



J A N U A R Y 2 0 0 4

Explanations for the High Proportion of SA matters classified by the ABS as withdrawn in 2001/02

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Executive Summary

Each year the Australian Bureau of Statistics publishes information relating to defendants dealt with in the criminal jurisdiction of the Higher (Supreme and Intermediate) Courts of Australia (*Criminal Courts, Australia*, catalogue number 4513.0). The aim is to provide nationally comparable data on the number of defendants dealt with by the higher courts, the characteristics of defendants, the types of offences committed and the outcomes. To allow for comparability, the ABS National Criminal Courts Statistics Unit (NCCSU) has developed national standards and classifications.

Since the release of the latest ABS report covering the 2001/02 financial year, there has been some concern expressed about the apparently high proportion of matters withdrawn by the prosecution in South Australia in comparison with other jurisdictions.

The aim of this present study is to explain why, according to the 2001/02 ABS report, a higher proportion of South Australian defendants had their matters finalised via the withdrawal of the charges by the prosecution than any other state/territory. The findings from this study are detailed below.

- Of the 265 South Australian matters classified by the ABS in its *Criminal Courts, Australia 2001/02* report as 'withdrawn by the prosecution', the Office of the Director of Public Prosecutions (ODPP) questioned the appropriateness of this classification for 177 (66.8%).
- This 177 consisted of 97 'white papers', which the ODPP argued should be separately identified, and 80 matters where their records suggested an alternative outcome.
- While OCSAR lacks the national perspective of the ABS and therefore cannot comment on the appropriateness of the inclusion of 'white papers'¹ in the withdrawn category, such matters are not included in its *Crime and Justice* collection. Further, while information is not available from all jurisdictions, it seems that not all states/territories have an equivalent process. Consequently, it is recommended that

¹ Those matters where the ODPP decline to prosecute any charge and prior to arraignment files a notice to that effect.

the ABS conduct further investigation into the inclusion of these matters in its national collection. If it is decided that they should continue to be included, it may be appropriate to separately identify these matters or add an explanatory note highlighting this issue.

- OCSAR conducted a detailed analysis of the 80 matters where the ODPP queried the categorisation of withdrawn. The results of this analysis indicate that these matters fall into four distinct categories, namely:

- ***All charges in the case are ‘withdrawn’ but a fresh Information is laid resulting in the generation of a new court file.***

There were 40 cases in this category. While the ABS, like OCSAR, has a policy of consolidating cases where a nolle is entered and a substitute Information is filed, this can only occur if these cases can be identified. In the 40 cases, the only way to determine that a fresh Information had been laid was to check the text field in the CAA electronic file. To ensure that these cases can be more readily identified, it is recommended that the CAA introduce a new outcome value (eg NOLFI) for cases where the matter is withdrawn and a fresh Information is laid. Preliminary discussions with the ABS indicate they would support such an initiative.

- ***All charges in the case are ‘withdrawn’ and, while it is possible that a fresh Information was later laid, there was no indication of this in the CAA database***

This group (n=17) is similar to those listed above except, unlike the first group, there was no reference even in the database text fields to indicate that a fresh Information had been laid. While the ODPP records indicate that this occurred, there would be no way for the ABS to determine this on the basis of the information available on the CAA court file. While the introduction of a new outcome value as described above could also impact upon this group, this would need to be accompanied by ODPP staff training to ensure that they inform CAA staff of those cases where it should be applied. If a new value is introduced it is recommended that a similar ‘checking’ process to that undertaken for this paper be carried out to assess whether it is being properly implemented.

- ***Data entry errors by CAA***

These were cases entered incorrectly, then recorded as ‘not proceeded with’ and subsequently re-entered on a different case. As there were only two cases in this category this group would be unlikely to have a substantial impact upon the overall numbers. Nevertheless, CAA might be able to record these matters in some other way to indicate they are administrative errors and do not reflect the activities of the ODPP.

- ***One or more charges in the case are withdrawn, but other charges in the case had another outcome***

There were 21 cases where the ODPP nolleed or did not proceed with one or more charges in the case, but there were other charges within the same case where another outcome was recorded. It would appear that an incorrect method

of finalisation may have been allocated to these cases when CAA extracted the data for the ABS. These matters have been referred to the ABS for clarification.

- The impetus for conducting this research was a concern about the apparently high proportion of matters reported by the ABS as withdrawn by the prosecution in South Australia during the 2001/02 financial year in comparison with other states. However, the above indicates that the categorisation of at least some of these 265 matters is questionable. Excluding some or all of the matters queried by the ODPP would reduce the original ABS figure. The extent of this reduction would depend upon which groups were excluded. For example, if the 'white papers' were excluded this would reduce the figure to 168 or 14.9%. At a maximum, if the white papers and all 80 disputed matters were excluded, this would leave only 88 or 7.8%. Assuming this had no impact upon the figures recorded by the other jurisdictions, this would give South Australia one of the lowest 'withdrawn' figures, behind Victoria (3.2%), the Northern Territory (5.0%) and Western Australia (7.4%).
- While this report focused on the extent to which the definition and application of the ABS counting rules explained the relatively high proportion of matters withdrawn in this state in comparison with other jurisdictions, it is acknowledged that such differences could in part also reflect variations in the policies and practices in each state. More specifically, the higher court outcomes recorded in the ABS report could reflect:

- ***Differences in the application of the 'reasonable prospect of conviction' test in deciding whether to prosecute a criminal offence.***

While beyond the scope of this paper to investigate how each jurisdiction applies the uniform prosecution policy, it is worth highlighting this as a possible source of difference.

