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6 **Cabinet Notes for Discussion**

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602 CRIMINAL-JUSTICE MINISTERIAL TASKFORCE REPORT (Michael Atkinson) -  
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About CRIMINAL-JUSTICE MINISTERIAL TASKFORCE REPORT

**1. PROPOSAL**

- 1.1 That Cabinet note the attached first report of the Criminal-justice Ministerial Taskforce, and that a full submission will be presented to Cabinet soon on a proposed response to the recommendations of the Taskforce that will detail what money is needed to reduce the current criminal case backlog and delays in cases coming to trial.

**2. BACKGROUND**

- 2.1 In October, 2006 I advised Cabinet that I had formed a Criminal-justice Ministerial Taskforce to address, in the first instance, the time taken for committal and trial processes in the criminal courts in South Australia and then to provide leadership in responding to other inefficiencies within the criminal-justice system.

**3. DISCUSSION**

- 3.1 I have received a first report of the Taskforce with recommendations on the matters referred to above. The Taskforce has brought together interested parties in the criminal-justice system to recommend measures to expedite the finalisation of criminal cases in the superior courts, including:
- a legislated scheme of sentence discounts providing incentives for accused persons to plead guilty at an early stage of proceedings thereby avoiding costly court proceedings and delays in bringing matters to trial;
  - expanding the defined scope of minor indictable offences to offences having a maximum sentence of 10 years imprisonment, which would divert more than 200 cases *per annum* from the superior courts, to the Magistrates Court;
  - providing flexibility for other indictable offences to be tried summarily in the Magistrates Court if prosecution and defence agree;
  - increasing the sentencing jurisdiction of the Magistrates Court from two years to five years with authority to remit cases to the superior courts for sentencing if a higher penalty seems warranted;
  - use of closed circuit T.V. and teleconferencing technology to make better use of courts;

- committal processes and timetables being modified to provide formal opportunities for accused to be apprised of sentence discount in return for an early plea and to provide for Magistrates to take the initiative in an inquisitorial way, to narrow issues in dispute and ensuring cases are ready for trial in the shortest possible time and,
- Legal Services Commission introducing fee scales and methods of payment that encourage defence lawyers to resolve matters by the time of committal

Some initial observations on the report are:

- There will be a need for more work to now be carried out on the resource implications of the proposals. This will be co-ordinated from Attorney-General's Department (A.G.D.) to provide an overview of whole-of-justice resource implications to be taken up in the budget processes for 2008-09 and to carry forward proposals for further Cabinet consideration.
- At this early stage it would appear that some of the measures proposed by the Taskforce would substantially reduce the load of new cases being lodged in the superior courts, possibly to the point where the growth in the backlog is arrested and begins to decline.
- Although these measures may help to provide a balance between the number of cases being finalised each year and the number of new cases being lodged, these measures alone are unlikely to reduce substantially the backlog of some 1150 cases. Indeed the measures may serve to have cases ready for listing at a faster rate and thus increase the current backlog and the delay of around 14 months from listing to trial date. The proposed new measures would effectively get cases ready for trial more quickly and have a greater percentage of cases resolved by early guilty pleas. However, until the current backlog awaiting trial is substantially reduced, waiting times for trials are unlikely to reduce significantly and it is this delay from the date a case is being listed for trial to the date set down for trial (currently about 14 months) that is thought by many to be the nub of the problem. To address this matter in any proper manner may require considerable, but temporary, additional funding.
- Broadly, there is a current backlog of around 1150 criminal cases lodged with the superior courts of which, based on past statistics, about 28 per cent or around 300 cases would proceed to trial. Thus there is a current backlog of about 300 criminal trials. A further broad estimate is that on average a District Court judge dedicated to criminal matters would conduct about 20 trials per annum. Thus the current backlog of about 300 trials would represent about 15 person years of judicial effort above the current level to eliminate. This could be in the form of three additional temporary judges dedicated to criminal matters for five years or five judges for three years and so on. A cost of eliminating the accumulated backlog might then be about \$8 million for temporary extra judicial and support staff plus potential costs for additional courtroom capacity. These estimates are at this stage rubbery and subject to further analysis but give an indication of the magnitude of the backlog. Temporary judicial appointments also bring risks, for example, at the end of the temporary appointment pressure may be placed on the Government to continue the appointment.
- The diversion of cases from the superior courts to the Magistrates Court will cause added pressure there but a "Diversionary Measures Taskforce" reporting to the Criminal Justice Ministerial Taskforce is examining the potential for diverting lower order summary offences to other means of finalisation, such as by expiation. Further work is needed to assess the net effect on workloads of the Magistrates Court of cases being diverted from the superior courts offset by lower order cases being diverted to expiation etc.

