONS

Appendix 1

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;

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- 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 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 organisations 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 2

Applying for Violence Restraining Orders Pursuant to the *Restraining Orders Act 1997*

Definition

1. A “**violence restraining order**” (VRO) is an order made under the *RO Act*, imposing restraints of the kind referred to in s13 of the *RO Act*, essentially aimed at preventing violence.
2. The DPP can request that the Court to make a VRO for a person who needs the protection or benefit of such an order.

Power and Authority

3. A Court can make a VRO during any criminal proceedings, pursuant to S63(1) of the *RO Act*:
“A court, including a judicial officer considering a case for bail, before which a person charged with an offence is appearing may make a restraining order against that person or any other person who gives evidence in relation to the charge.”
4. The DPP would normally request a VRO in those cases where there is a fear of a violent personal offence being committed. These are the matters where safety is clearly an issue.
5. Any such request for a VRO for victims/complainants against appropriate offenders, should be made after conviction and during the sentencing process.
6. The DPP, in requesting a VRO for a victim/complainant, is not acting for them, but is making the request on behalf of the State for the complainant/victim to ensure their safety post-trial. The role of the DPP in the process is similar to that in applications for reparation on behalf of victims.

Notification

7. The DPP is to ask the complainant/victim, using the questionnaire process in the initial victim contact letter (IVCL), if they would like the DPP to request a VRO, subject to:
 - (a) the DPP being of the view that it is appropriate to request a VRO on the facts;
 - (b) the offender being convicted; and
 - (c) the request being made at the sentencing stage of proceedings.
8. Generally it is important that the victim *consent* to the request of a VRO be sought and obtained before proceeding to a request for a VRO.

Procedure for Requesting a Violence Restraining Order

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9. Generally the request should be made as part of the sentencing process. At this stage the Respondent/Offender would have either been convicted or pleaded guilty. Whilst a VRO is not a sentencing option, but a civil order, s123 of the *Sentencing Act 1995* links any VROs to the sentencing/safety process.
 10. From the DPP perspective, a request for a VRO is an extension of the process of sentencing, including ensuring victim safety. Section 63(1) of the *RO Act* does not limit when a request can be made, subject to the respondent being a person charged with an offence. But, whilst bail conditions are usually sufficient to protect a victim in the earlier stages of prosecution, given the limits on parole conditions, a VRO represents the best way to ensure victim safety subsequent to sentencing.
 11. That is, *generally* no request would be made at the bail hearing, or any occasion prior to sentencing or in the event of a dismissal. However, prosecutors have *discretion* to consider applying on other occasions in exceptional circumstances.
 12. An application for a VRO at a time other than sentencing, or variation of a VRO, will be made by the DPP ONLY where the DPP/WAP is at fault.
 13. If a VRO is not sought at sentencing due to DPP/WAP fault, the DPP will file an application and appear at the hearing and move for the order. If the order is opposed the DPP will withdraw and the complainant will have to take over the conduct of the application. If a final order is not made under section 63(4a) of the *RO Act* the DPP will not appear in a contested application.

Appropriate Circumstances

14. The DPP will request a VRO in appropriate circumstances at the recommendation of the File Manager. The File Manager will have a broad discretion, but will generally exercise their discretion to request a VRO, if the following conditions are met:
 - (a) the offence is a violent personal offence (as defined under the *RO Act*, see list below);
 - (b) there is a risk that the offender may commit a violent offence in the future or it is reasonable for the victim to fear so or there are concerns for victim's safety (in assessing this the FM will give particular weight to where the victim and offender have been in a domestic relationship or there is a prospect of future contact or the circumstances of the offence are serious);
 - (c) there is evidence to support such a request based on current offence/s and conviction/s on the facts, past criminal record; past history of violence; and past history of VROs and breach of any VROs; and
 - (d) the victim has consented to a VRO being requested;

List of Violent Personal Offences

15. All offences in Part V of the *Criminal Code*, other than Chapters XXXIV and XXXV (the Chapters dealing with offences relating to marriage and parental rights and duties, and defamation).
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These include, but are not limited to:

