

2022 | 2023

ANNUAL REPORT

Office of the Director of
Public Prosecutions

QUEENSLAND



Queensland
Government

Introduction

Acknowledgement of Country

The Office of the Director of Public Prosecutions would like to acknowledge the Traditional Custodians of Queensland and their connection to land, sea and community. We pay our respects to the Traditional Custodians, Elders past, present and emerging.

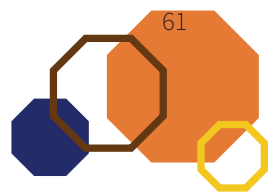
About this report

The Director of Public Prosecutions (referred to throughout this report as 'the Director') is required by section 16 of the *Director of Public Prosecutions Act 1984 (Qld)* to report each year before 31 October to the Attorney-General and Minister responsible for the operations of the Office of the Director of Public Prosecutions.

The report is to be laid before the Legislative Assembly within 14 sitting days after the Minister receives this report. This report is designed to inform both the Parliament and the community regarding the functions performed by the ODPP and covers operations for the period 1 July 2022 to 30 June 2023. The Director's Guidelines as at 30 June 2023 are also included as required by section 11(2)(b) of the *Director of Public Prosecutions Act 1984 (QLD)*.

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Directorate Overview

Delivering a high performing prosecutorial service

The Queensland ODPP is the most decentralised prosecution service in Australia, servicing regional and rural Courts from as far north as Cape York, as far west as Mt Isa and south to the Gold Coast. We have nine Offices that service 45 court locations across Queensland with staff spending over 3000 days on court circuit, away from their home base.

The number of offences being received by the Office has been trending upwards following the post COVID-19 pandemic adjustment in 2020/2021. The introduction of Body Worn Cameras for policing and prison personnel, along with increasingly sophisticated technology that facilitates the analysis of electronic devices and crime scenes, has added to the complexity of those matters and the heavy disclosure obligations placed on the prosecution authority.

Active involvement, by the Office in the Magistrates Courts in Ipswich, Brisbane, and Southport has resulted in some reduction on matters proceeding to the higher courts. While it is argued the Office can play a greater role in this area, without significant legislative change and significant increases to resourcing, it is not feasible to expand the ODPP's remit at this time.

The ODPP presented 6187 indictments in the financial year, a slight decrease on the previous year, which was itself a rebound from the COVID-19 hiatus, is reflective of an upward trend that places significant pressure on the Office and the Courts. There have been increases in Mental Health Referrals and Bail Applications, the latter reflecting legislative changes in respect of youth offenders and domestic violence offences. The increase of pretrial hearings in part reflects the impact of legislation in relation to intermediaries and counselling notes.

Pleasingly, 94% of matters dealt with during the period proceeded by way of a plea of guilty, with 85% being listed for sentence without a trial listing, which is reflective of sound decision making undertaken by staff in the Office and a willingness to engage with defence counsel to reduce the impact on victims by the effective and early resolution of matters where possible. The higher plea rate is reflected in the reduction of the number of matters prepared for trial and perhaps in the conviction rate of those matters that

proceeded to trial. Increased demands have been placed upon prosecutors by the Courts, particularly in the area of pre-trial preparation and the provision of written material to the court, including the drafting of directions and summaries of the prosecution case.

Staff from the ODPP have appeared in extensive legal matters and bodies of work, in the Court of Appeal and in the High Court, and some of those matters are further discussed in this report. We play an important part in the Criminal Justice system and have an impact on those offended against and those who offend.



Our people

We have 444 full time equivalent positions, predominantly in front line service delivery. An increase of almost 10% on the previous year.

The Working for Queensland (WFQ) survey in some ways reflects the pressure the Office is experiencing, with staff reporting high workloads, increased stress, a perceived lack of unfairness and poor work-life balance. Following the release of the 2022 WFQ results, the Office has taken affirmative action to promote work-life balance, explore suitable flexible work arrangements, and increased wellbeing support for staff, including the introduction of Mental Health First Aid Officers in all ODPP offices. Positively, staff have a strong connection to the Office and the work they do and are proud to support the community of Queensland in the administering the justice system.

Contributions to the criminal justice system

The ODPP is called upon to make a contribution to the reform of the criminal justice system and in the 22/23 year, our contributions included representation on the following committees:

- Queensland Sentencing Advisory Council with Philip McCarthy KC as a standing member and Todd Fuller KC as a standing advisor
- Criminal Justice Innovation Office with Philip McCarthy KC and Todd Fuller KC as standing members
- Streamlining Criminal Justice Committee with Todd Fuller KC as a standing member and Philip McCarthy KC as a member of a subcommittee
- The DNA advisory Committee with the Director as a standing member and Todd Fuller KC as a member of the subcommittee
- The Queensland Health SAIK advisory committee
- The Intermediary Oversight Committee with the Director as a standing member
- Women's Safety and Justice Taskforce with Philip McCarthy KC as a standing member and supported by Senior Crown Prosecutor Carly Whelan and Senior Lawyer Kathleen Christopherson
- The DNA Commission of Inquiry supported by Crown Prosecutor Geoffrey Wong
- The QPS Domestic Violence Inquiry supported by Senior Crown Prosecutor Lara Soldi and Stephanie Gallagher and Senior Lawyers Luke Smoothie and James Coghlan,
- The Crime and Corruption Commission of Inquiry supported by Senior Crown Prosecutor James Marxson and Senior Lawyer Malinda Ralph

We are called upon to provide advice on the impact of proposed legislative reform and draft legislation and to provide the AG advice on matters of general interest, as well as specific prosecutions.

The work of the Office is wide reaching and this report will provide more information in relation to our impact and engagement with victims, our partner organisations, and the wider community. You will read how we support and recognise the contribution of our staff to positive outcomes for the community, how we are working to manage an upward swing in cases referred to the Office for prosecution, and the special projects we have underway to improve prosecutorial service delivery, including the Forensic DNA Commission of Inquiry response, Women's Safety and Justice Taskforce response project and the Digital Case Management project.



Women in the ODPP

The ODPP has proactively engaged in the mentoring and development of women within our workplace. We have supported our female lawyers by providing development and mentoring opportunities by funding corporate membership of WLAQ, and attendance at conferences and leadership forums focused on empowerment and leadership skills.

Path to Treaty

Our Commitment to the Path to Treaty signifies our collective pledge to be courageous and curious, to be open to hearing the truth of our State's history, and to collaborate in readiness for negotiating treaties with the First peoples of our country. The ODPP is an active member of the Departmental Path to Treaty Committee. We proudly acknowledge the traditional custodians of the lands upon which we work.

Champions for LGBTIQ+

Throughout the year, the ODPP promoted several events to celebrate diversity and inclusivity within our workplace. During Pride Month the Office heard from proud gay leaders within our workplace speak of their experiences and challenge thinking of what it means to be an ally. A Pride mentoring program is in inception stage and will be implemented organisationally next year.

University Engagement

The ODPP has built strong partnerships with many educational institutions throughout our State and is actively engaged in supporting the law schools. Our leaders were involved in presenting information sessions, guest lectures and judging in advocacy competitions.

Engagement with QPS

In particular, the ODPP facilitated its embedded training with the Queensland Police Service in enhancing skills of police officers involved in the investigation of sexual and domestic violence crime. The police training included the ISACURE (Investigating Sexual Assault - Corroborating and Understanding Relationship Evidence) course, AISCAM (Advanced Interviewing Skills and Conversation Management) course, and CPYJ (Child Protection & Youth Justice Specialist Investigators) course and the training of police prosecutors. The ODPP also participated as subject matter experts in broader training of police in both Financial Crime Investigation and the Phase 1 Detective course.



Philip McCarthy KC
Acting Director of Public Prosecutions



About Us

The *Director of Public Prosecutions Act 1984* (Qld) created the independent Director of Public Prosecutions. The Office of the Director of Public Prosecutions is a business unit of the Department of Justice and Attorney-General.

The Director, with the assistance of officers appointed under the Act and the *Public Sector Act 2022* (Qld), has the primary function of prosecuting on behalf of the State of Queensland people charged with criminal offences in the High Court of Australia, Court of Appeal, Supreme Court, District Court, Children's Court of Queensland, Magistrates Court (limited) and Mental Health Court. The ODPP also assists victims of crime and their families in their interactions with the criminal justice system, primarily by providing information on court events and referral services.

In addition, the ODPP (in conjunction with the Crime and Corruption Commission) has a role in restraining and confiscating proceeds of crime under the *Criminal Proceeds Confiscation Act 2002* (Qld).

Our purpose

Deliver to the community of Queensland the highest quality, independent, effective and efficient prosecution service.

Our vision

The Office strives to make a positive difference to people's lives and create a safer community. The Office strives to deliver an innovative prosecution service in a challenging environment where staff are encouraged to achieve work-life balance. The ODPP endeavours to be an innovative prosecution service by:

- Performing its prosecution functions effectively
- Delivering professional prosecution services
- Applying contemporary approaches to emerging criminal justice and organisational issues
- Sustaining excellence in service delivery

Our goals

Our people are empowered, healthy, inspired and professional:

- implement a holistic talent management framework
- develop our people as supportive, agile and creative leaders
- a flexible, dynamic and diverse workplace

We are resilient to demand shocks & adaptive to changing circumstances:

- formulate and execute a strategic plan and governance framework
- continuously review, identify and improve service delivery
- redesign ways of working and early file intervention to reduce demand pressure and create flexibility

A leader of criminal justice reform:

- use our unique position to collaborate with criminal justice partners to create valuable reforms
- strengthen community understanding and trust in prosecutions

Victims & witnesses are acknowledged and supported:

- recognise individual needs and circumstances
- personalised services that demonstrate our values

Digital 1st, data-driven and sustainable services:

- invest in contemporary digital technologies and practices
- employ cognitive-driven decision making & work management
- innovative, evergreen, people-centred and interoperable systems prosecution

Our values

The values of the Office of the Director of Public Prosecutions include:



Independence



Professionalism



*Respect and
Inclusivity*



Integrity



*Fairness and
Justness*



The Director of Public Prosecutions



Carl Heaton KC

Appointed June 2020

Director

Carl Heaton KC commenced working in the Queensland Office of the Director of Public Prosecutions in 1989. He obtained his Bachelor of Laws degree from the Queensland University of Technology in 1989. Mr Heaton was appointed Senior Counsel in and for the State of Queensland in 2010. In his time with the ODPP he has been based in Maroochydore, Cairns and Brisbane and has appeared in almost every centre in the State where the District and Supreme Courts are held. He is a Member of the Board of the Australian Advocacy Institute and a senior Advocacy Trainer.

Carl Heaton KC was appointed in June 2020 as the Director of Public Prosecutions. In his role as Director, he regularly appears in all jurisdictional levels of Queensland courts as well as the High Court of Australia. He regularly conducts high profile and complex prosecutions and now has an almost exclusively appellate practice in the Court of Appeal and High Court of Australia, as well as attending to all other requirements of his position.



Management



Todd Fuller KC
Deputy Director

Todd Fuller KC commenced working at the ODPP in 1988 as a paralegal clerk in the Brisbane office. He obtained his Bachelor of Law degree with Honours from the Queensland University of Technology in 1989 and was admitted to the Bar the same year and was appointed as a Crown Prosecutor. He was appointed Senior Counsel in and for the State of Queensland in 2010. Todd Fuller KC was appointed as Deputy Director in 2016. He serves on the Queensland Bar Association CPD, New Bar and University Relations Committees in addition to presenting on the Bar Practice Course. He is a member of the Griffith Law School Visiting Committee. Todd has a wealth of corporate knowledge and oversees the operation of the ODPP and uses his experience of over 35 years within the criminal justice system to foster improvement, mentor and develop staff and engage with a variety of stakeholders. He has appeared in all jurisdictional levels of the Queensland Courts as well as the High Court of Australia and regularly conducts high profile and complex prosecutions and appeals.



Philip McCarthy KC
Deputy Director

Philip McCarthy KC commenced with the ODPP as a paralegal in July 1995 after graduating from the University of Queensland with degrees in Law and Science. Philip was admitted as Counsel in 1997, commenced prosecuting trials in 2001, and over the years has developed a reputation for carrying a heavy caseload and prosecuting with fairness, common sense and diligence. Philip was recognised as a leader within the legal profession through his appointment as Queen's Counsel in December 2019. Philip McCarthy KC was appointed as Deputy Director in 2021. He is currently a member of the Queensland Sentencing and Advisory Council, appointed by the Governor in Council on recommendation by the Attorney-General. Philip was also a member of the Women's Safety and Justice Taskforce. Philip shares his experience and expertise through a range of developmental and mentoring programs aimed at developing the capability of ODPP staff and external organisations.



Carla Norbury
Executive Manager

As Executive Manager, Carla leads the ODPP's financial, human resources and corporate services. Carla recently joined the Office in January 2023 following the retirement of the former Executive Manager, Mrs Helen Kentrotis. Carla has a Bachelor of Business in Marketing, and a Master's in Management (Human Resources) and has worked almost exclusively in the justice sector, in youth justice and correctional services, as well as international experience, working in developing nations. Carla's breadth of experience and knowledge in all functions of corporate services and support, is complemented by a strong focus on people and engagement as well as organisational development. Carla has joined the Office at a time of transformation and growth in prosecutorial scope and service delivery and is eager to enhance service delivery by providing corporate services that support the important work of busy prosecution and legal staff.



Director Profiles

Des Sturgess QC Appointed 1985

Des Sturgess QC was appointed to the position of Director of Prosecutions by the Attorney-General of the time, the Honourable Neville Harper. Bringing a wealth of experience to the newly created office from his extensive time in practice as a Barrister at the Private Bar. Des strove throughout his term as Director to develop a thoroughly skilled criminal prosecution service for the people of Queensland. Des was committed to ensuring the Office was a robust and independent authority. He retired in 1990, handing over the leadership to Royce Miller QC. Des became a published author in his retirement. In March 2019, Mr Sturgess QC passed away.

January 1985 - May 1990



Royce Miller QC Appointed May 1990

Royce Miller QC was appointed in 1990 as the Director of Prosecutions, taking over from the outgoing Director Des Sturgess QC. Royce became the longest serving Director to date, serving for a ten-year period until his retirement. Prior to his appointment as Director, Royce was a District Court Judge, a position to which he was appointed in 1980. Prior to that, he was Chief Crown Prosecutor in the Office of the Solicitor-General. Royce originally joined the public service in 1950 as a clerk in the Solicitor-General's Office. Upon admission to the Bar in 1958, he became a Crown Prosecutor and Senior Crown Prosecutor before his appointment as Public Defender in 1977. He took silk during this time. In 1978, he was appointed Chief Crown Prosecutor before his appointment to the bench. In October 2017, Mr Miller QC passed away at the age of 84.

May 1990 - June 2000



Leanne Clare SC Appointed June 2000

Her Honour Judge Leanne Clare SC was appointed as Director on 22 June 2000, following the retirement of Royce Miller QC. Leanne was admitted as a Barrister of the Supreme Court of Queensland on 29 July 1985. Prior to her appointment as Director, Leanne performed the role of Special Counsel of Appeals within the Office of the Director of Public Prosecutions. Her Honour had also acted as a Judge of the District Court between March and August of 1999 and between February and March of 2000. Leanne was appointed Senior Counsel in 2006, and was appointed as a Judge of the District Court of Queensland on 2 April 2008.

June 2000 - June 2008





Anthony Moynihan QC
Appointed June 2008

His Honour Judge Anthony Moynihan QC was admitted to the Queensland Bar in 1991 and took silk in November 2006. Anthony practiced at the private bar for five years before taking a position with the Office of the Director of Public Prosecutions. He was appointed Deputy Public Defender with Legal Aid Queensland in 1999. During his time as Deputy Public Defender, Anthony specialised in appellate work in the Court of Appeal and the High Court of Australia. He served as Director for seven years before his appointment to the District Court bench in June 2015.

June 2008 - June 2015



Michael R Byrne QC
Appointed November 2015

His Honour Judge Michael Byrne QC commenced working in the Office of the Director of Public Prosecutions in 1988. Michael obtained his Bachelor of Laws from the Queensland University of Technology in 1991. After working as a case lawyer for some years, he commenced prosecuting criminal trials in the District and Supreme Courts in 1995. Michael was appointed Senior Counsel in and for the State of Queensland in 2009 prior to his appointment as the Deputy Director of Public Prosecutions in 2010. In his role as Deputy Director, he regularly appeared in all jurisdictional levels of courts in Queensland, and on occasion in the High Court of Australia. He was also heavily involved in inter-departmental and government body meetings considering policy and legislative issues. He served as Director for four years and two months before his appointment to the District Court bench in January 2020.

November 2015 - January 2020



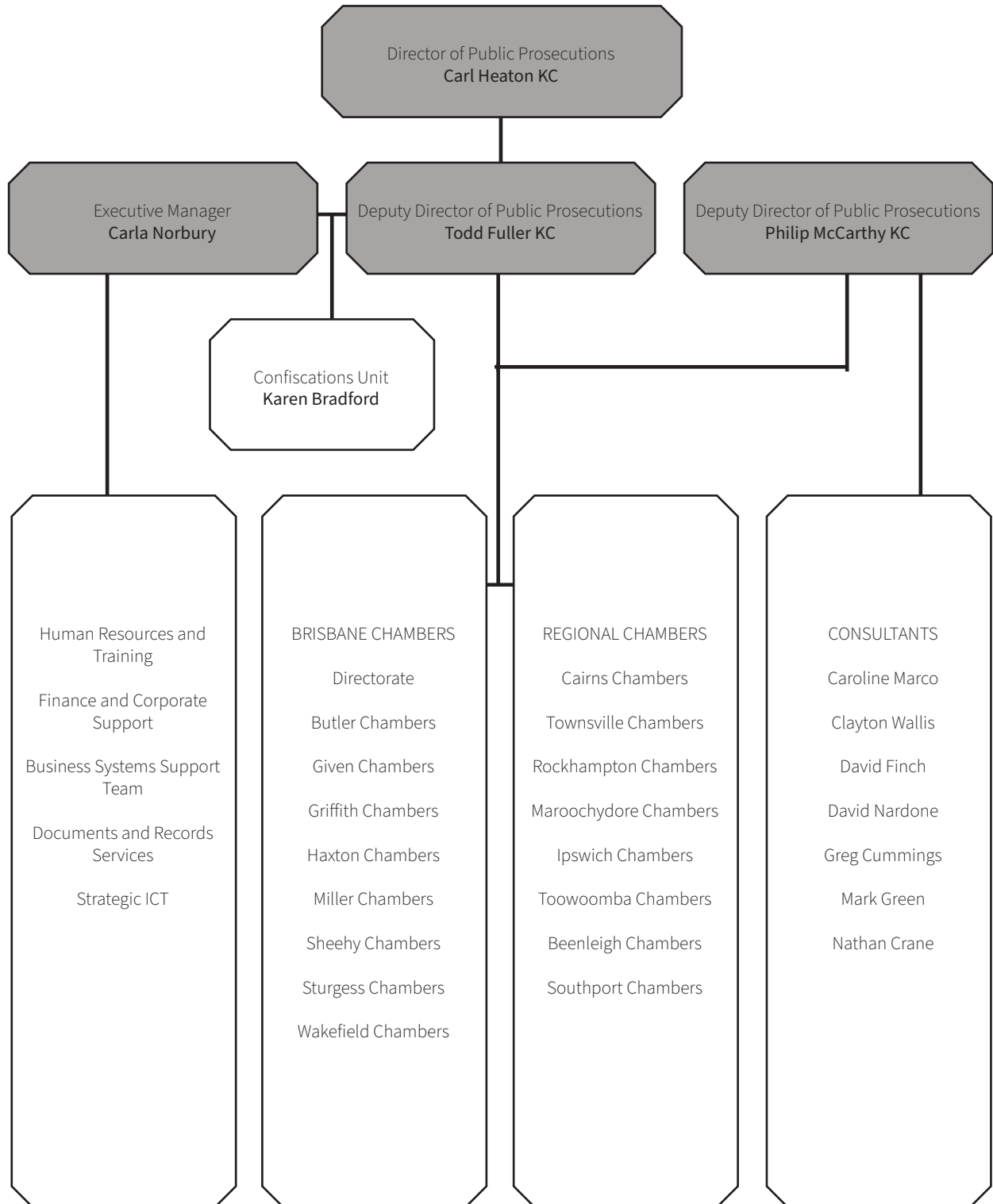
Carl Heaton KC
Appointed June 2020 - Director

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Organisational Structure



Locations of ODPP



BRISBANE CHAMBERS

Level 5 State Law Building
50 Ann Street
BRISBANE QLD 4000
PO Box 2403
P (07) 3035 1122

BEENLEIGH CHAMBERS

Level 1 12-14 James Street
BEENLEIGH QLD 4207
PO Box 717
P (07) 3081 2300



CAIRNS CHAMBERS

Level 6 City Central Building
63-67 Spence Street
CAIRNS QLD 4870
PO Box 1095
P (07) 4038 5731

IPSWICH CHAMBERS

Level 2 Ipswich Courthouse
43 Ellenborough Street
IPSWICH QLD 4305
PO Box 27
P (07) 3470 7419



MAROOCHYDORE CHAMBERS

Level 4 Mike Ahern Centre
12 First Avenue
MAROOCHYDORE QLD 4558
PO Box 1105
P (07) 5376 5200

ROCKHAMPTON CHAMBERS

Ground Floor
149 Bolsover Street
ROCKHAMPTON QLD 4700
PO Box 1304
P (07) 4921 6227



SOUTHPORT CHAMBERS

Ground Floor
149 Bolsover Street
ROCKHAMPTON QLD 4700
PO Box 1304
P (07) 5675 7000

TOOWOOMBA CHAMBERS

Toowoomba Courthouse
159 Hume Street
TOOWOOMBA QLD 4350
PO Box 1800
P (07) 4591 4758

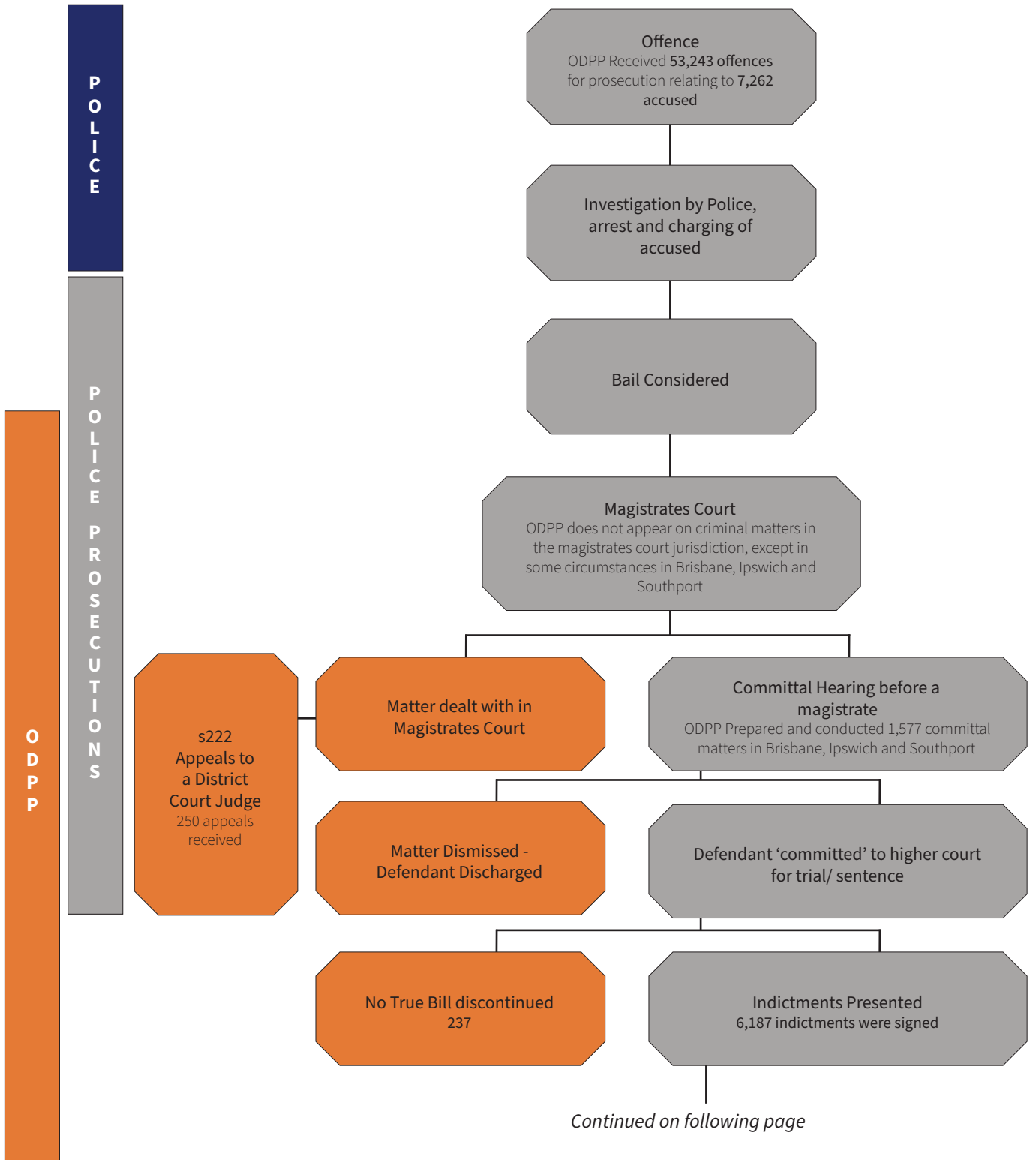


TOWNSVILLE CHAMBERS

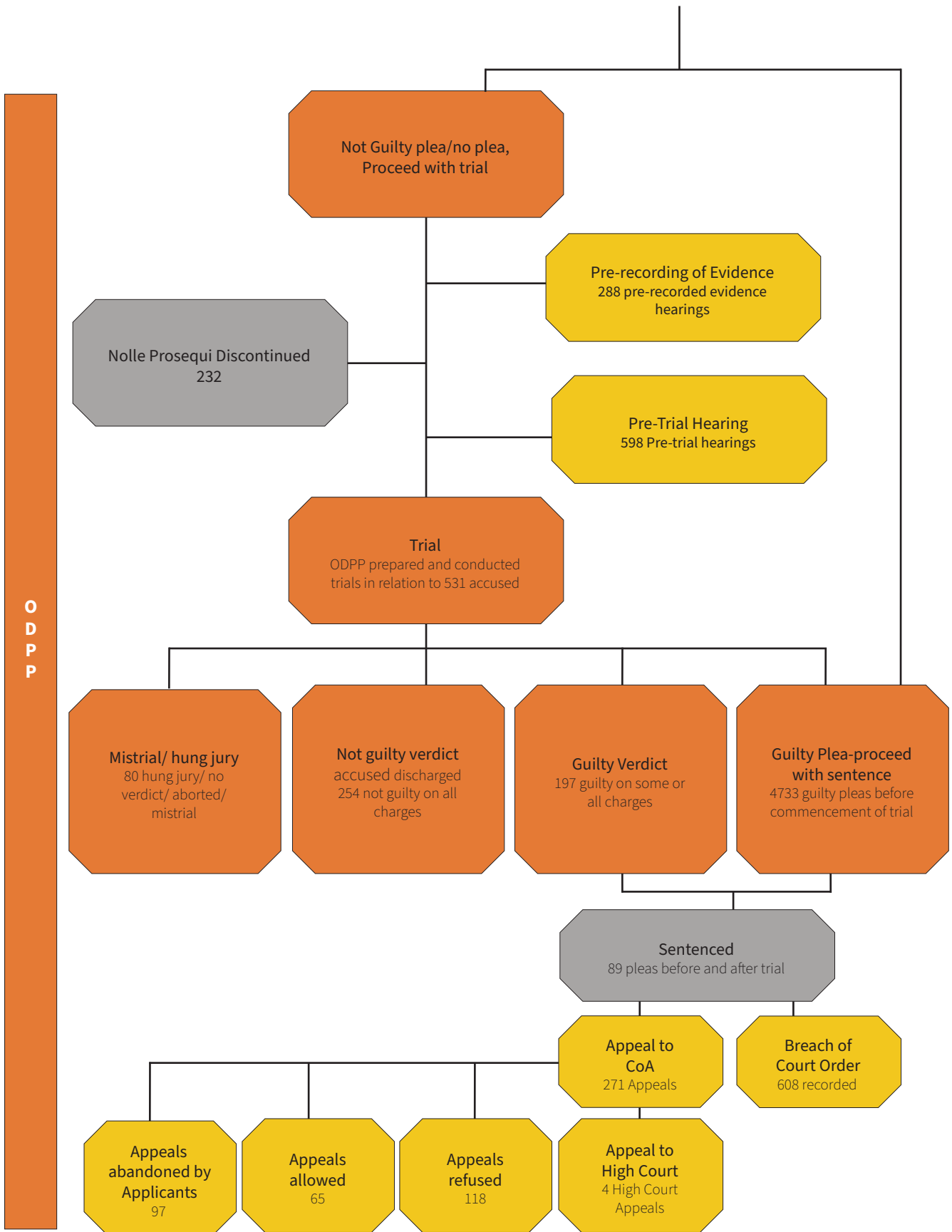
Level 3 22 Walker Street
TOWNSVILLE QLD 4810
PO Box 989
P (07) 4781 8933



Court Process Flowchart



Continued



Financial Performance

Income Statement (at close of Financial Period 16)

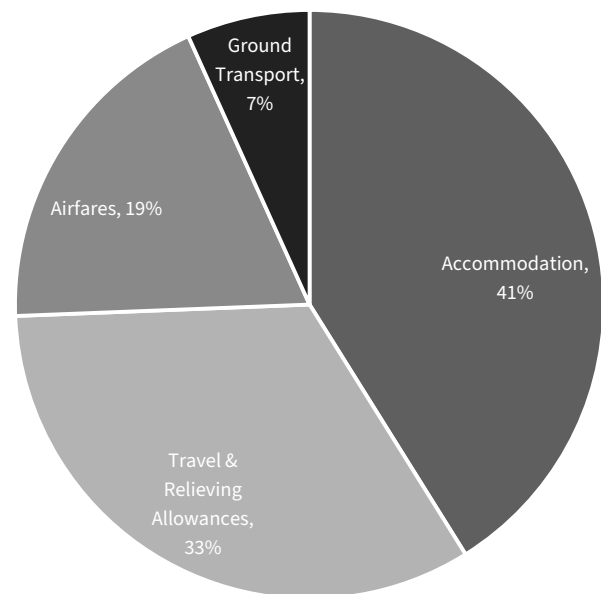
Revenue	Amount \$
Service Revenue:	60,259,000.00
Own Sourced Revenue (Fees and Charges):	517,000.00
Special Programs (Included in service revenue)	
Phase 2 ICT Strategy Implementation Program (ISIP 2):	1,172,000.00
Royal Commission into Institutional Responses to Child Sexual Abuse:	645,000.00
Forensic DNA Commission of Inquiry:	398,000.00
Total Revenue:	60,776,000.00
Expenditure	
Employee Related Expenses (1):	49,242,000.00
Depreciation and Amortisation:	495,000.00
Supplies and Services Total:	11,039,000.00
Property Tenancy and Maintenance:	4,989,000.00
Contractors IT Projects (2):	1,206,000.00
Witness Costs* (3):	978,000.00
Legal Barrister Fees (Brief-Outs):	953,000.00
Staff Travel*:	855,000.00
Printing, Postage and Stationery:	811,000.00
Plant and Equipment:	370,000.00
Subscriptions (Legal Databases):	234,000.00
Document Destruction & Archiving:	168,000.00
IT Services and Support:	167,000.00
Telecommunications:	149,000.00
Other General Supplies and Services:	82,000.00
Motor Vehicles:	49,000.00
Transcription Charges:	28,000.00
Total Expenditure	60,776,000.00

(1) Expenses include Wages and Salaries, Employer Superannuation, Long Service Leave Levy, Workers Compensation Premium, Fringe Benefits Tax, and Study and Research Assistance Scheme Payments. (2) Predominantly relates to work performed on Phase 2 ICT Strategy Implementation Program (ISIP 2). (3) Expert Fees & Reports, Interpreters Fees and Videolink Costs have been incorporated into Witness Costs. In previous years, these costs were reported individually.