- Although the proposed legislated sentence discount scheme provides an incentive for accused persons to plead guilty at an early stage, in its current form the significant discounts (and thus significant incentives to plead guilty) would by and large not be available to the current backlog cases that have progressed past the trial listing point. However, if Government introduced a legislated incentive scheme with sentence discounts for early pleas, it could consider providing a once-off opportunity for all cases currently pending to attract the maximum sentence discount if a guilty plea is entered within a specified period (e.g. one month). This could be a low-cost measure that might further reduce the current backlog of cases.
- The Criminal-justice Ministerial Taskforce is continuing its work in looking at other efficiency issues in the criminal-justice system.

A further submission to Cabinet on the Taskforce recommendations and associated issues of reducing the case backlog will be provided soon.

#### 4. RECOMMENDATION

- 4.1 That Cabinet note the attached first report of the Criminal-justice Ministerial Taskforce, and that a full submission will be presented to Cabinet soon on a proposed response to the recommendations of the Taskforce that will detail resource requirements to reduce the current criminal case backlog and delays in cases coming to trial.

I declare that I have no actual or potential conflict of interest about the proposals contained in this submission.

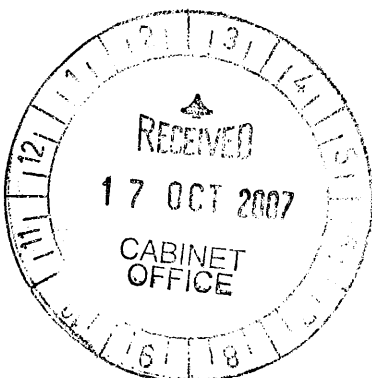
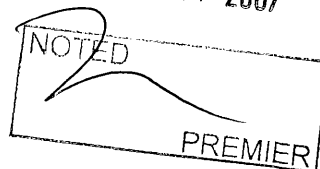
  
**Michael Atkinson**  
 Attorney-General

16 October 2007

Contact Officer: Bernie Lindner  
 8207 1562

*In Cabinet*

22 OCT 2007





**Government of South Australia**  
Department of Justice

**FIRST REPORT OF THE CRIMINAL  
JUSTICE MINISTERIAL TASKFORCE**

September 2007  
AGD 07/0823 1



**Government of South Australia**  
**Solicitor-General**

Reference:  
SGO\

24 September 2007

Level 11  
45 Pirle Street  
Adelaide SA 5000

GPO Box 464  
Adelaide SA 5001  
DX 336

Tel: 08 8207 1563  
Fax: 08 8207 2013

The Hon Michael Atkinson MP  
Attorney-General  
Minister for Justice  
Minister for Multicultural Affairs  
DX336  
Adelaide SA

Dear Mr Attorney

I am pleased to submit herewith a first report of the Criminal Justice Ministerial Taskforce that you commissioned late last year to address in the first instance, the time taken for committal and trial processes in the criminal courts in South Australia and then to provide leadership in responding to other inefficiencies within the criminal justice system.

The Taskforce has met on a monthly basis since its inception and has considered in some detail the issues attending the time taken for committal and trial processes. The Taskforce has been a very productive forum for an exchange of views of all the relevant stakeholders in the criminal justice system and for the development of a common view and commitment, wherever possible, to the courses of action that will need to be pursued to achieve significant improvements in the processing of criminal cases at all of the various stages that are typically involved.

A significant milestone has been reached where the Taskforce has developed a quite detailed set of measures that are now recommended to Government to achieve significant improvements in the processing of criminal cases. It is therefore timely to report on these recommended measures and the background to their formulation.

The taskforce is of the view that there are further contributions it can make in identifying and recommending additional measures for improvement of the criminal justice system and accordingly the taskforce is continuing to meet on a monthly basis.

I commend the attached report and recommendations for your consideration.

Yours sincerely

A handwritten signature in black ink, appearing to be "Chris Kourakis", written over a horizontal line.

Chris Kourakis QC  
Solicitor-General  
Chairman, Criminal Justice Ministerial Taskforce

## INTRODUCTION

The Criminal Justice Ministerial Taskforce was established by the Attorney-General late in 2006 to address the growing time taken for committal and trial processes in the criminal courts in South Australia and then to provide leadership in responding to other inefficiencies within the criminal justice system.

The establishment of the taskforce followed a number of earlier studies of aspects of increasing delays in criminal cases coming to trial in the District and Criminal Courts with an attendant growth in the backlog of cases awaiting finalisation.

The most recent review was the subject of a report in June 2006 by Judge Paul Rice of the District Court at the request of the Chief Justice and Chief Judge to address "how the trend towards an increasing number of cases in the criminal trial list and the steadily lengthening time between arraignment and trial (now averaging at least one year) can be reversed." The Rice report focused on delays in pre-trial procedures and recommended a series of measures to address factors giving rise to delays.