- (a) Common Assault (s.313 *Criminal Code*)
- (b) Assault occasioning bodily harm (s.317 *Criminal Code*)
- (c) Serious Assault (s.318 *Criminal Code*)
- (d) Sexual offences against a child under 13 (s.320 *Criminal Code*)
- (e) Sexual offences against a child over 13 and under 16 (s.321 *Criminal Code*)
- (f) Indecent and Aggravated Indecent assault (ss.323 & 324 *Criminal Code*)
- (g) Sexual penetration and Aggravated sexual penetration without consent (ss.325 & 326 *Criminal Code*)
- (h) Sexual Coercion and Aggravated sexual coercion (ss.327 & 328 *Criminal Code*)
- (i) Kidnapping (s.332 *Criminal Code*)
- (j) Deprivation of Liberty (s.333 *Criminal Code*)
- (k) Threats and threats with intent to influence (ss.338A & 338B *Criminal Code*)
- (l) Stalking (s.338E *Criminal Code*).

Decision As to Whether Request for Violence Restraining Order will be made

16. If consent is provided by complainant/victim (see below) and after considering the Brief, the File Manager should indicate whether VRO should/not be requested by DPP by endorsing the *Pleas Information Sheet* that a VRO/no VRO is to be requested.

Absence of Victim Consent

17. The DPP will not request a VRO unless the victim consents. However, where the File Manager believes that an order should be requested they should suggest to the victim that they consider obtaining legal advice and counselling.
18. Once the request has been consented to by complainant/victim, the File Manager will inform the victim/complainant of the application that they will/will not be requesting a VRO.
19. If the DPP will not make the request for a VRO, referral details for Legal Aid will be provided where appropriate.

Grounds for Granting a Violence Restraining Order

20. Under s11 of *RO Act*, the test at law for a VRO is that the Court be satisfied on the balance of probabilities that unless restrained the respondent is likely to:
- (i) commit a violent personal offence against the applicant; or
 - (ii) behave in a manner that could reasonably be expected to cause the applicant or relevant person to fear that the respondent will commit such an offence.
21. Under Section 12(1) *RO Act* the Court must consider:
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- (a) the need to ensure that the person seeking protection is protected from acts of abuse;
 - (b) the need to prevent behaviour that could reasonably be expected to cause fear that the person seeking protection will have an act of abuse committed against him or her;
 - (ba) the need to ensure that the children are not exposed to acts of family and domestic violence;
 - (c) the welfare of children who are likely to be affected by the respondent's behaviour or the operation of the proposed order;
 - (d) the accommodation needs of the respondent and the applicant;
 - (da) the past history of the respondent and person seeking to be protected with respect to application under the *RO Act*.
 - (e) hardship that may be caused to the respondent if the order is made;
 - (f) any family orders;
 - (g) other current legal proceedings involving the respondent or the applicant;
 - (h) any criminal record of the respondent;
 - (i) any previous similar behaviour of the respondent whether in relation to the person to be protected or otherwise; and
 - (j) other matters the court considers relevant.
- (2) A court is to have regard to the matters set out in subsection (1)(a), (b), (ba) and (c) as being of primary importance.
22. This section makes an offender's criminal record and any prior similar behaviour relevant (which would include other VRO's granted against the offender).
23. The court will have evidence before it regarding the sentencing:
- If the offender has been found or pleaded guilty then the facts of the offence are essentially proven and should be carried over as evidence to support the restraining order application. That is, any plea or conviction is evidence of all the material facts necessary to sustain the elements of the offence/conviction which should also be grounds for supporting a VRO.
 - Further, the court will have the offender's prior criminal record, which is specifically made relevant to the granting of a VRO by section 12(h).
 - Further matters that may be relevant and which could readily be put to the court are
 - any prior history of VRO's against the offender (s.12(i));
 - prior criminal record and any other pending criminal charges for violence (s.12(g)).
24. The sentencing court will be provided with this information once the offender/respondent is convicted. This information should be provided by the WAP.
25. In summary, the main evidence to support the VRO application would include:
- facts of the current criminal charges;
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- evidence supporting current criminal charges;
 - prior criminal history; and
 - prior history of any restraining orders.
26. Section 63(4) provides that
- (4) A court is not to make a restraining order under this section unless –
- (a) the court is satisfied that there are grounds for making the order under section 11 or 34, as is appropriate in the case;
 - (b) the court has had regard to the matters set out in section 12 or 35, as is appropriate to the case; and
 - (c) the person is present when the order is made and has been given the opportunity to be heard on the matter.