- ***Whether the ODPP or police prosecutions handle matters prior to committal.***

In South Australia the Committal Unit within the ODPP assesses all major indictable offences in the metropolitan area prior to committal, while this role is performed by SAPOL in regional areas. The ODPP annual report suggests that matters where there is no involvement of the ODPP prior to committal are more likely to be withdrawn by way of a white paper. While this information was not available for all other jurisdictions, it seems there is variation in who handles committals, which could impact upon the proportion of cases withdrawn.

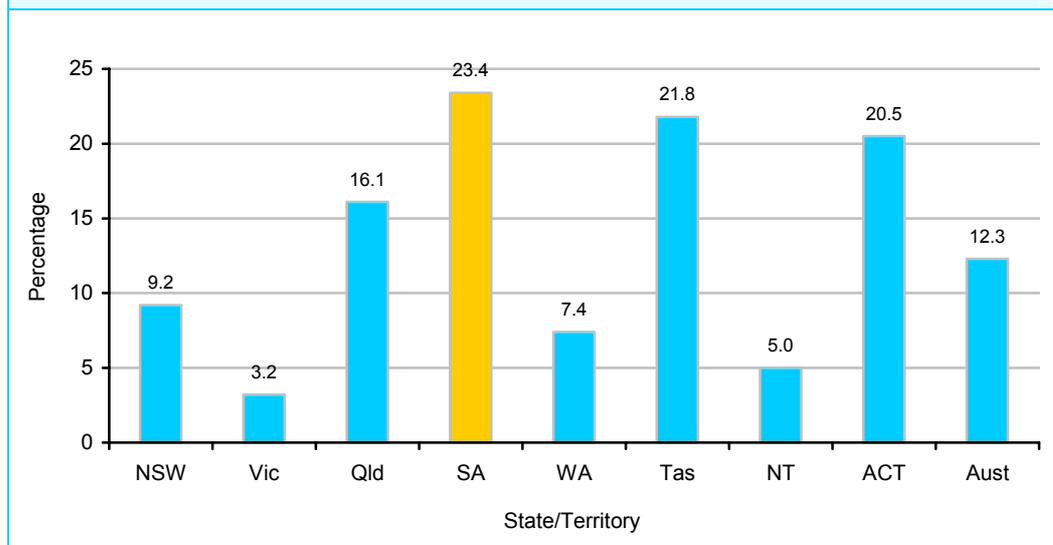
Background

Each year the Australia Bureau of Statistics publishes information relating to defendants dealt with in the criminal jurisdiction of the Higher (Supreme and Intermediate) Courts of Australia (*Criminal Courts, Australia*, catalogue number 4513.0). The aim is to provide nationally comparable data on the number of defendants dealt with by the higher courts, the characteristics of defendants, the types of offences committed and the outcomes. To allow for comparability, the ABS National Criminal Courts Statistics Unit (NCCSU) has developed national standards and classifications.

Since the release of the latest ABS report covering the 2001/02 financial year, there has been some concern expressed about the apparently high proportion of matters withdrawn by the prosecution in South Australia in comparison with other jurisdictions. As Figure 1 indicates, while nationally, 12.3% of finalisations occurred via the withdrawal of the charges, the proportion was considerably higher for South Australia (23.4%). Further, these figures are consistent with those recorded in the previous financial year, when 21.3% of South Australian finalisations occurred via the withdrawal of the charges, compared with 12.6% for Australia as a whole.

- ‘Withdrawn by the prosecution’ is defined by the ABS as the formal withdrawal of charges by the prosecution (eg. police, Director of Public Prosecutions, Attorney-General). In South Australia the court outcomes included in this category are:
 - Dismissed Summary Procedure Act;
 - Information quashed;
 - Nolle Prosequi;
 - Not proceeded with;
 - Withdrawn; and
 - White Certificate.

Figure 1 Finalised defendants: proportion where the method of finalisation was withdrawn by the prosecution



Source: Australian Bureau of Statistics *Criminal Courts, Australia* (Catalogue number 4513.0) 2001/02

While the ABS acknowledge that there may be variations in the statistics published by them and those published by each state/territory due to differences in the definitions and counting rules employed by each jurisdiction, the figures detailed above are higher than those published by the South Australia's Office of the Director of Public Prosecutions (ODPP). In the ODPP's annual report for the 2001/02 financial year, of the 1,088 matters finalised, 101 (9.3%) were classified as nolle, while another 10.5% were white papers. According to this report, the majority of matters were finalised via conviction (74.4%).

Table 1 Outcomes of superior court prosecutions in South Australia according to the Office of the Director of Public Prosecutions 2001/02

	Number	Percentage
Convicted	810	74.4
Nolle	101	9.3
Not guilty	48	4.4
White paper	114	10.5
Other*	15	1.4
Total finalised	1,088	100.0

Source: ODPP annual report 2001/02, p.16

* Other includes "Technical Nolle Prosequi" where incorrectly committed matters are returned to the Magistrates Court, or a lesser charge, or alternative remedy is pursued in the Magistrates Courts.

In light of these contradictory figures, the OCSAR Advisory Committee requested that the Office conduct research to identify explanations for the relatively high proportion of matters listed by the ABS as withdrawn in South Australia in comparison to other jurisdictions. Given that the Office of the Director of Public Prosecutions (ODPP) was also responding to questions in Parliament about this issue, it was agreed that OCSAR and the ODPP would undertake a collaborative project on this topic.