The Criminal Justice Ministerial Taskforce has brought together the key stakeholders in the Criminal Justice System with a view to reaching agreement and commitment to a package of measures for implementation derived from the Rice report and other inputs. The membership of the Taskforce has grown over time and now includes representatives of the following stakeholders in the South Australian Criminal Justice system and from the Commonwealth Office of the Director of Public Prosecutions who have contributed from related experience in the Commonwealth criminal justice system:

- Attorney-General's Department & Department of Justice
- Office of the Director of Public Prosecutions (ODPP)
- South Australian Police (SAPOL)
- Courts Administration Authority (CAA)
- Legal Services Commission (LSC)
- Bar Association
- SA Law Society
- Commissioner for Victims Rights
- Department of Treasury and Finance
- Aboriginal Legal Rights Movement (ALRM)
- Office of the Commonwealth DPP (Adelaide)

In addition the Taskforce has benefited from the attendance in a liaison capacity of Judge Paul Rice from the District Court and Chief Magistrate Liz Bolton.

## DISCUSSION

The Rice report documented a rise in the backlog of cases committed for trial and awaiting finalisation in the District and Supreme Courts with a backlog of cases pending having risen from around 70 at the end of 2000/2001 to a recent level of around 1150 cases. In addition the report has highlighted inefficiencies and delays in cases being progressed to the point where they are ready for trial and has proposed measures and incentives for earlier finalisation of cases before trial or for finalisation in the Magistrates Court.

At present the rate at which new cases are entering the criminal justice system in the superior courts jurisdiction exceeds the rate at which case are finalised by about 200 cases

per annum such that there is a potential for the current backlog of cases to rise at the rate of around 200 cases per annum unless significant measures are invoked.

The Taskforce has met on a monthly basis since November 2006 and has invited presentations and papers on some of the more detailed aspects of the Rice report recommendations and a range of other issues bearing on the efficiency of the criminal justice system.

At the outset the key parameters defining the context in which the Taskforce would operate were recognised as:

- the primary focus of the Committee would be to develop practical proposals to implement the broad thrust of the Rice report recommendations with such refinements or modifications as might prove warranted;
- Whilst the Rice report would provide a primary focus, the Taskforce could expand its focus to any other matters bearing on the efficiency of the criminal justice system;
- An assumption that additional funding/resources would not be readily available and there would need to be an initial focus on what can be achieved within existing resources or with limited additional resources.
- There needs to be an holistic approach across Justice agencies to deal with aspects of the growing backlog and delays in criminal cases coming to trial. The Taskforce would provide a mechanism for the coordination and cooperation of the relevant parties and would seek to proceed by consensus.
- The exercise would provide an opportunity for genuine self examination by all Justice agencies to balance their reactions to various criticisms in the Rice report.

One of the natural reactions to dealing with the problem of delays in cases progressing is to consider the imposition of deadlines that would be more strictly enforced. The Rice report was critical of the delays often involved in the prosecution providing adequate disclosure of its case to defence, as a key source of delays in cases progressing. A strict case management approach might, for example, rule out the bringing of evidence by the prosecution that has not been disclosed within deadlines set by the court. However, a consistent theme that was expressed by both ODPP and SAPOL was that the Taskforce should not lose sight of the fact we need a “justice system”, not just a case management system and that previously unknown late evidence that comes to hand should not be excluded under a strict case management approach.

Some of the key observations and issues that arose in the deliberations of the Taskforce were as follows:

- There is a limit to what can be achieved without additional resources to address the mounting backlog of cases and there is little point in getting cases ready for trial more quickly while there is a greater than 12 month backlog of listed cases. There will be a need to apply additional resources to clearing the backlog to allow cases to get to trial more quickly.
- The lengthy delays in criminal cases coming to trial serve to increase the prospect of criminals escaping justice through attrition of witnesses and disruption of prosecution officers’ continuity. “Justice delayed is justice denied”.
- Many cases listed for trial drop out of the trial list just before trial through late guilty pleas or withdrawal of charges. In order to keep the courts operating as fully as possible, the Courts engage in substantial “overlisting” of cases based on the probability that many cases will be resolved without trial just before the trial is due to commence. However, whilst this is a process that is efficient from the perspective of keeping the courts as full as possible from the list of cases

awaiting trial, there are substantial inefficiencies for other parties to the criminal justice system with listed cases frequently having to be delayed if insufficient cases have dropped out of the list without trial. There are major disruptive effects of this overlisting practice with police needlessly diverted from other duties to attend, witnesses needlessly arriving from afar and being paid expenses only to be rescheduled, victims being further traumatised by delays and so on.

- There is perceived to be a need for a significant culture change in all facets of the criminal law legal profession - judiciary to be more pro-active in pressing the parties to narrow issues in dispute, the need for greater trust between prosecution and defence etc.
- The current structure of Legal Services Commission funding of defence lawyers provides an incentive for defence lawyers to drag cases out. There is a need for incentives to resolve matters more quickly and efficiently.