Orders Sought

27. S13 of the *RO Act 1997* provides that the court in imposing a VRO may impose such restraints on lawful activities and behaviours of the respondent as are appropriate to prevent commission of a violent personal offence against the respondent or cause fear that such an offence will be committed.
28. S13 of the *RO Act 1997* empowers the court to impose an order absolutely or on such terms as the court considers appropriate.

Length of a Violence Restraining Order

29. The Court has the discretion under S15 of the *RO Act* to make a VRO for whatever length of time it considers appropriate. If no period is specified, the order remains in force for 2 years.
30. If a lengthy order is appropriate, counsel might seek an order for a set number of years (eg. 5 years or “until further order of this court”).
31. Generally, the order should apply from the date of it being made by the court, even if the respondent is going into custody on making of the order.

Outcome of an Application for a Violence Restraining Order

32. The File Manager will inform the victim/complainant of the outcome of the application and the reasons for that outcome.
33. The File Manager must also inform the victim that they can seek an order on their own behalf and suggest they may wish to seek advice from their legal adviser or the court and be given contact details for referral to Legal Aid.

* This Appendix pre-dates amendments to the *Restraining Orders Act 1997*.

Appendix 3

Procedure for Dealing with Secondary Victims of Homicide

1. The DPP will respond to key secondary victims if charges have been laid, in the following manner:
 - (a) Allocate a State Prosecutor to act as file manager;
 - (b) Inform the key secondary victim (KSV) of the name of the file manager and contact details for that person;
 - (c) Make contact with KSV, ascertain from KSV the extent of the information required about the criminal processes and provide or make available ongoing information to KSV as required including:
 - (i) significant court dates, whether the KSV is a witness in the proceedings or not;
 - (ii) the criminal process including pre-trial, trial and sentencing and appeal processes to help demystify them;
 - (iii) written material in pamphlet form and video material about court and non court processes available to KSV during the criminal proceedings, including reparation and compensation, VSS and Victim Offender Mediation Unit (VMU), as required;
 - (iv) inform KSV of possible outcomes at major stages of the criminal process including, the trial, sentence and appeal; and,
 - (v) inform KSV of actual outcomes at major stages of criminal processes, including sentence, trial and appeal.
 - (d) Provide ongoing information to KSV;
 - (e) Discuss with KSV any major proposed changes to charges, including any decision to file a nolle prosequi or accept a plea of guilty;
 - (f) Inform KSV of any major changes to charges, including any decision to file a nolle prosequi or accept a plea of guilty by SIO or charges laid by the DPP;
 - (g) Inform KSV of trial date;
 - (h) Inform KSV of possible option of, and process for submitting a Victim Impact Statement;
 - (i) Refer KSV to Victim Support Service for support and assistance;
 - (j) Issue subpoena and arrange for Senior Investigating Officer to serve personally on KSV;
 - (k) Conduct an interview with KSV, subject to their agreement and whether or not witness, including to inform KSV of potential outcomes of trial;

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- (l) Inform KSV about witness fees, accommodation, travel arrangements and child care available for KSV as a witness during trial;
 - (m) Process any claims for witness fees by KSV who is witness, if not applied for at court registry;
 - (n) Inform KSV of outcome of trial and any possibility of appeal (if latter known);
 - (o) Inform KSV of any appeal including date for hearing;
 - (p) Discuss appeal outcome possibilities with KSV;
 - (q) Inform KSV of the result of the appeal;
 - (r) Inform the KSV of date when it is reasonably expected that the accused will be sentenced;
 - (s) Discuss various sentencing possibilities or outcomes with KSV;
 - (t) Check whether KSV requires DPP to make application for reparation (compensation and/or restitution or a Violence Restraining Order) and ensure that any application is made to court;
 - (u) Ensure that any Victim Impact Statement is presented to the Court;
 - (v) Inform KSV of the sentence; and
 - (w) Send final letter to KSV.

Appendix 4

Victim Impact Statements

What is a Victim Impact Statement and what is its status?