Study Aim

The aim of this study is to explain why, according to the 2001/02 ABS report, a higher proportion of South Australian defendants had their matters finalised via the withdrawal of the charges by the prosecution than any other state/territory.

Methodology

With the permission of the Courts Administration Authority (CAA), OCSAR obtained a download of the 2001/02 South Australian higher court data that the ABS had used to compile its report. The 265 defendants classified by the ABS as having a method of finalisation of 'withdrawn' were then identified. The ODPP was provided with an extract containing details of these matters. The ODPP then compared this list with their records for the same period. Through this process, they identified matters where they agreed with the ABS coding of 'withdrawn' and matters where they disputed this classification. A detailed analysis of the disputed cases was conducted by OCSAR. The remainder of this document details the results.

Results

As Table 2 indicates, of the 265 matters where an outcome of ‘withdrawn’ was recorded in the ABS publication, the ODPP agreed with this classification in approximately one third (33.2%). According to the ODPP records, a further 97 matters (36.6%) were ‘white papers’ which, they argued, should not be included in the category of ‘withdrawn by the prosecution’. They also disputed the appropriateness of the ‘withdrawn’ classification in another 80 cases (30.2%).

Table 2 Total higher court finalised defendants where the method of finalisation was ‘withdrawn’ – ODPP assessment of this classification

ODPP assessment	Number	Percentage
White paper	97	36.6
Classification agreed	88	33.2
Classified disputed	80	30.2
Total	265	100.0

White papers

As indicated above, the ODPP queried the ABS inclusion of ‘white papers’ in the ‘withdrawn’ classification. They regard nolle prosequi and white papers as distinct outcomes and distinguish between the two in their annual reports (as detailed in Table 1). According to their definition, a nolle is where all charges against the accused are not proceeded with and, while this definition technically encompasses white papers, they are not included in this category. The ODPP defines a ‘white paper’ as “where the Director declines to prosecute any charge and files prior to arraignment, a notice pursuant to the Criminal Law Consolidation Act, s.276.” According to the ODPP, this commonly occurs where the committal process is conducted in the country and there is no ODPP involvement prior to committal. In such instances, once assessed by the ODPP following committal, it may decide that the complaint or information should be more appropriately heard in the Magistrates Court (as a summary or minor indictable offence) or should not proceed at all. A ‘white paper’ is then lodged with the court.

As noted previously, the ABS counting rules have been developed in consultation with the states and territories to maximise consistency. It is not the role of OCSAR to comment upon the appropriateness of the inclusion of ‘white papers’ in the ‘withdrawn by the prosecution’ category. However, in the Higher Courts *Crime and Justice* collection, OCSAR excludes all matters where the outcome is ‘nolle prosequi’, ‘white certificate’ or ‘not proceeded with’ and where there were no hearings before a judge. Such matters may occur, for instance, when a fresh Information is to be laid joining the current matters with those on another file. This is recorded on the CAA computer system as though a hearing was held, but in front of a member of the Registry staff rather than a Judge.

After consultation with the ODPP some years ago, OCSAR agreed to exclude such matters on the grounds that they do not reflect actual court hearings, merely court registry activities involving the lodgement of documents and the grouping of matters for future hearings. As these matters are recognisable electronically they are excluded from the OCSAR *Crime and*

Justice collection² and likewise, could be identified and/or excluded from the ABS collection.

As part of this research project information was obtained from other jurisdictions, which suggests that not all states and territories have an equivalent system to ‘white papers’. Three states/territories responded to the request for information by the ODPP as to whether they had a similar process to South Australia. Of these:

- The Northern Territory indicated that, where a matter has been committed but there is no indictment, a ‘No True Bill’ is filed (s.297A of the *Criminal Code*). While this appears to be similar to the use of ‘white papers’ in South Australia, according to information provided by the ODPP in that state, this system is used infrequently (accounting for approximately 1.5% of finalisations in the 2002/03 financial year).
- The Tasmanian ODPP indicated they do not have ‘white papers’. However, they do have a discharge system similar to white papers, although there is no ‘paper’ filed (ie. no document is filed with the court and the accused is simply discharged until his/her next appearance).
- New South Wales indicated they have a system similar to ‘white papers’, but the numbers of matters dealt with in this way are very small and no statistics are maintained on the level of use.

Each state/territory has its own procedures manual, detailing the local codes that fall into each of the national classifications. While OCSAR has a list of the court outcome codes that constitute the category of withdrawn in this state, it was not possible to obtain this information from other jurisdictions. Nevertheless, as the ABS definition of withdrawn includes ‘Nolle Prosequi’ and ‘No True Bill’, it is likely that the Northern Territory ‘No True Bill’ figures are included in the ‘withdrawn’ category. However, the Northern Territory response indicated this option is rarely used.

On the basis of the information available, it is unclear whether the Tasmanian and NSW systems, which are similar to ‘white papers’, are included in the ABS category of ‘withdrawn’. Given no document is lodged with the court in Tasmania, and the NSW ODPP maintains no statistics on the level of use of this system, it is possible that cases that have these outcomes are not included in the national collection.

Recommendation

As indicated above, given the ABS has a national perspective and has developed its collection to maximise consistency between the jurisdictions, it is not the role of OCSAR to comment on the appropriateness of the inclusion of white papers by the ABS in the category of withdrawn. However, after negotiation with the ODPP, these matters are not included in the OCSAR annual *Crime and Justice* publications. Further, while information is not available from all jurisdictions, it seems that this system is either not used in all states/territories or, if something similar does exist, statistics are not necessarily kept. It is therefore recommended that the ABS conduct further investigation into the inclusion of these matters in the national collection and, if included, consider whether they should be separately identified or be the subject of an explanatory note.