The taskforce identified a series of issues on which members with relevant experience were invited to prepare and present discussion papers. In addition papers and presentations were also invited from other observers of the criminal justice system. The issues and topics that were covered included the following:

- Courtroom utilisation levels and the potential for improved utilisation.
- Potential improvements to criminal case listing practices having regard to practices in other states.
- Directions hearings and why SA has a higher level than other states.
- Statistics on the growing backlog of cases and the rate at which cases are finalised compared with the rate of incoming cases.
- Issues surrounding "Fast Track" guilty plea incentives having regard to the sensitivities of victims to potential penalty reductions as the incentive.
- Legal Services Commission revised funding options to provide incentives for defence lawyers to identify and finalise potential early guilty pleas.
- Potential improvements in the quality of SAPOL prosecution briefs provided to ODPP.
- Potential changes in the jurisdictions of the District and Magistrates Courts.
- Potential improvements to committal and pre-trial processes.
- The potential for Video Conferencing and Closed Circuit TV technology to assist in diverting minor criminal proceedings from criminal courts to civil courts, thereby effectively providing additional criminal courtroom capacity.
- Recent efficiency reforms to the English Criminal Justice System.
- Alternative strategies for dealing with lesser summary offences.
- Forensic Science SA role in the Criminal Justice System.
- ODPP criminal case backlog reduction project.
- Solicitor/Client communications restrictions in prisons.
- Streamlining the hearing of aggravated offences cases.

It is of interest to note that apart from the recommendations that have been formulated by the Taskforce for consideration by Government, various potential improvements to current processes that have been identified by the Taskforce are already being actively pursued by relevant parties.

A key example emerged from a presentation to the taskforce by the Chief Executive of the Department for Correctional Services. Discussion elicited that there are significant restrictions on the ability of defence lawyers to communicate fully with their clients remanded in custody and record conversations, thus delaying the preparation of defence cases and the negotiation of potential early guilty pleas. These restrictions have been imposed by DCS on the basis of security concerns but the discussion at the Taskforce identified the possibility of improving access without compromising security and DCS has undertaken to further consider the prospect of improved access.

## **DIVERSIONARY MEASURES**

The Taskforce believes that there is a potential for diverting a significant number of criminal cases from the District Court to the Magistrates Court for summary disposal in lieu of trial by jury. This would involve a legislated change to the scope of what are classified as minor indictable offences that can then be disposed of in the Magistrates Court. The Office for Crime Statistics and Research was commissioned to prepare a paper on this subject and their research indicates that if the definition of minor indictable offences were amended to increase the maximum penalty limit to 10 years imprisonment in lieu of the current 5 year limit, this would serve to divert about 250 cases per annum to the Magistrates Court. There may well be controversy over certain offences being thereby classified as minor indictable offences (eg sex offences against children), but even if these were excluded from summary disposal in the Magistrates Court, there would still be well over 200 cases per annum potentially diverted from the District Court to the Magistrates Court.

This measure alone would not serve to significantly reduce the current backlog of District Court cases but it would provide for the current rate of finalisations in the Superior Courts to approximately balance with the number of new incoming cases each year, a critical factor in stemming the current growth in the backlog of cases which is increasing at the rate of about of 200 cases per annum.

The sentencing jurisdiction of the Magistrates Court is currently limited to 2 years imprisonment and it would also be appropriate to review this being increased to 5 years with Magistrates having discretion to send cases up to the District Court for sentencing if a 5 year penalty seems inadequate to the case at hand.

Apart from reducing the annual caseload entering the superior criminal courts, the diversion of cases to the Magistrates Court would be expected to also result in lower costs of finalising cases as the District Court daily operational costs for hearing a case are about 30% higher than in the Magistrates Court<sup>1</sup>.

Apart from examining the potential for diverting cases from the District Court to the Magistrates Court, the Taskforce has also established a subsidiary "Diversionary Measures Taskforce" group convened by the Chief Magistrate to examine the potential for diverting lesser summary offences out of the court to alternative means of resolution, such as expiation of offences and formal Police cautions.

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<sup>1</sup> The OCSAR report to the Taskforce "Assessing the impact of expanding the range of offences classified as minor indictable" (June 2007) indicates at page 69 that in 2005/06 the average cost of one day in court was \$5, 766 in the District Court and \$4, 412 in the Magistrates Court.

To date, the Diversionary Measures Task Force has found that:

- A DTEI proposal to expiate unregistered/uninsured offences when implemented, would be likely to have a significant impact on reducing the caseload of the Magistrates Court;
- There are many relatively minor offences that potentially could be made expiable. However further exploration and analysis is required regarding the impact, flow on effects and whether expiation notices are likely to get paid or end up back in the court system.
- It is important to determine those offences which are most numerous and/or take up the most time in the Magistrates Court - these offences should be targeted.
- For a number of those offences, there would need to be a rule to limit the number of expiation notices/diversions issued to individuals over a set period of time.
- The current Shop Theft Infringement Notice system is somewhat problematic. It seems to have been little used. A change to the current system may have a positive impact. Further exploration and analysis is required, including consultation with the stakeholders.
- SAPOL is currently developing an Adult Cautioning Model for certain summary offences. The DMTF will consider the potential impact on the Magistrates Court caseload once the model is made available and further analysis is conducted.
- A more detailed analysis is required to develop a discussion paper with specific options for the Criminal Justice Task Force.