1. A victim impact statement ("VIS") contains written information concerning the impact of the offence or offences on a victim, for presentation to the sentencing court at the appropriate time by the prosecutor.
2. A VIS is like a cross between a pre-sentence report and the statement of material facts provided by the prosecution (Mitchell v R (1998) 104 A Crim R 523).
3. Sections 13, 24, 25 and 26 Sentencing Act 1995 generally governs the content, use and availability of VISs. The Sentencing Act 1995 provides that:
 - (a) a victim may provide a VIS;
 - (b) the VIS is not to address the way or extent to which the offender ought be sentenced;
 - (c) the court may use a VIS to assist it in determining proper sentence;
 - (d) the court may make a written VIS available to the prosecutor and to the offender, on such conditions as it thinks fit;
 - (e) the court may rule as inadmissible the whole or any part of a VIS.
4. A victim can be cross-examined as to the content of a VIS for the purposes of sentencing or if it is inconsistent with any evidence they gave during the trial.

Who Drafts a Victim Impact Statement?

5. The ODPP does not prepare VISs as it does not act for victims.
6. The ODPP's initial letter to victims:
 - (a) informs them of their right to provide a VIS;
 - (b) encloses a pamphlet from the Victim Support Service ("VSS"); and
 - (c) informs them that the VSS can assist victims to prepare VIS.
7. As a matter of practice, the ODPP normally receives the VIS either directly from the Victim or via the VSS.
8. If the VIS requires editing the ODPP should endeavour where time permits to send it back to VSS to enable the editing to be done with the victim.

Receipt and Tendering

9. The ODPP will generally present a VIS to the court in two situations:
 - (a) Where the victim indicates his or her intention to put information in writing or orally before the sentencing court and subject to any legal requirements about its content (see below); or

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- (b) Where a prosecutor, as a result of work on the brief, decides that the circumstances personal to the victim ought to be put before the sentencing Judge.

ODPP Responsibilities and Procedures Regarding Victim Impact Statements

10. The role of the State in relation to VISs is to facilitate the presentation of relevant information to the sentencing Judge with the task of deciding a proper sentence. In *Mitchell, Kennedy and Ipp JJ* considered the operation of sections 13, 24, 25 and 26 of the Sentencing Act 1995 and the obligations on counsel for the State regarding tendering victim impact statements and made the following observations:
- (a) A responsibility rests upon the prosecutor who tenders the VIS to ensure as far as possible that it complies with the requirements of the Sentencing Act 1995.
- (b) In particular, the prosecutor must ensure that VISs do not address the way in which, or the extent to which, the offender ought to be sentenced.
11. The ODPP (the State Prosecutor) effectively acts as agent for the court for the purposes of receiving and passing on the VIS (*Mitchell's Case*).

Disclosure

12. Subject to directions first obtained from the Court and only when directed by the Court to do so, Prosecuting counsel is to ensure in accordance with any such those directions, as far as practicable, that the defence is given a copy of the VIS sufficiently early to enable the defence to make a reasoned and proper judgment as to their admissibility. Subject to directions of the Court the copy provided to the defence is not to be copied and is to be returned to and therefore collected by Prosecuting Counsel at the conclusion of sentencing.

Outcome

13. An officer of the ODPP, shall, if requested by the victim, inform the Victim of the sentence, including whether the VIS was tendered and whether the VIS required editing.

Common Issues for Victims

14. There is a general need for prosecutors to ensure that:
- VISs comply with the Sentencing Act 1995 and do not address the way in which, or the extent to which, the offender ought to be sentenced.
 - If a VIS has to be edited, seeking a fresh VIS if practicable from the victim, but if that is not practicable then editing, with notice given to the

victim beforehand if practical and alerting the court about the occurrence of editing.

- Victims be informed that they may be cross-examined on a VIS.
- Any victim concerns about whether a VIS was used and if not why not are satisfied.
- Any wish on the part of victims to provide an oral VIS is accommodated.
- Victims are provided with information about the process of tendering a VIS, including whether the defendant can have verbal or written access and whether the offender is entitled to retain a copy.

Appendix 5

Policy and Guidelines for the Confiscation Of Property

Pursuant to the

Criminal Property Confiscation Act 2000

Application

1. The policies expressed in this Statement apply to all decisions to proceed under the Criminal Property Confiscation Act 2000 ('CPCA').
2. The CPCA is to be used to compliment the criminal justice system by depriving offenders of the fruits of their criminal conduct and the decision to exercise the provisions of the Act is made at the discretion of the DPP on the basis of the guidelines set out below.