Staff travel

The below chart shows staff travel costs by category of travel. This graph is a breakdown of staff travel costs incurred in the reporting period and shown in the Income Statement. It should be noted that staff travel predominantly relates to attending court and court related matters.

Percentage of staff travel expenses incurred by category
1 July 2022 - 30 June 2023



Witness travel and associated costs

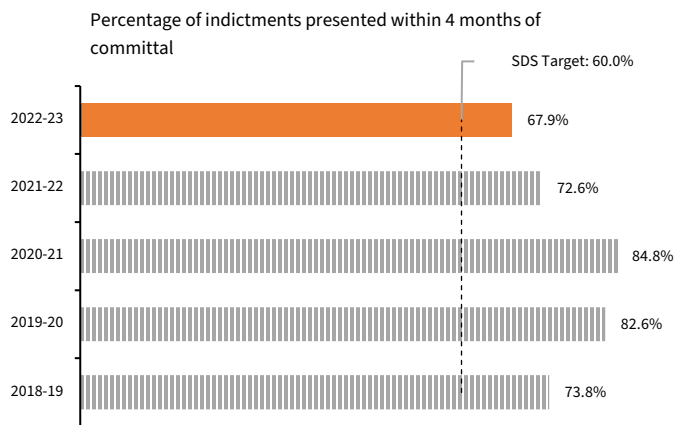
The table below shows witness costs by category of cost and is a breakdown of witness costs incurred during the reporting period and shown in the Income Statement.

Category	%
Domestic Air travel	33.07%
Accommodation & Meals	23.45%
Expert Fees & Reports	14.59%
Videolinks & Interpreters	7.61%
Witness Attendance	7.56%
Own Transport	5.30%
Overseas Air travel	4.32%
Ground Transport	3.14%
Flight Booking Fees	0.96%

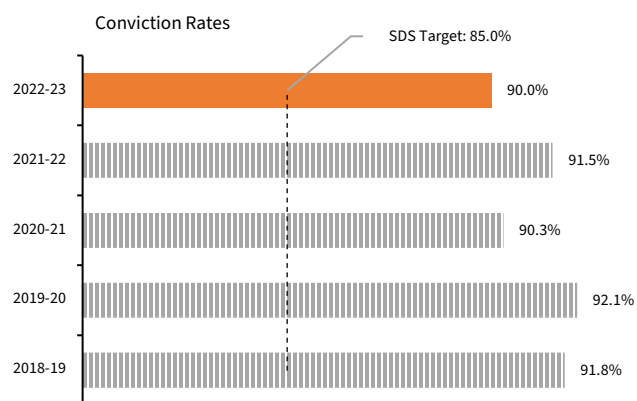


Service Delivery Statements

Service Delivery Statements (SDS) provide budgeted financial and non-financial information for the budget year. One of five service areas of the Department of Justice and Attorney-General is 'Legal and Prosecutions'. The ODPP currently has three service delivery statements to measure the efficiency and effectiveness of its core activities. These measures are reported to the Department of Justice and Attorney-General on a quarterly basis.



2020-21 reduced court workloads for staff



Indictment presentation

The ODPP is required by section 590(1) of the *Criminal Code Act 1899* (Qld) to present an indictment within 6 months of committal, where the ODPP intends to prosecute a matter.

Complementing this statutory timeframe, the ODPP's efficiency measure requires that 60% of indictments in the Supreme District and Children's Court of Queensland are signed and prepared for presentation within 4 months of a committal.

The ODPP exceeded its 60% efficiency target for the 2022-23 financial year by 7.9%, signing **67.9%** of indictments within 4 months of committal. Throughout the reporting period, the ODPP has continued to address increased workloads and operate efficiently.

Conviction rate

The other ODPP effectiveness measure requires an 85% conviction rate for prosecutions on indictment in the Supreme, District and Children's Court of Queensland. The ODPP exceeded this target for the 2022-2023 financial year, achieving a conviction rate of 90.0%.

The ODPP has maintained a high conviction rate over the last five reporting periods, with an **average of 90.1%**. Maintaining a high conviction rate demonstrates the ODPP's expertise in appropriately disposing of matters referred for prosecution, and accordingly meeting its obligations to the Queensland community.

Indictments signed per Crown Prosecutor per month

In the 2022-23 financial year, the ODPP has implemented a new SDS efficiency measure - indictments signed per Crown Prosecutor, per month. In the 2022-23 financial year the office had an average of **15.6 indictments** signed per Crown Prosecutor per month, falling below its first target figure of 18.

This can be attributed to the increase in the number of Crown Prosecutors employed by the Office, contrasted against the stable number of indictments presented.



Incoming Offences during 2022-23 by Category

Incoming offences are recorded against established categories determined by the nature of the offence. This table shows the number of new charges received per category and chamber for the financial year of 2022-23

Values		Brisbane	Beentleigh	Cairns	Ipswich	Maroochy	Rockhampton	Southport	Toowoomba	Townsville	Directorate	Total
Homicide	Sum of Murder	101	1	4	9	1	1		4	6	49	127
	Sum of Attempted murder	100			10	1	5		1	2	22	119
	Sum of Manslaughter	17		1			1	1		4	14	24
	Sum of Dangerous op. c/death	15	3	3	3	7	9	1	2	3	3	46
	Sum of Striking causing death	3									1	3
	Sum of OTHER CH 28 (ss.307-314)	12	3	1	2				2	1	4	21
Sexual Offences	Sum of Rape	1664	124	94	178	120	103	153	229	126	366	2791
	Sum of Sexual assault	374	53	74	37	17	25	53	25	34	107	692
	Sum of Unlawful carnal knowledge	88	6	4	12	15	9	23	6	16	9	179
	Sum of Unlawful sodomy	5	9			1					1	19
	Sum of Indecent treatment	1833	288	205	258	258	187	258	204	246	376	3737
	Sum of CEM (incl. Cth Code)	462	20	139	44	65	62	55	20	110	53	977
Sum of OTHER CH 22 (ss.211-229B)	402	38	54	45	8	78	29	110	22	147	786	
Violence and Offences Endangering Life	Sum of Malicious act w/intent	76	7	6	12	3	8	3	3	7	16	125
	Sum of Grievous bodily harm	208	24	47	23	22	23	30	16	55	59	448
	Sum of Dangerous op. (excl. c/death)	163	17	11	14	7	23	9	7	24	67	275
	Sum of Torture	69	12	10	15	11	4	6	5	1	22	133
	Sum of Wounding	82	19	52	11	11	5	50	5	28	18	263
	Sum of Assaults	1741	242	420	411	209	159	195	220	261	575	3858
Property Offences	Sum of Choking, suffocation, strangula	498	124	123	142	70	61	73	70	81	174	1242
	Sum of OTHER CH 29 (ss.315-334)	183	44	3	12	4	9	26	6	4	68	291
	Sum of Robbery	1079	107	147	177	95	92	141	90	129	150	2057
	Sum of Extortion	56	26	7	14		2	7	1	1	19	114
	Sum of Burglary, Enter/being in prem	1739	73	79	88	134	83	128	115	113	412	2552
	Sum of UEMV for CIO	78	15	14	6	10	1	6	4	3	21	137
	Sum of Stealing/receiving	1393	50	27	53	89	44	89	45	75	767	1865
	Sum of UUMV and UPMV	804	41	53	57	49	50	50	64	54	242	1222
Sum of Fraud	835	13	17	20	62	10	178	146	128	357	1409	
Sum of Forgery and uttering	373	11		2			2	7	3	29	68	427
Sum of Arson and wilful damage	669	64	63	92	37	58	39	61	69	198	1152	
Sum of OTHER PT 6 (ss. 390-553)	378	10	8	64	28	11	4	9	38	202	550	
Other Offences in the criminal codes (QLD & CTH)	Sum of Breaches of the peace	116	8	25	13	4	9	9	4	30	38	218
	Sum of Corruption, abuse of office	31	2	1							29	34
	Sum of Administration of justice	76	1	19	6	8	12	6	3	10	38	141
	Sum of Prostitution	12	10			3			1		9	26
	Sum of Offences against liberty	286	27	27	58	7	7	31	22	9	97	474
	Sum of Unlawful stalking	221	6	20	51	17	14	14	14	13	79	370
	Sum of Marriage, parental rights/dutie	7	8			1	4	3	2		3	25
	Sum of OTHER (Criminal Code Qld)	289	9		41	11		13	11	26	111	400
Sum of OTHER (Criminal Code Cth)	93	2		15	10	4		2	50	41	176	
Drug Offences	Sum of Trafficking DD	540	6	24	15	21	68	12	25	73	119	784
	Sum of Producing DD	126	28	23	19	34	18	21	5	13	26	287
	Sum of Supplying DD	6174	81	410	761	149	1296	107	706	1490	1077	11174
	Sum of Possessing DD	2481	44	164	173	86	188	106	107	179	754	3528
	Sum of OTHER (Drugs Misuse Act)	1928	24	33	186	41	121	55	45	138	683	2571
All Others Offences	Sum of SUMMARY OFFENCES ACT	369	5		8	2	18	3	1	59	190	465
	Sum of WEAPONS ACT/REG.	670	10	3	29	6	19	10	7	17	305	771
	Sum of BAIL ACT	555	2		46		6	4	14	4	423	631
	Sum of TORUM ACT	494	27		41	1	22	12	28	10	387	635
	Sum of ALL OTHER OFFENCES	1730	60	212	283	143	144	55	123	142	988	2892
Grand Total	31698	1804	2627	3556	1878	3075	2078	2593	3934	9987	53243	



Offence Trends

Incoming offences

The ODPP received **53,243** charges for consideration during the reporting period. This is an **increase of 7.24%** from the previous financial year, however is 1.71% below the 5 year average.

Incoming violent offences

The ODPP observed an increase in the number of homicide offences received during the reporting period. The 2022-23 period saw **340 homicide charges**, which is an **increase of 21.4%** from the previous financial year's figure of 280. It also falls well above the five-year average of 263.6.

Similar increases can be observed in violent offences and sexual offences. The number of violent offences received has **increased by 10.1%** in the past financial year, and the number of sexual offences received has **increased by 13.3%**. Sexual offences in particular have seen a consistent and increasing trend. When viewed over a five year period, the number of sexual offences received has increased by a **substantial 26.1%**.

Incoming property and drug offences

The number of drug offences at 18,344 marginally **decreased this financial year by 2.2%**, continuing to fall below the five year average. The number of property offences was 11,485, which **increased by 11.2%**, however continued to remain below the five year average.

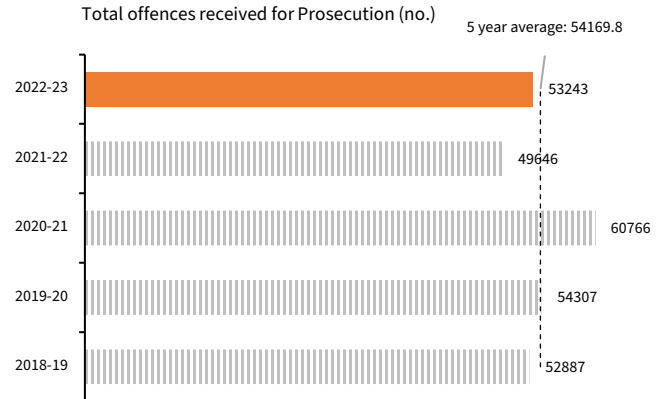
When these trends are viewed holistically over the past five years, they indicate a shift in the type of offences referred to the ODPP for prosecution. The proportion of 'volume crimes' involving drug and property offences is steadily decreasing, while the proportion of violent, sexual, and homicide offences has steadily increased. This effect is again most notable with the increase in the proportion of sexual offences referred for prosecution.

Notable changes in occurrence of offences

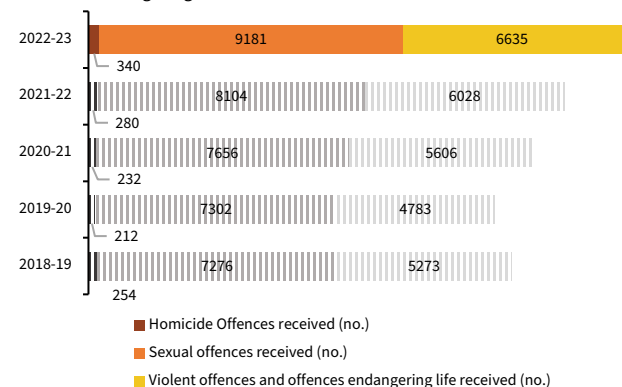
When considering individual offences, the following offences saw the most significant changes from their five year averages in 2022-23:

- **73.98% Increase** in Attempted Murder
- **42.43% Increase** in Choking (Domestic Violence)
- **41.80% Increase** in Unlawful entry of motor vehicle for committing an indictable offence
- **41.80% Increase** in Rape
- **35.43% Increase** in Unlawful Stalking
- **24.88% Decrease** in Malicious Act with Intent
- **30.34% Decrease** in Fraud
- **29.24% Decrease** in Producing Dangerous Drugs

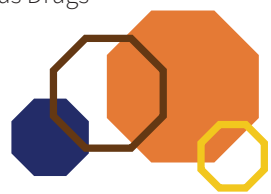
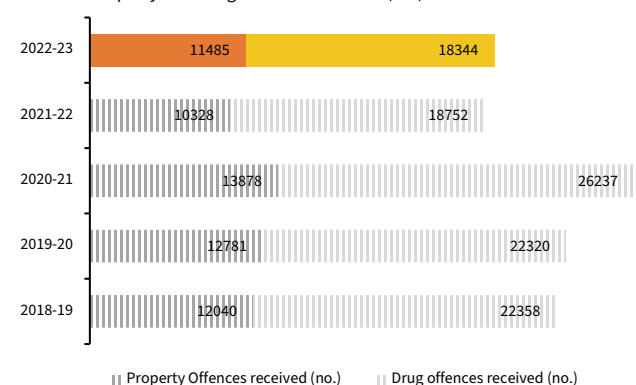
Total offences received for Prosecution (no.)



Homicide, Sexual Offences and Violent offences and offences endangering life received



Property and Drug Offences received (no.)



Preparation of Matters

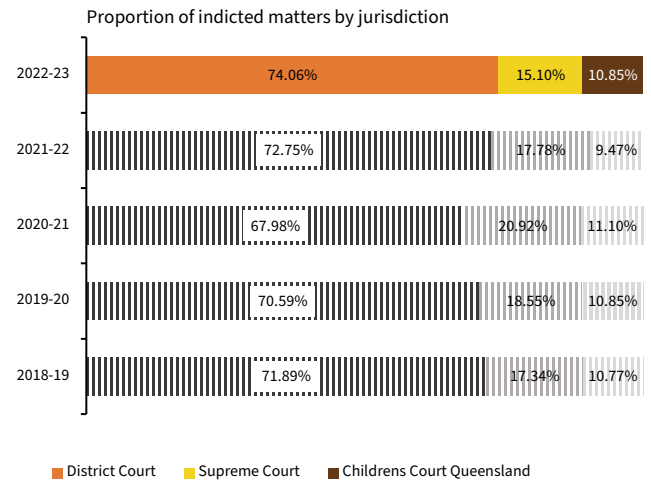
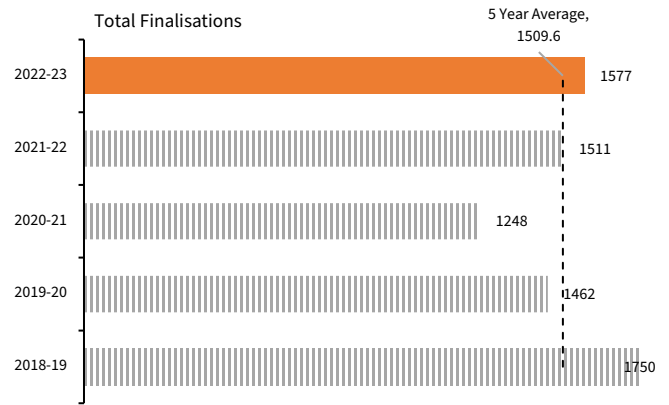
The ODPP is responsible for preparing and appearing at committal matters in the Brisbane Central and Ipswich Magistrates Courts, as well as committal matters in the Southport Magistrates Court that relate to sexual offending. The ODPP **finalised 1577 summary matters** during the reporting period.

- 1123 matters committed for trial
- 215 summary pleas of guilty
- 100 defendants discharged on all charges or had charges withdrawn
- 4 summary trials
- 92 committed for sentence
- 43 matters returned to police prosecutions

The indicted matters in the current reporting period consisted of 4,582 District Court matters, 934 Supreme Court matters and 671 Childrens Court of Queensland matters.

Director's consent

The Director gave consent to prosecute the offence of maintaining a sexual relationship with a child pursuant to section 229B(6) of the Criminal Code 1899(Qld) was granted in 160 matters.

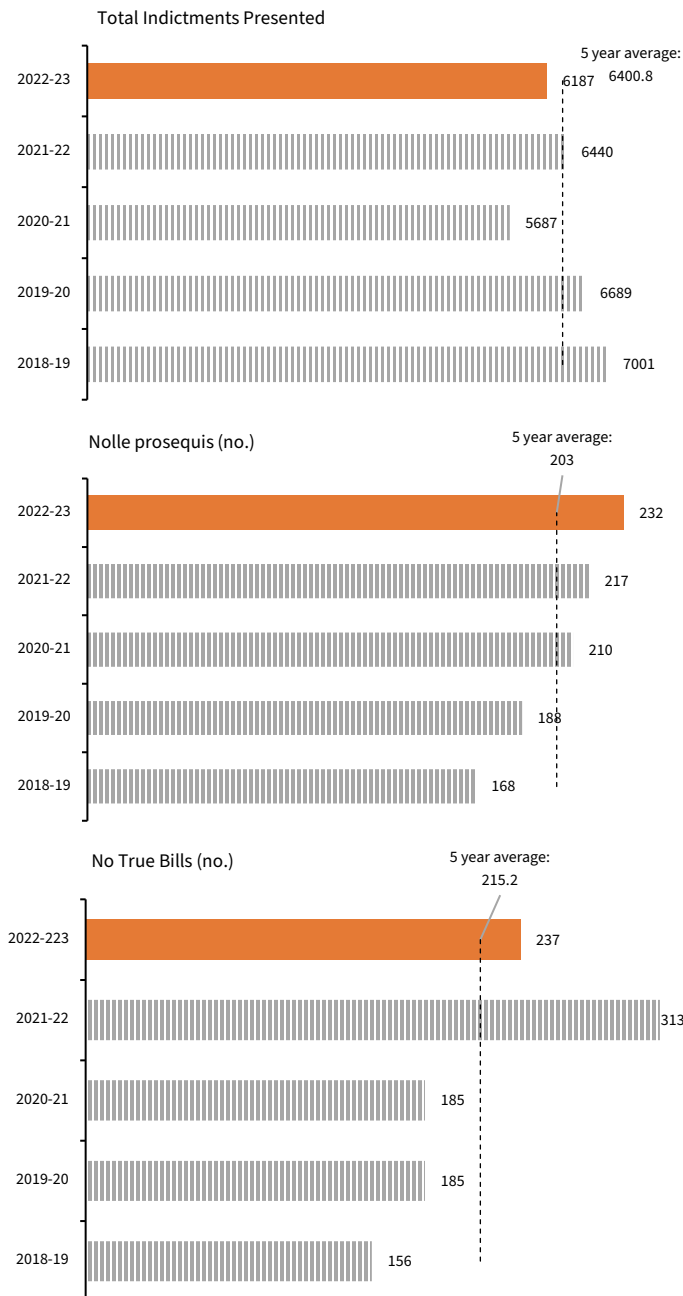


Presentation of indictments

The ODPP presented **6,187 indictments** to the Supreme, District and Children's Court of Queensland in the 2022-23 financial year. This is an **decrease of 3.9%** from the last reporting period.

237 committed matters were determined that an indictment should not be presented (referred to as 'no true bill'). A further **232 committed matters** were discontinued after an indictment was presented (referred to as 'nolle prosequi').

The average file workload per legal officer was **79 for the year 2022-2023**.



Hearing Appearances

Breach proceedings

Breach proceedings are conducted if a person has been convicted of an offence and fails to act in accordance with a court order, such as community service, probation or a suspended sentence. The ODPP is required to prove the breach and make submissions for appropriate re-sentencing of the offender.

The ODPP conducted **608 breach hearings** in 2022-23, a **6.6% decrease** from 2021-22.

Pre-trial hearings

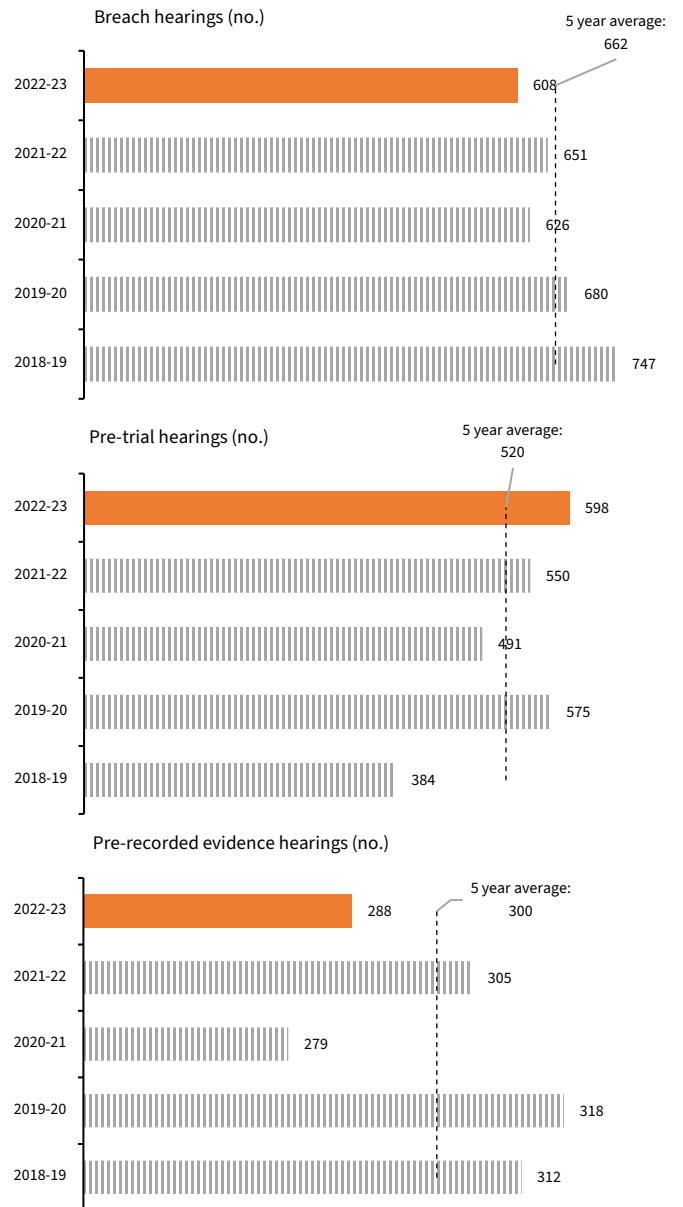
Pre-trial hearings are conducted by application under section 590AA of the Criminal Code, usually in relation to issues of law that need to be resolved prior to the commencement of trial. The ODPP is required to prepare a written outline of submissions and appear before the court for legal argument.

The ODPP conducted **598 pre-trial hearings** in 2022-23, an **8.7% increase** from 2021-22. This figure also remains above the five year average of 598.

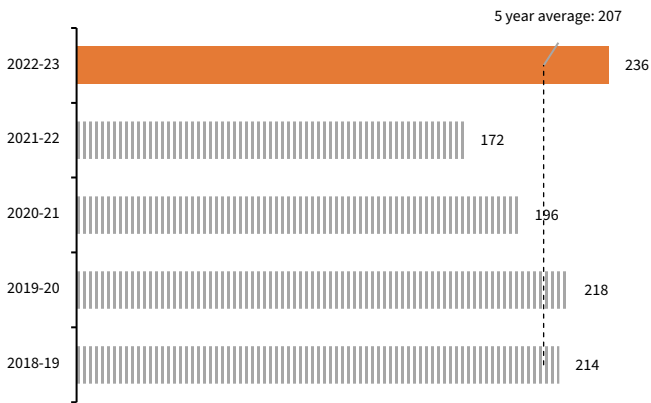
Pre-recorded evidence hearings

Pre-recorded evidence hearings are conducted pursuant to the *Evidence Act 1977(Qld)*. These hearings are held in a closed court and allow special witnesses, including affected child witnesses, to testify in the absence of a jury. This evidence is recorded, and the recording played to the jury at trial.

The ODPP conducted **288 pre-recorded evidence hearings** in 2022-23, a **5.5% decrease** from 305 in 2021-22.



Mental Health Court referrals (no.)



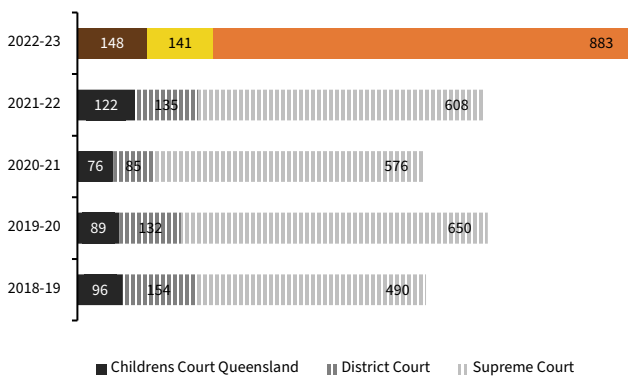
Mental Health Act proceedings

Section 110 of the *Mental Health Act 2016 (Qld)* allows the matter of a person’s mental state in relation to a serious offence to be referred to the Mental Health Court. The ODPP is a party to these proceedings.

The purpose of referrals is to determine whether a person who is alleged to have committed a serious offence was of unsound mind at the time of the offence, and whether the person is unfit for trial. The Mental Health Court is also required to determine whether a person charged with murder was of diminished responsibility when the offence was committed.

The ODPP received **236 references** to the Mental Health Court during the 2022-23 reporting period.

Bail applications, variation applications, and revocation applications by jurisdiction (no.)

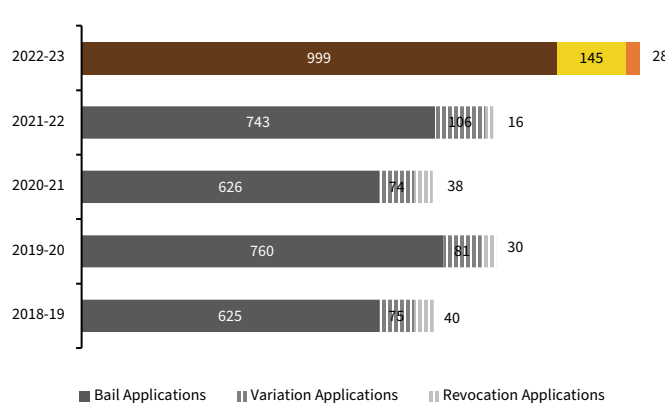


Bail hearings

The ODPP is the respondent to all bail applications in the District, Supreme and Children’s Court of Queensland, as well as for matters which the ODPP retains carriage of in the Magistrates Court. The ODPP may also apply to vary or revoke bail where appropriate.

In 2022-23, the ODPP **appeared on 1172 bail hearings**, a significant **increase of 35.5%** from the previous financial year, exceeding the five year average of 877.

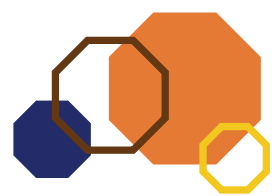
Bail applications, variation applications, and revocation applications (no.)



Intermediary program

Since July 2021, the ODPP has been involved in the Queensland Intermediary Scheme (QIS) pilot program in Brisbane and Cairns. The scheme was developed by the Queensland Courts to assist witnesses with communication needs. The pilot program is limited to prosecution witnesses in child sexual offence matters who are under 16 years of age, have an impairment of the mind, or have difficulty communicating.

The two-year pilot scheme was one of the recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (2013-17). The intermediaries are engaged upon request by police officers, lawyers, and the Court. There have been **124 instances** in the reporting period where the ODPP has participated in the scheme by making referrals.



Circuit appearances

ODPP Crown Prosecutors and support staff regularly travel to Queensland's **32 District Courts** and **11 Supreme Courts** for trials, sentences and hearings throughout the year. Throughout the 2022-23 year, 183 staff spent an equivalent of 3066 days on circuit, with an **average of 8.3 days** across 32 different locations around Queensland.



Circuit	Number of Days (actual)
Aurukun	2
Bamaga	1
Bowen	32
Brisbane	48
Bundaberg	116
Cairns	105
Charleville	26
Charters Towers	16
Dalby	53
Emerald	59
Gladstone	74
Goondiwindi	25
Gympie	74
Hervey Bay	116
Innisfail	38
Ipswich	5
Kingaroy	38
Longreach	5
Mackay	167
Maroochydore	18
Maryborough	130
Mount Isa	102
Rockhampton	135
Roma	35
Southport	12
Thursday Island	12
Toowoomba	54
Townsville	13
Warwick	63



Finalisation of Superior Court Matters

Finalisation prior to trial

During the reporting period, the ODPP prepared 5,004 matters for sentence, and finalised 4,733 indicted matters by a plea of guilty prior to the commencement of a trial. This represents 94% of all indicted matters which were finalised during the reporting period.

