

## The Threshold Test

- 5.1 The Threshold Test may only be applied where the suspect presents a substantial bail risk and not all the evidence is available at the time when he or she must be released from custody unless charged.

### When the Threshold Test may be applied

- 5.2 Prosecutors must determine whether the following conditions are met:
- a) there is insufficient evidence currently available to apply the evidential stage of the Full Code Test; and
  - b) there are reasonable grounds for believing that further evidence will become available within a reasonable period; and
  - c) the seriousness or the circumstances of the case justifies the making of an immediate charging decision; and
  - d) there are continuing substantial grounds to object to bail in accordance with the Bail Act 1976 and in all the circumstances of the case it is proper to do so.
- 5.3 Where any of the above conditions is not met, the Threshold Test cannot be applied and the suspect cannot be charged. The custody officer must determine whether the person may continue to be detained or be released on bail, with or without conditions.
- 5.4 There are two parts to the evidential consideration of the Threshold Test.

## **The first part of the Threshold Test – is there reasonable suspicion?**

- 5.5 Prosecutors must be satisfied that there is at least a reasonable suspicion that the person to be charged has committed the offence.
- 5.6 In determining this, prosecutors must consider the evidence then available. This may take the form of witness statements, material or other information, provided the prosecutor is satisfied that:
  - a) it is relevant; and
  - b) it is capable of being put into an admissible format for presentation in court; and
  - c) it would be used in the case.
- 5.7 If satisfied on this the prosecutor should then consider the second part of the Threshold Test.

## **The second part of the Threshold Test – can further evidence be gathered to provide a realistic prospect of conviction?**

- 5.8 Prosecutors must be satisfied that there are reasonable grounds for believing that the continuing investigation will provide further evidence, within a reasonable period of time, so that all the evidence together is capable of establishing a realistic prospect of conviction in accordance with the Full Code Test.
- 5.9 The further evidence must be identifiable and not merely speculative.
- 5.10 In reaching this decision prosecutors must consider:
- a) the nature, extent and admissibility of any likely further evidence and the impact it will have on the case;
  - b) the charges that all the evidence will support;
  - c) the reasons why the evidence is not already available;
  - d) the time required to obtain the further evidence and whether any consequential delay is reasonable in all the circumstances.
- 5.11 If both parts of the Threshold Test are satisfied, prosecutors must apply the public interest stage of the Full Code Test based on the information available at that time.