The Taskforce is continuing its consideration of these potential diversionary measures which will be the subject of a separate report in due course.

## CONCLUSIONS

The Taskforce has considered a wide range of practical issues associated with delays in the criminal justice system and has reached the following conclusions:

- a) It is appropriate to offer incentives for accused persons to plead guilty at an early stage of proceedings in the form of discounts to the sentences that would otherwise pertain if they pleaded guilty later or were found guilty by trial. Early guilty pleas have a number of major benefits including substantial savings in gathering further evidence and preparing prosecution cases as well as relieving victims and witnesses of the trauma of extended proceedings and court appearances. Early guilty pleas also can be indicative of genuine remorse that should be relevant to penalty. There are of course dilemmas involved in cases where, for example, an offender is caught "red-handed" committing a heinous crime and an element of judicial discretion will always be appropriate.
- b) Sentence discounts for pleading guilty should be graduated so as to provide the maximum incentive for a very early "fast track" guilty plea with sentence discounts reducing in a graduated way for pleas at later stages of pre-trial proceedings.
- c) The scope of minor indictable offences should be increased to included offences for which the maximum penalty is higher than the current five years imprisonment. This would serve to divert cases from the superior courts to the Magistrates Court thereby assisting in relieving the current pressure on the superior courts where the rate of incoming new cases currently significantly exceeds the rate of finalisation of cases. The sentencing jurisdiction of the Magistrates Court should be increased to a maximum of five years imprisonment with a court discretion to remit cases to the District Court for sentence if a higher penalty is considered to be warranted.

- d) There should be more flexibility allowing for transfer of cases down to the Magistrates Court where both prosecution and defence agree or where a superior court thinks it appropriate. Again this could serve to relieve pressure on the superior courts.
- e) Closed Circuit TV and Video Conferencing technology should be utilised in the court and prison environment to allow defendants to appear by video link in certain proceedings thereby freeing up criminal court rooms for trials and more substantive matters.
- f) That Committal processes and timeframes should be modified to provide formal opportunities for accused to be apprised of sentence discount rights for an early plea and to provide for a more pro-active inquisitorial and summary role of Magistrates in narrowing issues in dispute and ensuring cases are ready for trial within 23 weeks of the first appearance of the defendant.

The Taskforce has developed a package of recommended measures some of which could take some time to introduce, such as the recommended case management measures which would require the courts to develop modified rules of court.

However, other measures such as introducing a legislated sentence discount scheme for early guilty pleas and expanding the scope of minor indictable offences could be proceeded with ahead of these other reforms as significant measures for expediting the finalisation of cases and reducing the criminal case load on the District Court

## RECOMMENDATIONS

The Task Force is of the view that the delays in the listing of criminal trials can only be adequately addressed by the co-ordinated implementation of a wide range of legislative and administrative measures. It accordingly recommends the adoption of all of the following measures in a co-ordinated way:

1. The introduction of a Bill to amend the *Criminal Law (Sentencing) Act* 1988 so that sentencing courts are required to reduce the sentence that would otherwise have been imposed if the accused had been convicted at trial following a plea of not guilty by no less than 30% and no more than 35% in those cases where an accused has entered a plea within six weeks of arrest/summons. This proposal is referred to as the "fast track guilty plea"<sup>2</sup>. (Rice Recommendation 19).

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<sup>2</sup> The proposal to legislate for a 'graded' discount on sentencing is supported in principle by the Victims of Crime Ministerial Advisory Committee. Some members of the Committee, however, feel that the maximum discount for an early plea should not exceed 1/3, or about 30%. Most oppose any recommendation for a 40% discount. Members representing victims of sex offences and child victims, as well as the Commissioner for Victims' Rights, have reservations about giving such a significant discount to sex offenders - especially sex offenders who victimise children - because the current head sentences do not appear to be satisfactory and sexual offender treatment programs have a duration of approximately 2 years. These members suggest that the 30%, if considered in the context of the tariff or average sentence currently imposed, would not clearly denunciate the public abhorrence for such offences.