A plea of guilty is considered an 'early plea' if the ODPP is advised of the defendant's intention to plead guilty before the matter is listed for trial. This results in significant cost and time benefits for the criminal justice system, and can reduce emotional impact on victims and their families. An early plea of guilty was indicated in 4,167 of the matters finalised by a plea of guilty prior to the commencement of a trial over the reporting period. This accounts for 88% of all finalised matters.

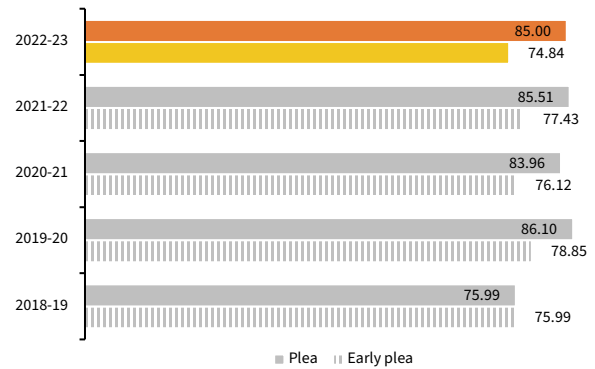
Finalisation by trial

ODPP Crown Prosecutors prepared 824 matters for trial during the reporting period, a **decrease of 21%** from 1046 matters in the previous reporting period.

Of the total indicted matters finalised during the reporting period, **11% were disposed of by trial**. This is a slight increase from 10.8% reported during the previous reporting period.

The conviction rate after trial for the reporting period was 48.8%, a **decrease of 6.4%** from the previous reporting period.

Indicted matters finalised by pleas of guilty (%)



Finalisation by Trial

197 Guilty Verdicts

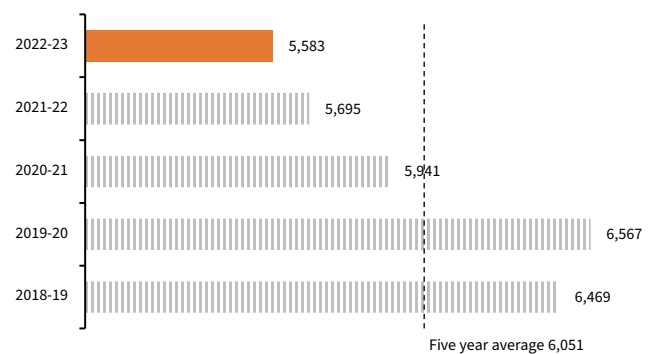
89 Guilty pleas to all or some courts

254 Not guilty on all counts

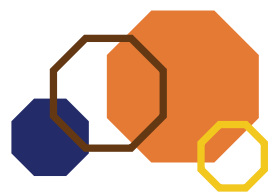
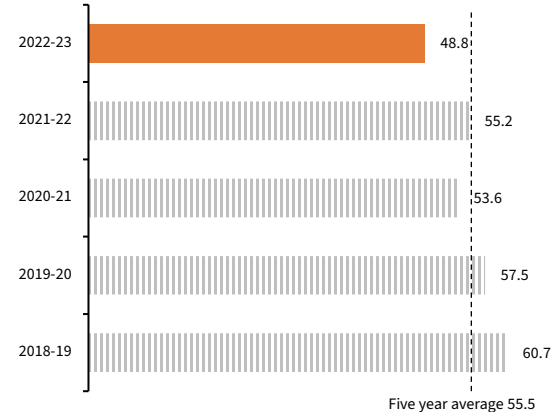
52 Discontinuances

80 Mistrials

Indicted matters finalised (no.)



Trial conviction rate (%)



Throughput

Throughput is a measure of the ratio between the number of matters indicted and the number of indicted matters finalised. A throughput ratio greater than 1.0 indicates the Office has finalised more matters than it has received; conversely a throughput ratio less than 1.0 indicates the Office has received more matters than it has finalised. In the 2022-23 reporting period the ODPP recorded a **throughput of 0.89**.

Appeals

District Court

The ODPP has carriage of criminal appeals brought under section 222 of the *Justices Act 1886* (Qld). Decisions made by a Magistrate may be appealed to a single judge of the District Court. The ODPP **received 250 appeals** during the reporting period.

Queensland Court of Appeal

The ODPP received **271 appeals** to the Court of Appeal during the reporting period, **an increase of 5.4%** from the 251 appeals received during the previous reporting period. Of the appeals received during 2022-23, 62 were appeals against conviction and sentence.

The ODPP finalised 280 appeals to the Court of Appeal during the reporting period.

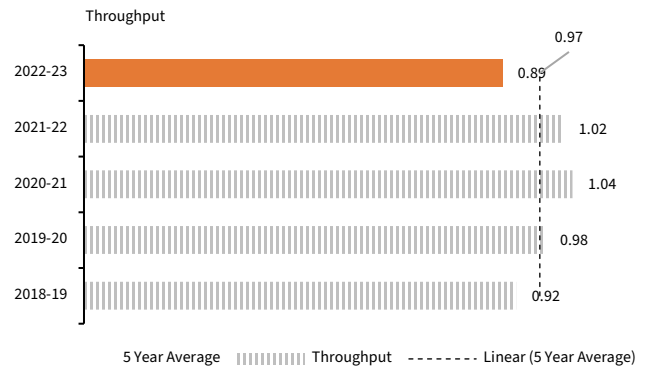
- 97 appeals were abandoned by the applicants
- 65 appeals were allowed
- 118 appeals were refused

High Court of Australia

During the reporting period, the ODPP received **17 applications** for special leave to appeal to the High Court of Australia.

Judgments were delivered in relation to **18 special leave applications** during the reporting period. Four were granted and **14 were refused**.

There were three full hearings in the High Court within the reporting period. Judgment was delivered within the reporting period for one appeal. This appeal was allowed.



Attorney-General appeals and references

The Attorney-General may appeal against a sentence imposed, pursuant to s 669A of the Criminal Code. **The ODPP filed two appeals** against sentence on behalf of the Attorney-General during the reporting period. Judgments were delivered in relation to three Attorney-General appeals during the reporting period. Two appeals were allowed and one appeal was dismissed.

Section 669A of the Criminal Code further allows the Attorney-General to refer a point of law to the Court of Appeal for its consideration and opinion. During the reporting period, no references were filed in the Court of Appeal.

Judgments

Judgments were delivered in relation to 162 appeals during the reporting period. A further 97 appeals were abandoned or discontinued during the reporting period.



Notable Prosecutions

High Court

BDO v The Queen [2023] HCA 16

The appellant was charged with 15 counts of rape and one count of indecent treatment of a child, with the offences alleged to have occurred over a 9-year period. The appellant at the time was between 9 and 19 years of age, and the victim was the appellant's younger sister. The appellant was convicted of 11 counts of rape, and unsuccessfully appealed to the Court of Appeal on the basis that judge directions were insufficient. On appeal to the High Court, the Court (Keifel CJ, Gordon, Steward, Gleeson and Jagot JJ) confirmed the law of *doli incapax* in Queensland is different from the other States as the language of s.29 Criminal Code focuses attention on the capacity of the child to know or understand the moral wrongness of an act. However, the Court unanimously allowed the appeal on account of the insufficiency of the evidence to rebut the presumption where it applied to some of the counts of which the appellant was convicted.

At trial the judge gave directions to the jury that the prosecution did not need to prove the appellant, who was a child at the time, knew his conduct involved criminal offences. The judge directed that the appellant only needed to have the capacity to know that his acts were seriously wrong, according to the ordinary principles of reasonable adults. That direction was sufficient. The High Court reviewed the sufficiency of the evidence to rebut the presumption. The evidence was left to the jury as a whole and not in any way that could be associated with the count in question. The jury were not able to assess the question of capacity "at the time of doing the act" for each count. The evidence was insufficient to rebut the presumption of incapacity beyond reasonable doubt in relation to five counts.

The High Court allowed the appellant's appeal, and held that a re-trial would be inappropriate; ordering a verdict of acquittal on some counts.

Court of Appeal

R v YTZ; Ex parte Attorney-General [2023] QCA 87

This appeal followed from the sentencing of a juvenile offender for the death of Matthew Field, Kate Leadbetter, and their unborn child. The defendant was originally sentenced on 8 June 2022, on an eight-count indictment charging him with two counts of manslaughter, as well as unlawful use of a motor vehicle, dangerous operation of a motor vehicle while adversely affected by intoxicating substances, excessively speeding and with a previous conviction, unlawful entry of a motor vehicle with intent to commit an indictable offence, wilful damage, and two counts of burglary and stealing. The ODP, on instruction from the Attorney-General, appealed on the basis that a sentence of 10 years' detention imposed for two counts of manslaughter, with release after serving 60% of the sentence, was manifestly inadequate. The defendant's counsel also appealed, on the basis that the sentencing judge erred in finding the offences were 'particularly heinous in all of the circumstances;' the effect of which being that the maximum detention period that applied to each offence of manslaughter was life imprisonment.

The Queensland Court of Appeal dismissed the Attorney-General's appeal, and refused leave to appeal for the defendant. It held that the sentence was not manifestly inadequate.

Sentencing the respondent in accordance with the principles established under legislation required the sentencing judge to consider, weigh up and balance all the objectives of sentencing relevant to the sentencing of the respondent. He was not being sentenced as a representative of a "cohort of offenders". The respondent was sentenced for his particularly heinous offending but also having regard to his circumstances and history. The deterrent effect of the sentence follows from an appropriate and just punishment for the respondent in those circumstances. Community protection and denunciation arises from the imposition of a lengthy sentence of detention on the respondent in accordance with the act and the facilitation of the respondent's rehabilitation through the courses and programs available to him first while he was held in detention as a youth and then while in custody in the adult prison [45].



R v Koko [2022] QCA 216

The appellant pleaded guilty to manslaughter at the commencement of his trial for murder. He accepted that he unlawfully killed his partner but denied he had the requisite intent for murder. The Crown did not accept the plea and he was ultimately convicted of murder. The Crown case was that across the day there were four instances of violence perpetrated by the appellant against the deceased. The precise cause of death was difficult to determine, and the medical expert was unable to say with absolute certainty that only one factor had caused the death [12]. The appellant unsuccessfully appealed his conviction, alleging a miscarriage of justice occurred because of the direction given to the jury on unanimity of acts. Flanagan JA (with the concurrence of Mullins P and Dalton JA) held at [29]:

“The direction given by his Honour ensured that the jury was unanimous as to which of the appellant’s acts of violence either did or may have substantially contributed to death. That is, the jury was instructed that they had to be unanimous that each act on the “shortlist” had the quality that it was an act that either did or may have contributed to death. The direction implicitly required the jury to be unanimous as to which act or acts of violence the appellant committed against the deceased and which act or acts of violence either did or may have contributed to death. The direction required the jury to be unanimously satisfied that at the time the appellant committed any act which did or may have contributed substantially to death, that the appellant had the requisite intention for a conclusion of guilt of murder.”

R v WBV [2023] QCA 79

The applicant was sentenced for persistent and extensive criminality across three indictments for violent offending and one ex officio indictment for drug offending in custody. The applicant unsuccessfully applied to appeal his sentence, arguing that the setting of the parole eligibility date after serving 40% of his sentence, rather than at the usual one-third mark, rendered his sentence manifestly excessive. In dismissing the appeal, Crow J observed at [39]-[40]:

“The common practice of a one third reduction is not a rule. As s13(4) of the Penalties and Sentences Act (Qld) 1992 recognises in unusual cases there may be no reduction for a plea of guilty. As this Court said in CCR at [18] “in each case” the factors relevant to sentence must be considered and weighed to determine a just reduction in the non-parole

period. The factors relevant to setting a non-parole period include the specific circumstances of the offender including his antecedents, character, and any prior criminal history...’

Barbaro v Director of Public Prosecutions (Qld) [2022] QCA 145

The appellant appealed an order dismissing an application for bail. The appellant was in a position where he needed to show cause as to why his continued detention in custody was not justified under s 16(3) of the Bail Act 1980 (Qld). The sole ground of appeal was that the primary judge erred in assessing whether there was an unacceptable risk posed by the appellant’s release on bail, having reasoned that the Court could not have regard to a proposed condition that the appellant was to be fitted with an electronic monitoring device. The appeal was dismissed. Per Kelly J:

“Section 16(2A) makes clear that, at the risk assessment stage, a court must not have regard to one type of special condition, namely a condition that an applicant wear a monitoring device. That the risk of a person remaining in the community on bail is found to be acceptable, does not mean that there is no remaining risk attendant upon the grant of bail. It has often been said that no grant of bail is risk-free [22]. When regard is had to sections 11(5), 11(9B) and 16(2A), the Act contemplates a situation where, although the risk of a person remaining in the community without being fitted with a monitoring device is considered acceptable, a court might still form the opinion that it is necessary for that person to be fitted with a monitoring device [23]. However, the exclusion of the fitting of a monitoring device from the assessment of acceptable risk has also served to significantly curtail the circumstances in which a monitoring device condition might be imposed with a grant of bail [23].”



R v BDW; R v DAA [2022] QCA 197

Both appellants were convicted of trafficking methylamphetamine with a serious organised crime circumstance of aggravation. At the contested sentence, apart from factual disputes, there was contest as to whether s 161S of the *Penalties and Sentences Act 1992* was applicable to the cooperation proffered by each of the appellants. They appealed on the basis that on a proper construction of s 161S, such a finding was not open on the evidence. In dismissing the appeal against sentence, the Court of Appeal reasoned:

“The qualifier “significant” [in s 161S(2)(b) PSA] signals that it is not anything that might be characterised as cooperation that will trigger the procedure under ss 13A or 13B; it is only where the court is satisfied that the cooperation will be of “significant use”, in the detection of crime, identification of offenders and/or the prosecution and conviction of them, that the procedure will be available. [16]. ... The offender’s cooperation, to be of significant use, need not be an essential part of the prosecution case, but must involve more than undertaking to give evidence of a peripheral nature in the proceeding about a major criminal offence. The evidence must be of real use to a successful prosecution of the proceeding about a major criminal offence.” [42].

R v Robbins [2023] QCA 18

The appellant unsuccessfully appealed his conviction for the murder of his brother on the basis that the trial judge erred in not directing the jury in relation to the partial defence of killing for preservation in an abusive domestic relationship. The circumstances of the offending involved a serious verbal argument between the brothers, who had been drinking, followed by a physical confrontation between the men which involved them exchanging punches. During the struggle, the appellant grabbed a knife and used it to stab the deceased seven times. The Court of Appeal (Morrison and Bond JJA and Callaghan J) agreed with the ruling of the trial judge, concluding that the partial defence was not one which fairly arose on the evidence. In dismissing the appeal, Bond JA concluded:

“If the relationship between the appellant and [the deceased] was to be characterised as an abusive domestic relationship, the existing relationship between them would have to be one in which there had been a previous tendency by either to engage in acts of serious domestic violence repeatedly or habitually against the other.” [30]. “The problem for the appellant’s argument is that the evidence did not fairly raise a case that the existing relationship between the appellant and [the deceased] was one in which there had been previous tendency by either to engage in acts of serious domestic violence repeatedly or habitually against the other.” [32]. “Certainly, there was evidence of the three incidents with [the deceased and] their father. The first two were at least 40 years in the past, when the appellant would, necessarily, have been only a teenager. The third one was when the appellant would have been in his late 40’s. Even if this could arguably have amounted to “a history of serious domestic violence” in the sense of revealing repeated or habitual behaviour when it happened so long ago, which is doubtful, this evidence did not assist the appellant’s argument because it did not amount to domestic violence against the appellant.” [36].



R v Lahai [2023] QCA 81

The appellant was convicted on three offences of rape, committed with a co-offender. The co-offender was a taxi driver, and the pair had taken the complainant; who was a taxi passenger otherwise unknown to them; to a location where they then rape her. The appellant was sentenced to 9 years' imprisonment with a serious violent offence declaration. He unsuccessfully appealed his conviction and sentence. At trial, the appellant's counsel applied during the trial for a direction pursuant s 132BA of the *Evidence Act 1977*. They argued that due to the delay of three years between the offence and the police first speaking to the appellant, he suffered significant forensic disadvantage. It was claimed that he lost the ability to explore the circumstances of the alleged offending, including obtaining CCTV footage from inside the taxi, and he lost the opportunity of having his clothing forensically examined and investigating whether any witnesses were able to support his version that he was dropped off at his home address prior to the offending against the complainant. The primary judge was not satisfied that the appellant had suffered a significant forensic disadvantage because of the effects of delay in prosecuting the offences. And, even if there were some disadvantage, the primary judge concluded it was not significant forensic disadvantage such as to warrant a direction under s 132BA of the Act [42]. The Court, in dismissing the appeal, held:

'It is a fact of life that clothes worn by any person can be expected to be washed at some time after they have been worn. It is reasonable to assume that Mr Lahai's clothes which he wore home on 6 May 2016 after an evening out would have been laundered in the normal course. Mr Lahai was never going to be identified as a possible offender immediately [after] the complainant made her complaint, as inquiries had to be undertaken to ascertain the taxi involved in the incident and to access the CCTV footage from outside Gilligan's nightclub that linked Mr Lahai to the subject taxi. Even if the police investigation had proceeded more quickly, it is most unlikely that it would have ever resulted in the clothes that Mr Lahai wore home from the nightclub on 6 May 2016 being available for forensic examination. There was therefore no forensic disadvantage (significant or otherwise) suffered by Mr Lahai in not being able to have his clothes forensically examined because of the delay in his being informed of the complainant's allegations, as the clothes would have been laundered and would not have been available in the ordinary course for forensic examination. The position in relation to the clothes is equivalent to the position in respect of the CCTV footage inside the taxi.' [45]

Supreme Court

R v Kerri-Ann Conley

On 14 February 2023, Kerri-Ann Conley pleaded guilty to two counts of manslaughter for causing the deaths of her two daughters, Darcey-Helen aged 2½ years old and Chloe-Ann Louise aged 18 months. She was sentenced in the Supreme Court at Brisbane to 9 years imprisonment to serve 5 years in actual custody before being eligible to apply for parole.

After a night at a friend's house the defendant returned home at about 4am on the morning of Saturday 23 November 2019. She went inside her house, leaving her two children strapped in their car seats in the car. All the doors and windows were closed and the car was parked outside without shade. The sun had risen by 5am, the car was in direct sunlight and remained so throughout the day. The defendant was inside the house active on her mobile phone until 5.55am when she sent a text message. At approximately 1.20pm, nine hours after she went inside, the defendant came out of the house and approached the car. She took the children out of the car and took their lifeless bodies inside the house. She disposed of some drug paraphernalia before calling for help.

The children died of vehicular hyperthermia, in which the body absorbs more heat than it can dissipate. Police investigations indicated a likely high temperature inside the car of 61.5 degrees Celsius during the mid-morning. The defendant was a heavy user of methylamphetamine at the time, methylamphetamine was detected in a blood sample taken by police and the defendant admitted she had consumed methylamphetamine the day before the offending. In that regard the learned sentencing Judge remarked:

"If a parent smokes methylamphetamine, even in a tiny quantity, their children can never come first. Meth always wins that race. Their children, at best, come a very distant second."

Police investigations identified that the defendant had left her children in the car sleeping in a similar way on previous occasions and had been told by others not to. The defendant told those people that the reason she did so was because the children were difficult to settle again once woken. In sentencing the defendant the sentencing Judge described her offending as "gross criminal neglect".



R v Traven Fisher

The defendant had been in a domestic relationship with the deceased for over 12 months. Information provided to the police by neighbours of the defendant and associates of the couple demonstrated their relationship was marred by domestic violence, with the defendant regularly verbally and physically abusing the deceased. On 10 December 2019, police received an anonymous phone call advising that the deceased was killed by the defendant and asked a friend to help him dispose of the body. After a search of the property, police found the deceased's body in the boot of the defendant's car. A search of the house revealed the property was poorly kept, with exception to tiled areas of the kitchen and dining room which had recently been mopped. Crime scene analysis located a large blood stain on a wall inside the house, with a positive DNA match to the deceased.

Police enquiries with neighbours brought to light that an associate of the defendant visited the night before. The associate of the defendant told police the defendant asked for his help moving the body of the deceased, and that the defendant said that she had died from a drug overdose. This was inconsistent with injuries sustained by the deceased, including a fractured skull, cheek, hyoid bone and thyroid bone, as well as a possibly broken nose and severely broken lower leg. The fractures were demonstrative of pressure consistent with strangulation or an arm lock. The deceased was also pregnant at the time of death. The unborn child was also deceased.

In a record of interview, the defendant denied wrongdoing, stating he had a loving relationship with the deceased and was excited for the birth of their child. The defendant denied ever physically abusing the deceased, suggested the deceased would regularly 'take off' without warning, and proposed that someone else killed her.

The defendant was sentenced on a plea of guilty for manslaughter, destroying the life of a child before its birth, and interfering with a corpse on 15 March 2023. The defendant had a lengthy criminal history commencing in 1999, including offences of rape, assaults, robbery and breaches of supervision orders.

He was sentenced to 13 years' imprisonment for manslaughter, to be served concurrently with 8 years' imprisonment for destroying the life of a child before its birth. He was further sentenced to a cumulative 12 months' imprisonment for interfering with a corpse. The first two

charges were declared as serious violent offences, meaning he will not be eligible for parole until he has served at least 80% of that sentence.

R v Benjamin Bourke

On 22 September 2020, Benjamin Bourke left his home dressed in a hooded jumper, long pants, gloves, and a mask covering his entire face. He armed himself with a compound bow, five arrows, three small sledgehammers, and two knives. He walked from his house towards the Aldi Supermarket at Booral. On his way, a woman jogged past him. After she had passed, he turned and shot an arrow towards her. The arrow missed. Once the defendant reached the Aldi, the defendant approached a 15 year-old complainant, removed his mask, and said to her "I'll let you see who I am first." He then shot an arrow at the complainant, which missed. He shot another arrow, which skimmed past her right arm. The complainant ran between the aisles yelling for help, and hid amongst some pallets. The defendant found the complainant, looked her in the eye, and shot at her. She held her hand out in self defence. The arrow shot through her left hand, and pierced her upper torso. The complainant ran for help, showing customers her injuries. The defendant shot another arrow at the complainant, which missed. A good samaritan shielded the complainant from the defendant. The defendant was tackled by two good samaritans and detained.

At the time of his arrest, the defendant told police he was trying to get himself killed. He also said he attempted to shoot the first jogger because he disliked Aboriginal people. The defendant was sentenced on a plea of guilty to attempted murder on 26 April 2023. He received 10 years, 6 months' imprisonment, with a serious violent offender declaration order being made, meaning he will not be eligible for parole until he has served at least 80% of that sentence.



R v Gregory Roser

Gregory Roser was charged with one count of murdering Bruce Saunders on 12 November 2017. Roser knew Saunders through his girlfriend, Sharon Graham, with whom Saunders lived and had previously been in a relationship. The Crown alleged that Graham had procured Roser and another man, Peter Koenig, to kill Saunders while clearing a rural property at Goomboorian, outside of Gympie. Graham was motivated by money, being the sole beneficiary of both Saunders' \$500,000 life insurance policy and Will. The Crown alleged that Roser committed the murder at her request, knowing that she would financially benefit from Saunders' death.

Roser was found guilty by a Supreme Court jury on Friday, 21 October 2022. The conviction followed a five-week trial during which the Crown alleged that, while clearing the property, Roser had hit Saunders to his head with a metal bar and, with the assistance of Koenig, put his body halfway through a woodchipper which was being used to dispose of trees. Koenig was originally charged with murder but gave evidence against Roser after the Crown accepted that he was not involved in the killing but was guilty of being an accessory after the fact to murder, having assisted Roser in putting Saunders' body into the wood chipper. Koenig pleaded guilty to that charge and was sentenced to an effective nine-year term of imprisonment prior to Roser's trial commencing.

The trial began on 19 September 2022 against both Graham and Roser. Graham was granted a separate trial midway through the Crown case because of inadmissible prejudicial evidence adduced by Roser which was inadmissible against her. The trial continued against Roser alone, with the Court hearing that the killing took place on the third of three weekends during which Saunders, Roser and Koenig were clearing the property at Graham's request, purportedly as a favour for the owner of the property. Koenig, Roser and Saunders were all infatuated with Graham, and the Crown alleged that this enabled Graham to secure their assistance, putting them all in one place together.

The Crown called 'blood spatter pattern' evidence to show that Saunders had been killed before being put into the wood chipper, and that he had not accidentally fallen into it. Koenig was called to give a direct account of Graham's requests of he and Roser to kill Saunders, and Roser's killing of Saunders.

Friends, neighbours, and co-workers of Saunders – a butcher who worked in the Sunshine Coast area – gave evidence

that he was generous and friendly. Significantly, Saunders was open about his romantic problems with Graham and would tell co-workers and friends about his strained efforts to gain her favour. They painted a picture of Saunders being a man who was enamoured with Graham, despite her poor treatment of him, and who would do anything to salvage their relationship. There was also evidence that Graham had moved on to Roser in the months leading up to the killing, but that she tried to conceal this from Saunders.

The Crown case featured five-and-a-half hours of covert recordings during which Graham, Roser and Koenig discussed what they should tell police and speculated about where the investigation was heading. Graham was heard to insist to Roser that they get their 'stories straight' and encourage him to tell police certain information to deflect suspicion.

Roser was sentenced to life imprisonment shortly after the jury returned its guilty verdict. He filed a notice of appeal against his conviction on 15 November 2022. The trial was prosecuted by Senior Consultant Crown Prosecutor David Meredith, being the final of his career.

R v Ricky Lefoe

In the early hours of 1 October 2019, Ivan Susin was with friends at Orchid Avenue at Surfers Paradise after a night on the town. While his friends were eating, a passerby, Shaun Simpson, stole some chips from one of Ivan's friends, then attacked him. Ivan Susin attempted to intervene, when Ricky Lefoe; a friend of Simpson; punched Ivan, causing him to hit his head on the pavement. Simpson and Lefoe fled the scene. Ivan was taken to the Gold Coast University Hospital, where examination found he suffered a right extradural haematoma with an underlying undisplaced fracture, and several haemorrhages. Despite undergoing extensive neurosurgery, Ivan never regained consciousness, and on 10 October 2019, he developed brain death. He was declared deceased on 11 October 2019.

Lefoe stood trial for three days between 6 February 2023 and 8 February 2023. The jury returned a verdict after 2.5 hours, finding the defendant guilty. Ivan Susin's family travelled from Brazil to attend the trial, and viewed the sentence by videolink. Portuguese translators had to be organised for both hearings. On 28 March 2023, the Chief Justice Helen Bowskill sentenced him to 8 years' imprisonment, with parole eligibility after 4 years. A notice of appeal was filed on 10 March 2023.



R v Benjamin Jansen

On the morning of 14 August 1976, the body of 46-year-old Rex Keen was discovered by cleaning staff in the room of his hotel. He was found with eleven head lacerations of varying sizes. It wasn't until 43 years later, on January 2019, that DNA from a tissue located at the scene was identified as belonging to the defendant Benjamin Jansen. Jansen was unknown to the police and had not been a suspect in the matter when investigated in 1976. It was later revealed that Jansen had been drinking with the deceased the night before his death. In a recorded interview, he denied meeting the deceased or any involvement in the offending. When he was arrested for the murder of Mr Keen, Jansen he became upset and told the police the deceased made sexual advances towards him.

On 13 October 2022, the defendant plead not guilty to murder, and the Crown accepted a guilty plea to manslaughter. The key issue was that due to the age of the matter, at the time the offence was committed, the 'gay panic defence' was available to the defendant as a partial defence to murder. He was sentenced on the basis that fearing these advances, he struck the deceased up to 12 times, then left him for dead. The defendant was sentenced to 9 years imprisonment, with immediate parole eligibility. 1,205 days (3 years, 3 months) of pre-sentence custody was declared as time served.

R v Glenn Ryan Clarke

Glenn Clarke, and the deceased, Nicholas Triggs, were both defendants serving sentences at the Borallon Training and Correctional Centre. They started sharing a cell on 16 May 2019. On 9 June 2019 a Custodial Corrections Officer found Triggs dead in his cell with a plastic bag covering his face and a bedding fabric tied into a ligature wrapped around his neck six times. The ligature was tied like a tourniquet with plastic cutlery. In an interview by police, the defendant admitted to killing the deceased, stating he did it because the deceased was in prison for domestic violence offences. The defendant said he had schizophrenia, and 'dipped out'. Other inmates said the defendant had sexually propositioned the deceased before his death.

The defendant was sentenced on 20 April 2023 for manslaughter, on the basis that the defendant was suffering from an abnormality of mind; namely schizophrenia, and that his mental condition substantially impaired his capacity to know that he ought not kill the deceased. He received 13 years and six months' imprisonment, with a serious violent offender

declaration order being made, meaning he will not be eligible for parole until he has served at least 80% of that sentence.

R v William Karran

William Karran and the deceased Gail Karran had been married for 34 years. On 1 November 2017, Gail took an audio recording of events in the house. Over the course of the next few hours, the recording captures a number of violent and sexual assaults William perpetrated against Gail, coupled with repeated threats to kill her. Later that morning, William took Gail to hospital after she received a cut. Gail lied about her injuries to hospital staff, and again the following day when she attended the hospital for a scheduled check-up. On 3 November, Gail suffered a seizure, and she was hospitalised until her death a week later, on 9 November 2017. An autopsy revealed her cause of death was multi-organ failure secondary to post-traumatic epilepsy caused by traumatic head injury.

On 24 August 2022, in a late plea of guilty after a trial was set to commence, William Karran plead guilty to manslaughter and several counts of choking, rape, and sexual assault; all charged as domestic violence offences. At sentence, the prosecutor noted the offending was so violent it could not be captured by a transcript, and played the recordings taken by the deceased Gail in court. He was sentenced to 12 years imprisonment, with a serious violent offender declaration being made, meaning he will not be eligible for parole until he has served at least 80% of that sentence.



R v Cameron Bardak

On 1 July 2020, the defendant Cameron Bardak purchased a crowbar and hatchet from Bunnings Warehouse, then travelled to the secure carpark where the complainant, who was his ex-partner, had parked. He sent the complainant text messages from within her carpark, then hid and waited for her while armed. As the complainant went to her car at the end of the day, the defendant approached her, while holding the hatchet concealed in plastic bag. The defendant directed the complainant to get into her car, and when she refused, he leaned into her face and calmly stated "I am going to kill you." The defendant attacked the complainant with the hatchet, but was interrupted by a passerby. The defendant attacked the passerby, then continued his assault. The passerby managed to disarm the defendant, however the defendant then began choking the complainant. A number of other passerby heard the complainant's screams, then moved to help in restraining the defendant. The complainant fled, however the defendant managed to break free, chase her down, and began choking her again, before the passerby again managed to restrain the defendant.