² However, they are included in most other research and statistical analysis carried out by OCSAR.

Analysis of those cases disputed by the ODPP

As Table 2 indicated, there were 80 matters where the ODPP queried the method of finalisation of ‘withdrawal by the prosecution’ in the ABS report. OCSAR conducted further detailed analysis of the 80 matters/defendants.

As Table 3 indicates, the 80 matters were grouped into four mutually exclusive categories. Each of these groups is discussed below.

Table 3 Results of the OCSAR analysis of the 80 cases where the ODPP queried the ABS coding of withdrawn

	Number	Percentage
1. All charges on case withdrawn by the prosecution – fresh information laid	40	50.0
2. All charges on case withdrawn – possible that fresh information later laid	17	21.3
3. Data entry errors by CAA	2	2.5
4. One of more charges in case withdrawn – but other charges in the case had another outcome	21	26.3
Total cases queried by ODPP	80	100.0

1. All charges in the case are ‘withdrawn’ – a fresh Information is laid, generating a new court case

As Table 3 indicates, in 40 cases all the charges in the case had an outcome of ‘Nolle Prosequi’ or ‘Not Proceeded With’. Both of these outcomes are included in the ABS definition of ‘withdrawn’ and in line with their counting rules. However, checking of the text field in the CAA electronic file indicated that, for each of these 40 cases, a fresh Information had been laid at a later date, resulting in the generation of a new court case with a new court ID number. The current structure of the CAA database does not contain any information that links this new case to the originating case. The only data relating to the laying of a fresh Information is stored in the text fields associated with the outcome on the CAA database, and so cannot be electronically analysed as part of the process of extracting data for the ABS. This can lead to double counting, as each case is counted separately by the ABS.

Discussions with the South Australian ODPP indicate that, in this State, a fresh Information could be laid because of a minor inaccuracy in the original version, such as a typing mistake. However, in such instances, it might also be considered more appropriate to simply amend the Information. An Information would always be relaid where a substantial change is involved, such as the clarification or alteration of the particulars alleged, the description of the charge or the charge itself.

It is not known in what circumstances or how frequently other jurisdictions lay fresh Informations rather than simply amending the original Information. Further, it is not known how this is recorded on the relevant databases within each jurisdiction and in particular, whether the two files can be linked electronically.

In its annual reports the ODPP does not count nolle that are entered “purely because a substitute Information is filed”. Where possible, OCSAR now also excludes such cases

from its higher court *Crime and Justice* collection. This change in counting occurred after OCSAR's figures on the number of cases nolle'd or withdrawn was questioned by the ODPP. As a result of discussions between ODPP and OCSAR concerning this issue, it was agreed that OCSAR would, where possible and appropriate, consolidate such matters on to one case if finalisation of all cases occurred within the same reporting period. This has resulted in a reduction in OCSAR's figures of 50-70 cases classified as nolle'd or not proceeded with each reporting period. This consolidation process involves some manual intervention and close examination of the individual cases but does not take long and is considered appropriate to achieve a more accurate result.

If the ABS undertook a similar process to that used by OCSAR this would mean that all 40 matters detailed above would be counted under the method of finalisation recorded for the fresh Information. Further, this would mean that these matters would be counted only once, rather than as both the original 'withdrawn' case as well as the case that resulted from the fresh Information. However, as previously noted, some manual intervention would be required to identify these cases.

An alternative way of dealing with such matters would be to introduce new values for CAA outcomes in cases where the matter is withdrawn and a fresh Information laid. An outcome such as NOLFI (Nolle Prosequi and new Information laid) would make these matters easily identifiable by electronic means. They could then be excluded from the data collection or treated separately.

Recommendation

These issues should be discussed with the ABS to come to some resolution that would satisfy national reporting requirements and address the problem of double or multiple counting for the same matter in South Australia. Discussions should also be held with the Courts Administration Authority to identify whether new outcome values, such as NOLFI, could be added, as this would overcome the need to manually consolidate these cases. Preliminary discussion with the ABS indicates they would support the introduction of such a value as it would enable these cases to be identified and then investigated on a case-by-case basis. CAA has also indicated in-principle support for the introduction of new outcome values.

2 *All charges in the case withdrawn – seems a fresh Information was later laid, but no record of this*

Similar to the above, there were 17 cases where it would appear that a fresh Information was laid at a later date, but there was no reference to that on the original CAA court file in the text fields contained on the electronic database. Nor was there enough comparable data on the cases to infer that a fresh information was definitely laid (eg. the offences or offence dates were different). Hence, although the ODPP records suggest that fresh Informations were laid, there was no way to identify that this had occurred from the information available on the CAA database. Given the lack of information available to it, these cases appear to be classified appropriately under the ABS counting rules.

Recommendation

While it is unclear why there is no reference to the relaying of a fresh Information in the text field in these cases, adding a new court outcome value of NOLFI, as discussed above, might also assist in the identification of these cases if the courts are aware that a fresh Information had been laid. Further, the ODPP suggested that the creation of a new court outcome value could be accompanied by educating their staff about the importance of ensuring courts are informed when a new Information is laid.

3. Data entry errors

The CAA entered two cases wrongly on to CRIMCASE. In order to correct this, an outcome of ‘not proceeded with’ was listed and these matters were re-entered correctly as a different case. Again, the fact that the first entry is an error was only specified in the text fields and so could not be identified electronically. While the number of matters that fall into this category is small and therefore unlikely to have substantial implications, the CAA might be able to record these matters in some other way to indicate that they are administrative entries and do not reflect the activities of the ODPP.