Definitions

3. The terms contained in this Statement have the same meaning as under the CPCA.

Objectives Of Confiscating Crime-Used Property

4. The objects of confiscating crime-used property are:
 - (i) To act as a deterrent to members of the community who use or might use their property or the property of another, for a criminal purpose; and
 - (ii) To confiscate property used, directly or indirectly, in connection with the commission of a confiscation offence, however the potential revenue must not be allowed to jeopardise the effective investigation and prosecution of criminal offences, nor to be the sole factor considered in making the decision to take confiscation proceedings in respect of the property.
5. The decisions to proceed to confiscate crime-used property must be determine with due regard to the desirability of ensuring that:
 - (i) Innocent persons do not suffer undue hardship by reason of a connection to the crime-used property; and
 - (ii) The CPCA is not intended primarily as an avenue through which existing exhibits and property are forfeited and destroyed, although this may be an incidental consequence of proceedings properly instituted in accordance with these guidelines.

Factors to be Considered when confiscating Crime-Used Property

6. The following factors are relevant to a decision to confiscate crime-used property:

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- (a) The extent to which the property was set up or actually used to facilitate the commission of the confiscation offence – whether it was incidental or integral.
 - (b) Whether it is in the public interest to seek to confiscate the crime-used property.
 - (c) The need for general deterrence of the underlying confiscation offence.
 - (d) The need for specific deterrence of the underlying confiscation offence.
 - (e) Whether the person responsible for criminally using the property co-operated to a significant level with the authorities even where there has been cooperation with the authorities it may nevertheless be in the public interest to confiscate the property.
 - (f) The seriousness of the confiscation offence.
 - (g) Where the cost of recovering the property exceeds the likely net return to the State, in the absence of other public interest factors, it may not be in the State's interest to seek recovery.
 - (h) Where the potential return to the State having regard to the value of crime-used property is significant, it will not be appropriate to confiscate the property in the absence of the presence of one or more of the factors set out in these guidelines.
 - (i) Whether instituting confiscation proceedings will deprive the victim of the confiscation offence of compensation or reparation. Where the proceedings will have this result it may not be appropriate to proceed to confiscation.
 - (j) Any sentence imposed in respect of the confiscation offence is not relevant to a determination as to whether confiscation proceedings should be instituted in respect of property used in connection with that offence.
 - (k) Representations regarding the effect of confiscation proceedings in respect of crime-used property on the family or relations of the offender, where known, are irrelevant, other than in so far as they are an innocent party in relation to the property.

Factors to be Considered when Confiscating Crime-Derived Property

- 7. The following factors are to be considered when determining whether to proceed to confiscate crime-derived property:
 - (a) The extent to which the property was derived from the commission of the confiscation offence – whether it was wholly or partly funded by the commission of the confiscation offence.
 - (b) Whether it is in the public interest to seek to confiscate the crime-derived property.
 - (c) The need for general deterrence of the underlying confiscation offence.
 - (d) The need for specific deterrence of the underlying confiscation offence.

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- (e) Whether the person responsible for criminally deriving the property cooperated to a significant level with the authorities even where there has been cooperation with the authorities it may nevertheless be in the public interest to confiscate the property.
 - (f) Where the cost of recovering the property exceeds the likely net return to the State, in the absence of other public interest factors, it may not be in the State's interest to seek recovery.
 - (g) The strength of the evidence showing that the property is derived from the commission of a confiscation offence, having regard to any alternative explanations as to how the property was derived.
 - (h) Where the potential return to the State having regard to the value of crime-used property is significant, it will not be appropriate to confiscate the property in the absence of the presence of one or more of the factors set out in these guidelines which will militate in favour of confiscation proceedings.
 - (i) Whether instituting confiscation proceedings will deprive the victim of the confiscation offence of compensation or reparation. Where the proceedings will have this result it may not be appropriate to proceed to confiscation.

The Seizure And Confiscation Of Property Of A Declared Drug Trafficker

8. Despite that all property of a drug trafficker being automatically confiscated to the State upon the declaration made pursuant to section 32A of the Misuse of Drugs Act 1981, where the cost of recovering the property exceeds the likely return to the State, in the absence of other public interest factors, it may not be in the State's interest to seek recovery of particular property.