The defendant stood trial between 24 April 2023 - 5 May 2023 for attempted murder. At trial, the defendant plead guilty to the alternate charge of a malicious act with intent against the complainant, and wounding against the first passerby, however maintained a plea of not guilty for attempted murder. On 4 May, after over a day of deliberation, the jury returned a guilty verdict for attempted murder.

On 5 May 2023, the defendant was sentenced to 14 years' imprisonment, with a serious violent offender declaration being made, meaning he will not be eligible for parole until he has served at least 80% of that sentence.

A notice of appeal was filed on 7 June 2023.

District Court

R v Rachelle Perry

Rachelle Perry was 25 years old and a serving police officer. At the time of her arrest In December 2020, police commenced a series of investigations, later assisted by the Crime and Corruption Commission. Both investigations utilised various overt and covert investigative strategies against Perry and her intimate partner, including telephone intercepts, physical surveillance, and the installation of an electronic surveillance device. The defendant was sentenced on 8 May 2023 for a series of drug and related offences occurring in early 2021, including supplying cocaine, cannabis, and Methylenedioxy methamphetamine, computer hacking of police databases, stealing QPS drug test kits, possessing a QPS firearm, and other offences. She received 2 years and 6 months' imprisonment, with immediate parole release. A serious drug offence certificate was issued.

R v Duane Nixon

At approximately 9pm on 25 February 2022, the defendant Duane Nixon entered a house the complainant was visiting, approached her, led her out of the house, then brandishing a knife instructed the complainant to follow him to his car. What followed was a horrific ordeal that lasted well until the next morning, where the complainant approached police limping and bruised.

On 1 June 2023, the defendant plead guilty to 12 counts, including charges of kidnapping, torture, assault occasioning bodily harm while armed and in company, sexual assault, rape, bestiality, and extortion. The sentencing judge noted the defendant had a significant and lengthy criminal history for violent offences, including twice being sentenced for grievous bodily harm. The sentencing judge noted that Nixon's behaviour demonstrated a continuing danger to the community and an appalling lack of humanity, requiring a sentence that protects the community from him. He was sentenced to 10 years' imprisonment, with a serious violent offender declaration being made, meaning he will not be eligible for parole until he has served at least 80% of that sentence.



R v Alan Vico

The defendant Alan Vico was a millionaire businessman in Far North Queensland. He was previously convicted of rape and sentenced to a term of imprisonment in August 2020, however the Queensland Court of Appeal ordered a re-trial on 16 April 2021.

The offences involved Mr Vico raping a Norwegian backpacker whilst she was heavily intoxicated after an evening with friends in a Cairns nightclub. She woke up the next morning with a \$20 note and a condom wrapper on her bedside table. Mr Vico claimed the sex was consensual. Mr Vico stood trial for a second time between 5 September to 14 September 2022. After eight hours of deliberation, a second jury delivered a guilty verdict, for one count of rape. The defendant was sentenced to five years imprisonment, with no parole eligibility date set.



Confiscating Proceeds of Crime

The *Criminal Proceeds Confiscation Act 2002 (QLD)* ('CPCA') commenced on 1 January 2003. The Director is the statutorily appointed solicitor on the record for the State for all proceedings under the CPCA. The Confiscations Unit is a civil litigation team within the Brisbane Office of the Director of Public Prosecutions.

The primary focus of the CPCA is to remove the financial gain and increase the financial loss associated with illegal activity. There are separate schemes within the CPA that achieve this;

- The non-conviction-based scheme in Chapter 2
- The conviction-based serious drug offender confiscation scheme in Chapter 2A, and
- The conviction-based scheme in Chapter 3

Unlike the conviction-based schemes in Chapter 2A and 3 of the CPCA, the non-conviction-based scheme in Chapter 2 does not depend on a charge or conviction to commence confiscations proceedings. Under Chapter 2, there is no need to show a connection between the property and the illegal activity and under Chapter 2A, there is no need to show a connection between the property and the criminal charges. However, under Chapter 3 of the CPCA, a direct connection between the property and the criminal charges must exist.

The Crime and Corruption Commission administers and provides instructions to the ODPP in relation to proceedings under Chapters 2 and 2A of the CPCA. The Director solely administers proceedings under Chapter 3 of the CPCA.

Outcomes

During 2022-23, under Chapter 2 and 2A:

- 9 new confiscations proceedings were commenced
- 11 restraining orders were obtained
- 936 serious drug offence certificates were issued

During 2022-23, under Chapter 3:

- \$10.082 million in forfeiture orders collected
- \$90,265.08 in pecuniary penalty orders collected

Criminal Proceeds Confiscations Act Historical Results

Type	2018-19	2019-20	2020-21	2021-22	2022-23
Chapter 2 and 2A outcomes					
Restrained Property	\$28.248m	\$8.994m	\$20.159m	\$8.786m	\$5.223m
Confiscated Property	\$12.651m	\$7.181m	\$6.845m	\$7.419m	\$4.298m
Chapter 3 Outcomes					
Foreiture Orders Collected	\$3.696m	\$4.993m	\$3.788m	\$5.073m	\$10.082m
Pecuniary Penalty Orders Collected	\$191,750.00	\$131,485.00	\$76,914.00	\$119,804.00	\$90,265.08



Supporting Victims of Crime

Charter of Victims' Rights

The ODPP acts in accordance with the Charter of Victims' Rights under Chapter 2 and Schedule 1AA of the *Victims of Crime Assistance Act 2009 (Qld)*. Under the Charter, victims of violent, sexual or domestic violence offences have a number of rights.

Victims have to be treated with compassion, courtesy, respect, and dignity; not to have their personal details disclosed without authority; and to receive information about services and remedies available

Victim Liaison Service

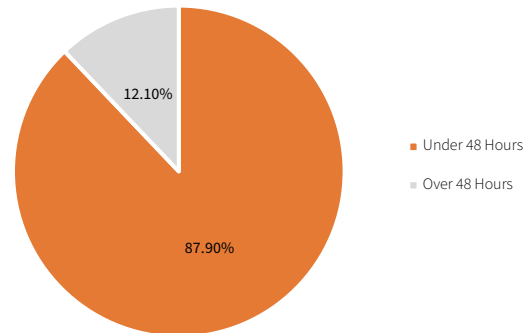
The ODPP Victim Liaison Service provides a critical link between victims of crime, their families and the prosecution, and assists the ODPP in meeting its obligations under the Charter. The ODPP's Victim Liaison Officers are based around the State ensure that victims and their families receive timely information about the prosecution of the offender, the court process, and, if applicable, the victims' roles as witnesses. A significant part of the Victim Liaison Officer's role is to refer victims to support agencies, including Victim Assist Queensland.

The Director's Guidelines outline the obligations of ODPP staff regarding the Charter of Victims' Rights including treating victims in a way that is responsive to their age, sex or gender identity, race or indigenous background, cultural or linguistic identity, sexuality, disability, and or religious belief.

During the 2022-23 reporting period, the ODPP Victim Liaison Officers recorded **59,251 instances of contact with victims of crime and their family members or support persons**. These instances of contact included contact by telephone, through written correspondence, in person or via SMS messaging. This was an **increase of 2.4%** from the previous reporting period.

- 59,251 instances of contact
- 27,759 emails sent
- 17,719 phone or video calls made
- 4,568 text messages sent
- 6,949 letters sent by post
- 2,255 surveys sent at the conclusion of matters

VLO - Response Time Frame



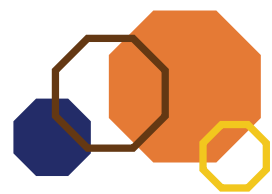
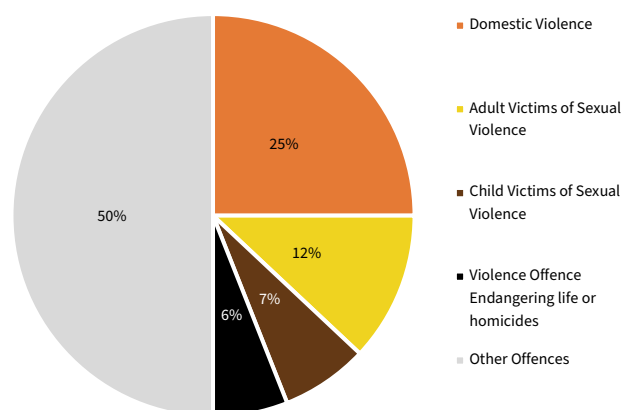
Survey for Victims and Families

Since 2017, the ODPP has surveyed victims of crime, to collect results for which feedback from victims or their families, and or their carers or guardians, on the service provided by their allocated Victim Liaison Officer and the ODPP in general. The survey allows the ODPP to measure its compliance with the Charter of Victims' Rights. All survey responses are anonymous.

The survey is available online or in hardcopy upon request. The following individuals are invited by their Victim Liaison Officer to complete the survey when the prosecution of an offender is finalised (unless the Officer determines that it would be inappropriate to do so):

- Primary victims aged 16 years and over
- Parents, guardians or carers of child victims under 16 years
- Parents or carers of adult victims with an intellectual or learning disability
- Next of kin and relatives of deceased victims

Victim Engagement Based on Offence Type



Victim opinion survey results

- **75.4%** of respondents agreed or strongly agreed that ODPP staff treated them with courtesy, compassion, respect and dignity.
- **69.57%** of respondents agreed or strongly agreed that the Victim Liaison Service provides a valuable service.
- **78.26%** of respondents agreed or strongly agreed that they received updates about the progress of their matter.

Of the 59,251 instances of contact, **87.9%** were responded to within the 48 hour time period in alignment with ODPP policy ensuring that victim-survivors are responded to in a timely manner.

20 respondents indicated their matters proceeded by way of trial; of which 45% received not guilty jury verdicts. 77.8% of these victims noted that they were provided an opportunity to speak with the Crown Prosecutor after the jury delivered a not guilty verdict.

During the 2022-23 reporting period, the survey received 86 responses, an increase of 14 responses from the previous reporting period. 74.6% of respondents identified as women, 9% of respondents identified as indigenous, and 14.9% of respondents identified as speaking a language other than English at home.

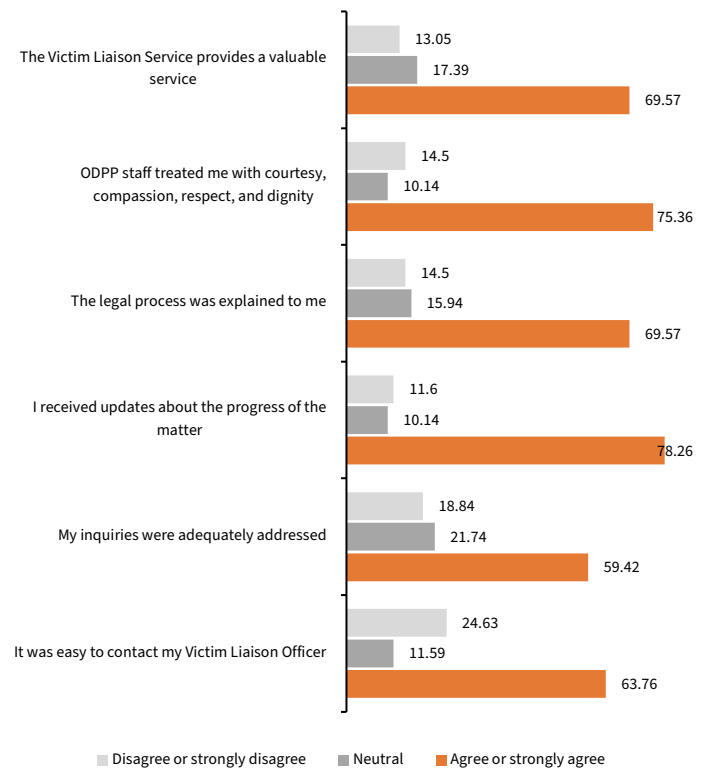
Training and cooperation with other agencies

The ODPP liaises closely with other agencies and government departments to ensure that appropriate support and information is provided to victims, and that victims are linked with appropriate agencies after the prosecution of a matter has concluded.

Protective All Children Today (<https://pact.org.au/>) is a key support agency providing support services and court support to children and adults who are victims or otherwise required to give evidence in criminal proceedings and the ODPP works closely with PACT to provide information to victims and witnesses. This includes ODPP providing learning sessions for PACT volunteers on three occasions in the 22/23 year.

Other key support organisations the ODPP liaises closely with are WWILD (<https://wwild.org.au/>) which provides support services to people with a disabilities and Queensland Homicide Victims Support Agency (<https://qhvsg.org.au/>) to ensure the organisations are updated when involved in supporting victims and families. The ODPP also collaborates with the Queensland Health Victim Support Service (<https://www.health.qld.gov.au/qhvss>) to ensure that tailored support can be provided to victims when matters are referred to the Mental Health Court.

Victim Opinion Survey Results



Sexual Assault Response Team

Sexual Assault Response Team (SART). Townsville Region

The Sexual Assault Response Team (SART) is a multidisciplinary, inter-agency group of professionals, established in July 2016 to work alongside survivors of sexual violence to provide a response that is sensitive, holistic and timely.

The specialist team comprises of social workers from the Sexual Assault Support Service (SASS workers), detectives from the Sexual Crimes Unit, nurse examiners from the Clinical Forensic Medicine Unit, Allied Health Staff from the Townsville Hospital and Health Service and representatives from the Townsville ODPP. The services provided by SART span therapeutic, general and forensic medical and criminal support needs throughout the criminal justice system.

Critical to the establishment and continuation of SART was the development of a Terms of Reference that is victim centric and the promotion of a trauma and violence informed framework as best practice. Monthly inter-agency meetings allow team members to identify and address issues and enhance integrated responses. These regular meetings strengthen working relationships between team members and foster organisational cultural change.

Staff of the Townsville ODPP have provided educational/information sessions to SART member organisations and the broader community. Increasing SART members and other stakeholders' knowledge and understanding of the criminal justice system enables victims to have a more meaningful participation at key stages in the justice process.

Reciprocal education provided by the other SART member organisations has increased ODPP staff knowledge and understanding of the importance of a consistent, holistic and trauma informed "wrap around" response to all victims of sexual violence. The SART model has been endorsed and is now embedded as best practice within the Townsville ODPP.

In particular, the continued collaboration between ODPP staff and Sexual Assault Support Service (SASS) workers to provide holistic victim support has resulted in a more streamlined service and a better experience for victims. SASS involvement has enhanced and expanded the support offered to victims of sexual offences who are involved with the ODPP. The SASS workers are able to provide a level of care to victims in the

court process which is not possible for ODPP staff given time constraints and the nature of the prosecution role. They are invaluable in that they help prepare their clients for court and can provide ODPP staff with information regarding individual complainants which allows the ODPP to properly address an individual survivor's particular needs and concerns. In conjunction with the ODPP staff, SASS workers help the victim navigate the complex, formal and intimidating legal process and provide on-going support at the conclusion of any legal proceedings.

Almost seven years on, and among many significant milestones and outcomes, the established evidence base indicates that the SART model has decreased response times for victims who report sexual offences, withdrawal of complaints, and victim reports of dissatisfaction, and increased reporting rates, completed forensic medical examinations, and referrals to the SASS.

SART remains committed to the continued development of a best practice response, particularly attentive to the needs of all victims and survivors, the local Townsville community, and the broader findings and recommendations of previous and current inquiries regarding sexual violence.



Special Projects

Women's Safety and Justice Taskforce

The Women's Safety and Justice Taskforce (WSJT) was established in March 2021 to examine coercive control and review both the need for a specific offence of 'domestic violence' and to examine the experience of women across the criminal justice system. The Taskforce was chaired by the former President of the Queensland Court of Appeal, The Honourable Margaret McMurdo AC and was comprised of respected leaders from within the legal and support sector including Philip McCarthy KC, Deputy Director. Additional experienced ODPP staff were seconded to the secretariat of the Taskforce.

The WSJT delivered its first report on 2 December 2021 and made 89 recommendations that seek to further reform justice and domestic and family violence specialist service systems to ensure they keep victims safe and hold perpetrators to account of the 89 recommendations, ODPP had specific responsibilities under recommendation 41 and 69.

In response to recommendation 41 the ODPP:

- has delivered training 'Deconstructing Myths and Stereotypes About Domestic and Family Violence and Coercive Control' (May 2023)
- Has developed training with respect to the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Act 2023* (delivered immediately following the commencement of the legislation on 1 August 2023)
- is considering longer term solutions to ensure staff undertake regular tailored domestic and family violence training to support their knowledge and understanding of domestic and family violence and its impact on relevant law.

In response to recommendation 69 the ODPP is finalising an evidence based, trauma informed domestic and family violence guidance document to educate and guide staff dealing with matters involving domestic and family violence. Developing a training program aligned with the existing Understanding Sexual Offences Training will enhance the professional capability of staff to understand and prosecute all forms of domestic and family violence.

The second WSJT report was delivered on 1 July 2022 and made 188 recommendations about essential reforms across the criminal justice and other systems to improve the experiences and justice outcomes for women and girls. The

ODPP is the lead agency on the following recommendations:

Recommendation 45 - Memorandum of understanding with Queensland Police Service

Recommendation 47 – Review of Director's Guidelines and development of additional guidance about the prosecution of sexual violence

Recommendation 49 – Review the prosecution of matters referred to the ODPP involving victims of sexual violence

Recommendation 50 – 'Right to Review' Process for victims

Recommendation 51 – Cultural capability plan

Recommendation 74 – Design and implement a new operating model for the prosecution of sexual violence matters

Recommendation 118 – Development of training relating to gendered issues facing women and girls as accused persons and offenders

Planning for the implementation of these recommendations is underway with funding to commence from 1 July 2023.

In addition to the lead recommendations the ODPP is a support agency on numerous other recommendations and is contributing to meaningful consultation with a wide range of stakeholders from across the criminal justice system.

The ODPP has secured funding for a new WSJT Project Team to prepare and implement the recommendations of WSJT Report 2 over the next four years. This funding commences on 1 July 2023 and includes six new positions within the project team in addition to four additional corporate services roles to assist in the delivery of WSJT recommendations.



Kathleen Christopherson awarded Churchill Fellowship.

Kathleen Christopherson has worked with the ODPP since 2008, in roles including as a legal officer, prosecutor, and practice manager. Kathleen recently returned to the ODPP from a secondment to the Secretariat of the Women's Safety and Justice Taskforce, where she is currently the Project Manager for the WSJT. In 2020, Ms Christopherson became a recipient of the Churchill Fellowship, and on 1 May 2023, she published her report into assessing the efficacy of prosecuting the offence of coercive control. At the time the Fellowship was awarded, no Australian jurisdiction had created a specific offence criminalising coercive control, however it was a discrete offence in England, Wales, Scotland, Ireland and Northern Ireland. The Fellowship provided Ms Christopherson with the opportunity to travel to these jurisdictions to learn all she could about the prosecution of this new offence.

Coercive control refers to a pattern of behaviour used by one person to dominate, control or intimidate another person. This pattern is designed to maintain power and control over the other person, often using psychological, emotional, or physical abuse. Coercive control is tailored to the victim and examples of the kinds of behaviours that it can include are extensive and include isolation, intimidation, monitoring, financial abuse, gaslighting, physical violence, exposure to dangerous situations, humiliation, sexual coercion, removing autonomy, property damage, animal abuse and the use of fire, threats of burning, dousing or threats of dousing to exert control.

The report outlines:

- best practice for training prosecutors in coercive and controlling behaviours.
- the integral role that professional victim advocates can and should play in helping victims to better engage in the criminal justice process.
- the development of overarching statutory guidance frameworks to ensure national consistency in the identification, investigation and prosecution of coercive and controlling behaviour.
- the need for prosecution services to develop clear, publicly available guidance documents dealing with domestic and family violence and coercive and controlling behaviour and associated myths and stereotypes.
- the utility in police and prosecution collaborating on joint protocols for investigation and prosecution of coercive control as well as on the development of processes aimed at the early identification of special witness measures.
- the practical and positive impact that a commissioner with a dedicated focus on the needs of domestic and family violence victims would have on the criminal justice experience of victims and the prosecution of coercive and controlling behaviour.
- the need for prosecutors to have a nuanced understanding of risk and risk assessment.
- the value that permanent internal training colleges could bring to Australian prosecution services.
- the need for the establishment of triage systems to identify matters involving domestic and family violence and coercive and controlling behaviour.
- the need for accountability infrastructure within prosecution services placing responsibility on supervisors to possess the skills to identify and deal with coercive control and to actively encourage their staff to do the same.
- the potential for collaboration with specialist domestic and family (and sexual) violence services to review victim correspondence templates to ensure that they are clear, simply worded and trauma informed.
- the need for further research capturing the views and experiences of victims who have been through the criminal justice process to improve understanding of the operation and effectiveness of new coercive control legislation.



Ms Christopherson's report may be read here: <https://www.churchilltrust.com.au/qld/project/to-assess-the-efficacy-of-prosecuting-the-offence-of-coercive-control/>



Digital Case Management Project

In July 2022, the ODPP Digital Case Management project commenced with the goal of modernizing and enhancing the efficiency of case management processes throughout the ODPP. This initiative, a project under the sub-portfolio of the Department of Justice and Attorney-General's ICT Strategy Implementation Program (ISIP 2), aims to replace outdated manual procedures and systems over a 5-year period. By leveraging technology, the project seeks to streamline workload management, digitise processes and documentation, and facilitate secure data and document sharing with prosecution authorities. It also aims to improve interoperability with various stakeholders including the Queensland Police Service and Queensland Courts, marking a significant step towards a more integrated criminal justice system.

The first 12 months of the project targeted significant business analysis, engaging with stakeholders throughout the organisation at various levels and across various positions. The analysis phase has delivered some significant foundational documentation as well as a digital transformation strategy, and has developed a number of proof-of-concepts aimed to address specific organisational challenges. The project will focus on the implementation of a dynamic ODPP Case Management tool, and prepare the organisation for the future integration and adoption of future solutions within the sector. In providing staff with digital tools to assist them undertake their work, it is hoped that the project will work to create organisational efficiencies and contribute to delivering an improved quality legal prosecution service throughout the State of Queensland. The project has been allocated 10.5 million dollars across the next five years and expected to go live mid 2025.

Response to the Commission of Inquiry into Forensic DNA Testing in Queensland

On 6 June 2022 the Queensland Government established a Commission of Inquiry into Forensic DNA Testing in Queensland, headed by the former President of the Court of Appeal, retired judge Mr Walter Sofronoff KC. The aim of the Inquiry was to ensure transparency, identify opportunities for improvement and enhance public confidence in the collection of DNA and the testing and analysis undertaken in relation to DNA in the Queensland criminal justice system.

On 15 September 2022 the Commissioner issued an interim report recommending that addendum statements be prepared by Forensic and Scientific Services (FSS) for every DNA witness statement issued since February 2018 where a sample has been reported as “DNA insufficient for further processing” or any similar expression, or “No DNA detected” (the interim report addendum statement process). The Commissioner issued his final report on 13 December 2022 with several recommendations requiring Forensic Science Queensland (FSQ) to review seven categories of cases from 2008 onwards (the case review process).

The ODPP is one of the key stakeholders in both processes. The Office established a specialist team of prosecution lawyers to review these cases, supported by administrative and statistical staff. The Office has worked closely with FSQ to ensure that cases are reviewed efficiently and effectively.

In relation to the recommendations of the final report, a Legal Led Case Review process was developed in May 2023 and commenced on 5 July 2023 where the Office and FSQ are working together and sharing contemporary information on the progress of prosecutions cases, to prioritise the time of the scientists working within FSQ. There are focused efforts in minimising disruption to the operation of the criminal justice system.



Engagement with Legal Stakeholders

ODPP Brief Out Scheme

The ODPP commenced briefing out matters to Counsel from the Private Bar in August 2018.

In the 2022-23 reporting period, 184 barristers were applicants within the scheme.

275 matters were briefed to the Private Bar during the reporting period. Of which, 31.6% of these matters were for matters not dealt with in the Brisbane courts.

Matters Briefed out included:

- 100 Sentences
- 159 Trials
- 1 Indictment to be drafted
- 1 Magistrates Court committal hearing
- 2 pre-recorded hearings
- 5 pre-trial hearings
- 7 advices on briefs

The ODPP is committed to equitable briefing out of the Private Bar and aims to ensure that 30% of cases briefed out are briefed to women barristers. In the 22/23 year, 35.5% of barristers who were applicants in the brief out scheme were women and 30.9% of matters briefed were briefed to women barristers.

Blue Card | Working with Children (Risk Management and Screening) Act 2000 (Qld)

Blue Card services require information from the ODPP to make assessments on individuals with a criminal history applying for a Blue Card. During the 2022-23 period the ODPP gave advice to 131 applications.

Crown Law | Dangerous Prisoners (Sexual Offences) Act 2003 (Qld)

Crown Law requests information relating to possible applications pursuant to the *Dangerous Prisoners (Sexual Offences) Act 2003* (Qld). During the 2022-23 period the ODPP actioned 17 information requests.

Victims of Crime Assistance Act | VOCA Act s67

Victims Assist Queensland requires information from the ODPP to make assessments on applications for financial assistance from victim-survivors. During the 2022-23 period the ODPP provided advice for 65 applications.

Subpoenas

Notices to Produce and Notices of Non-Party Disclosure from various agencies and law firms relating to civil proceedings including the OHO and Coroner. The ODPP responded to 170 Subpoenas during the 2022-23 operational period.

RTI | Right to Information Act 2009 (Qld)

The 2022-23 period saw the ODPP responded to 142 Right to Information requests.

Parole Board of Queensland

The Parole Board Queensland requires material from the ODPP to assist in its decision-making process. The ODPP responded to 142 Parole Board requests for information during the 2022-23 period.

ODPP Engagement with the Bar

The ODPP actively engages with the Bar Association of Queensland and makes a positive contribution to the profession by participation in the association committees and education programs.

In the reporting period it had representation on the council, the Criminal Law Committee, the Bar Care Committee, the Legal Education Committee, the New Bar Committee, and the University Relations Committee.

Members of the Office contributed to the Bar Practice Course and the Association's continuing professional Development program as Chair's, subject matter experts and participants.

The office sponsored 11 staff members to attend Bar Association conferences in Brisbane (3), Gold Coast (4) and Cairns (4).



Complaints management

The ODPP aims to be accessible and responsive to victims of crime, witnesses, and stakeholders in the prosecution process. The ODPP strives to deliver a quality service and continuously improve by constructively using the feedback received. Complaints may be made by victims, witnesses, or family members who have consent on behalf of a victim (for instance if the victim is a child), defendants, and other stakeholders. The ODPP will not respond to complaints made by members of the public who are not connected to a case. All complaints are investigated and reviewed internally by a legal manager not connected to the case, with oversight by a Deputy Director.

In the 2022-23 financial year, the ODPP received a total of **30 complaints**. Complaints during the reporting period concerned a range of issues. Most frequently, complaints stemmed from prosecutorial decisions (e.g. Forensic decisions made at trial, decisions made with regards to what a defendant is charged with, and discontinuance decisions). The most common means of resolving complaints involved senior ODPP legal staff conducting further conferences with the complainant to explain the legal process and reasons behind decisions.

Other complaints, while directed towards the ODPP, did not actually concern the conduct or decisions of the ODPP, and were referred to relevant stakeholders for management.

While the limited number of complaints received during the reporting period relative to the number of matters dealt with reflects well on the conduct of the ODPP, the Office has identified there can be further service improvements; particularly in relation to communicating with victims of crime how the criminal justice system works and how prosecutorial decisions are made.

Complaints may be referred by email to:
DPPFeedbackandcomplaints@justice.qld.gov.au

Complaint type	Number of complaints
Court Processes	3
Defendant Complaint	6
Financial Compensation	3
ODPP Policies and Procedure	3
Prosecution Outcome	4
Prosecutorial Decision	7
Staff Conduct	4
Total	30

Complaint Outcome	Number
Local resolution - apology	1
Local resolution -	8
Local resolution - email	3
Matter reviewed - decision	4
Matter referred to relevant	8
Matter referred to Ethical	1
Service improvement	3
Not resolved in reporting	2



Awards and Nominees

DJAG Staff Excellence Awards

During the reporting period, ODPP staff were recognised for their contribution to the Department of Justice and Attorney-General and the Queensland Public Sector, through the department's Staff Excellence Awards.

The Awards recognise outstanding work in a number of categories which align with the DJAG Charter, including customer focus, innovation, leadership and partnership. The 2022-2023 financial year was the first year ODPP staff received nominations for the department's awards.

The following staff were listed as Staff Excellence Awards finalists during the reporting period:

Innovation

Human Resources Unit – Caitlin Lindsay, Melissa Dyer, Cassandra Kerr, Sarah Prasad

The establishment of Mental Health First Aid (MHFA) Officers in the Office of the Director of Public Prosecutions (ODPP), with the aim of providing immediate support for staff experiencing mental health and wellbeing issues in the workplace, until more specialised support can be engaged. MHFA Officers are in place in all ODPP workgroups across the State, including in all legal chambers in Brisbane and regional areas.

The Human Resources Unit received a 'highly commended' award for their efforts. In planning and delivery of the Mental Health First Aid course to 44 participants from ODPP Offices across Queensland.

Strategic ICT – Peter Negerevich, Dominic Willys, Riley Camp

The ODPP Digitisation and Business Review Project was established to undertake an organisational-wide review of business processes and commence a digital transformation. A significant amount of staff engagement has delivered some key deliverables under the project in terms of organisational review. The nominees have been instrumental in delivering key proof of concepts around leveraging artificial intelligence to deliver transcription services that address some organisational backlogs, and also work towards delivering future digital document and handling solutions.

Leadership

Christopher Cook

Nominated for the individual award for leadership for providing leadership and demonstrating the highest standard of prosecution for the people of Queensland. Chris is described as someone who leads from the front and motivates staff to work efficiently as well as effectively.

Performance

Stephanie Gallagher

Stephanie is an amazing prosecutor with strong negotiation skills. Stephanie makes sensible decisions relating to possible resolutions of matters, in a way that is both efficient and delivers just outcomes.

