

## Responding to Criminal Procedure Questions

### DPP policies

The prosecution process is outlined in the DPP statement of Prosecution Policy and Guidelines and is determined by whether ***there is a reasonable prospect of conviction based on the evidence*** and ***if it is in the public interest***. The policy outlines the criteria for both areas.

- Identify the relevant sections from the policy and apply them to the facts of the case
- When referencing the policy identify either the 'evaluating the evidence criteria' or 'public interest criteria' then the letter (pinpoint).
- First: is there a reasonable prospect of conviction? Second: is it in the public interest?
- There may be an overlap with sentencing

### Reasonable prospect of conviction criteria

- a. Are there grounds for believing the evidence may be excluded bearing in mind the principles of admissibility at common law and under statute?
- b. If the case depends in part on admissions by the accused, are there any grounds for believing that they are of doubtful reliability having regard to the age, intelligence and apparent understanding of the accused?
- c. Does it appear that a witness is exaggerating, or that his or her memory is faulty, or that the witness is either hostile or friendly to the accused, or may be otherwise unreliable?
- d. Has a witness a motive for telling less than the whole truth?
- e. Are there matters which might properly be put to a witness by the defence to attack his or her credibility?
- f. What sort of impression is the witness likely to make? How is the witness likely to stand up to cross-examination?
- g. If identity is likely to be an issue, how cogent and reliable is the evidence of those who purport to identify the accused?
- h. If there is conflict between eye witnesses, does it go beyond what one would expect and hence materially weaken the case?
- i. Is there anything which causes suspicion that a false story may have been concocted?
- j. Are all the necessary witnesses available and competent to give evidence, including any who may be out of the jurisdiction?
- k. Is any witness likely to obtain an exemption from giving evidence pursuant to section 21 of the Evidence Act, 1929?
- l. Where child witnesses are involved, are there statutory difficulties in the reception and evaluation of their evidence?

### Public interest criteria

- a. the seriousness or, conversely, the triviality of the alleged offence or that it is of a "technical" nature only
- b. any mitigating or aggravating circumstances
- c. the youth, age, intelligence, physical health, mental health, or special infirmity of the accused, a witness or victim
- d. the accused's antecedents and background

- e. the staleness of the alleged offence
- f. the degree of culpability of the accused in connection with the offence
- g. the effect on public order and morale
- h. the obsolescence or obscurity of the law
- i. whether the prosecution would be perceived as counter-productive, for example, by bringing the law into disrepute
- j. the availability and efficacy of any alternatives to prosecution
- k. the prevalence of the alleged offence and the need for deterrence, both personal and general
- l. whether the consequences of any resulting prosecution or conviction would be unduly harsh and oppressive
- m. whether the alleged offence is of considerable public concern
- n. any entitlement of the State or other person or body to criminal compensation, reparation or forfeiture
- o. the attitude of the victim of the alleged offence to a prosecution
- p. the likely length and expense of a trial
- q. whether the accused is willing to co-operate in the investigation or prosecution of others, or the extent to which the accused has done so
- r. the likely outcome in the event of a finding of guilt having regard to the sentencing options available to the Court
- s. whether the alleged offence is triable only on indictment
- t. the necessity to maintain public confidence in such institutions as the Parliament and the Courts.

There is sufficient reason to prosecute as the criteria for both the reasonable prospect for conviction and public interest have been satisfied.

### Charging

Guideline #1 of the DPP Policy indicates that the charge must **adequately reflect the nature and extent of the criminal conduct alleged**; and **provide appropriate basis for sentence**. There must not be overcharging to gain 'charge bargaining' pursuant of guideline #2 power. The number of counts also needs to be specified pursuant of **Wellington v Police**.

#### Cases

- *Wellington v Police* [2009] SASR 215 – only one count (para 5, 6, 7). Both incidents were separated by a not insignificant period of time and they occurred in different, albeit physically close, locations.
- *Walsh v Tattersall* (1996) 188 CLR 77. One assault or two? – One assault.
- *Haskett v Police* [2005] SASC 174. – All of the blows were part of one course of conduct and constituted what any reasonable person would regard as a single incident.

### Bail

If you are taken into police custody, you are entitled to apply for release on bail (s4 Bail Act SA).

### Three types of offences

There are three types of offences which are defined under s 5 of the Summary Procedure Act 1921.