Recommendation

As well as creating a new outcome value of NOLFI, the CAA should consider creating another new outcome value to be used in those cases where data enter errors occur, rather than recording these matters as ‘not proceeded with’.

4. Matters where the data may have been inappropriately extracted by CAA

In 21 of the cases, the ODPP nolle or did not proceed with one or more charges in the case, but there were other charges within the same case where another outcome was recorded. Generally, the other outcome was a conviction and sentence, or a conviction and remand followed by a consolidation with another case for sentencing. Using the ABS national coding rules for determining the method of finalisation in instances where a defendant has multiple charges that are finalised in different ways, it would appear that the incorrect method of finalisation might have been allocated to these cases when CAA extracted the data for the ABS. Some of these cases involve the more serious charge being nolle/not proceeded with and a guilty plea being accepted to alternate, generally less serious charges in full satisfaction of the Information within the same case.

As Table 4 indicates, in six of the 21 cases, as well as the ‘nolle prosequi’ or ‘not proceeded with’, there was a conviction recorded in relation to one or more charges within the same case. Thirteen of the 21 cases involved matters with an outcome of a conviction, which were then consolidated with another case within the same court for sentencing. In yet another case a conviction was recorded on at least one charge and then the matter was transferred. The remaining case had a final outcome of ‘transferred’.

Table 4 Outcomes in those cases where there was a nolle/not proceeded with and another outcome

Outcome	Number
Conviction recorded on some charges in the case	6
Conviction recorded – then consolidated with another case for sentencing	13
Conviction recorded and transferred	1
Transferred	1
Total	21

According to the explanatory notes contained in the ABS report, the method of finalisation is “the process which leads to the completion of a criminal charge within a court so that it ceases to be an item of work in that court.” There is one method of finalisation applied to each defendant within the higher courts. Consequently, where a defendant has multiple charges with different methods of finalisation, the finalisation code is determined by reference to the following order of precedence:

- Defendant deceased;
- Bench warrant issued;
- Unfit to plead;
- Not guilty on grounds of insanity;
- Guilty finding by court;
- Charge proven n.f.d.;
- Guilty plea by defendant;
- Acquitted by court;
- Charge unproven;
- Transfer from a Higher Court to a Court of Summary Jurisdiction;
- Other transfer between court levels;
- ***Withdrawn by the prosecution;***
- Other non-adjudicated finalisation;

There is also a specific category for consolidations that applies to South Australian data.

As this indicates, ‘withdrawn by the prosecution’ is low on the list, with a transfer between jurisdictions and a guilty finding/plea having precedence. This is applicable to the 21 cases detailed previously. This suggests that these cases were not appropriately coded during the extraction process.

RECOMMENDATION

Those matters where it seems that data could have been incorrectly extracted by CAA were referred to ABS for further consideration.

Implications for South Australia

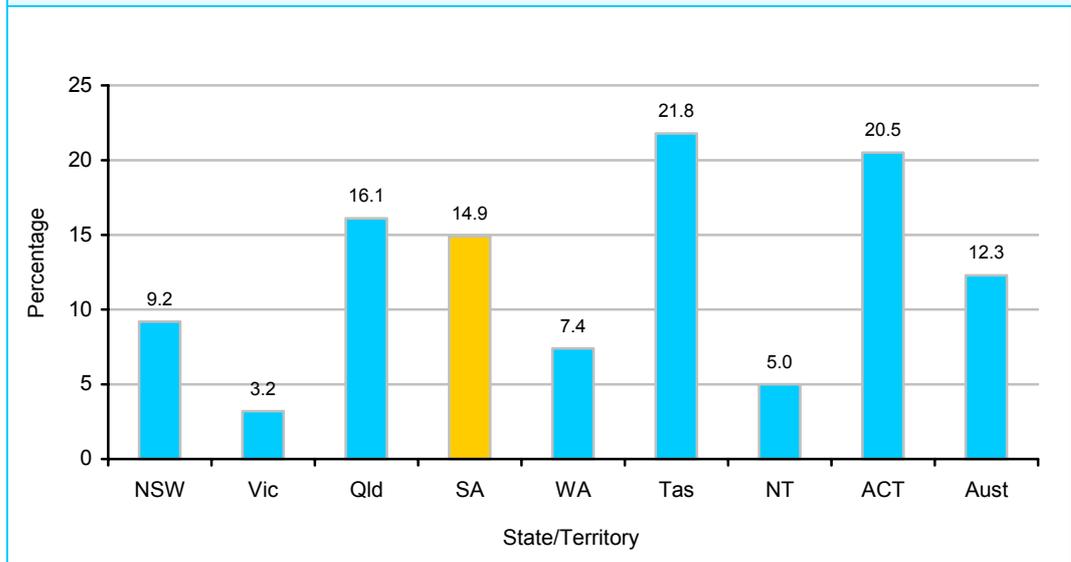
The impact of excluding those cases where the ‘withdrawn’ classification was disputed by the ODPP

As noted previously, of the 1,131 higher court finalised defendants recorded in South Australia in 2001/02, for 265 or 23.4% the method of finalisation was listed as ‘withdrawn’. As discussed previously, the ODPP questioned the categorisation of 80 of these matters. If all 80 matters were excluded from the total, this would reduce the figure from 265 to 185 or 16.4%.