Haxton Chambers - William Cloake, Ronald Swanwick, Julie Aylward, Chontelle Farnsworth, Geoffrey Wong, Michael Andronicus, Rhys Dunmall, Sam Poplawski, Zachary Arnold, Siobhan Markwell, Courtney McMullan, Erin Gillam, Lana Ibbott, Sharon Thomas, Daniel Song, Matthew Morton, Natalie Meggitt, David Stillwell, Rebekah Ahrens

There was a shuffle in work allocated within the Office of the Director of Public Prosecutions which resulted in a circuit to the District Court at Gladstone being solely allocated to Haxton Chambers. Haxton Chambers took carriage of the circuit in January 2022 and since transformed the circuit into a high functioning and smooth running court circuit.

Customer Focus

Kathryn Thomsen

Kathryn delivers week in week out, creating files in an efficient manner for Given Chambers. Kathryn is a dependable records officer who is instrumental in training new records officers when they are recruited.



The Queensland Homicide Victims' Support Group (QHVSIG) Recognition of staff excellence in service

Our staff at all levels interact with victims and their families, and the agencies who work to support victims.

The Queensland Homicide Victims' Support Group (QHVSIG) highlights excellence in service to victims annually with their QHVSIG Recognition Awards. We are proud to have had ODPP staff nominated for these awards in 2022 and 2023.

Brad Lees Compassion in Service Award, November 2022

Mr Daniel Boyle, former Consultant Crown Prosecutor

Daniel was the recipient of this award in November 2022 and was nominated by the victim's family for his work on the prosecution of R v Paul MOORE and Emily TRACEY. (This matter remains subject to an appeal.) His nomination included the plaudit, "Compassion, empathy, understanding and respect. That is what Danny has shown us time and time again." In his acceptance speech, Daniel also acknowledged the support he received from other ODPP staff members which helped to meet the needs of the family and enable him to successfully prosecute the matter.



Brad Lees Compassion in Service Award, June 2023
Pictured : Daniel Boyle

Three ODPP staff members were nominated for these awards in 2023.

Mr Todd Fuller KC, Deputy Director

Todd was nominated for this award by a QHVSIG member who has had contact with him through supporting homicide victims' families over a number of years. The nomination stated, "He understands that every victim has grieving loved ones that should be treated with compassion and empathy, and ensures that every victim is treated with the utmost respect, regardless of age, sex or culture." While Todd was not the ultimate recipient of the award, his nomination was a fitting recognition of over 30 years of service to the ODPP.

Ms Lisa Mallett, Victim Liaison Officer

Lisa was nominated for this award by the family member of a homicide victim. Her nomination stated, "Lisa always was clear and precise on what was going on which helped my family understand where we were heading." Lisa was not the ultimate recipient of the Award, however this nomination is an important recognition of the work which our Victim Liaison Officers do in their daily contact with victims and families.

Mr Sam Bain, former Principal Crown Prosecutor

Sam was also nominated for this award by the family member of a homicide victim. His nomination included a reference to all of the staff who worked on the matter, "They've been patient and kind in all our interactions and correspondence, even when we were emotional at times." Sam was not the ultimate recipient of the Award but his nomination recognises how significant the interaction and information provided by our office is for victims and their families.



David Meredith

40 years of service

Mr Meredith commenced his long and distinguished career with the Office of the Solicitor General in January 1978 (the precursor to the Office of the Director of Public Prosecutions (Qld)).

In 1985, he joined the newly formed Office of the Director of Public Prosecutions (Qld). In 1991, he was appointed Consultant Crown Prosecutor and was responsible leading offices in Northern Queensland. Under his leadership, he introduced legal officer positions to enhance the efficient preparation of matters for prosecution in the superior courts.

In 1994, Mr Meredith returned to Brisbane and relieved in the roles of Director of Public Prosecutions and Deputy Director of Public Prosecutions on several occasions. In 2013 he was appointed Senior Consultant Crown Prosecutor in recognition of his extensive experience and professional contribution.

Mr Meredith prosecuted 79 murder trials (among the most appearances in the State's history for an advocate) including some of the most famous and notorious murder trials in Queensland's history. He secured convictions for murder in the prosecution of Robert Long, who set fire to the Palace Backpackers in Childers killing 15 people. On the 20-year anniversary of this devastating fire, Mr Meredith attended the service to honour the lives lost and met with the families to provide support.

Mr Meredith prosecuted the first trial in Queensland involving the use of DNA evidence. He provided authoritative advice to Attorneys-General on matters of legal importance to the administration of Criminal Law in Queensland.

Mr Meredith is held in high regard by judicial officers, members of the profession and other stakeholders and has contributed to the broader legal profession and mentored many generations of Crown Prosecutors, possessing the qualities, abilities, and character that other Crown Prosecutors aspire to possess with a dedicated service to the protection of the community. Mr Meredith's contributions were recognised by the ODPP and was commissioned a portrait by the Director and the CPAQ.



Our People

Staff Demographics

As at 30 June 2023, the ODPP had a funded establishment of **444 full-time equivalent positions**, comprising the senior leadership team, prosecutors, legal officer, legal support staff, victim liaison officers and corporate service officers.

The ODPP welcomed 129 new employees during the reporting period. This is an **onboarding rate of 29.1%**.

118 staff left the ODPP in the 2022-23 financial year. **This is a staff turnover rate of 26.6%**. The leading reason for termination of employment was resignation (68.6%), followed by appointment to another Queensland Public Sector (16.9%), and end of contract without renewal (10.2%). 4.3% of terminations were due to retirement or other reasons.

Gender Identification Profile

As at 30 June 2023, **62.34% of all staff employed by the ODPP were female** and 37.66% were male.

Age Profile

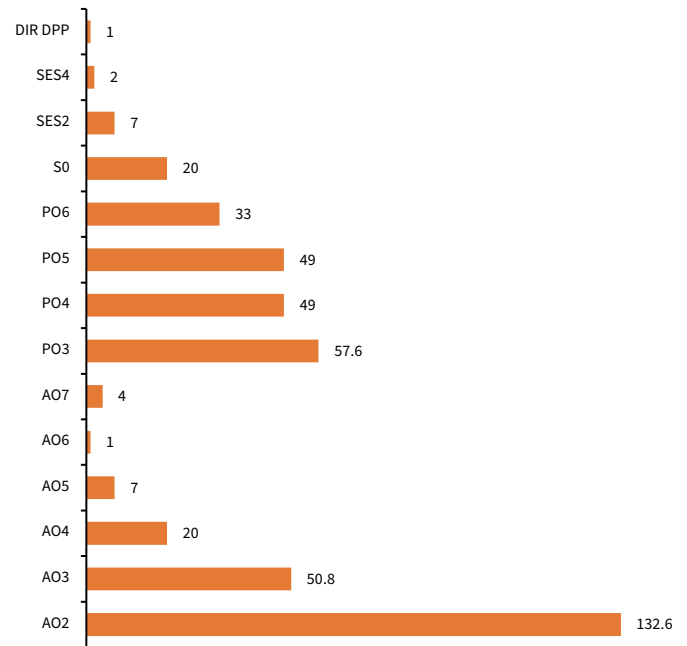
As at 30 June 2023, the average age of the ODPP's workforce was 38 years.

9.02% of staff were aged 55 years or older, while 4.3% were aged 60 years or older.

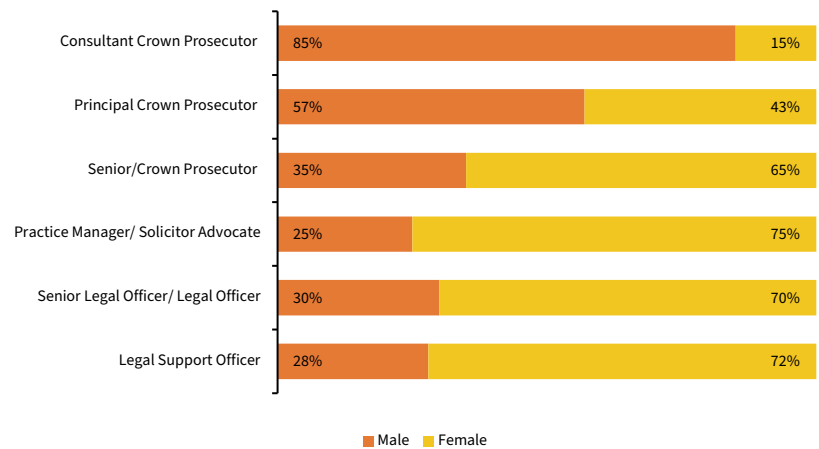
11.9% of our workforce are part-time employees.

This year's growth saw the ODPP increase by 9.3% during the 2022-23 period.

Funded FTEs by Classification



Gender by Job Classification



Full-time Equivalent Positions

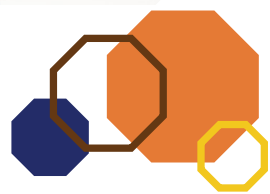
Full-time Equivalent Positions	Number
Director	1
Deputy Director	2
Executive Manager	1
Crown Prosecutor	87
Practice Manager/ Solicitor Advocate	16
Legal Officer	112
Legal Support	173
Victim Liaison Officer	22
Corporate Services	30
Total	444



Crown Prosecutor Appointments

The Office would like to acknowledge the hard work and dedication of the below staff members and congratulate them on their accomplishments.

Consultant Crown Prosecutor Appointments	Crown Prosecutor Appointments
Nathan Crane	Tegan Grasso
Greg Cummings	Matt Hancock
David Nardone	Christian Peters
Clayton Wallis	Rana Aldas
David Finch	Tom Hancock
Principal Crown Prosecutor Appointments	Christa Nicola
Aaron Dunkerton	Bernhard Berger
Michael Lehane	Amy Stannard
Toby Corsbie	Mitchell Whelan
Rebecca Marks	Andreas Galloway
Samantha O'Rourke	Matthew Sutton
Brendan White	Erin Kelly
Ryder Reid	Jane Shaw
Senior Crown Prosecutor Appointments	Hamish McIntyre
Cameron Wilkins	Caitlin Penfold
	Shannon Sutherland



Consultant Crown Prosecutors



Mark Green

Appointed in December 2021

Mark Green's legal career began in the Public Defender's Office in February 1989. He was admitted as a Barrister in April 1992, and continued working in the Public Defender's Office after it merged with Legal Aid until 2008; including acting periods as the Deputy Public Defender. Mr Green then went to work for the Private Bar until October 2017, where he commenced working for the ODPP as a Senior Crown Prosecutor. Mark Green became a Principal Crown Prosecutor in 2018, until his appointment as a Consultant Crown Prosecutor in December 2021. Mr Green has been involved in a number of serious trial and appeal matters; for example the prosecution of the millionaire businessman John Chardon in 2019, for the homicide of his estranged wife.



Caroline Marco

Appointed in January 2022

Caroline Marco started at the ODPP in January 2000 as a legal support officer as part of the cadet program (the precursor to the WEPP program). She commenced working as a Crown Prosecutor in September 2005, and was appointed as a Principal Crown Prosecutor in December 2011. From 2019-2020 Ms Marco worked as the Appeals Prosecutor for the Office, and she was then appointed a Consultant Crown Prosecutor in January 2022. Ms Marco has also had periods where she has acted as the Deputy Director of Public Prosecutions. Ms Marco's lengthy experience has seen her conduct many high-profile trials and appeals, including the prosecution of the serial murderer Rodney Williams.



Greg Cummings

Appointed in September 2022

Greg Cummings commenced his legal career in 1985 in private practice. He was admitted as a barrister in December that year, and continued working in private practice until April 1991, where he then commenced working as a Senior Legal Officer in the Office of General Counsel with the Criminal Justice Commission. In 1993, Mr Cummings commenced working with the ODPP, where he led the Confiscations section. Mr Cummings was appointed as a prosecutor in August 1996. Mr Cummings began prosecuting murder matters in 2005, and has regularly appeared in the Court of Appeal since 2007. He became a Principal Crown Prosecutor in 2008, and was appointed as a Consultant Crown Prosecutor in 2022. Mr Cummings has been involved in many complex organised crime cases, such as the 'Irish Boys' boiler room fraud prosecutions.





David Nardone
Appointed in October 2022

David Nardone commenced as a legal support officer in the Brisbane ODPP in November 1995 and shortly after was admitted as a solicitor. After working as a legal officer in the Brisbane, Cairns and Rockhampton offices of the ODPP he was admitted as a Barrister in April of 2004 and appointed as a Crown Prosecutor in December 2006. In September of 2017 he was appointed as a Principal Crown Prosecutor leading the Beenleigh ODPP. After a nine months secondment to the secretariat of the Law Reform Commission (Qld) in 2020, Mr Nardone became the Principal Crown Prosecutor of the DPP Appeals team and in October 2022 was appointed as a Consultant Crown Prosecutor. David has worked on many notable trials and appeals, including for example the prosecution of the notorious serial ‘yacht rapist’ John Collins.



Nathan Crane
Appointed in September 2022

Nathan Crane commenced in the office in 2006, and was appointed a Senior Crown Prosecutor in 2014. In 2017, he was appointed as the Principal Crown Prosecutor of the Townsville Chambers and in 2019, the Principal Crown Prosecutor of the Cairns Chambers. In 2022, he was appointed as a Consultant Crown Prosecutor in Brisbane. Mr Crane has appeared as lead counsel on many significant appeals and trials, including the double-murder by Balwinder Ghuman and the cold-case killing of Jay Brogden in the Whitsundays.



Clayton Wallis
Appointed in September 2022

Clayton Wallis commenced as a legal support officer in the Brisbane office of the ODPP in 2007. The following year he was admitted as a legal practitioner and commenced acting as a legal officer. In January 2009, he was appointed as a Crown Prosecutor, and in 2017 he was appointed as a Principal Crown Prosecutor. In 2022, Mr Wallis became the Principal Crown Prosecutor of the DPP Appeals team, and later that year he was appointed as a Consultant Crown Prosecutor. During his career Mr Wallis has worked in numerous notable prosecutions and appeals, such as the 2018 prosecution of the ‘night stalker’ serial rapist Jason Burr.



David Finch
Appointed in January 2023

David re-joined the Director’s office in 2002 as a senior legal officer. He commenced prosecuting in (circa) 2006. Since then he has maintained a busy practice based in Brisbane, but travelled widely on circuit. David has progressed his career steadily through the office appearing for the State in a wide variety of matters before all Courts, but with a particular focus on trials. His trial experience has included several complex and notable matters, such as the 2016 prosecution of the electronics engineer Robert Ridgeway, who had attempted to murder his estranged wife through introducing nitrogen gas into a confined space to asphyxiate her.



Years of Service Honour Board

The Director would like to acknowledge the following staff that have served the Office of the Director of Public Prosecutions for 20 years or longer.

The nature and volume of the work of the ODPP requires people with dedication and resilience with a clear focus on community service. The work is also particularly rewarding. It is important to acknowledge those who have chosen to dedicate their working lives to the important work of the ODPP through their lengthy service to the Office and the community.

Name	Years of Service to DPP	Name	Years of Service to DPP
David Meredith	35	Alexander Stark	24
Todd Fuller KC	35	Carl Heaton KC	24
Susan Gillies	34	Zaneb Salam	24
Marcos Malaxechebarria	31	Lisa Mallett	24
Greg Cummings	29	Rebecca Pennell	24
Ronald Swanwick	29	Shauna Farrelly	23
Teresa Davis	29	Amanda Kajewski	23
Michelle McCormack	29	Caroline Marco	22
Alan Kent	28	Stacey Cristaldi	22
Philip McCarthy KC	27	Larissa Peddell	21
Scott Smith	27	Catherine Birkett	21
Roderick McPhillips	27	Tracey Street	21
Andrew Lowrie	27	Sarah Dennis	21
David Nardone	26	Bronwyn Currie	20
Malinda Ralph	25	David Finch	20
Jane Shaw	25	Julie Aylward	20
		Frances Chatterton	20



Learning and Development and Continuous Improvement

ODPP staff attended various external training and presentation opportunities during the 2022-23 reporting period:

- Australian Women Lawyers 2022 National Conference
- Queensland Law Society Criminal Law Conference 2022
- Gold Coast Centre Against Sexual Violence Inc. Start by Believing Community Breakfast
- Adaptive Leadership
- Lifting the Lid on Sexual Assault Seminar 2022
- Bar Association Annual Conference
- Youth, Technology and Virtual Communities Conference
- Mental Health First Aid
- Victim Voices, Justice and Choices
- DPC Speakers Series with Carly Findlay
- North Queensland Legal Association Conference

ODPP staff were also given the opportunity to attend various training and webinar presented by the Department of Justice and Attorney-General during the reporting period:

- Leader as Coach – presented by DJAG in partnership with Trevor Roberts
- Unconscious bias, diversity & inclusion – presented by DJAG in partnership with Benestar
- Foundations of Mental Health Awareness – presented by DJAG in partnership with Benestar
- Promoting psychological safety for better outcomes
- Transitioning from chaos to calm
- Managing trauma & vicarious trauma – presented by the DJAG Women's Network
- Having an R U OK conversation with a peer at work – presented by DJAG in partnership with Benestar
- Imagining a Workplace without Burnout
- Diversity and inclusion for mentally healthy workplaces
- Emotionally Intelligent Leadership
- Mindset Mastery with Darren Fleming

Employee Attraction, Retention and mobility

ODPP is committed to enhancing staff development. 144 internal expressions of interest for short-term acting arrangements were advertised to ODPP staff during the reporting period and secondments to other organisations were approved to 29 permanent staff.

Work Experience Placement Program (WEPP)

The ODPP'S work experience placement program (WEPP) has operated for over 10 years and remains a key recruitment strategy for entry-level legal support staff.

The WEPP is offered to students from Queensland universities, including the University of Queensland, Queensland University of Technology, Griffith University, Bond University, University of Sunshine Coast, University of Southern Queensland, James Cook University and the Queensland College of Law.

The four-week program is offered to law students in a full-time structured format. It provides participants exposure to criminal matters and the opportunity to observe criminal trials, sentences, and other hearings before the Courts. Students are encouraged to actively participate in the practical opportunities and experiences offered, to meet their own learning objectives, and to meet the objectives established as part of the WEPP.

The WEPP was offered to 101 students in the Brisbane and regional chambers during the reporting period.

Study and Research Assistance Scheme

The Study and Research Assistance Scheme is a sector-wide initiative adopted by business units to support eligible employees undertaking tertiary studies.

The ODPP'S Study and Research Assistance Scheme provided study assistance to 6 staff in the following areas of study in 22/23:

- Bar Practice Course (5)
- Bachelor of Business (1)



Workforce planning & Employee support

Mental Health First Aid Officers

As part of the continued recognition of the challenges of the work of the ODPP and the risk of vicarious trauma, and in response to managing the risk of psychosocial hazards at work (*Code of Practice 2022*.) ODPP engaged with Mental Health First Aid Australia to deliver a program designed to support staff psychological wellbeing until more specialised support is arranged.

In two separate workshops, Mental Health First Aid Australia in partnership with Cooper Grace Ward, delivered law professional specific mental health first aid training to 44 ODPP staff across the State, qualifying them to act as Mental Health First Aid Officers.

ODPP's Mental Health First Aid Officers are staff at all levels through the legal and corporate teams, and are easily identifiable through unique badges in email signatures and the online staff phone list. Supported by the ODPP Human Resources team, the Mental Health First Aid Officers are able to recognise when their colleagues may be struggling with their mental health, respond appropriately and refer the staff member on to dedicated resources.

This is just one part of a suite of initiatives and strategies the ODPP plan to deliver to manage risks of psychosocial hazards. Regular events that focus on wellbeing also form part of the strategy.

Planning and performance

Workforce strategies at the ODPP are guided by the Department of Justice and Attorney's (DJAG) Strategic Workforce Plan 2021-25. Strategies include leadership and capability, culture, new ways of working and talent management. To assess performance against departmental workforce strategies in 2023, DJAG asked agencies to compare results from the Working for Queensland (WfQ) employee opinion survey for factors and topics identified to align with each of the four workforce strategies. Analysis of the ODPP results highlighted a need to focus on improvement of fair and equitable processes particularly around recruitment and backfilling, workload and wellbeing.

During the reporting period, the Human Resources team drafted and published a number of Directors Instructions as part of the actions to improve processes and ensure

they remain fair and equitable. These included topics such as recruitment, appointments, expressions of interest and parental leave.

There was also a renewed focus on recruiting to relevant vacancies and providing permanent employment opportunities wherever possible. During the reporting period, the ODPP posted 36 advertisements for long term temporary or permanent vacancies on SmartJobs and ran 144 expressions of interest processes for short term vacancies with the ODPP.

Public Sector Act 2022

During the 2022-23 reporting period, the *Public Sector Act 2022* came into effect and with it new Directives governing the review of non-permanent employment for the purposes of conversion to permanent appointment and the review of acting in or secondment to higher classifications.

These Directives were released on 1 March 2023. The ODPP has reported its conversion and appointment figures under the superseded and current Directives separately, and a total of 53 conversions were completed in the year.

Conversions from fixed-term temporary to permanent appointment:

In the 2022-23 reporting period, the ODPP converted 12 staff from fixed-term temporary to permanent appointments under Directive 09/20 Fixed-term temporary employment.

In the same reporting period, the ODPP converted 19 staff from non-permanent employment to permanent appointments under new Directive 02/23 Review of non-permanent employment.

Appointments to higher classification level

In the 2022-23 reporting period, the ODPP appointed 18 staff to higher classification level positions under Directive 13/20 Appointing a public service employee to a higher classification level.

In the same reporting period, the ODPP appointed 4 staff to higher classification level positions under new Directive 03/23 Review of acting or secondment at higher classification level.

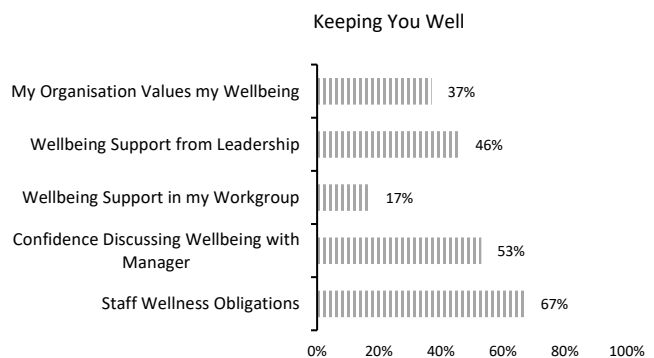
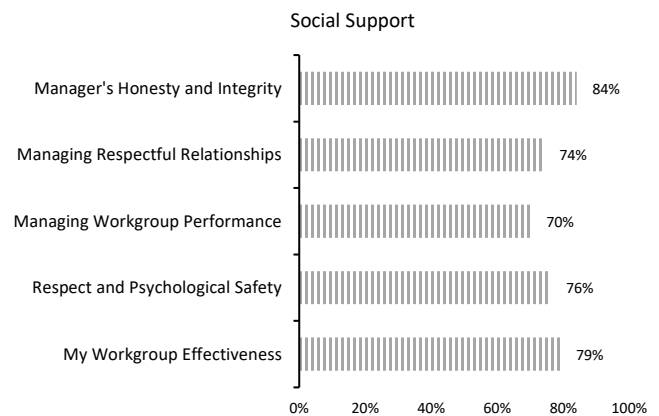
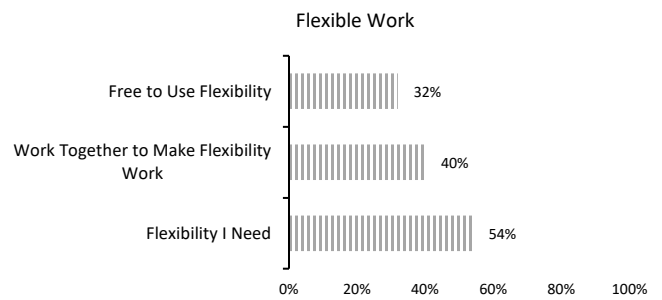
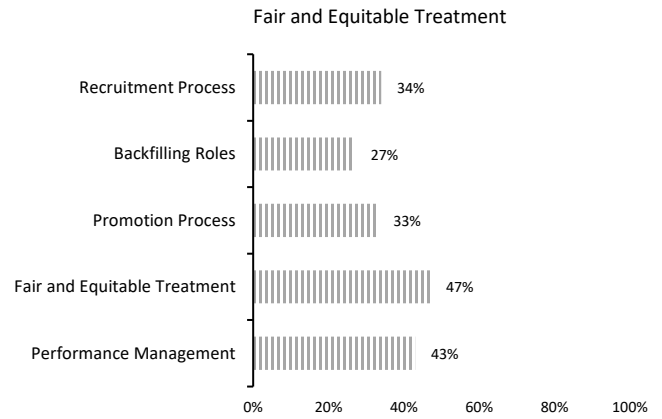
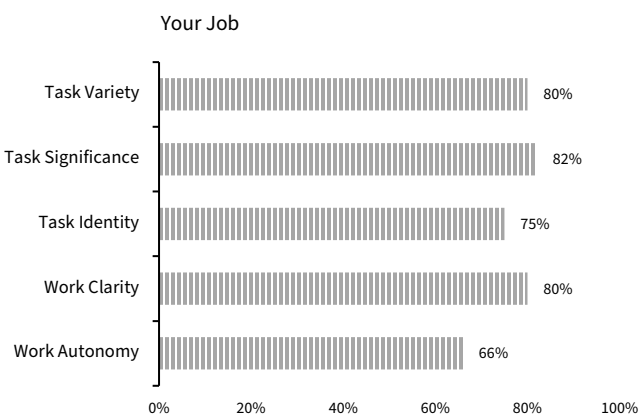


Working for Queensland survey

Workforce strategies at the ODPP are guided by the Department of Justice and Attorney-General's (DJAG) Strategic Workforce Plan 2021-2025. Strategies include leadership and capability, culture, new ways of working, and talent management. To ascertain performance against departmental workforce strategies in 2022-23, DJAG asked agencies to compare results from the Working for Queensland (WfQ) employee opinion survey for factors and topics identified to align with each of the four workforce strategies.

In 2022-23, 60% of ODPP staff responded to the WfQ survey; a marginal decrease from the 61% of staff who responded in 2021-22. Survey results indicated that ODPP staff have a strong connection to the work they do, feeling that their work is clear, significant, has variety, and they are free to work autonomously. Staff also consider their work groups as working effectively and respecting them and their psychological safety. Staff see managers as being effective at managing work group performance and respectful relationships, as well as being honest and acting with integrity.

However, survey results have also indicated staff are unsatisfied with the Office's ability to treat all staff fair and equitably, support their wellbeing, and support flexible working arrangements. Some of these issues are attributable to the nature of criminal prosecution and court work.



Events and Community Engagement

HoPAC July 2022, London

The conference was conducted by way of presentations from delegates and external speakers and round table discussions to enable the exchange of views and sharing of best practice by all attendees.

The conference provided an opportunity for the heads of prosecuting agencies of common law jurisdictions to discuss the trends and challenges faced in both domestic and international prosecutions, with a particular focus on three themes – (i) COVID: Challenges, Responses and Digital Transformation (ii) Emerging Crime Types and Threats and (iii) Economic Crime and the Freezing and Confiscation of Assets.

RUOK day?

ODPP recognises the importance of supporting staff to ensure their health, safety and wellbeing is a priority, in the workplace and beyond. R U OK Day promotes and encourages people to reach out, stay connected and have conversations that can help others through difficult time.

In 2022, ODPP partnered with other business areas within the Department of Justice and Attorney-General to host a visit from Animal Welfare League Queensland (AWLQ) and their adoptable pups. The dogs visited Brisbane staff in the State Law Building, encouraging plenty of smiles and conversations amongst the teams.

ODPP Ball

The 35th ODPP Anniversary Ball was held on 10th September 2022 at Rivershed located along the Howard Smith Wharves precinct overlooking the Brisbane River. The night was celebrated by staff both past and present and the aim was to celebrate and reflect on the vast variety of work ODPP do. Special mention was made to David Meredith, Consultant Crown Prosecutor for his long esteemed career with the ODPP. Former Directors who attended included Michael Byrne KC; Leanne Clare SC; Anthony Moynihan KC. The 231 staff and guests enjoyed a three course meal followed by live entertainment and dancing. The function was a ticketed event and paid for by those who attended.

Mental Health Week

Between 10-14 October 2022, the Office observed Mental Health Week by providing staff several opportunities to wind down and de-stress. This included visits from Eddy the poodle from Animal Welfare Queensland, trollies of treats, an Office-wide morning tea, and crocheting and yoga sessions.

CADs, October 2022, Perth

This conference allowed the Directors to share information and develop a coordinated response to issues to major prosecutions, law reform, continuing legal education, performance management, human resource management and reporting.

The second conference for 2022 will be hosted in Perth on 27th and 28th October 2022.

BAR Association Conference

The Queensland Bar Association annual Brisbane conference was held on 3 and 4 March 2023, providing ODPP staff an opportunity to connect with other members of the legal profession, and participate in a number of workshops over two days. Sessions included an address from the Commonwealth Attorney-General, a panel with Richard Douglas KC, Susan Anderson and David Schneidewin on Stay Applications with a focus on Historical Sexual Abuse cases, and a panel examining the management of sex trials in the #MeToo era hosted by Saul Holt KC, Carl Heaton KC and Ruth O’Gorman KC.



International Women's Day

This year the Office celebrated International Women's Day on Wednesday 8 March with a breakfast to mark the occasion. The theme was 'Embracing Equity'. The Director, Carl Heaton KC, Consultant Crown Prosecutor, Caroline Marco, and Executive Manager, Carla Norbury, each spoke at the event, recognising how far women had come on their journey to achieving equality, particularly in law, and what more can be done to advance women in the workplace to challenge the underrepresentation of women in senior leadership roles.

A team comprised of ten Legal Support Officers, Legal Officers, and Crown Prosecutors took part in the Mater Foundation's International Women's Fun Run held on Sunday 12 March in Brisbane City. The team raised \$2,302 for the Mater Foundation.

National Witness Assistance Service Conference 2023

The National Witness Assistance Service (WAS) Conference 2023 was hosted by the Victorian ODPP on 20 – 21 March 2023. Attendees travelled from prosecution agencies across Australia including New South Wales, South Australia, Tasmania, the Australian Capital Territory and Queensland as well as the Commonwealth ODPP. The Queensland ODPP sent three representatives, namely Victim Liaison Coordinators Rosemary Cleary and Frances Chatterton and Womens Safety and Justice Taskforce Project Officer Kathleen Christopherson.

Presentations were given by each agency sharing resources, case studies, best practice learnings, staff training initiatives and providing updates regarding other recent developments in the legal and victim support space in their respective jurisdictions. A number of organisations presented on court dog programs running in their jurisdictions and attendees had the opportunity to meet the Victorian ODPP court dog. The Queensland team presented on the implementation of the Women's Safety and Justice Taskforce recommendations and establishing a best practice response to victims of sexual assault in North Queensland via the Sexual Assault Response Team (SART). A fascinating presentation was delivered by Victorian ODPP Senior Solicitor Alice Cooney on The Impact of Social Workers – A Solicitor's Perspective. The Victorian ODPP also arranged for a victim to attend the conference and tell her story about her journey through the criminal justice system.