2. The introduction of a Bill to amend the *Criminal Law (Sentencing) Act 1988* to provide that a sentencing court, when taking into account the fact that a defendant has pleaded guilty, must<sup>3</sup>:
  - 2.1. differentiate in favour of defendants that have entered a plea of guilty at or before the plea negotiation conference referred to in subparagraph 11.6 below by discounting the sentence that would otherwise have been imposed by no less than 25% and no more than 30%. This proposal may be referred to as the “early plea” proposal. (DPP proposal)
  - 2.2. differentiate in favour of defendants who enter a plea after the plea negotiation conference but before the matter is set for trial by no more than 20% and no less than 5%.
  - 2.3. not discount a sentence by more than 10% if a guilty plea is entered after a matter has been set for trial.
3. In determining the particular percentage within the prescribed range by which to reduce a sentence for fast track and other guilty pleas, the court should have regard to whether or not the offender is remorseful, when the plea was made and the degree to which the timing of the plea facilitated the administration of justice.
4. Both in the case of fast track and other pleas the sentencing court should be given a discretion, to decline to give a discount within the statutory range if there are special reasons to do so (and the court should be empowered to make a declaration in advance as to whether or not there are special reasons) having regard to the following matters:
  - 4.1. the utilitarian purpose of encouraging offenders to plead guilty at the earliest possible opportunity.
  - 4.2. the need for preventative detention to protect the community or the victim of the offence.
  - 4.3. the nature and gravity of the offence.<sup>4</sup>
  - 4.4. the likely consequence on the emotional well being of the victim of the offence.

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<sup>3</sup> The proposed discount regime reflects the almost unanimous consensus position of the Taskforce. Some members advocated a greater discount for early pleas and no reduction of the discount for pleas offered in the District Court below the percentage currently available. On the other hand Commissioner Hyde contended that the early plea discounts offered were too high and remains of that view.

<sup>4</sup> The proposal is a compromise view of the Taskforce having regard to the following considerations. Some members of the Taskforce were concerned that any power to reduce the extent of the discount would seriously undermine the purpose of encouraging early guilty pleas. On the other hand there was a strong concern that there may be a small number of dangerous and recidivist offenders who should not receive any discount. Most members of the Taskforce held the strong view that the Court should exercise any discretion to withhold the discounts and not the prosecuting authority. It may accordingly be necessary to empower a court to give an advance ruling on an application heard summarily as to whether the discount would be withheld if a guilty plea was entered.

- 4.5. whether the defendant has unsuccessfully challenged the prosecution case on a disputed facts hearing.
5. The court should have a limited discretion to allow a discount that would have applied had the guilty plea been entered earlier where there is good reason to do so having regard to:
- 5.1. any earlier offer that the accused had made to plead guilty but which was rejected by the prosecution.
  - 5.2. the likelihood that the accused would have pleaded guilty at an earlier stage but for the fact that he or she was unable to obtain legal advice through no fault of his or her own.
  - 5.3. any substantial change in the nature and state of the prosecution case that reasonably explains why the plea was not entered earlier.
6. The introduction of a Bill to amend the *Criminal Law (Sentencing) Act* 1988 to provide that a court can take into account, in sentencing an offender, the degree to which the accused co-operated in the efficient hearing of the matter, including any early admission of any element of the offence<sup>5</sup>.
7. For aggravated offences:
- 7.1. where an accused accepts that he or she is guilty of a basic offence, but is charged with an aggravated version of the same offence and disputes the aggravating element, and
  - 7.2. upon arraignment pleads not guilty to the aggravated offence but guilty to the basic offence, then;
  - 7.3. where the prosecution fails to prove the aggravating element beyond reasonable doubt, the accused is to receive a discount in sentence for the basic offence in accordance with paragraphs 2 to 5 above, or;
  - 7.4. where the accused has elected for trial of the aggravating element to be heard by a judge sitting alone, or a magistrate, and the prosecution succeeds in proving the aggravating element, the accused is entitled to receive a discount in sentence<sup>6</sup>:
    - 7.4.1. of between 15% and 20% where the guilty plea to the basic offence was entered before the plea negotiation conference;

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<sup>5</sup> The reference to a discretion on sentence reduction for early admission of any element of an offence provides for the situation where an accused has entered an early guilty plea to a basic offence but has elected for alleged aggravating elements to be tried by jury and has been found guilty of the aggravating elements. This discretion would allow some credit for the early plea. In any drafting of legislation it may be desirable to provide further guidance on the level of discount in such a situation to avoid, for example, an anomalously greater discount being given in these circumstances than would have been available if the accused elected to have the aggravating elements determined by a judge sitting alone or a magistrate.

<sup>6</sup> Commissioner Hyde dissented from the view that these sentence discounts should be available.

- 7.4.2. of between 5% and 15% where the guilty plea to the basic offence was entered after the plea negotiation conference but before the matter was set for trial;
- 7.4.3. of no more than 10% where the guilty plea was entered after the matter was set down for trial.
8. There should be further examination of the merits of amending the *Summary Procedure Act 1921* to:
- 8.1. expand the ranges of offences that are classified as minor indictable offences by increasing the maximum penalty that determines that class from five years to seven/ten years? and
- 8.2. confer a discretion on the Magistrates Court to hear a major indictable offence where both the prosecutor and the defendant agree and the culpability of the alleged offending is in the lower range for offences of that kind.
- 8.3. confer a discretion on the District and Supreme Courts to remit a major indictable offence to the Magistrates Court. (Rice Recommendation 21)
9. The introduction of a Bill to amend s 9 of the *Criminal Law (Sentences) Act 1988* to increase the maximum sentence that can be imposed in the Magistrates Court for a single offence to five years and to make a commensurate increase to the maximum fine that can be imposed. (Rice Recommendation 22).
10. Install CCTV in civil and criminal courts in the Sir Samuel Way building to allow defendants to appear by video link for directions hearings, voire dire hearings and some sentencing matters (Legal Services Commission/Law Society proposal) and to facilitate the giving of evidence by vulnerable witnesses. (Rice Recommendation 26)
11. That committal proceedings be modified to conform with the following procedures and timetable:

11.1 Time zero	First appearance	Court fixes date on which defendant is to answer charge on first remand of defendant presented ex-custody following arrest or on summons <sup>7</sup> . Date to be no less than 23 weeks to accommodate the steps referred to below. Accused to be advised of discount regimes in writing on first appearance and/or by notice with summons. (Rice Recommendation 3). Accused to be advised that he or she can request a sentencing summary from the DPP if he or she indicates a preparedness to plead guilty. The DPP will be required to provide the sentencing
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<sup>7</sup> Section 103 *Summary Procedure Act 1921* (SPA) requires the Court to fix an answer charge date on his or her first appearance or in the summons issued by it. Section 104 SPA requires s 104 material to be filed no later than 14 days before the answer charge date. Rule 20 requires material to be filed within 6 weeks of the defendant's first appearance.

		summary within 14 days. (DPP proposal) The summary can be requested at any time until 14 days prior to the plea negotiation conference. This timetable will be suspended for a period of up to four weeks while negotiations on a fast track or early guilty plea continue unless a Magistrate otherwise directs.
11.2 Ten weeks	Police to deliver s 104 material to DPP	Police to provide s 104 material to DPP within 10 weeks after first remand or issue of summons. The material should be provided together with: the apprehension report; a disclosure statement pursuant to s 10A of the Director of Public Prosecutions Act 1991; a list specifying further statements or evidentiary material to be obtained.
11.3 Twelve weeks	DPP to provide s 104 material to defendant and advice to investigator	DPP to review declarations. DPP to provide declarations received and disclosure statement, (modified if necessary) to defence. DPP to advise police on further investigations. (DPP proposal)
11.4 Thirteen weeks	Defendant to advise whether he or she is prepared to participate in plea negotiation conference.	
11.5 Fourteen weeks	Delivery of follow up s 104 material if defendant has not requested plea negotiations.	
11.6 Sixteen weeks	Plea negotiation/ committal conference  (Rice Recommendation 2)	To be conducted by a Magistrate in summary and inquisitorial manner (see note 12.11 below). Conference to address: (a) plea negotiations. (b) completeness of prosecution disclosure. (c) defence issues - whether there will be Rule 20 applications/no case submissions  At conclusion of conference if guilty plea negotiated: (a) matter will be immediately committed for plea; or (b) matter will be remanded for plea (including major indictables that can be properly dealt with in Magistrates Court) and answer charge date vacated (Rice Recommendation 21) If matter not resolved by guilty plea then (c) matter will be set down for special reasons application and/or for oral committal hearing; or (d) matter will be adjourned to trial readiness conference.

11.7 Eighteen weeks	If matter not resolved DPP requests follow ups from police and advises defence what has been requested to extent appropriate. DPP to request by notice to defence agreement on facts in relation to specified issues eg. chain, provenance of exhibits, forensic results etc. and disclosure of defences	
11.8 Twenty one weeks	Defence to file statement in response: provide notice of facts that can be agreed, exhibits tendered etc. Defence to give notice of alibi (s 285C) and special defence (s 285BB) and proposed expert evidence (s 285BC)	
11.9 Twenty three weeks	<p>Trial readiness conference. (Legal Services/ Law Society proposal)</p> <p>(Rice Recommendations 1 and 4)</p>	<p>To be conducted by a Magistrate in summary and inquisitorial manner (see 12.11 below). Case conference to address:</p> <ul style="list-style-type: none"> <li>(a) final charges to be laid. (Rice Recommendation 12)</li> <li>(b) plea negotiations.</li> <li>(c) completeness of prosecution disclosure. (Trial Readiness Certificate? Rice Recommendation 12)</li> <li>(d) legal representation.</li> <li>(e) Defence Responses - set timetable for completion of <ul style="list-style-type: none"> <li>- 285BA matters: agreed facts, evidential aids, other ways to shorten trial</li> <li>- s 285BB:special defences</li> <li>- s 285BC:expert evidence</li> <li>- s 285c Alibi notice</li> <li>- voire dire issues</li> <li>- mental competence issues</li> </ul> </li> </ul> <p>At conclusion of conference -</p> <ul style="list-style-type: none"> <li>(a) matter will be remanded for plea in Magistrates Court and answer charge date vacated or</li> <li>(b) matter will be immediately committed for plea in superior Court, or</li> <li>(c) set for trial in the Magistrates Court (including major indictable that can be appropriately dealt with in Magistrates Court: (Rice Recommendation 21), or</li> <li>(d) matter committed to superior court for trial</li> <li>(e) matter will be stood over to answer charge date for contested committal/no case hearing</li> <li>(f) case conference will be adjourned (exceptionally) and answer charge date vacated</li> </ul>