Appendix 6

Media Policy

1. The public's interest in information must be balanced against the need to maintain the integrity of the criminal process, and the DPP's stated tenets of fairness and justice.

Policy and Its Objectives

2. It is the policy of the Director of Public Prosecutions for Western Australia to assist, whenever possible, the public to understand how the criminal justice system works and, specifically, the DPP's function within it. It is in the common interest of the DPP and the public for the public to know that cases are being dealt with in accordance with the law and the DPP's stated Policies and Guidelines. Informed debate is preferable to mis- or ill-informed criticism.
3. The DPP recognises that news media are often the only effective means by which the Prosecution can inform and educate the public in a timely manner of matters of topical interest.
4. Accordingly, and subject to any legal prohibition or competing public interest consideration, the news media should be assisted in their efforts to obtain information from the DPP in order that the DPP can achieve the following objectives:
 - (a) to inform and educate the public about the functioning of the criminal justice system and the DPP's role in that system;
 - (b) to reassure the public about the functioning of the criminal justice system;
 - (c) to demonstrate the DPP's openness and accountability;
 - (d) to explain the reasons for decisions to commence, continue, or terminate prosecutions;
 - (e) to ensure that reports concerning the DPP's activities and the operation of the criminal justice system are complete, accurate, and fair.
5. It is also recognised that not all prosecutors will feel confident or comfortable in dealing with the media. Accordingly, the extent to which a prosecutor makes a public comment, particularly one which is to be broadcast, is a matter for the individual concerned. If a prosecutor is disinclined to comment in a particular situation, the inquirer should be referred to the Director or the Director Legal Services.
6. For the purposes of this Policy "public comment" includes the expression of views as an officer of the DPP to the press, in letters, books, journals, notices, at meetings, or interviews for radio or television.

Guidelines Regarding Information

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7. Prosecutors may use their discretion as to the information they supply but, subject to specific restrictions mentioned herein, the following factors are relevant to the exercise of that discretion:
- (a) It is in the Prosecution's interest that trials and other cases are reported. The community must know about the matters before the courts, and how they are dealt with, if the rule of law is to have any deterrent effect upon criminal conduct and if the community is to have confidence in the administration of justice.
 - (b) It is in the Prosecution's interest that reports should be accurate. Therefore, if a reporter who has attended court seeks clarification or assistance, reasonable efforts should be made to help.
 - (c) There is a real risk of a report being incomplete or inaccurate when journalists report proceedings they have not personally attended, and rely on getting information after the trial or proceeding ends. Nevertheless few media outlets can afford to fully cover proceedings. It is a matter for the discretion of the prosecutor whether to supply information to reporters who were not present during a hearing, having regard to the objectives of this Policy.
 - (d) Respect should be accorded to the feelings and concerns of witnesses and victims. Witnesses and victims' addresses and contact details should never be disclosed. If news media wish to contact a witness or victim, advise the witness or victim of the inquiry so that he or she can decide whether to contact the inquirer directly.
 - (e) Prosecutors making public comment represent the State and speak on behalf of the DPP and as an officer of the Court. They should be careful not to express personal opinions inconsistent with the responsibilities that attach to their position. However, this does not prohibit expressing compassion or sympathy toward victims, or condemnation of or legitimate concern regarding criminal conduct, if consistent with the Prosecution's position as presented in open court.
 - (f) The type and the extent of the information that can properly be disclosed will depend, inter alia, upon the stage and nature of the proceedings being commented on. For example, more information and comment may be made about a case following trial or sentence, than while it is sub judice.
 - (g) Officers should avoid comment on matters outside their area of responsibility, or on cases in which they have not been involved or have had only marginal involvement.
 - (h) The Director, through his secretary, must be kept advised of pre-arranged speaking engagements and interviews. It is wise to consult with the Director about the topics that may come up for discussion.
 - (i) Regard shall be had, when commenting publicly, to any legislative or court-ordered restrictions or prohibitions upon comment – for example by reason of or imposed pursuant to the Justices Act 1902, Bail Act 1982, Evidence Act 1906, Children's Court of Western Australia Act 1988 or Criminal Procedure Act 2004.
 - (j) Information revealed about specific cases should not go beyond the facts and related circumstances disclosed, and comments made, in open court.
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- (k) Officers shall not reveal information that is privileged;
 - (l) Officers shall not make comments that may be defamatory;
 - (m) Officers shall be careful to avoid comment that may adversely affect the State's relations with another State or Territory, the Federal Government, or another country.