The next national WAS conference is scheduled for late 2024.



Term Glossary

- Appeal** A process by which all or part of a court's decision is reviewed. Matters are appealed to and determined by a court higher than the court in which the original decision was made. The judicial hierarchy of criminal courts in Queensland, from highest to lowest, is the High Court of Australia, the Queensland Court of Appeal, the Supreme Court, the District Court, and the Magistrates Court.
- Appeals may be made against sentence, conviction, or both. If an appeal against sentence is successful, the Court will set aside the sentence and impose a new sentence. If an appeal against conviction is successful, then the Court will set aside the conviction, and may order a new trial or substitute a verdict of acquittal. If the Court does not find an error, or in some cases, if there is no substantial miscarriage of justice, then the appeal is dismissed and the decision of the lower court is upheld.
- Appearance** When a person physically attends a hearing before a court, that person is said to appear before the court. When a person's lawyer physically attends a hearing before a court on the person's behalf, that lawyer is said to have appeared for that person. The action of that person or that person's lawyer, as the case may be, is called an appearance.
- Bail** A legal authority for a person to remain out of custody after they have been arrested and charged with an offence prior to the finalisation of their charges. A charged person will remain in custody unless they have been granted bail. Bail is usually granted by a court; however, often it may be granted by police. Bail may be granted on the defendant's own undertaking to appear in court a later date, or with sureties and subject to conditions.
- Charge** The name given to the formal record of an allegation that a defendant has committed an offence. A person is usually charged by police and, once charged, that person must appear before a court at a specified place, date and time.
- Committal (Hand up)** A committal hearing at which the legal representative of the defendant consents to all of the statements of witnesses being handed up to the magistrate without any of the witnesses being required to give oral evidence.
- Committal Hearing (Committed for Trial/ Committed for Sentence)** The procedure by which a magistrate determines if there is a sufficient evidence for a defendant to stand trial before a judge and jury. If the magistrate determines there is sufficient evidence, then the magistrate orders the defendant to stand trial before a court with the jurisdiction to try the defendant. This will be the District Court or the Supreme Court.
- When a magistrate makes such an order, the person is said to have been 'committed' for trial. 'Hearing' refers to the procedure by which the evidence is given verbally (testimony) and the magistrate listens to, or 'hears', that evidence. If at the committal hearing the defendant admits to having breached the law as charged, the magistrate will order the defendant to appear before a District Court or the Supreme Court to be punished (sentenced) according to law. Such a defendant is said to have been committed for sentence.
- Criminal Code** Criminal Code is a reference to the Criminal Code Act 1899 (Qld) schedule 1 ('Criminal Code').



<i>Crown</i>	The Crown refers to the Queensland Government representing the community of Queensland. All criminal proceedings on indictment are brought in the name of the Crown.
<i>Defendant/Accused</i>	A person who is alleged to have committed an offence. In this report, a convicted person is also referred to as a defendant for ease of reference.
<i>Director</i>	The person appointed as the Director of Public Prosecutions for the State of Queensland
<i>Discontinuance</i>	<p>The process by which it is decided and formally recorded that a defendant is not to be prosecuted further, and the criminal proceedings against a defendant are to cease. This means a defendant no longer requires bail to remain out of custody and will not stand trial or be sentenced.</p> <p>If an indictment has been presented, a written record of the discontinuance is also entered. This record is called a <i>nolle prosequi</i>, Latin for ‘we shall no longer prosecute’.</p> <p>If the indictment has not been presented, the discontinuance is recorded by way of filing what is known as a ‘No True Bill’ in the Court Registry.</p>
<i>Ex-officio Indictment</i>	An indictment against a person presented to a court without that person having being committed for trial or committed for sentence. Such indictments require the approval of the Director of Public Prosecutions before they can be presented to the relevant court.
<i>Indemnity</i>	When providing evidence against a defendant, a person may admit to having committed criminal acts themselves. An indemnity is an assurance that no criminal proceeding will be taken or continued in relation to any such criminal acts that the person might admit to having committed (see also ‘use-derivative-use undertaking’).
<i>Indictment</i>	A formal document setting out the offence or offences that a defendant is alleged to have committed. Indictments are presented to (or lodged with) the Supreme Court or a District Court to notify the court of the offence/s with which the defendant has been charged.
<i>Indictable Offence</i>	An offence whereby, under the Criminal Code 1899 (Qld) or other legislation, the defendant has a right to stand trial before a judge and jury. An offence may be indictable even if the defendant or some other person can determine that the defendant will stand trial before a magistrate only.
<i>Mention</i>	A mention is an appearance before a court which is not for a specific purpose such as trial, sentence or committal hearing. Mentions allow the court and the parties to monitor the progress of charges. Usually, once a person has been charged, the charges will be mentioned at least once so a date for the committal hearing or trial may be set. The list is the written record kept by a court of all mentions, trials, sentences and bail applications (and committal hearings in the case of a Magistrates Court) to be heard by that court. The list is kept in a form similar to that of a diary. The District and Supreme Courts are available to hold trials or pass sentence only between certain dates. These periods are referred to as ‘sittings’. For example, when a person is committed for trial, the magistrate may say something similar to ‘you are committed for trial to the criminal sittings of the Supreme Court of Queensland at Brisbane on a date to be notified by the Office of the Director of Public Prosecutions.’
<i>Nolle prosequi</i>	See ‘discontinuance.’
<i>Offence</i>	An offence is any act or omission prohibited by the law of Queensland, and for which an offender will be punished. Offences may be indictable or summary. Summary offences can only be dealt with in a Magistrates Court.



<i>Office of the Director of Public Prosecutions</i>	The Office of the Director of Public Prosecutions is the statutory body within the Department of Justice and Attorney-General under the Director's control. All Crown Prosecutors are employed by the ODPP. The Office and its functions were established by the Director of Public Prosecutions Act 1984.
<i>Plea</i>	A plea is the formal response of a defendant to the charges on an indictment. At the defendant's trial or sentence, the indictment is read out to the defendant (the defendant is 'arraigned') and the defendant then formally responds by stating that they are 'guilty' or 'not guilty'.
<i>Prosecutor</i>	Prosecutors are barristers authorised to appear in the superior courts on behalf of the Crown. The term includes Crown Prosecutors from the Office of the Director of Public Prosecutions and members of the private bar who hold a commission to prosecute and are briefed to do work for the Director.
<i>Summary trial</i>	A trial held in a Magistrates Court before a magistrate sitting alone.
<i>Superior Courts</i>	The District Court (including the Childrens Court of Queensland) and the Supreme Court.
<i>Trial</i>	A hearing where evidence supporting a charge or charges against the defendant, and any evidence put forward by the defendant in defence, is heard by a judge and jury. Having regard to that evidence only, the jury decides whether the defendant is guilty or not guilty. If the jury determines that a charge is proved beyond reasonable doubt, the jury reaches a 'verdict' that the defendant is guilty of that charge. If the court is satisfied that the jury has reached a verdict after proper deliberation, and that it is lawful to do so, it will accept the verdict and formally convict the defendant. The court will then sentence the defendant. If the jury determines that a charge has not been proved beyond reasonable doubt, then the jury enters a verdict that the defendant is not guilty of that charge. The court will record that the defendant has been acquitted, and the defendant is then released or discharged. In the case of a trial before a magistrate, the magistrate will operate in the same manner as a jury, and deliver verdicts in the same way. A judge alone trial is a trial conducted by a Judge in the District or Supreme Court without a jury. In these trials, the judge will act in the role of the jury, and reach a verdict in the same way.
<i>Use-Derivative-Use Undertaking</i>	An undertaking given to a potential witness on the understanding that the evidence the witness gives will not be used against them in any criminal proceeding. (see also 'Indemnity').



Director's Guidelines

As at 30 June 2023



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GUIDELINES TO REPLACE ALL PREVIOUS GUIDELINES

GUIDELINE TO ALL STAFF OF THE OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS AND OTHERS ACTING ON MY BEHALF, AND TO POLICE

ISSUED BY THE DIRECTOR OF PUBLIC PROSECUTIONS UNDER SECTION 11(1)(a)(i) OF THE *DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984*

These are guidelines not directions. They are designed to assist the exercise of prosecutorial decisions to achieve consistency and efficiency, effectiveness and transparency in the administration of criminal justice.

The Director of Public Prosecutions represents the community. The community's interest is that the guilty be brought to justice and that the innocent not be wrongly convicted.

1. DUTY TO BE FAIR

The duty of a prosecutor is to act fairly and impartially, to assist the court to arrive at the truth.

- a prosecutor has the duty of ensuring that the prosecution case is presented properly and with fairness to the accused;
- a prosecutor is entitled to firmly and vigorously urge the Crown view about a particular issue and to test and, if necessary, to attack the view put forward on behalf of the accused; however, this must be done temperately and with restraint;
- a prosecutor must never seek to persuade a jury to a point of view by introducing prejudice or emotion;
- a prosecutor must not advance any argument that does not carry weight in his or her own mind or try to shut out any legal evidence that would be important to the interests of the person accused;
- a prosecutor must inform the Court of authorities or trial directions appropriate to the case, even where unfavourable to the prosecution; and
- a prosecutor must offer all evidence relevant to the Crown case during the presentation of the Crown case. The Crown cannot split its case.

2. FAIRNESS TO THE COMMUNITY

The prosecution also has a right to be treated fairly. It must maintain that right in the interests of justice. This may mean, for example, that an adjournment must be sought when insufficient notice is given of alibi evidence, representations by an unavailable person or expert evidence to be called by the defence.

3. EXPEDITION

A fundamental obligation of the prosecution is to assist in the timely and efficient administration of justice.

- cases should be prepared for hearing as quickly as possible;
- indictments should be finalised as quickly as possible;
- indictments should be published to the defence as soon as possible;
- any amendment to an indictment should be made known to the defence as soon as possible;
- as far as practicable, adjournment of any trial should be avoided by prompt attention to the form of the indictment, the availability of witnesses and any other matter which may cause delay; and
- any application by ODPP for adjournment must be approved by the relevant Legal Practice Manager, the Director or Deputy Director.

4. THE DECISION TO PROSECUTE

The prosecution process should be initiated or continued wherever it appears to be in the public interest. That is the prosecution policy of the prosecuting authorities in this country and in England and Wales. If it is not in the interests of the public that a prosecution should be initiated or continued then it should not be pursued. The scarce resources available for prosecution should be used to pursue, with appropriate vigour, cases worthy of prosecution and not wasted pursuing inappropriate cases.

It is a two tiered test:-

- (i) is there sufficient evidence?; and
- (ii) does the public interest require a prosecution?

(i) **Sufficient Evidence**

- A prima facie case is necessary but not enough.
- A prosecution should not proceed if there is no reasonable prospect of conviction before a reasonable jury (or Magistrate).

A decision by a Magistrate to commit a defendant for trial does not absolve the prosecution from its responsibility to independently evaluate the evidence. The test for the Magistrate is limited to whether there is a bare prima facie case. The prosecutor must go further to assess the quality and persuasive strength of the evidence as it is likely to be at trial.

The following matters need to be carefully considered bearing in mind that guilt has to be established beyond reasonable doubt:-

- (a) the availability, competence and compellability of witnesses and their likely impression on the Court;
- (b) any conflicting statements by a material witness;
- (c) the admissibility of evidence, including any alleged confession;
- (d) any lines of defence which are plainly open; and
- (e) any other factors relevant to the merits of the Crown case.

(ii) **Public Interest Criteria**

If there is sufficient reliable evidence of an offence, the issue is whether discretionary factors nevertheless dictate that the matter should not proceed in the public interest.

Discretionary factors may include:-

- (a) the level of seriousness or triviality of the alleged offence, or whether or not it is of a 'technical' nature only;
- (b) the existence of any mitigating or aggravating circumstances;
- (c) the youth, age, physical or mental health or special infirmity of the alleged offender or a necessary witness;
- (d) the alleged offender's antecedents and background, including culture and ability to understand the English language;
- (e) the staleness of the alleged offence;
- (f) the degree of culpability of the alleged offender in connection with the offence;
- (g) whether or not the prosecution would be perceived as counter-productive to the interests of justice;
- (h) the availability and efficacy of any alternatives to prosecution;
- (i) the prevalence of the alleged offence and the need for deterrence, either personal or general;
- (j) whether or not the alleged offence is of minimal public concern;
- (k) any entitlement or liability of a victim or other person to criminal compensation, reparation or forfeiture if prosecution action is taken;

- (l) the attitude of the victim of the alleged offence to a prosecution;
- (m) the likely length and expense of a trial;
- (n) whether or not the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;
- (o) the likely outcome in the event of a conviction considering the sentencing options available to the Court;
- (p) whether the alleged offender elected to be tried on indictment rather than be dealt with summarily;
- (q) whether or not a sentence has already been imposed on the offender which adequately reflects the criminality of the episode;
- (r) whether or not the alleged offender has already been sentenced for a series of other offences and what likelihood there is of an additional penalty, having regard to the totality principle;
- (s) the necessity to maintain public confidence in the Parliament and the Courts; and
- (t) the effect on public order and morale.

The relevance of discretionary factors will depend upon the individual circumstances of each case.

The more serious the offence, the more likely, that the public interest will require a prosecution.

Indeed, the proper decision in most cases will be to proceed with the prosecution if there is sufficient evidence. Mitigating factors can then be put to the Court at sentence.

(iii) **Impartiality**

A decision to prosecute or not to prosecute must be based upon the evidence, the law and these guidelines. It must never be influenced by:-

- (a) race, religion, sex, national origin or political views;
- (b) personal feelings of the prosecutor concerning the offender or the victim;
- (c) possible political advantage or disadvantage to the government or any political group or party; or

- (d) the possible effect of the decision on the personal or professional circumstances of those responsible for the prosecution.

5. THE DECISION TO PROSECUTE PARTICULAR CASES

Generally, the case lawyer should at least read the depositions and the witness statements and examine important exhibits before a decision whether or not to indict, and upon what charges, is made.

Where the case lawyer has prosecuted the committal hearing, it will generally not be necessary to wait for the delivery of the depositions before preparing a draft indictment. Unless the matter is complex or borderline, the case lawyer will often be able to rely upon his or her assessment of the committal evidence and its impact upon the Crown case without delaying matters for the delivery of the transcript.

(i) Child Offenders

Special considerations apply to child offenders. Under the principles of the Juvenile Justice Act 1992 a prosecution is a last resort.

- The welfare of the child and rehabilitation should be carefully considered;
- Ordinarily the public interest will not require the prosecution of a child who is a first offender where the offence is minor;
- The seriousness of the offence or serial offending will generally require a prosecution;
- Driving offences that endanger the lives of the child and other members of the community should be viewed seriously.

The public interest factors should be considered with particular attention to:-

- (a) the seriousness of the alleged offence;
- (b) the age, apparent maturity and mental capacity of the child (including the need, in the case of children under the age of 14, to prove that they knew that what they were doing was seriously wrong and was deserving of punishment);
- (c) the available alternatives to prosecution, and their efficacy;
- (d) the sentencing options available to Courts dealing with child offenders if the prosecution was successful;
- (e) the child's family circumstances, particularly whether or not the parents appear able and prepared to exercise effective discipline and control over the child;

- (f) the child's antecedents, including the circumstances of any previous caution or conference and whether or not a less formal resolution would be inappropriate;
- (g) whether a prosecution would be harmful or inappropriate, considering the child's personality, family and other circumstances; and
- (h) the interest of the victim.

(ii) **Aged or Infirm Offenders**

Prosecuting authorities are reluctant to prosecute the older or more infirm offender unless there is a real risk of repetition or the offence is so serious that it is impossible to overlook it.

In general, proceedings should not be instituted or continued where the nature of the offence is such that, considering the offender, a Court is likely to impose only a nominal penalty.

When the defence suggests that the accused's health will be detrimentally affected by standing trial, medical reports should be obtained from the defence and, if necessary, arrangements should be sought for an independent medical examination.

(iii) **Peripheral Defendants**

As a general rule the prosecution should only proceed against those whose participation in the offence was significant.

The inclusion of defendants on the fringe of the action or whose guilt in comparison with the principal offender is minimal may cause unwarranted delay or cost and cloud the essential features of the case.

(iv) **Sexual Offences**

Sexual offences such as rape or attempted rape are a gross personal violation and are serious offences. Similarly, sexual offences upon children should always be regarded seriously. Where there is sufficient reliable evidence to warrant a prosecution, there will seldom be any doubt that the prosecution is in the public interest.

(v) **Sexual Offences by Children**

A child may be prosecuted for a sexual offence where the child has exercised force, coerced someone younger, or otherwise acted without the consent of the other person.

A child should **not be prosecuted** for:-

- (a) A sexual offence in which he or she is also the “**complainant**”, as in the case of unlawful carnal knowledge or indecent dealing. The underage target of such activity cannot be a party to it, no matter how willing he or she is: R v Maroney [2002] Qd.R285 and Maroney v R (2003) 216 CLR 31.
- (b) For sexual experimentation involving children of similar ages in consensual activity.

(vi) **Mental Illness**

- Mentally disordered people should **not** be prosecuted for **trivial** offences which pose no threat to the community.
- However, a prosecution may be warranted where there is a **risk of re-offending** by a repeat offender with no viable alternative to prosecution. Regard must be had to:-
 - (a) details of previous and present offences;
 - (b) the nature of the defendant’s condition; and
 - (c) the likelihood of re-offending.
- In rare cases, continuation of the prosecution may so seriously aggravate a defendant’s mental health that this outweighs factors in favour of the prosecution. Where the matter would clearly proceed but for the mental deterioration, an independent assessment may be sought.
- The Director may **refer the matter** of a person’s mental condition to the Mental Health Court pursuant to section 257 of the Mental Health Act 2000.
- Relevant issues should be brought to the Director’s attention as soon as possible. The Director’s discretion to refer will more likely be exercised in cases where:-
 - (a) either:-
 - the defence are relying upon expert reports describing unfitness to plead, unsoundness of mind or, in the case of murder, diminished responsibility at the time of the offence; or
 - there is otherwise significant evidence of unsoundness of mind or unfitness for trial; **and**
 - (b) the matter has not previously been determined by the Mental Health Court; **and**
 - (c) the defence has declined to refer the matter.

- Where the offence is “**disputed**” within the meaning of section 268 the Director will **not refer** the case unless there is an issue about fitness for trial.
- If a significant issue about the accused’s capacity to be tried arises **during the trial**, the prosecutor should seek an adjournment for the purpose of obtaining an independent psychiatric assessment. The prosecutor should refer the matter to the Director for consideration of a reference if:-
 - (a) either:-
 - the expert concludes that the accused is unfit for trial and is unlikely to become fit after a tolerable adjournment; or
 - the expert is uncertain as to fitness; **and**
 - (b) the defence will not refer the matter to the Mental Health Court.

If the matter is not referred, consideration should be given to section 613 of the Criminal Code and R v Wilson [1997] QCA 423.

(vii) **Perjury during investigative hearings**

Where a witness has been compelled to give evidence under oath at an investigative hearing and the witness has committed perjury in the course of giving that evidence, it will generally not be in the public interest to prosecute the witness for the perjury if, the witness subsequently corrected the perjury and was otherwise reasonably considered by the Director, acting on the advice of the agency or agencies involved in the investigation, to have been fully truthful in giving evidence about all matters material to the investigation.

6. CAPACITY OF CHILD OFFENDERS – between 10 & 14 years (see also Guideline 5(v) Child Offenders)

A child less than 14 years of age is not criminally responsible unless at the time of offending, he or she had the capacity to know that he or she ought not to do the act or make the omission. Without proof of capacity, the prosecution must fail: section 29 of the Criminal Code.

Police questioning a child suspect less than 14 years of age should question the child as to whether at the time of the offence, he or she knew that it was seriously wrong to do the act alleged. This issue should be explored whether or not the child admits the offence.

If the child does not admit the requisite knowledge, police should further investigate between right and wrong and therefore, the child’s capacity to know that doing the act was wrong. Evidence should be sought from a parent, teacher, clergyman, or other person who knows the child.

7. COMPETENCY OF CHILD WITNESSES

- (i) No witness **under the age of 5 years** should be called to testify on any matter of substance unless the competency of the witness has been confirmed in a report by an appropriately qualified expert.
- (ii) A brief of evidence relying upon the evidence of witnesses less than 5 years of age will not be complete until the prosecution has received such a report.
- (iii) Where a child witness is 5 years of age or older, that witness may be requested to undergo assessment as to his or her competency if that is considered necessary or desirable by the case lawyer responsible for the prosecution and the approval has been obtained from each of a Crown Prosecutor, Practice Manager and Assistant Director.
- (iv) Generally, there should only be **one** assessment undertaken. A second assessment must not be sought without the **written consent** of a Practice Manager, Assistant Director, Director or Deputy Director. Consent will only be given in exceptional circumstances.
- (v) A child witness is not an exhibit. The prosecution should not consent to a private assessment on behalf of the defence.

8. SECTION 93 A TRANSCRIPTS

In every case where the evidence includes a pre-recorded interview with a child witness, a transcript of the interview must be included in the police brief provided for the committal hearing.

9. AFFECTED CHILD WITNESSES

All affected child witnesses are to be treated with dignity, respect and compassion and measures should be taken to limit, to the greatest practical extent, the distress or trauma suffered by the child when giving evidence.

All cases involving affected child witnesses must be treated with priority to enable the pre recording of the child's evidence at the earliest date possible.

When notice is given by the defence of an intention to plead guilty, the case lawyer should seek an early arraignment, or at least obtain written confirmation of the defence instructions. This is to avoid losing an opportunity to expedite the child's evidence should the anticipated plea does not eventuate.

Where a plea of guilty has been indicated:-

- Prosecution staff should not delay presentation of an indictment or defer the listing of a preliminary hearing for any significant period unless the accused

has already pleaded guilty or has provided written confirmation of his or intention to plead guilty;

- Prosecution staff should not consent to the delisting of a preliminary hearing without an arraignment or written confirmation of the accused person's instructions to plead guilty.

10. INDICTMENTS

- (i) Indictments can only be signed by crown prosecutors or those holding a commission to prosecute.
- (ii) An indictment must not be signed and presented unless it is intended to prosecute the accused for the offence or offences charged in it.
- (iii) Charges must adequately and appropriately reflect the criminality that can reasonably be proven.
- (iv) Holding indictments must not be presented.
- (v) It is not appropriate to overcharge to provide scope for plea negotiation.
- (vi) Substantive charges are to be preferred to conspiracy where possible. However conspiracy may be the only appropriate charge in view of the facts and the need to reflect the overall criminality of the conduct alleged. Such a prosecution cannot commence without the consent of the Attorney-General. An application should only be made through the Director or Deputy Director.
- (vii) In all cases prosecutors must guard against the risk of an unduly lengthy or complex trial (obviously there will be cases where complexity and length are unavoidable).
- (viii) The indictment should be presented as soon as reasonably practicable, but **no later than 4 months** from the committal for trial.
- (ix) If the prosecutor responsible for the indictment is not in a position to present it within the 4 month period, the prosecutor should advise in writing the defence, the Legal Practice Manager and the Director or Deputy Director of the situation.
- (x) No indictment can be presented after the 6 month time limit in section 590 of the Criminal Code, unless an extension of time has been obtained from the Court.

11. EX-OFFICIO INDICTMENTS – Section 560 of the Code

An ex-officio indictment (where the person has not been committed for trial on that offence) should only be presented in one of the following circumstances:-

- (a) the defence has consented in writing;
- (b) the counts on indictment and the charges committed up are not substantially different in nature or seriousness; or
- (c) the person accused has been committed for trial or sentence on some charges, and in the opinion of the **Legal Practice Manager** or principal crown prosecutor, the evidence is such that some substantially different offence should be charged;
- (d) in all other circumstances (namely where a matter has **not** been committed to a higher court on any charge and the defence has **not** consented) an ex-officio indictment should not be presented without consultation with *the Director or Deputy Director*. The accused must be advised in writing when an ex-officio indictment is under consideration and, where appropriate, should be given an opportunity to make a submission. A decision whether or not to present an ex-officio indictment should be made within **2 months** of the matter coming to the attention of the officer.

12. EX-OFFICIO SENTENCES

The ODPP will not, unless there are exceptional circumstances, present an ex-officio indictment for the purpose of sentence.

The ordinary procedure will be to have the matter committed for sentence pursuant to Part 5 of the *Justices Act 1886* (which includes registry committals in s. 114).

It will be necessary for a defendant who is applying for the presentation of an ex-officio indictment to demonstrate what the exceptional circumstances are. An example would be where a defendant has a matter on indictment before a court for sentence and wants other offences to be dealt with at the same time.

The consent of the Director or Deputy Director/s must be obtained before an ex-officio indictment is presented for sentence.

If the Director or Deputy Director/s is satisfied that there are exceptional circumstances and consents to the presentation of an ex-officio indictment for sentence then the following protocol applies:

- (i) A defendant may request an ex-officio indictment.
- (ii) The use of ex-officio indictments for pleas of guilty is intended to fast-track uncontested matters.
- (iii) The case lawyer must prepare an indictment, schedule of facts and draft certificate of readiness within one month of the receipt of the full ex-officio material.

- (iv) The ex-officio brief is not a full brief of evidence. The following material will be required:-
- (a) any police interviews with the defendant;
 - (b) a set of any photographs taken;
 - (c) any witness statements that have already been taken;
 - (d) for violent or sexual offences:-
 - a statement from the victim;
 - the victim's contact details for victim liaison; and
 - if applicable, a medical statement documenting the injuries and treatment undertaken;
 - (e) for drug offences, an analyst's certificate, if applicable;
 - (f) a schedule of any property loss or damage including:-
 - the complainant's name and address;
 - the type of property;
 - the value of the loss or damage;
 - the value of any insurance payout; and
 - any recovery or other reparation.
 - (g) a schedule of any property confiscated, detailing the current location of the property and the property number. The value of the property should also be included where the charges involve the unlawful production or supply of dangerous drugs and the property is to be forfeited pursuant to the Drugs Misuse Act 1986.
- (v) Prosecutors must be vigilant to ensure that the indictment prepared fairly reflects the gravity of the allegations made against the defendant.
- (vi) If summary charges are more appropriate, the case should be referred back to the Magistrates Court (see Guideline 11).
- (vii) Where it appears that police have undercharged a defendant, the defence and police should be advised in writing as soon as possible. The preparation of the ex-officio prosecution should not proceed without reconfirmation of the defence request for it.
- (viii) The ODPP *may decline* to proceed by way of ex-officio process where:-

- (a) *The defence disputes significant facts:* A request for an ex-officio indictment signifies acceptance of all of the material allegations set out in the police QP9 forms. If there is any relevant dispute about those matters, the appropriate resolution will generally be through a committal hearing.
- (b) *Police material is outstanding:* Police should forward the ex-officio brief within 14 days of its request.

If difficulties arise, for example because of the complexity of the matter, the investigating officer should notify the ODPP case lawyer as soon as possible.

Where there is insufficient reason for the delay, the matter will be referred back for a committal hearing.

- (c) *The certificate of readiness is not returned:* The matter should be sent back for committal if the defence have not returned the certificate of readiness within 4 weeks of the delivery of the draft indictment and schedule of facts.
- (d) A full brief of evidence has already been prepared.
- (ix) The ODPP *will decline* to proceed by way of ex officio indictment for certain categories of cases involving violence or sexual offending, or co-offending.

(a) *Serious Sexual or Violent Offending*

For offences of serious sexual or serious violent offending, the conditions for an ex officio prosecution must be strictly met before consent is given.

- Charges must adequately reflect the criminality involved;
- The accused must accept the facts without significant dispute; and
- The application for ex-officio proceedings must be made before a brief of evidence is complete.

(b) *Co-Accused*

It is difficult for a court to accurately apportion responsibility amongst co-offenders if they are dealt with separately. Furthermore the prosecution's position can only be determined after a full assessment of the versions of each accused and the key witnesses. It is therefore desirable that co-accused be dealt with together.

Where two or more people have been charged with serious offences, the office will not consent to an ex-officio indictment for one or some accused only, unless:-

- the accused is proceeding pursuant to section 13A of the Penalties and Sentences Act; and
- there is a clear and uncontested factual basis for the plea.

In other cases, the co-operative co-offender may choose to proceed by full hand-up, enter an early plea and be committed for sentence.

(x) PRESENTATION OF INDICTMENTS

If the accused is in custody the indictment should be presented to the court before the day of arraignment to allow the accused to be produced.

If the accused is not in custody, other than in exceptional circumstances, ex-officio indictments should not be presented to the Court until the day of arraignment. In most cases a failure to appear can be adequately dealt with by a warrant in the Magistrates Court at the next mention date.

(xi) BRISBANE

The following are additional instructions that apply only to Brisbane matters. They are in response to Magistrates Court Practice Direction No 3 of 2004, which operates in Brisbane only.

(a) Drug Offences:-

Consent for an ex officio indictment involving drug offences should not be given unless:-

- (i) an analyst's certificate (where required) has issued prior to the committal mention date; and
- (ii) the quantity exceeds the schedule amount (where relevant).

Where the quantity of drug is less than the schedule amount, the case should be dealt with summarily by the next mention date.

(b) Complex or Difficult Matters: Extension of Time

Particular attention should be paid to cases involving:-

- large or complex fraud or property offences;
- serious sexual offences;
- offences of serious violence.

In those cases or any other case: if it is apparent from the QP9 that 8 weeks is not likely to afford sufficient time to meet all requirements for arraignment, the legal officer should seek an extension of time. This is to be done promptly by letter through the Legal Practice Manager to the Chief Magistrate pursuant to paragraph 5 of Practice Direction No 3 Of 2004. The application should set out detailed reasons.

If the extension of time is refused, the request for ex-officio indictment must also be refused and the matter returned for committal hearing.

(c) Timely Arraignment

If the defence have returned the signed certificate of readiness and obtained a sentence date, the indictment should be presented and the accused arraigned before the date listed for committal mention or full hand up.

Early arraignment is necessary to avoid the matter being forced on for hearing in the Magistrates Court pursuant to the Magistrates Court Practice Direction No 3 of 2004.

If the accused pleads guilty the charges can then be discontinued at the next mention date in the Magistrates Court, regardless of whether the matter proceeds to sentence at that time or is adjourned.

If the accused fails to appear for arraignment or indicates that he or she will plead not guilty, the indictment should not be presented.

13. SUMMARY CHARGES

Where the same criminal act could be charged either as a summary or an indictable offence, the **summary offence should be preferred** unless either:-

- (a) The conduct could not be adequately punished other than as an indictable offence having regard to:-
 - the maximum penalty of the summary charge;
 - the circumstances of the offence; and
 - the antecedents of the offender; or
- (b) There is some relevant connection between the commission of the offence and some other offence punishable only on indictment, which would allow the two offences to be tried together.