The impact of excluding white papers

Ignoring the cases disputed by the ODPP, if only ‘white papers’ were excluded from the total, this would reduce the figure to 168 or 14.9%. The following graph highlights the impact of such a move on South Australia’s ranking compared with other jurisdictions. However, this assumes that other states would be unaffected by the exclusion of ‘white papers’.

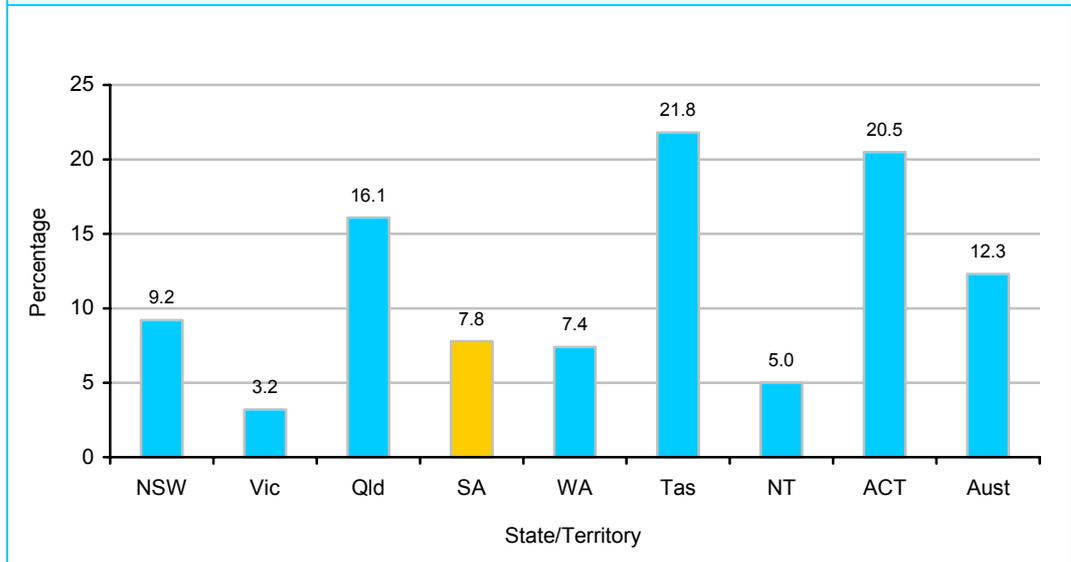
Figure 2 Finalised defendants: proportion where the method of finalisation was ‘withdrawn by the prosecution’, 2001/02 – the impact of excluding ‘white papers’ in South Australia



The impact of excluding all the disputed matters and white papers

If all the ‘white papers’ and the 80 matters disputed by the ODPP were excluded this would mean a substantial reduction from 265 to 88, resulting in a percentage of 7.8%. This would give South Australia one of the lowest ‘withdrawal’ figures, behind Victoria (3.2%), the Northern Territory (5.0%) and Western Australia (7.4%). However, this assumes that the figures from the other states would remain unaffected if these cases were excluded from the South Australian figures.

Figure 3 Finalised defendants: proportion where the method of finalisation was 'withdrawn by the prosecution', 2001/02 – the impact of excluding 'white papers' and those cases disputed by the ODPP in South Australia



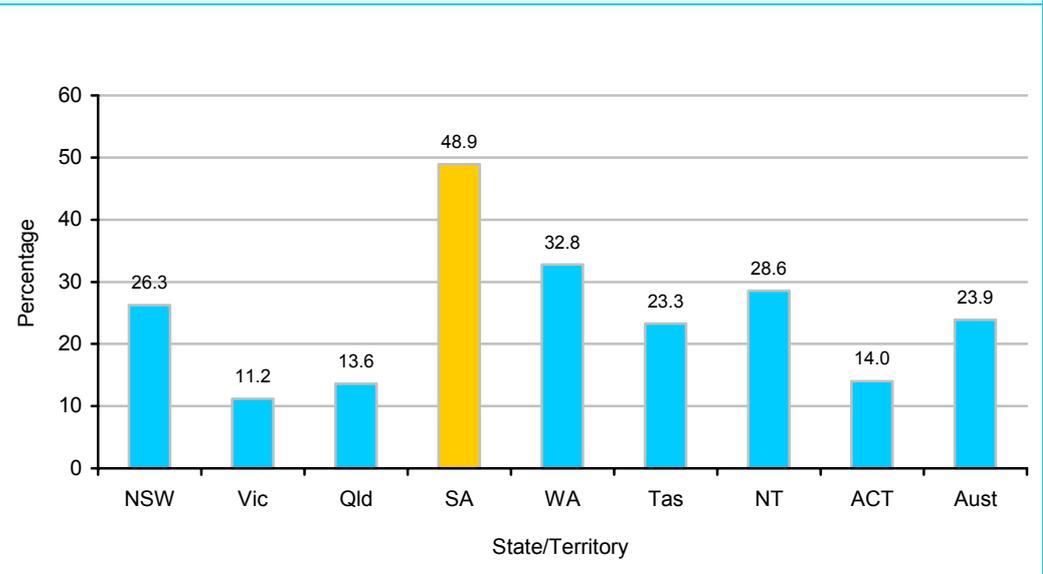
The impact upon other South Australian data published by the ABS in its Criminal Courts report

Obviously, whether 'white papers' are included in the category of withdrawn has implications for South Australia in terms of the total number of matters classified as 'withdrawn'. However, because 'white papers' are disposed of in a single hearing, possibly in a court registry, this also has implications when considering the duration from initiation to finalisation, as reported in the ABS publication.