Comment Before Trial or Plea

- 8. Where an inquiry concerns a pending trial or plea, information may be given as to the trial date, likely length of the trial, and the venue. Details of charges contained within an indictment ought not to be disclosed prior to the indictment being filed and served, although the charges upon which an accused has been committed can be revealed or confirmed, it being made clear that those charges are subject to the formulation of an indictment.
- 9. The dates of past or scheduled future court appearances, and the purpose of those appearances, can be revealed. Be aware of legislative restrictions on the disclosure of information such as in the Justices Act 1902, Bail Act 1982, and Evidence Act 1906.
- 10. Names, addresses and contact details of witnesses cannot be disclosed.
- 11. Details of prior convictions of an accused cannot be disclosed.

Comment Upon a Plea of Guilty

- 12. Following a plea of 'guilty', the following details may be provided
 - (a) a copy of the indictment (but not of any list of witnesses);
 - (b) the plea;
 - (c) the court, and the name of the judge and counsel;
 - (d) the sentence or other orders made against the offender;
 - (e) the offender's address, limited to the suburb only, and not the street name or number;
 - (f) a copy of the Prosecution's statement of the material facts as presented in court;
 - (g) any other information that has been stated in open court (eg: criminal history), subject to any order of the court restricting publication and any legislative prohibitions.

Comment Regarding Trials

- 13. In the event of a trial, all the details referred to above in respect of pleas of guilty may be given. All other questions should be referred to prosecuting counsel. If prosecuting counsel is not employed in the office, then such questions should be referred to a Consultant State Prosecutor, the Director, Legal Services, or the Director.

Comment on Specific Cases or Sentences

14. No comment should be made out of court critical of a verdict or sentence, or suggesting that a case might or will be the subject of appeal. In the case of Crown appeals, the practice is not to release details to the media until the appeal is filed and served.
15. Certain cases will attract particular media interest, and may be attended by controversy. If asked, it is proper to say (where an appeal is available) that the DPP as a matter of course considers all cases to decide whether an appeal is proper, and will do so in the present case. Where no appeal is available (as in the case of an acquittal on the merits by a jury) it is proper to say that no appeal is available, as the jury's verdict is final.

Comment on Policy & Practices

16. It is permissible to comment on the DPP's practices. However, comments on policy not covered by the Statement of Prosecution Policy & Guidelines or other Gazetted policy documents should be referred to the Director, the Director, Legal Services, a Consultant State Prosecutor or the Manager of the Team responsible for the particular area of policy being inquired about (eg: Victims, confiscation of profits of crime). It would not be proper, or correct, to suggest that the DPP follows internal policies other than those set out in Policy documents.
17. It is not proper for officers to make comments critical of existing or proposed legislation, any court decision, Parliament, any government department or authority, DPP Policy or DPP procedure, without reference first to and express approval from the Director.

Comment on Investigations or Operational Matters

18. Comments should not be made on investigations or operational matters, and if appropriate such requests for comment should be referred to the Director. Comments which may prejudice WAP investigations or pending prosecutions should be avoided. Sometimes the WAP specify certain information they wish to keep confidential.

Comment on Decisions to Terminate Prosecutions

19. It is DPP policy to give reasons to a court for the termination of a prosecution [see Clause 73, Statement of Prosecution Policy & Guidelines 2005].
20. It is proper to explain the DPP's approach to the question of whether a prosecution is to continue or be terminated, by reference to the factors in the Statement (ie: prima facie case, reasonable prospects of conviction, public interest in having charges adjudicated by a court of competent jurisdiction, etc).

Requests to Film Prosecutors

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21. Newspapers and television stations have a legitimate interest in obtaining photographs or film of prosecutors for use in reports of cases. It is a matter for individuals as to how they will respond to such a request. However, there is no objection to prosecutors cooperating with reasonable requests of journalists in the office or elsewhere to provide newspapers with photographs or television stations with file footage.