Prosecutors should be aware of the maximum penalties provided by section 552H of the Code for indictable offences dealt with summarily.

Below is a schedule of summary charges which will often be more appropriate than the indictable counter-part:-

Indictable Offence	Possible Summary Charge and Maximum Penalty
Threatening violence in the night: Section 75(2) <u>Criminal Code</u>	(a) Assault: Section 335 <u>Code</u> (3 years imprisonment) (b) Public Nuisance: Section 6 <u>Summary Offences Act 2005</u> (6 months imprisonment)
Threats: Section 359 <u>Code</u>	Public Nuisance: Section 6 <u>Summary Offences Act</u> (6 months imprisonment)
Stalking (simpliciter only): Section 359E <u>Code</u>	Section 85ZE <u>Crimes Act 1914</u> (Commonwealth) Improper use of telecommunications device (1 year imprisonment)
Unlawful use of motor vehicle (simpliciter): Section 408A <u>Code</u>	Unlawful use of motor vehicle: Section 25 <u>Summary Offences Act</u> (12 months imprisonment and compensation)
Stealing: Section 391 <u>Code</u>	Sections 5 & 6 <u>Regulatory Offences Act</u> (value to \$150 wholesale)
Stealing: Section 391 <u>Code</u> Receiving: Section 433 <u>Code</u> Burglary: Section 419 <u>Code</u> Break and enter: Section 421 <u>Code</u>	Unlawful possession of suspected stolen property: Section 16 <u>Summary Offences Act</u> (1 year imprisonment) Unlawfully gathering in a building/structure: Section 12 <u>Summary Offences Act</u> (6 months imprisonment) Unlawfully entering farming land: Section 13 <u>Summary Offences Act</u> (6 months imprisonment) Possession of tainted property: Section 92 <u>Crimes (Confiscation) Act</u> (2 years imprisonment)
Fraud: Section 408C <u>Code</u>	False advertisements (births, deaths etc): Section 21 <u>Summary Offences Act</u> (6 months imprisonment) Imposition: Section 22 <u>Summary Offences Act</u> (1 year imprisonment)
Production of a dangerous drug: Section 8 <u>Drugs Misuse Act</u>	Possession of things used/for use in connection with a crime: Section 10 <u>Drugs Misuse Act</u>

“Commercial purpose”

Where a person is alleged to have unlawfully possessed a dangerous drug in contravention of s.9 of the *Drugs Misuse Act 1986*, the Crown should allege a commercial purpose when, on the whole of the evidence, it can reasonably be inferred that the defendant did not possess the drug for their own personal use: see s 14 of the *Drugs Misuse Act 1986*.

There will be cases where “personal use” can include small-scale social sharing

in circumstances where there is limited scope and repetition, but this principle should not be allowed to be used to mask cases where the “sharing” spills over into the generation of financial or equivalent advantage.

Care must be taken when considering whether a summary prosecution is appropriate for an **assault upon a police officer** who is acting in the execution of his duty. Prosecutors should note the following:-

(a) Serious injuries to police:-

A charge involving grievous bodily harm or wounding, under sections 317, 320 or 323 of the Code, can only proceed on indictment. There is no election.

Serious injuries which fall short of a grievous bodily harm or wounding should be charged as assault occasioning bodily harm under section 339(3) or serious assault under section 340(b) of the Code. The prosecution should proceed upon indictment.

(b) In company of weapons used:-

A charge of assault occasioning bodily harm with a circumstance of aggravation under section 339(3) can only proceed on indictment, subject to the defendant's election.

(c) Spitting, biting, needle stick injury:-

The prosecution should elect to proceed upon indictment where the assault involves spitting, biting or a needle stick injury **if** the circumstances raise a real risk of the police officer contracting an infectious disease.

(d) Other cases:-

In all other cases an assessment should be made as to whether the conduct could be adequately punished upon summary prosecution. Generally, a scuffle which results in no more than minor injuries should be dealt with summarily. However, in every case all of the circumstances should be taken into account, including the nature of the assault, its context, and the criminal history of the accused.

A charge of assault on a police officer should be prosecuted on indictment if it would otherwise be joined with other criminal charges which are proceeding on indictment.

Where the prosecution has the election to proceed with an indictable offence summarily, that offence must be dealt with summarily unless:

- (a) The conduct could not be adequately punished other than upon indictment having regard to:

- The maximum penalty able to be imposed summarily;
 - The circumstances of the offence; and
 - The antecedents of the offender
- (b) The interests of justice require that it be dealt with upon indictment having regard to:
- The exceptional circumstances of the offence/s;
 - The nature and complexity of the legal or factual issues involved;
 - The case involves an important point of law or is of general importance
- (c) There is some relevant connection between the commission of the offence and some other offence punishable only on indictment, which would allow the two offences to be tried together (see section 552D Criminal Code).

PROSECUTION OF DERM MATTERS

There are a number of statutes administered by the Department of Environment and Resource Management (DERM) containing offences (DERM offences) which may be prosecuted on indictment.

This guideline for the ODPP sets out:

- a list of indictable offences;
- the power for the prosecution to elect jurisdiction;
- the power for the accused to elect jurisdiction;
- the power for the magistrate to determine jurisdiction;
- the test to be applied by the prosecution;
- the procedure to be followed in determining prosecution election; and
- the procedure to be followed when the accused is committed for trial or consents to the presentation of an ex-officio indictment.

Indictable offences:

The following offences may be dealt with summarily or upon indictment:

Act	Section	Offence
<i>Environmental Protection Act 1994</i>	289(1) and (2)	False or misleading information about environmental audits
	357(5)	Contravention of Court order (transitional program)
	361(1)	Wilful contravention of environmental protection order
	430(2)(a)	Wilful contravention of an environmental authority
	432(1)	Wilful contravention of a transitional environmental program
	434(1)	Wilful contravention of a site management plan
	435(1)	Wilful contravention of a development

		condition
	435A(1)	Wilful contravention of a standard environmental condition
	437(1)	Wilful unlawful serious environmental harm
	438(1)	Wilful unlawful material environmental harm
	480(1)	False, Misleading or incomplete documents
	481(1)(a) and (b)	False or misleading information
	505(12)	Contravention of a restraint order
	506(6)	Contravention of an interim order
	511(4)	Contravention of an enforcement order
<i>Aboriginal Cultural Heritage Act 2003</i>	23(1)	Breach of cultural heritage duty of care
	24(1)	Unlawful harm to cultural heritage
	25(1)	Prohibited excavation, relocation and taking away
	26(1)	Unlawful possession of cultural heritage
	32(6)	Contravene a stop order
<i>Coastal Protection and Management Act 1995</i>	59(6)	Failure to comply with a coastal protection notice
	60(5)	Failure to comply with a tidal works notice
	148(12)	Contravention of a restraint order
	149(6)	Contravention of an interim order
<i>Marine Parks Act 2004</i>	48(1)	Non-compliance with a temporary restricted access area declaration
	50(1)	Wilful serious unlawful environmental harm to a marine park
	114(4)	Contravention of an enforcement order or an interim enforcement
<i>Nature Conservation Act 1992</i>	62(1)	Taking of a cultural or natural resource of a protected area
	88(2)	Taking a protected animal (class 1 offence)
	88(5)	Keeping or using a protected animal (class 1 offence)
	88B(1)	Keeping or using native wildlife reasonably suspected to have been unlawfully taken (class 1 offence)
	89(1)	Taking a protected plant (class 1 offence)
	89(4)	Keeping or using a protected plant (class 1 offence)
	91(1)	Release of international and prohibited wildlife
	93(4)	Taking of protected wildlife in a protected area (by Aborigine or Torres Strait Islander)
	97(2)	Taking a native wildlife in areas of major interest and critical habitat
	109	Contravention of interim conservation order
	173G(4)	Contravention of enforcement order or interim enforcement order
<i>Torres Strait Islander Cultural Heritage Act 2003</i>	23(1)	Breach of cultural heritage duty of care
	24(1)	Unlawful harm to cultural heritage
	25(1)	Prohibited excavation, relocation and taking away
	26(1)	Unlawful possession of cultural heritage
	32(6)	Contravene a stop order
<i>Water Act 2000</i>	585(1)	Failure to act honestly
	585(3)	Improper use of information
	585(4)	Improper use of position

	617(12)	Knowingly make a false or misleading statement
	619(4)	Providing a document containing false or misleading or incomplete information
<i>Wet Tropics World Heritage Protection and Management Act 1993</i>	56(1)	Prohibited acts

Jurisdiction – Prosecution Election:

The prosecution's authority to elect jurisdiction in relation to DERM offences is contained in the following legislation:

Act	Section
<i>Environmental Protection Act 1994</i>	495(1)
<i>Aboriginal Cultural Heritage Act 2003</i>	156(2)
<i>Coastal Protection and Management Act 1995</i>	145(1)
<i>Marine Parks Act 2004</i>	131(1)
<i>Nature Conservation Act 1992</i>	165(1)
<i>Torres Strait Islander Cultural Heritage Act 2003</i>	156(2)
<i>Water Act 2000</i>	931(2)
<i>Wet Tropics World Heritage Protection and Management Act 1993</i>	82(1)

Jurisdiction – Accused Election / Magistrate Determination:

Even if the prosecution elects summary jurisdiction, the magistrate must not determine the matter if the accused requests that the charge/s be indicted, or if the magistrate believes that the charge/s should be indicted. The statutory basis for this accused election or magistrate determination is contained in the following legislation:

Act	Section
<i>Environmental Protection Act 1994</i>	495(2)
<i>Aboriginal Cultural Heritage Act 2003</i>	156(5)
<i>Coastal Protection and Management Act 1995</i>	145(2)
<i>Marine Parks Act 2004</i>	131(2)
<i>Nature Conservation Act 1992</i>	165(2)
<i>Torres Strait Islander Cultural Heritage Act 2003</i>	156(5)
<i>Water Act 2000</i>	931(5)
<i>Wet Tropics World Heritage Protection and Management Act 1993</i>	82(6)

The Test - Prosecution Election:

Summary jurisdiction will be preferred unless the conduct could not be adequately punished other than on indictment having regard to:

- the likely sentence in the event of a conviction on indictment;
- the maximum penalty a magistrate may impose if the offence is dealt with summarily;
- the antecedents of the alleged offender; and
- the circumstances of the alleged offence, including:
 - the harm or risk of harm to the environment caused by the offence;
 - the culpability of the offender;

- whether a comparable offender has been dealt with for a similar offence on indictment; and
- any other mitigating or aggravating circumstance.

Procedure – Prosecution Election:

If the DERM considers that a charge should be indicted, they must seek advice from the Director of Public Prosecutions (DPP). The request for advice *must* be made before the election of jurisdiction and *should* be made before charges are laid if possible.

The DERM request for advice from the DPP should include:

1. the brief of evidence;
2. the DERM's legal advice on the evidence, prospects of conviction and likely sentence;
3. any time limit within which summary charges must be charged; and
4. any other relevant material.

The DPP must respond to a request for advice from the DERM within one month of the receipt of this material.

Where DPP advises that summary jurisdiction should be elected:

If the DPP disagrees with the DERM's preference for prosecution on indictment, the DPP will explain their reasons in writing. Upon receipt of these written reasons the DERM must elect summary jurisdiction.

Where DPP advises that charges should be indicted:

If the DPP advice is to proceed on indictment the DERM will prosecute the committal hearing.

Procedure – Accused Election / Magistrate Determination:

Where the accused elects to be prosecuted upon an indictment or a magistrate considers that the charge should be indicted, the DERM will conduct the committal hearing.

If a Matter is Committed for Trial on Indictment:

Within one month of the committal hearing the brief of evidence, depositions from the committal, along with any other material the DERM considers relevant should be provided to the Director.

- The Director will decide, after consulting with the nominee of the DERM, whether an indictment should be presented.
- If an indictment is to be presented, it will be presented by the ODPP.

- The Director, in consultation with the DERM, will brief counsel to appear for the prosecution.
- The DERM will be responsible for all costs of the prosecution.
- The prosecution cannot be discontinued without the approval of the Director.

14. CHARGES REQUIRING DIRECTOR'S CONSENT

(i) **Section 229B Maintaining an Unlawful Sexual Relationship with a Child**

- (a) For a charge under section 229B of the Code there must be sufficient credible evidence of continuity ie: evidence of the maintenance of a relationship rather than isolated acts of indecency.
- (b) Consent will **not** be given where:-
- the sexual contact is confined to **isolated** episodes; or
 - the period of offending is **brief** and can be **adequately particularised** by discrete counts on the indictment.

(ii) **Chapter 42A Secret Commissions**

The burden of proof is reversed under section 442M (2) of the Criminal Code. Consent to prosecute secret commissions pursuant to section 442M (3) will **not** be given where:-

- the breach is minor or technical only: section 442J; or
- an accused holds a certificate under section 442L.

15. WORKPLACE HEALTH AND SAFETY PROSECUTIONS

Section 231 of the *Work Health and Safety Act 2011* provides that a procedure may be utilised if a prosecution is not brought after a particular time.

A referral from 'the regulator' under section 231 of the *Work Health and Safety Act 2011* must be referred to the **Deputy Director** or the **Director** within 24 hours of receipt.

16. CONSENT TO CALLING A WITNESS AT COMMITTAL

The calling of a witness to give oral evidence or be cross-examined in a committal proceeding has, since the passing of the *Civil and Criminal Jurisdiction and Modernisation Amendment Act 2010*, been restricted.

In circumstances where the prosecutor has a discretion to agree to the calling of a witness to give oral evidence or be cross-examined at a committal hearing

pursuant to sections 110A (5) & 110B (5) of the *Justices Act 1886*, the prosecutor must not consent to the calling of the witness unless there are substantial reasons why it is in the interest of justice that the person should attend to give oral evidence.

In determining if there are substantial reasons the prosecutor should consider:

1. The nature of the offence;
2. The nature of the witness, including-
 - Whether the evidence can be confined to an identified and limited issue;
 - Whether the witness is the best person to give the evidence concerning that issue; and
 - The purpose for which the evidence is to be used.

Finally, the cross-examination must be restricted to the area that gives rise to the interest of justice and is not at large.

17. CHARGE NEGOTIATIONS

The public interest is in the conviction of the guilty. The most efficient conviction is a plea of guilty. Early notice of the plea of guilty will maximise the benefits for the victim and the community.

Early negotiations (within this guideline) are therefore encouraged.

Negotiations may result in a reduction of the level or the number of charges. This is a legitimate and important part of the criminal justice system throughout Australia. The purpose is to secure a **just result**.

(i) The Principles

- The prosecution must always proceed on those charges which fairly represent the conduct that the Crown can **reasonably prove**;
- A plea of guilty will only be accepted if, after an analysis of all of the facts, it is in the general **public interest**.

The public interest may be satisfied if one or more of the following applies:-

- (a) the fresh charge adequately reflects the essential criminality of the conduct and provides sufficient scope for sentencing;
- (b) the prosecution evidence is deficient in some material way;
- (c) the saving of a trial compares favourably to the likely outcome of a trial; or
- (d) sparing the victim the ordeal of a trial compares favourably with the likely outcome of a trial.

A comparison of likely outcomes must take account of the principles set out in R v D [1996] 1 QdR 363, which limits punishment to the offence the subject of conviction and incidental minor offences which are inextricably bound up with it.

An accused cannot be sentenced for a more serious offence which is not charged.

(ii) **Prohibited Pleas**

Under no circumstances will a plea of guilty be accepted if:-

- (a) it does not adequately reflect the gravity of the provable conduct of the accused;
- (b) it would require the prosecution to distort evidence; or
- (c) the accused maintains his or her innocence.

(iii) **Scope for Charge Negotiations**

Each case will depend on its own facts but negotiation may be appropriate in the following cases:-

- (a) where the prosecution has to choose between a number of appropriate alternative charges. This occurs when the one episode of criminal conduct may constitute a number of overlapping but alternative charges;
- (b) where new reliable evidence reduces the Crown case; or
- (c) where the accused offers to plead to a specific count or an alternative count in an indictment and to give evidence against a co-offender. The acceptability of this will depend upon the importance of such evidence to the Crown case, and more importantly, its credibility in light of corroboration and the level of culpability of the accused as against the co-offenders;

There is an obligation to avoid overcharging. A common example is a charge of attempted murder when there is no evidence of an intention to kill. In such a case there is insufficient evidence to justify attempted murder and the charge should be reduced independent of any negotiations.

(iv) **File Note**

- Any offer by the defence, the supporting argument and the date it was made should be clearly noted on the file.
- The decision and the reasons for it should also be recorded and signed.

- When an offer has been rejected, it should not be later accepted before consultation with the Directorate.

(v) **Delegation**

- (a) In cases of **homicide, attempted murder or special sensitivity, notoriety or complexity** an offer should not be accepted without consultation with the Director or Deputy Director. The matter need not be referred unless the Legal Practice Manager or allocated prosecutor sees merit in the offer.
- (b) In **less serious cases** the decision to accept an offer may be made after consultation with a senior crown prosecutor or above. If the matter has not been allocated to a crown prosecutor, the decision should fall to the Legal Practice Manager.

(vi) **Consultation**

In all cases, before any decision is made, the views of the investigating officer and the victim or the victim's relatives, should be sought.

Those views must be considered but may not be determinative. It is the public, rather than an individual interest, which must be served.

18. SUBMISSIONS

- (i) Any submission from the defence must be dealt with expeditiously;
- (ii) If the matter is complex or sensitive, the defence should be asked to put the submission in writing;
- (iii) Submissions that a charge should be discontinued or reduced should be measured by the two tiered test for prosecuting, set out in Guideline 4; and
- (iv) Unless there are special circumstances, a submission to discontinue because of the triviality of the offence should be refused if the accused has elected trial on indictment for a charge that could have been dealt with in the Magistrates Court.

19. CASE REVIEW

All current cases must be continually reviewed. This means ongoing assessment of the evidence as to:-

- the appropriate charge;
- requisitions for further investigation; and
- the proper course for the prosecution.

Conferences with witnesses are an important part of the screening process. Matters have to be considered in a practical way upon the available evidence. The precise issues will depend upon the circumstances of the case, but the following should be considered:-

- Admissibility of the evidence - the likelihood that key evidence might be excluded may substantially affect the decision whether to proceed or not.
- The reliability of any confession.
- The liability of any witness: is exaggeration, poor memory or bias apparent?
- Has the witness a motive to distort the truth?
- What impression is the witness likely to make? How is the witness likely to stand-up to cross-examination? Are there matters which might properly be put to the witness by the defence to undermine his or her credibility? Does the witness suffer from any disability which is likely to affect his or her credibility (for example: poor eyesight in an eye witness).
- If identity is an issue, the cogency and reliability of the identification evidence.
- Any conflict between eyewitnesses: does it go beyond what reasonably might be expected and hence thereby materially weaken the case?
- If there is no conflict between eyewitnesses, is there cause for suspicion that a false story may have been concocted?
- Are all necessary witnesses available and competent to give evidence?

20. TERMINATION OF A PROSECUTION BY ODPP

- (i) A decision to discontinue a prosecution or to substantially reduce charges on the basis of *insufficient evidence* cannot be made without consultation with a Legal Practice Manager. If, and only if, it is not reasonably practicable to consult with the Legal Practice Manager, the consultation may be with a principal crown prosecutor, in lieu of the Legal Practice Manager.
- (ii) Where the charges involve ***homicide, attempted murder*** or matters of ***public notoriety*** or high ***sensitivity***, the consultation must then extend further to the Director or Deputy Director. The case lawyer should provide a detailed memorandum setting out all relevant issues. The Director may assemble a consultative committee to meet with case lawyer and consider the matter. The consultative committee shall comprise the Director, Deputy Director and two senior principal prosecutors.
- (iii) In all cases the person consulted should make appropriate notes on the file.

- (iv) A decision to discontinue on **public policy grounds** should only be made by the Director.

If, after an examination of the brief, a case lawyer or crown prosecutor is of the opinion there are matters which call into question the public interest in prosecuting, the lawyer, through the relevant Legal Practice Manager, should advise the Director of the reasons for such opinion.

- (v) The decision to discontinue a prosecution is final unless:
 - (a) There is fresh evidence that was not available at the time the decision was made; or
 - (b) The decision was affected by fraud; or
 - (c) There is a material error of law or fact that would lead to a substantial miscarriage of justice:
And It is in all the circumstances in the interests of justice to review the decision.

21. CONSULTATION WITH POLICE

The relevant case lawyer or prosecutor must advise the arresting officer whenever the ODPP is considering whether or not to discontinue a prosecution or to substantially reduce charges.

The arresting officer should be consulted on relevant matters, including perceived deficiencies in the evidence or any matters raised by the defence. The arresting officer's views should be sought and recorded prior to any decision. The purpose of consultation is to ensure that any final decision takes account of all relevant facts.

It is the responsibility of the Legal Practice Manager to check that consultation has occurred and that the police response is considered before any final decision is made.

If neither the arresting officer, nor the corroborator, is available for consultation within a reasonable time, the attempts to contact them should be recorded. After a decision has been made, the case lawyer must notify the arresting officer as soon as possible.

22. CONSULTATION WITH VICTIMS

The relevant case lawyer or prosecutor must also seek the views of any victim whenever serious consideration is given to discontinuing a prosecution for violence or sexual offences (see Guideline 25).

The views of the victim must be recorded and properly considered prior to any final decision, but those views alone are not determinative. It is the public, not any individual interest that must be served (see Guideline 4).

Where the victim does not want the prosecution to proceed and the offence is relatively minor, the discretion will usually favour discontinuance. However, the more serious the injury, the greater the public interest in proceeding. Care must also be taken to ensure that a victim's change of heart has not come from intimidation or fear.

23. REASONS FOR DECISIONS

- (i) Reasons for decisions made in the course of prosecutions may be disclosed by the **Director** to persons outside of the ODPP.
- (ii) The disclosure of reasons is generally consistent with the open and accountable operations of the ODPP.
- (iii) But reasons will only be given when the inquirer has a legitimate interest in the matter and it is otherwise appropriate to do so.
 - Reasons for not prosecuting must be given to the **victims** of crime;
 - A legitimate interest includes the interest of the media in the open dispensing of justice where previous proceedings have been **public**.
- (iv) Where a decision has been made not to prosecute prior to any public proceeding, reasons may be given by the Director. However, where it would mean publishing material too weak to justify a prosecution, any explanation should be brief.
- (v) Reasons will **not** be given in any case where to do so would cause unjustifiable harm to a victim, a witness or an accused or would significantly prejudice the administration of justice.

24. DIRECTED VERDICT/NOLLE PROSEQUI

If the trial has not commenced, ordinarily, a nolle prosequi should be entered to discontinue the proceedings.

In the absence of special circumstances, once the trial has commenced, it is desirable that it end by verdict of the jury. Where a prima facie case has not been established, this will be achieved by a directed verdict.

Special circumstances which may justify a nolle prosequi instead of a directed verdict will include circumstances where:-

- (a) without fault on the part of the prosecution, it is believed there cannot be a fair determination of the issues: for example: where a ruling of law may be the subject of a Reference;

- (b) a prosecution of a serious offence has failed because of some minor technicality that is curable; or
- (c) matters emerge during the hearing that cause the Director or Deputy Director to advise that it is not in the public interest to continue the hearing.

25. VICTIMS

This guideline applies to a victim as defined in section 5 of the Victims of Crime Assistance Act 2009 (VOCA). This is a person who has suffered harm either:-

- (a) because a crime is committed against the person; or
- (b) because the person is a family member or dependant of a person who has died or suffered harm because a crime is committed against that person; or
- (c) as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against that person.

(i) **General Guidelines for Dealing with Victims**

The ODPP has the following obligations to victims:-

- (a) To treat a victim with courtesy, compassion, respect and dignity;
- (b) To take into account and to treat a victim in a way that is responsive to the particular needs of the victim, including, his or her age, sex or gender identity, race or indigenous background, cultural or linguistic diversity, sexuality, impairment or religious belief;
- (c) To assist in the return, as soon as possible, of a victim's property which has been held as evidence or as part of an investigation.
 - Where appropriate, an application must be made under Rule 55 or 100 of the Criminal Practice Rules 1999 for an order for the disposal of any exhibit in the trial or appeal.
 - Where a victim's property is in the custody of the Director of Public Prosecutions and is not required for use in any further prosecution or other investigation, it should be returned to the victim as soon as is reasonably possible.
 - If the victim inquires about property believed to be in the possession of the police, the victim is to be directed to the investigating police officer. The victim should also be told of section 39 of the Justices Act 1886, which empowers a court to order the return of property in certain circumstances.

- (d) To seek all necessary protection from violence and intimidation by a person accused of a crime against the victim.
- Where a **bail** application is made and there is some prospect that if released, the defendant, would endanger the safety or welfare of the victim of the offence or be likely to interfere with a witness or obstruct the course of justice, all reasonable effort must be made to investigate whether there is an **unacceptable risk** of future harm or interference. Where sufficient evidence of risk has been obtained, bail should be opposed under section 16(1) (a) (ii) or 16(3) of the Bail Act 1980. If it has not been practicable in the time available to obtain sufficient information to oppose bail on that ground, an adjournment of the bail hearing should be sought so that the evidence can be obtained.
 - Where bail has been granted over the objection of the prosecution and there is a firm risk of serious harm to any person, a report must be given as soon as possible to the Director for consideration of an appeal or review.
 - When a person has been convicted of an offence involving **domestic violence** and there is reason to believe that the complainant remains at significant risk the prosecutor should apply to the Court for a **domestic violence order** pursuant to section 30 of the Domestic Violence (Family Protection) Act 1989. If there is a current domestic violence order and a person has been convicted of an offence in breach of it, section 30 requires the Court to consider whether there ought to be changes to it. A copy of the **original order** is therefore required. If at the time of sentencing a prosecutor is aware of the existence of such an order he or she must supply the Court with a copy of it.
 - If at the conclusion of a prosecution for **stalking** there is a significant risk of unwanted contact continuing, the prosecutor should apply for a restraining order under section 248F of the Code. This is so even if there is an acquittal or discontinuance.
- (e) To assist in protecting a **victim's privacy** as far as possible and to take into account the victim's welfare at all appropriate stages.

Protection for victims of violence

- The Court has power to suppress the home address or contact address of a victim of **personal violence** (except where those details are relevant to a fact in issue). An application should be made under section 695A of the Criminal Code where appropriate.

Closed Court for sex offences

- The Court must be closed during the testimony of any victim in a sexual offence case: see section 5 Criminal Law (Sexual Offences) Act 1978; section 21A Evidence Act 1977
- The Prosecutor must be vigilant to ensure this is done.
- In the pre-hearing conference, the victim must be asked whether he or she wants a support person. A “support person” includes external support persons.
- If the victim is a child, he or she should also be asked whether he or she wants his or her parent(s) or guardian(s) to be present (unless that person is being called as a witness in the proceeding). If the victim does not want such person(s) present then information as to why this is so should be obtained and file noted. If the victim does want such person(s) present, the prosecutor must make the application to the Court.

Anonymity for victims of sex offences

- In the initial contact, the victim must be told of the prohibition of publishing any particulars likely to identify the victim. The Court may permit some publication only if good and sufficient reason is shown.
- During criminal proceedings, the prosecutor should object to any application for publication unless the victim wants to be identified. In such a case, the prosecutor is to assist the complainant to apply for an order to allow publication.

Improper questions

- Prosecutors have a responsibility to protect witnesses, particularly youthful witnesses, against threatening, unfair or unduly repetitive cross-examination by making proper objection: see section 21 of the Evidence Act 1977.
- Questions should be framed in language that the witness understands.
- Prosecutors need to be particularly sensitive to the manner of questioning children and intellectually disabled witnesses.
- The difficulties faced by some Aboriginal witnesses in giving evidence are well catalogued in the government publication “*Aboriginal English in the Courts – a handbook*” and the Queensland Justice Commission’s report “*Aboriginal Witnesses in Queensland’s Criminal Courts*” of June 1996.
- Generally, questions about the sexual activities of a complainant of sexual offences will be irrelevant and inadmissible. They cannot be asked without leave of the Court. The only basis for leave is

“substantial relevance to the facts in issue or a proper matter for cross-examination as to credit”.

Special witness

- Special witnesses under section 21A of the Evidence Act are children under the age of 16 and those witnesses likely to be disadvantaged because of intellectual impairment or cultural differences.
- The provision gives the Court a discretion to modify the way in which the evidence of a special witness is taken.
- The prosecutor must, before the proceeding is begun, acquaint himself or herself with the needs of the special witness, and at the hearing, before the special witness is called, make an application to the court for such orders under section 21A, subsection (2) as the circumstances seem to require.
- The prosecutor must apply for an order under section 21A, subsections (2)(c) and (4), for evidence via closed circuit television where the witness is:-
 - (a) 15 years old or younger; and
 - (b) to testify in relation to violent or sexual offences.

The application must be made in every such case except where the child would prefer to give evidence in the courtroom.

- (f) To minimise inconvenience to a victim.

Information for Victims

The following information should be given in advance of the trial:-

- (a) Every victim who is a witness must be advised of the trial process and his or her role as a prosecution witness.
- (b) Where appropriate, victims must also be provided with access to information about:-
 - victim-offender conferencing services;
 - available welfare, health, counselling, medical and legal help responsive to their needs;
 - Victims Assist Queensland, for advice and support in relation to financial assistance under the Victims of Crime Assistance Act 2009

- Penalties and Sentences Act 1992 - section 9(2) which requires the court, in sentencing an offender, to have regard to any damage, injury or loss caused by the offender; section 35 relating to the court's power to order the offender to pay compensation; and
 - Juvenile Justice Act 1992 - section 192 relating to the power of the court to order that a child make restitution or pay compensation.
- (c) In the case of a complainant of a sexual offence, the victim should be told:-
- that the Court will be closed during his or her testimony;
 - that there is a general prohibition against publicly identifying particulars of the complainant.
- (d) As soon as a case lawyer has been allocated to the case any victims involved must be advised of:-
- the identity of the person charged (except if a juvenile);
 - the charges upon which the person has been charged by police, or, as appropriate, the charges upon which the person has been committed for trial or for sentence;
 - the identity and contact details of the case lawyer; and
 - the circumstances in which the charges against the defendant may be varied or dropped;
- (e) If requested by the victim, the following information about the progress of the case will be given, including:-
- details about relevant court processes, and when the victim may attend a relevant court proceeding, subject to any court order;
 - details of the availability of diversionary programs in relation to the crime;
 - notice of a decision to substantially change a charge, or not to continue with a charge, or accept a plea of guilty to a lesser charge;
 - notice of the outcome of a proceeding relating to the crime, including any sentence imposed and the outcome of any appeal.

