

Annexure 4- Recommendations

Recommendation 1- The DPP should undertake adjudications in all matters involving major indictable charges.

Recommendation 2- In arrest cases, at the “initial appearance” before a Magistrate, unless the Magistrate is persuaded otherwise, the matter should be adjourned for at least seven days to allow the adjudication to occur:

- Investigators should actively pursue investigations and the gathering of evidence following the initial appearance and, at the first appearance, SA Police will be expected to identify evidence gathered to date.
- Not less than four days before the “first appearance”, all relevant material obtained in the investigation must be provided by SA Police to the DPP and the accused.
- Not less than two days before the first appearance the DPP must advise SA Police and the accused of the DPP’s adjudication as to the charge, and advise SA Police as to evidence likely to be required and the period which the DPP recommends SA Police seek between the first and second appearances.

Recommendation 3- Appropriate timing adjustments should be made in report cases.

Recommendation 4- These administrative arrangements for the adjudication process should be bolstered by Rules of Court or practice directions.

Recommendation 5- Subject to appropriate adjustments of other times, Rule 20.01 of the Magistrates Court Rules should be amended to require the DPP to advise the Court and the accused of the specific charge or charges to be laid not less than seven days before the second appearance.

Recommendation 6- In cases other than those involving child complainants in sexual assault cases, a time limit of eight weeks should be prescribed as the standard period following the first appearance for service of the preliminary brief upon the DPP and the

accused; and a further four weeks should be prescribed for the making of the charge determination.

Recommendation 7- The court should be empowered to enlarge or contract these periods.

Recommendation 8- If a period of longer than eight weeks is fixed for the provision of the preliminary brief to the DPP and the accused, at the first appearance the court should fix a date for a progress check before a “judicial registrar” unless persuaded that such a check is not appropriate in the particular circumstances. The standard date for the check appearance should be prescribed as about halfway between the first and second appearances.

Recommendation 9- At least four days before the progress check appearance, SA Police must provide all relevant material obtained to date to the DPP and the accused.

Recommendation 10- At the progress check appearance,¹ SA Police should be required to advise the court of matters such as the progress or otherwise of an investigation and whether the date for the preliminary brief is likely to be met.

Recommendation 11- The judicial officer presiding at the progress check hearing should be empowered to amend the dates for the preliminary brief and charge determination.

Recommendation 12- Rule 20.01 of the Magistrate Court Rules should be amended to require the DPP to advise the court and the accused of the nature of the charge the DPP has determined should be laid, not just the fact that a decision has been made.

Recommendation 13- The DPP should also advise in writing if the DPP has decided not to make a charge determination for a major indictable offence.

¹ The accused should also be required to attend the progress check hearing.

Recommendation 14- Subject to other timing amendments, Rule 20.01 should be amended to require the advice to be given seven days prior to the second appearance.

Recommendation 15- The DPP and legal practitioners acting for accused persons should be encouraged to confer after the initial appearance and prior to adjudication and, unless the court otherwise orders, required to confer:

- prior to the progress check;
- after receipt of the preliminary brief and before the charge determination; and
- after receipt of the committal brief and prior to the answer charge hearing.

Recommendation 16- Following each of the mandatory conferences, at the next court hearing the parties should be required to report to the court as to the result of the conference.²

Recommendation 17- The DPP, rather than SA Police, should appear at all second appearances and thereafter:

Recommendation 18- If SA Police have been unable to meet the date for provision of the preliminary brief, SA Police should:

1. Not later than the date fixed for the provision of the preliminary brief, provide to the DPP and the accused all relevant material gathered to date; and
2. Not later than the date fixed for the provision of the preliminary brief, report that fact to the DPP and explain the reasons for the delay and the time likely to be needed to complete the brief.

² Anything said at such conferences, or at court hearings concerning such conferences, generally should not be admissible, but consideration should be given to limited exceptions. For example, if, for the purpose of sentencing, the accused subsequently seeks to establish that an offer to plead was made during a conference.

Recommendation 19- Priority be given to sexual assault cases involving child complainants. In such cases the standard period for service of the preliminary brief be prescribed as six weeks and, if longer than six weeks is fixed, the progress check system earlier recommended apply. Other periods through to committal should be reduced.

Recommendation 20- Amendment to s 123(4)(b) to remove the words “in accordance with s 34 of the *Evidence Act 1929*”.

Recommendation 21- Amendment to the legislation to provide, specifically, that immediately following a plea of guilty the offender is to be committed to the superior court for sentence.

Recommendation 22- Amendment to the legislation to provide that, following committal for sentence, within an appropriate time after service by the DPP of a Crown statement of facts, the offender is required to respond to the Crown statement of facts, specifically identifying any area of dispute.

Recommendation 23- If any of the facts asserted by the Crown are disputed by an offender, the DPP and the offender’s legal representative be required to confer and, if possible, to present to the Court an agreed statement of facts.

Recommendation 24- With a view to expediting matters committed for sentence, consideration be given to shortening the period for provision of the prosecution summary of facts for sentence pursuant to Rule 49A; and to other aspects of the processes in the sentencing courts.

Recommendation 25- Amendments to ss 120 and 123 of the CPA to incorporate flexibility with respect to the timetable between committal for trial and arraignment.