While data are not presented separately on the 265 withdrawals, of the 329 non-adjudicated finalisations in South Australia,³ 48.9% occurred in less than 13 weeks. This figure was considerably higher than that recorded for any other state/territory and approximately double the national average.

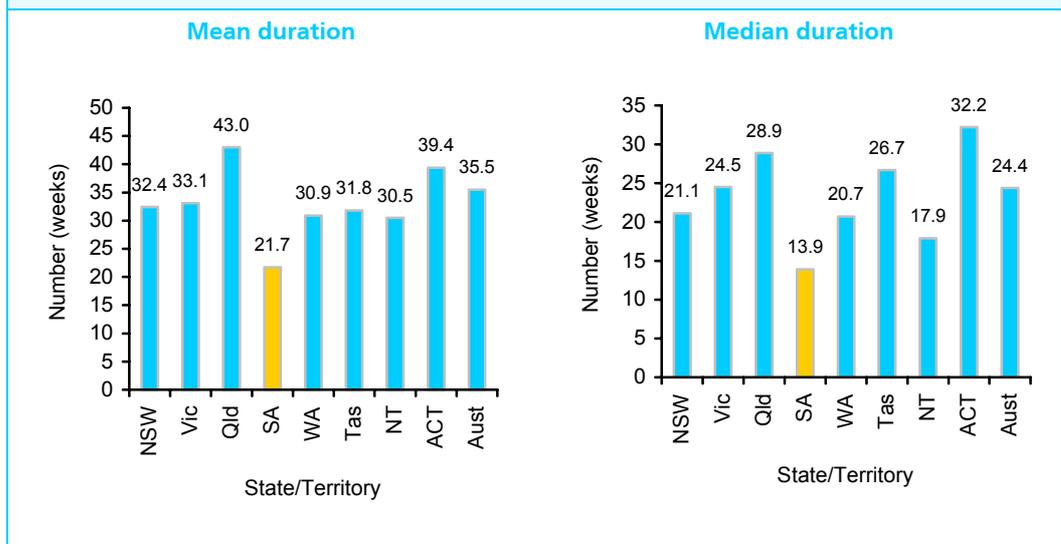
³ The ABS defines 'non-adjudication finalisation' as "a method of finalisation whereby a charge is considered completed and ceases to be active in a court even though there has not been a determination on whether the defendant is guilty. This includes where a charge is withdrawn by the prosecution, the defendant absconds and a bench warrant is issued, and where a defendant is deemed unfit to plead to the charge."

Figure 4 Non-adjudicated finalisations 2001/02, proportion finalised in under 13 weeks by state/territory



Similarly, the mean and median duration (in weeks) from initiation to finalisation for non-adjudicated matters in South Australia were lower than any other state (refer to Figure 5). The mean duration for South Australian was 21.7 weeks, compared with 35.5 for the nation, while the median was 13.9 weeks for South Australia compared with a national figure of 24.4 weeks. In contrast, the mean and median duration from initiation until acquittal, guilty verdict or guilty plea for South Australian finalised defendants was comparable with other jurisdictions.

Figure 5 Higher Court defendants where the method of finalisation is non-adjudication: mean and median duration from initiation to finalisation



That defendants in South Australia who had their cases finalised by ‘non-adjudicated methods’ tended to have their matters finalised more quickly than in other jurisdictions again suggests that there might be something different about the process in South Australia

in comparison with other states. If this difference is solely attributable to the inclusion of ‘white papers’ in the ‘withdrawn’ category in this state, their exclusion could impact upon the case duration.

Other explanations for the high proportion of SA matters withdrawn in comparison with other jurisdictions

While the first section of this paper considered whether the definition and application of the ABS counting rules offered a possible explanation for the relatively high proportion of matters withdrawn in South Australia in comparison with other states, differences could also be a reflection of the policies and practices in each state. While detailed information in relation to other jurisdictions is not available, there are some areas where differing practices could have an impact. Possible areas are considered below.

1. The application of prosecution policy

While the Directors of Public Prosecutions in all states and the Commonwealth of Australia adopted a uniform prosecution policy in 1990, the application of this policy may differ between jurisdictions.

All ODPPs use the ‘reasonable prospect of conviction’ test in making the decision whether to prosecute a criminal offence. As South Australia’s annual report of the ODPP indicates, “A prosecution should not proceed if there is no reasonable prospect of a conviction being secured.” In exercising this discretion consideration is given to how strong the case is likely to be when presented in court and whether prosecution is in the public interest.

Given there is discretion in the application of this test, it is possible that this may vary from one ODPP to another. Based on the information available it is not clear whether this is the case and it was considered beyond the scope of this paper to investigate in detail how the states apply the uniform prosecution policy. However, any differences could impact upon the higher court outcomes recorded in the ABS report.

2. Who handles indictable offences prior to committal?

Another factor that could impact upon the number of matters categorised in the ABS report as ‘withdrawn’ is different practices within the jurisdictions in the handling of indictable offences; in particular, whether these matters are handled by police prosecutions or the ODPP prior to committal?

In South Australia, there is a Committal Unit within the ODPP. This unit assesses all major indictable offences in the metropolitan area prior to committal. However, in a number of matters heard in country areas, South Australia Police (SAPOL) has the conduct of the early court appearances. Hence, the first time the ODPP has the opportunity to assess the charges laid might be after the matter has been committed. As a result, upon assessing the file, they might decide that, instead of laying the Information in the higher court, they will file a ‘white paper’ indicating they decline to prosecute in that court. According to the ODPP 2001/02 annual report, “In the absence of the screening and review of the Committal Unit these files require a more intensive initial assessment than on

occasions results in matters being referred back to the Magistrates Court and appropriate charges being disposed of in that jurisdiction.”