12. The following points are made in further explanation of the committal process described above:
- 12.1. It is expected that up to three more Magistrates may be required (Legal Services Commission - Law Society proposal, Rice Recommendation 24).
  - 12.2. The requirement to undertake the steps set out in the table should be introduced in the form of Magistrates Court Rules. The Rules should allow for any of the requirements to be waived on written, electronic or oral application made ex parte to the Magistrate on the grounds that compliance would not facilitate the conduct of the plea negotiation or trial readiness conference.
  - 12.3. There will be no amendment to the information allowed after the trial readiness conference<sup>8</sup> except by consent of the defendant or with leave of either the Magistrates Court or the trial court. The interests of justice must be the paramount consideration (Rules of Court or legislation may be required). (Legal Services Commission/Law Society proposal)
  - 12.4. A failure to meet timelines will not of itself be a reason to exclude any evidence tendered by the prosecutor at trial. The wide discretions of the court will continue to be exercised in the interests of justice.
  - 12.5. The DPP will take such steps as can be practicably taken to allocate responsibility to senior practitioners for committal matters before the plea negotiation conference (Rice Recommendation 6).
  - 12.6. The Law Society and the Bar Association will advise the profession that they take the view that it is a serious breach of professional responsibility for a practitioner not to take all practicable steps to be in a position to fully and properly advise clients in connection with any criminal case conference.
  - 12.7. The Legal Services Commission should introduce fee scales and methods of payment that encourage practitioners to resolve matters by the time of committal (Rice Recommendations 7 and 25).
  - 12.8. Any summary provided by the DPP will be provided on a without prejudice basis. Legislation may be required.
  - 12.9. All communications made in compliance or purported compliance with the Rules will be on a without prejudice basis. Legislation may be required (Legal Services Commission/ Law Society proposal).

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<sup>8</sup> Judges of the District Court have suggested that no additional statements should be allowed after the trial readiness conference without leave of the court. A provision like that would import a presumption against admission. Paragraph 12.4 of this resolution provides that the court must be guided by the interests of justice without such a presumption. The Taskforce was evenly divided about the merits of the changes suggested by the judges and a policy decision will be required by Government.

- 12.10. The Rules should require that persons with authority to make decisions should attend the plea negotiation and trial readiness conferences (Legal Services Commission/Law Society proposal).
- 12.11. Magistrates are to actively encourage resolution of matters in a way that properly reflects the culpability of the alleged conduct. Magistrates must advise the accused about the sentencing discounts that may be available if a plea of guilty is entered. If the matter is not resolved the Magistrate should actively encourage agreement on, or disclosure of, matters that facilitate the trial. (Legal Services Commission/Law Society proposal, Rice Recommendation 10)
13. Committals will be to an arraignment list either for sentence or to be remanded to a directions hearing for the purpose of setting a trial date.
14. By the time of the directions hearing most issues will have been identified through the committal processes described in paragraph 11 above. A Judge should need to do little more than order completion of the interlocutory process and set the trial date. Vulnerable witness applications should be dealt with at the directions hearing (Rice Recommendations 8, 15). Section 285BC CLCA (expert evidence) notices and s 285C CLCA (alibi) notices will have been filed before the District Court or Supreme Court directions hearing. The Judge should be in a position to exercise the s 285BB (special defence disclosure) and s 285BA CLCA (admit facts) powers at the directions hearing if an accused has not complied with directions given in the Magistrates Court. If the matter resolves the Judge may adjourn the matter into an arraignment list to be dealt with by way of plea and sentence or remittal to the Magistrates Court. If the matter is not resolved it will be usually listed for trial.
15. If the matter has not resolved in addition to being set for trial it may be set down for the determination of preliminary issues (Rice Recommendation 8). Determinations of preliminary issues will be binding unless further evidence is discovered and it is in the interests of justice to reconsider the matter. Legislation may be required. (Rice Recommendation 14).
16. Both professional conduct rules and Rules of Court should impose on practitioners an obligation to take all reasonably practicable steps that are consistent with their obligations to the court and their clients to facilitate the efficient resolution of criminal proceedings, including trials, in the shortest possible time.
17. The Law Society should provide CLE courses on the proposed procedures and on the benefits of early pleas and agreed factual summaries (Rice Recommendations 13 and 25).
18. The adoption of this resolution will have significant resource implications. The Taskforce recommends a trial of the proposals before a final long term commitment is made. The

trial should be for not less than 12 months and a 2 year trial might be necessary. The cost estimates will be more reliable after a trial period but work should commence immediately on cost estimates for the recommended trial. The Government may wish to consider introducing the sentence discount provisions before the case management proposals albeit with some modification to the time periods or events that determine when the discounts apply.