According to the ODPP, of the 114 white papers filed in 2001/02, 78% related to circuit matters.⁴ Similarly, the ODPP annual report indicated that 21 of the 101 matter finalised by a nolle prosequi were not from the Committals Unit (20.8%). Both figures are relatively high when it is considered that the majority of higher court matters would be from the metropolitan area.

In comparison, in some other states, the ODPP handle most, if not all, matters prior to committal. For example, approximately 99% of all committals in the Northern Territory are done by Crown Prosecutors or law officers within the ODPP (correspondence, 30/9/2003). Similarly, in NSW, the ODPP conducts all committal proceedings in relation to indictable criminal offences, with no such committal proceedings conducted by NSW Police Prosecutors. However, matters “are generally initiated by a NSW police officer and the initial appearance before an authorised justice and the first court appearance in the Local Court is usually conducted by a NSW Police Prosecutor” (correspondence, 30/9/2003). After the first court appearance, indictable matters are generally referred to the NSW ODPP for consideration and where an indictable disposition is elected, ODPP officers then take over the matter. Where the option of an indictable disposition is not pursued, the matter is usually returned to the police and conducted by Police Prosecutors until finalised in the Local Court.

In contrast, in Tasmania, approximately 80% of indictable matters are handled by police prosecutors to the point of committal. In that state, the ODPP handles sexual offences, murder and “difficult” or “complex” cases at Police Prosecution request, with Police Prosecutors handling the remainder (correspondence, 4/9/2003). In fact, in Tasmania, the ODPP seldom have charging involvement and matters are often committed for trial where they have had no involvement in the charge selection or assessing sufficiency to prosecute.

While no response to the request for information was obtained from the Queensland ODPP, data contained in their annual report indicates that the police usually present the case against the accused at the committal hearing, although in some Magistrates Courts a prosecutor from the ODPP does this. Similarly, the Western Australian annual report indicates that, although the DPP manages committal proceedings in Perth, the police handle committals to suburban and country courts.

Whether the ODPP or police prosecutions handle matters prior to committal could have implications for the rate of withdrawal. The South Australian figures suggest that committals handled by police prosecutors are more likely to lead to a ‘white paper’ than those handled by the ODPP. That a high proportion of Tasmanian matters are also handled by the ODPP lends some support to the hypothesis that the more matters handled by police prosecutors the higher the proportion of withdrawals. The proportion of matters withdrawn in Tasmania was 21.8%, which was the second highest figure recorded, behind South Australia. However, in his response to the request for information, the Tasmanian ODPP indicated that their system is different to South Australia’s in a number of respects. For example, committal proceedings are not compulsory and are often waived. Further, committal proceedings result in no determination. In other words, once the witnesses have been examined, there is no choice but to commit for trial. Such differences could also contribute to the differences in the rate of withdrawal.

⁴ While the District and Supreme Courts regularly sit in Adelaide, circuit sessions are conducted in regional areas.

In summary, there is some evidence to indicate that differing practices within the jurisdictions in relation to who handles indictable offences prior to committal could impact upon the level of withdrawal. This issue could be worthy of further investigation by the ABS.

Conclusion

This paper considered explanations for the relatively high proportion of matters listed by the ABS as withdrawn in South Australia in comparison to other jurisdictions. It found one explanation was the definition and application of the ABS counting rules.

Of the 265 matters classified by the ABS as ‘withdrawn by the prosecution’, the South Australian ODPP questioned the appropriateness of this classification for:

- 97 ‘white papers’, which the ODPP argued should be separately identified; and
- 80 matters where their records suggested an alternative outcome to that recorded by the ABS.

While OCSAR lacks the national perspective of the ABS to draw conclusions about the appropriateness of the inclusion of ‘white papers’ in the withdrawn category, it conducted detailed analysis of the 80 matters where the ODPP queried the categorisation of ‘withdrawn’. The results indicate that:

- In 40 cases all charges in the case were withdrawn but a fresh Information was laid resulting in the generation of a new court file. However, based on the information available on the CAA electronic file, it was difficult to determine that a fresh Information had been laid.
- In 17 cases all charges in the case were withdrawn and, while it is possible that a fresh Information was later laid, there was no indication of this in the CAA database. Hence, while the ODPP records indicate that this occurred, there would be no way for the ABS to determine this on the basis of the information available on the CAA court file.
- There were two cases entered incorrectly by CAA staff, who sought to correct the error by listing the case as ‘not proceeded with’ and subsequently re-entering the correct details on a different case.
- There were 21 cases where the ODPP nolleed or did not proceed with one or more charges, but there were other charges within the same case where another outcome was recorded. It would appear that an incorrect method of finalisation may have been allocated to these cases when CAA extracted the data for the ABS.

While the definition and application of the ABS counting rules appear to provide some explanation for the relatively high proportion of matters withdrawn in South Australia in comparison with other jurisdictions, it is acknowledged that such differences could in part also reflect variations in the policies and practices in each state. While not considered in detail in this report, the higher court outcomes recorded in the ABS report could reflect:

- Differences in the application of the ‘reasonable prospect of conviction’ test in deciding whether to prosecute a criminal offence; and/or
- Whether the ODPP or police prosecutions handle matters prior to committal.

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