A victim who is a witness for the prosecution in the trial for the crime committed against the victim is to be informed about the trial

process and the victim's role as a witness for the prosecution if not already informed by another prosecuting agency.

Information which the victim is entitled to receive must be provided within a reasonable time after the obligation to give the information arises.

Notwithstanding that a victim has not initially requested that certain information be provided, if later a request is made, the request is to be met.

Where a case involves a **group of victims**, or where there is one person or more against whom the offence has been committed and another who is an immediate family member or who is a dependant of the victim(s), the obligation to inform may be met by informing a representative member of the group.

If the victim is an **intellectually impaired person** and is in the care of another person or an institution, the information may be provided to that person's present carer, but only if the person so agrees.

If the victim is a **child** and is in the care of another person or an institution, the information may be provided to the child's present carer unless the child informs the ODPP that the information is to be provided to the child alone. The child should be asked questions in order to determine the child's wishes in this regard. Sensitive information should not be provided to a child's carer if that carer, on the information available, seems to be unsympathetic towards the child as, for example, a mother who seems to be supportive of the accused stepfather rather than her child.

Note: Where it appears that a victim would be unlikely to comprehend a form letter without **translation** or explanation the letter may be directed via a person who can be entrusted to arrange for any necessary translation or explanation.

(ii) **Pre-trial Conference**

Where a victim is to be called as a witness the case lawyer or prosecutor is to hold a conference with the victim beforehand and, if reasonably practicable, the witness should be taken to preview proceedings in a Court of the status of the impending hearing.

(iii) **Victim Impact Statements**

At the pre-trial conference, if it has not already been done, the victim is to be informed that a Victim Impact Statement may be tendered at any sentence proceeding. The victim is, however, to be informed of the limits of such a Statement (see Guideline 47(iv)).

The victim is also to be advised that he or she might be required to go into the witness box to swear to the truth of the contents and may be cross-examined if the defence challenges anything in the Victim Impact Statement.

(iv) **Sentencing**

Pursuant to section 15 of VOCA, the prosecutor should inform the sentencing Court of appropriate details of the harm caused to the victim by the crime, but in deciding what details are not appropriate the prosecutor may have regard to the victim's wishes.

The prosecutor must ensure the court has regard to the following provisions, if they would assist the victim:-

- Penalties and Sentences Act 1992 - section 9(2) (c), which states that a court, in sentencing an offender, must have regard to the nature and seriousness of the offence including harm done to the victim.
- Juvenile Justice Act 1992 - section 109(1) (g), which states that in sentencing a child a court must have regard to any impact of the offence on the victim.

The above are the minimum requirements in respect of victims (see also Guideline 47).

(v) In an appropriate case, further action will be required, for example:-

- To ensure, so far as it is possible, that victims and prosecution witnesses proceeding to court, at court and while leaving court, are protected against unwanted contact occurring between such person and the accused or anyone associated with the accused. The assistance of police in this regard might be necessary.
- In any case where a substantial reduction or discontinuance of charge is being considered, the victim and the charging police officer should be contacted and their views taken into account before a final determination is made (see Guidelines 20 and 21).
- In any case where it is desirable in the interests of the victim and in the interests of justice that the victim and some witnesses, particularly experts, are conferred with before a hearing, a conference should be held.

Officers required to comply with the above requirements must make file notes regarding compliance.

26. **ADVICE TO POLICE**

(i) **Appropriate References**

In circumstance where the Police have charged a person with an offence the Police may refer the matter to the Director for advice as to whether the prosecution should proceed only when:-

The Deputy Commissioner considers that the evidence is sufficient to support the charge, but the circumstances are such that there is a reasonable prospect that the ODPP may later exercise the discretion not to prosecute on public interest grounds.

(ii) **Form of Request and Advice**

- (a) Advice will not be given without a **full brief of evidence**;
- (b) All requests for advice must be answered within one month of receipt of the police material;
- (c) Any **time limit** must be included in the referral; and
- (d) As a general rule, both the police request for advice and the ODPP advice must be in **writing**.

There will be cases when the urgency of the matter precludes a written request. In those cases, an **urgent oral request** may be received and, if necessary, oral advice may be given on the condition that such advice will be formalised in writing within two days. The written advice should set out details of the oral request and the information provided by police for consideration.

(iii) **Nature of ODPP Advice**

Whether police follow the advice as is a matter for them. The referral of the matter for advice and any advice given is to be treated as confidential.

The ODPP will not advise the police to discontinue an investigation. Where the material provided by police is incomplete or further investigation is needed, the brief will be returned to police who will be advised that they may re-submit the brief for further advice when the additional information is obtained. For example, this may include requiring police to give an alleged offender an opportunity to answer or comment upon the substance of the allegations.

(iv) **Source of Advice**

The advice must be provided by the **Director** in all matters.

27. HYPNOSIS AND REGRESSION THERAPY

This guideline concerns the evidence of any witness who has undergone regression therapy or hypnosis, including eye movement and desensitisation reprocessing. Evidence in breach of this guideline is likely to be excluded from trial.

Where it is apparent to an investigating officer that a witness has undergone counselling or therapy prior to the provision of his or her witness statement, the officer should inquire as to the nature of the therapy. If hypnosis has been involved the witness's evidence cannot be used unless the following conditions are satisfied:-

- (1) (i) The victim **had recalled the evidence prior to any such therapy**;
and
- (ii) his or her prior memory can be established independently; or
- (2) Where a "recollection" of the witness has **emerged for the first time during or after hypnosis**:-
 1. The hypnotically induced evidence must be limited to matters which the witness has recalled and related prior to the hypnosis – referred to as "the original recollection". In other words evidence will not be tendered by the Crown where its subject matter was recalled for the first time under hypnosis or thereafter. The effect of that restriction is that no detail recalled for the first time under hypnosis or thereafter will be advanced as evidence.
 2. The substance of the original recollection must have been preserved in written, audio or video recorded form.
 3. The hypnosis must have been conducted with the following procedures:-
 - (a) the witness gave informed consent to the hypnosis;
 - (b) the hypnosis was performed by a person who is experienced in its use and who is independent of the police, the prosecution and the accused;
 - (c) the witness's original recollection and other information supplied to the hypnotist concerning the subject matter of the hypnosis was recorded in writing in advance of the hypnosis; and
 - (d) the hypnosis was performed in the absence of police, the prosecution and the accused, but was video recorded.

The fact that a witness has been hypnotised will be disclosed by the prosecution to the defence, and all relevant transcripts and information provided to the defence well in advance of trial in order to enable the defence to have the assistance of their own expert witnesses in relation to that material.

Prosecutors will not seek to tender such evidence unless the guidelines are met. Police officers should therefore make the relevant inquiries before progressing a prosecution.

28. BAIL APPLICATIONS

- (i) Section 9 of the Bail Act 1980 prima facie confers upon any unconvicted person who is brought before a Court the right to a grant of bail.
- (ii) Pursuant to section 16, the Court's power to refuse bail has three principal aspects:-
 - the risk of re-offending;
 - the risk of interfering with witnesses; and
 - the risk of absconding.

In determining its attitude to any bail application, the prosecution must measure these features against the seriousness of the original offence and the weight of the evidence.

Proposed bail conditions should be assessed in terms of their ability to control the risks.

- (iii) Where a **bail** application is made and there is some prospect that if released, the defendant would endanger the safety or welfare of the victim of the offence or be likely to interfere with a witness or obstruct the course of justice, all reasonable effort must be made to investigate whether there is an **unacceptable risk** of future harm or interference. Where sufficient evidence of risk has been obtained, bail should be opposed under section 16(1) (a) (ii) or 16(3) of the Bail Act 1980. If it has not been practicable in the time available to obtain sufficient information to oppose bail on that ground, an adjournment of the bail hearing should be sought so that the evidence can be obtained.
- (iv) Where bail has been granted over the objection of the prosecution and there is a firm risk of serious harm to any person, a report must be given as soon as possible to the Director for consideration of an appeal or review.
- (v) **Reversal of Onus of Proof**

Prosecutors should note that pursuant to section 16(3) of the Bail Act 1980, the defendant must show cause why his or her detention is not justified where there is a breach of the Bail Act, a weapon has been used or the alleged offence has been committed while the defendant was at large in respect of an earlier arrest.

(vi) **Reporting Conditions**

Reporting conditions are imposed to minimise the risk of absconding.

Some bail orders allow for the removal of a reporting condition upon the consent of the Director. Consent will not be given merely because of the inconvenience of reporting.

Where it is considered that the request has merit, it should be referred to a Legal Practice Manager, or above.

(vii) **Overseas Travel**

Staff should not consent to a condition of bail allowing overseas travel without the written authority of a Legal Practice Manager, the Director or the Deputy Director.

29. DISCLOSURE: Sections 590AB to 590AX of the Criminal Code

The Crown has a duty to make full and early disclosure of the prosecution case to the defence.

The duty extends to all facts and circumstances and the identity of all witnesses reasonably regarded as relevant to any issue likely to arise, in either the case for the prosecution or the defence.

However, the address, telephone number and business address of a witness should be omitted from statements provided to the defence, except where those details are material to the facts of the case: *section 590AP*. In the case of an anonymity certificate, the identity of the protected witness shall not be disclosed without order of the court: sections 21F and 21I of the Evidence Act 1977.

(i) **Criminal Histories**

The criminal history of the accused must be disclosed.

Where a prosecutor knows that a Crown witness has a criminal history, it should be disclosed to the defence.

Where the defence in a joint trial wishes to know the criminal history of a co-accused it should be provided.

The prosecution must, on request, give the accused person a copy of the Criminal History of a proposed witness for the prosecution in the possession of the prosecution.

(ii) **Immunity**

Any indemnity or use-derivative-use undertaking provided to a Crown witness in relation to the trial should be disclosed to the defence. However, the advice which accompanied the application for immunity is privileged and should not be disclosed.

The Attorney-General's protection from prosecution is limited to truthful evidence. This is clear on the face of the undertaking.

If the witness's credibility is attacked at trial, the undertaking should be tendered. But it cannot be tendered until and unless the witness's credibility is put in issue.

(iii) **Exculpatory Information**

If a prosecutor knows of a person who can give evidence that may be exculpatory, but forms the view on reasonable grounds that the person is not credible, the prosecutor is not obliged to call that witness (see Guideline 39).

The prosecutor must however disclose to the defence:-

- (a) the person's statement, if there is one, or
- (b) the nature of the information:-
 - the identity of the person who possesses it; and
 - when known, the whereabouts of the person.

These details should be disclosed in good time.

The Crown, if requested by the defence, should subpoena the person.

(iv) **Inconsistent Statement**

Where a prosecution witness has made a statement that may be inconsistent in a material way with the witness's previous evidence the prosecutor should inform the defence of that fact and make available the statement. This extends to any inconsistencies made in conference or in a victim impact statement.

(v) **Particulars**

Particulars of sexual offences or offences of violence about which an "affected child witness" is to testify, must be disclosed if requested: section 590AJ(2)(a).

(vi) **Sensitive Evidence: sections 590AF; 590AO; 590AX**

Sensitive evidence is that which contains an image of a person which is obscene or indecent or would otherwise violate the person's privacy. It will include video taped interviews with complainants of sexual offences containing accounts of sexual activity, pornography, child computer games, police photographs of naked complainants and autopsy photographs.

Sensitive evidence:-

- **Must not** be copied, other than for a legitimate purpose connected with a proceeding;
- **Must not** be given to the defence without a Court order;
- **Must be** made available for viewing by the defence upon a request if, the evidence is relevant to either the prosecution or defence case;
- **May be** made available for analysis by an appropriately qualified expert (for the prosecution or defence). Such release must first be authorised by the Legal Practice Manager, upon such conditions as thought appropriate.

(vii) **Original Evidence: section 590AS**

Original exhibits must be made available for viewing by the defence upon request. Conditions to safeguard the integrity of the exhibits must be settled by the Legal Practice Manager.

(viii) **Public Interest Exception: section 590AQ**

The duty of disclosure is subject only to any overriding demands of justice and public interest such as:-

- the need to protect the integrity of the administration of justice and ongoing investigations;
- the need to prevent risk to life or personal safety; or
- public interest immunity, such as information likely to lead to the identity of an informer, or a matter affecting national security.

These circumstances will be rare and information should only be withheld with the approval of the Director. When this happens, the defence must be given written notice of the claim (see Notice of Public Interest Exemption).

(ix) **Committal Hearings**

All admissible evidence collected by the investigating police officers should be produced at committal proceedings, unless the evidence falls into one of the following categories:-

- (a) it is unlikely to influence the result of the committal proceedings and it is contrary to the public interest to disclose it. (See paragraph 25 (viii) above);
- (b) it is unlikely to influence the result of the committal proceedings and the person who can give the evidence is not reasonably available or his or her appearance would result in unusual expense or inconvenience or produce a risk of injury to his or her physical or mental health, provided a copy of any written statement containing the evidence in the possession of the prosecution is given to the defence;
- (c) it would be unnecessary and repetitive in view of other evidence to be produced, provided a copy of any written statement containing the evidence in the possession of the prosecution is given to the defence;
- (d) it is reasonably believed the production of the evidence would lead to a dishonest attempt to persuade the person who can give the evidence to change his or her story or not to attend the trial, or to an attempt to intimidate or injure any person;
- (e) it is reasonably believed the evidence is untrue or so doubtful it ought to be tested upon cross-examination, provided the defence is given notice of the person who can give the evidence and such particulars of it as will allow the defence to make its own inquiries regarding the evidence and reach a decision as to whether it will produce the evidence.
 - Any doubt by the prosecutor as to whether the balance is in favour of, or against, the production of the evidence should be resolved in favour of production.
 - Copies of written statements to be given to the defence including copies to be used for the purposes of an application under *section 110A* of the *Justices Act 1886*, are to be given so as to provide the defence with a reasonable opportunity to consider and to respond to the matters contained in them: they should be given at least 7 clear days before the commencement of the committal proceedings.
 - In all cases where admissible evidence collected by the investigating police officers has not been produced at the committal proceedings, a note of what has occurred and why it occurred should be made by the person who made the decision and attached to the prosecution brief.

(x) **Legal Professional Advice**

Legal professional privilege will be claimed in respect of ODPP internal advices and legal advice given to the Attorney-General.

(xi) **Witness Conferences**

The Director will not claim privilege in respect of any taped or written record of a conference with a witness provided there is a legitimate forensic purpose to the disclosure, for example:-

- (a) an inconsistent statement on a material fact;
- (b) an exculpatory statement; or
- (c) further allegations.

The lawyer concerned must immediately file note the incident and arrange for a supplementary statement to be taken by investigators. The statement should be forwarded to the defence.

(xii) **Disclosure Form**

The Disclosure Form must be fully completed and provided to the legal representatives or the accused at his bail address or remand centre no later than:-

- 14 days before the committal hearing;
- again, within 28 days of the presentation of indictment, or prior to the trial evidence, whichever is sooner.

The police brief must include a copy of the Disclosure Form furnished to the accused. The ODPP must update the police disclosure but need not duplicate it: *section 590AN*.

Responsibility for disclosure within ODPP rests with the case lawyer or prosecutor if one has been allocated to the matter.

(xiii) **Ongoing Obligation of Disclosure**

When new and relevant evidence becomes available to the prosecution after the Disclosure Forms have been published, that new evidence should be disclosed as soon as practicable. The duty of disclosure of exculpatory information continues after conviction until the death of the convicted person: *section 590AL*.

Upon receipt of the file a written inquiry should be made of the arresting officer to ascertain whether that officer has knowledge of any information, not included in the brief of evidence, that would tend to help the case for the accused.

Post conviction disclosure relates to reliable evidence that may raise reasonable doubt about guilt: *section 590AD*.

(xiv) **Confidentiality**

- It is an offence to disclose confidential ODPP information other than in accordance with the duty of disclosure or as otherwise permitted by legislation: *section 24A of the Director of Public Prosecutions Act 1984*.
- Inappropriate disclosure of confidential information may affect the safety or privacy of individuals, compromise ongoing investigations or undermine confidence in the office. This means sensitive material must be carefully secured. It must not be left unattended in Court, in cars or in any place where it could be accessed by unauthorised people.

30. QUEENSLAND COLLEGE OF TEACHERS AND COMMISSION FOR CHILDREN AND YOUNG PEOPLE

(Queensland College of Teachers Act) 2005 imposes a duty upon prosecuting agencies to advise the Queensland College of Teachers of the progress of any prosecution of an **indictable offence** against a person who is, or is thought to have been, a registered **teacher**.

Section 318 of the Commission for Children and Young People Act 2000 imposes a similar duty where the person is listed under section 310.

- In the case of committal proceedings or indictable offences dealt with summarily through police prosecutors, the obligation falls on the Commissioner of Police.
- In all other cases, the responsibility rests with the ODPP case lawyer.

31. UNREPRESENTED ACCUSED

A prosecutor must take particular care when dealing with an unrepresented accused. There is an added duty of fairness and the prosecution must keep the accused properly informed of the prosecution case. At the same time the prosecution must avoid becoming personally involved.

- (i) Staff should seek to avoid any contact with the accused unless accompanied by a witness;
- (ii) Full notes should be promptly made in respect of:-
 - any oral communication;
 - all information and materials provided to the accused; and
 - any information or material provided by the accused.

- (iii) Any admissions made to ODPP staff or any communication of concern should be recorded and mentioned in open court as soon as possible.

The prosecutor should **not** advise the accused about legal issues, evidence or the conduct of the defence. But he or she should be alert to the judge's duty to do what is necessary to ensure that the unrepresented accused has a fair trial. This will include advising the accused of his or her right to a voir dire to challenge the admissibility of a confession see McPherson v R (1981) 147 CLR 512.

An accused cannot personally cross-examine children under 16, intellectually impaired witnesses, or the victim of a sexual or violent offence: see sections 21L to 21S of the Evidence Act 1977. Where the accused is unrepresented and does not adduce evidence, the crown prosecutor (other than the Director) has no right to a final address: *section 619* of the Criminal Code; R v Wilkie CA No 255 of 1997.

32. JURY SELECTION

Selection of a jury is within the general discretion of the prosecutor. However, no attempt should be made to select a jury that is unrepresentative as to race, age, sex, economic or social background.

33. OPENING ADDRESS

A prosecutor should take care to ensure that nothing is said in the opening address which may subsequently lead to the discharge of the jury. Such matters might include:-

- contentious evidence that has not yet been the subject of a ruling;
- evidence that may reasonably be expected to be the subject of objection;
- detailed aspects of a witness's evidence which may not be recalled in the witness box.

34. PRISON INFORMANT/CO-OFFENDER

When a prosecutor intends to call a prison informant or co-offender, the defence should be advised of the following:-

- the witness's criminal record; and
- any information which may bear upon the witness's credibility such as any benefit derived from the witness's co-operation. For example: any immunity, sentencing discount, prison benefit or any reward.

35. IMMUNITIES

The general rule is that an accomplice should be prosecuted regardless of whether he or she is to be called as a Crown witness. An accomplice who pleads guilty and agrees to testify against a co-offender may receive a sentencing discount for that co-operation. There will be cases, however, where the accomplice cannot be prosecuted. The issue of immunity most commonly arises where there is no evidence admissible against the accomplice, but he or she has provided an induced statement against the accused.

The Attorney-General has the prerogative power to grant immunity from prosecution. The power is also granted pursuant to Section 7(1) *Attorney-General Act 1999*. The immunity will usually be in the form of a **use-derivative-use undertaking** (an undertaking not to use the witness's evidence in a nominated prosecution against the witness, either directly or indirectly, as evidence against the witness or to use that evidence to obtain other evidence against the witness), but may also be an indemnity (complete protection for nominated offences). Protection in either form will be dependent upon the witness giving truthful evidence. It is a last resort only to be pursued when the interests of justice require it.

Any application should be through the Director or Deputy Director in the first instance so that advice may be furnished to the Attorney-General if requested.

The witness' statement must exist in some form before an application for immunity is made. The application can only be considered in respect of completed criminal conduct. Any form of immunity granted does not operate to cover future conduct.

The application must summarise:-

- (i) the witness' attitude to testifying without immunity;
- (ii) the witness' attitude to testifying with immunity;
- (iii) the existing prosecution case against the accused (without immunity for the witness);
- (iv) the evidence which the witness is capable of giving (including the significance of that evidence and independent support for its reliability);
- (v) the involvement and culpability of the proposed witness;
- (vi) public interest issues: including the comparative seriousness of the offending as between the accused and the witness; whether the witness could and should be prosecuted (e.g. what is the quality of the evidence admissible against the witness and the strength of any prosecution case against him or her); and
- (vii) reasons why the applicant believes that the application should be granted.

The application must contain:-

- (i) Notification of the date by which the decision of the Attorney-General is requested;
- (ii) A full copy of the brief of evidence, by way of attachment to the application;

- (iii) The name and full contact details of the applicant, including the rank and registration number of that person where the applicant is a member of a police service;
- (iv) The endorsement by way of signature of the applicant at the end of the application;
- (v) The name and contact details of a senior member of the organisation responsible for the making of the application who holds the opinion that the granting of the immunity is in the interests of justice. Where that organisation is a police service, that person must be of the rank of Superintendent or higher;
- (vi) Details of all matters concerning the credibility of the witness that are or may be relevant to the determination of the application;
- (vii) A copy of the record of all conversations held with the witness. Where that record is an electronic record, a full transcript of the conversation must also be supplied;
- (viii) A copy of the record of all conversations held with the alleged principal offender or offenders. Where that record is an electronic record, a full transcript of the conversation must also be supplied; and
- (ix) The full criminal history of each of the witness and the alleged principal offender or offenders from each State and territory of Australia by way of an attachment to the application. Where it is asserted that the witness or alleged principal offender or offenders do not have any prior criminal convictions in any one or more State or territory, that fact must be stated in the body of the application.

In addition to the application and the other materials required to be provided, there must also be supplied an affidavit sworn or affirmed by the applicant attesting to the following facts:

- (i) That the brief of evidence that accompanies the application contains all statements and other information and materials that would be required to be provided so as to comply with the requirements of Chapter 61 Chapter Division 3 *Criminal Code* if the brief had been supplied to the alleged principal offender or offenders; and
- (ii) That the contents of the application are true and correct and that there are no further matters known to the applicant which are or may be relevant to the determination of the application.

All applications and other materials must be received at least 42 clear days (“the prescribed period”) prior to the day by which the decision of the Attorney-General is requested, unless exceptional circumstances exist.

Where the application or the accompanying material is considered to be deficient and more information is requested to be provided, that further material must be provided at least 42 clear days prior to the day by which the decision of the Attorney-General is requested, unless exceptional circumstances exist.

In either case, where it is suggested that exceptional circumstances exist, the applicant must provide an affidavit attesting to what those circumstance are and justifying why they are said to be “exceptional”. Whether the circumstances are exceptional will be a matter solely for the decision of the Director or Deputy Director, as the case may be.

If all the required materials are not received prior to the prescribed period, and exceptional circumstances do not exist, the ODPP may not be able to provide any advice requested by the Attorney-General in sufficient time to allow the application to be determined by the requested date.

36. SUBPOENAS

Where subpoenas are required all reasonable effort must be made to ensure that the service of those subpoenas gives the witnesses as much notice as possible of the dates the witnesses are required to attend court.

37. HOSPITAL WITNESSES

This guideline applies to medical witnesses employed by hospitals in the Brisbane district.

- (i) All hospital witnesses (other than Government Medical Officers) are to be served with a **subpoena**;
- (ii) All subpoenas are to be accompanied by the appropriate form letter;
- (iii) The subpoena should be prepared and served with as much notice as reasonably possible;
- (iv) Service of the subpoena is to be arranged through the Hospital Liaison Officer where appropriate or through the Arresting Officer otherwise;
- (v) Such subpoenas are to be accompanied by the form letter addressed to the Liaison Officer or Investigating Officer requesting confirmation of the service.
- (vi) A file "**bring up**" should be actioned 2 weeks from the date of the letter, if there is no response.
- (vii) Where the ODPP is advised of the hospital witness's unavailability, the file should be referred to a Legal Practice Manager or a Crown Prosecutor for consideration as to whether the witness is essential or whether alternative arrangements can be made. Such advice should be given to the relevant workgroup clerk within a week, or sooner, depending upon the urgency of the listing.
- (viii) If the witness is essential and alternative arrangements cannot be made, the matter should be listed immediately for mention in the appropriate Court.

38. OTHER MEDICAL WITNESSES

Pathologists and Government Medical Officers do not require a subpoena, but should be notified of trial listings by the relevant form letter.

Medical practitioners in private practice will require written notice of upcoming trials, with the maximum amount of notice. Generally they will not require a subpoena.

39. WITNESSES

In deciding whether or not to call a particular witness the prosecutor must be fair to the accused. The general principle is that the Crown should call all witnesses capable of giving evidence relevant to the guilt or innocence of the accused.

The prosecutor should not call:-

- unchallenged evidence that is merely repetitious; or
- a witness who the prosecutor believes on reasonable grounds to be unreliable. The mere fact that a witness contradicts the Crown case will not constitute reasonable grounds.

See: Richardson v R (1974) 131 CLR 116; R v Apstolides (1984) 154 CLR 563; Whitehorn v R (1983) 152 CLR 657 at 664, 682-683.

The defence should be informed at the earliest possible time of the decision not to call a witness who might otherwise reasonably be expected to be called. Where appropriate the witness should be made available to the defence.

40. EXPERT WITNESSES

When a prosecutor proposes to call a government medical officer or other expert as a witness, all reasonable effort should be made to ensure that the witness is present at court no longer than is necessary to give the required evidence.

41. INTERPRETERS

Care must be taken to ensure that every crown witness who needs an interpreter to testify has one.

42. CROSS-EXAMINATION

Cross-examination of an accused as to his or her credit must be fairly conducted. In particular, accusations should not be put unless:-

- (i) they are based on information reasonably assessed to be accurate; and
- (ii) they are justified in the circumstances of the trial.

The Crown cannot split its case. Admissions relevant to a fact in issue during the Crown case ordinarily should not be introduced during cross-examination of the accused: R v Soma [2003] HCA 13.

43. DEFENDANT'S PRE-TRIAL MEMORANDUM

Where the Court has ordered the preparation and delivery of a pre-trial memorandum the prosecutor must not use a statement in the defendant's pre-trial memorandum to cross-examine the defendant in the trial except in exceptional circumstances and with prior notice to the defendant or the defendant's legal representatives.

44. ARGUMENT

A prosecutor must not argue any proposition of fact or law which the prosecutor does not believe on reasonable grounds can be sustained.

45. ACCUSED'S RIGHT TO SILENCE

The right to silence means that no adverse inference can be drawn from an accused's refusal to answer questions: Petty v The Queen (1991) 173 CLR 95.

- Where an accused has declined to answer questions, no evidence of this should be led as part of the Crown case (it will be sufficient to lead that the accused was seen by police, arrested and charged);
- Where a defence has been raised for the first time at trial:-
 - (a) if the accused has previously exercised his right to silence, the prosecutor should **not** raise recent invention;
 - (b) if the accused has previously given a version, but omitted the facts relied upon for the defence at trial, it may be appropriate for the prosecutor to raise recent invention.

46. JURY

No police officer, prosecutor or officer of the ODPP should:-

- (a) communicate outside of the trial with any person known to be a juror in a current trial;
- (b) obtain or solicit any particulars of the private deliberations of a jury in any criminal trial;
- (c) release personal particulars of any juror in a trial.

Any police officer, prosecutor or ODPP officer who becomes aware of a breach of the Jury Act should report it.

47. SENTENCE

It is the duty of the prosecutor to make submissions on sentence to:-

- (a) inform the court of all of the relevant circumstances of the case;
- (b) provide an appropriate level of assistance on the sentencing range;
- (c) identify relevant authorities and legislation; and
- (d) protect the judge from appealable error.

(i) **Notice**

The arresting officer should be advised through the Pros Index of the date for sentence.

(ii) **Mitigation**

The prosecution has a duty to do all that reasonably can be done to ensure that the court acts only on truthful information. Vigilance is required not just in the presentation of the Crown case but also in the approach taken to the defence case. Opinions, their underlying assumptions and factual allegations should be scrutinised for reliability and relevance.

Section 590B of the Code requires that advance notice of expert evidence be given.

- Where the defence seeks to rely, in mitigation, on reports, references and/or other allegations of substance, the prosecutor must satisfy himself or herself as to whether objection should be made, or challenge mounted, to the same;
- The prosecutor must provide reasonable notice to the defence of any witness or referee required for cross-examination;
- If the prosecutor has been given insufficient notice of the defence material or allegations to properly consider the Crown's position, an adjournment should be sought;
- Whether there has been insufficient notice will depend upon, inter alia:-
 - the seriousness of the offence;
 - the complexity of the new material;

- its volume;
- the significance of the new allegations;
- the degree of divergence between the Crown and defence positions; and
- availability of the means of checking the reliability of the material.

Victims of crime, particularly those associated with an offender, are often the best source of information. They should be advised of the sentencing date. They should be asked to be present. And as well, they should be told that if, when present in court, there is anything said by the defence which they know to be false, they should immediately inform the prosecutor so that, when appropriate, the defence assertions may be challenged.

Bogus claims have been made in relation to things like illness, employment, military service, and past trauma. Where the prosecution has not had sufficient notice to verify assertions prior to sentence, the truth may be investigated after sentence. The sentence may be reopened under section 188 of the Penalties and Sentences Act to correct a substantial error of fact.

(iii) **Substantial Violence or Sexual Offences**

While it is necessary at sentence for the prosecutor to summarise the victim's account, this may be inadequate.

- In cases of serious violence or sexual offences, the **victim's statement** should be tendered.
- When available, any **doctor's description** of injuries and **photographs** of the injuries should also be put before the judge.
- The court should also be told of any period of hospitalisation, intensive care or long term difficulties.

(iv) **Victim Impact Statements**

Where a victim impact statement has been received by the prosecution, a copy should be provided to the defence upon receipt.

Inflammatory or inadmissible material, such as a reference to uncharged criminal conduct, should be blocked out of the victim impact statement. If the defence objects to the tender of the edited statement, the unobjectionable passages should be read into the record.

(v) **Criminal Histories**

The prosecution must ensure that any criminal history is current as at the date of sentence.

The Police Information Bureau will not forward any interstate history unless it is expressly ordered. Judgment about whether an out of state search should be conducted will depend upon the nature of the present offences, and any information or suspicion that the offender had been interstate or in New Zealand. For example:-

- a trivial or minor property would not normally justify an interstate search;
- an offence of personal violence by a mature aged person who has lived interstate would suggest a full search should be made.

If information regarding offences in New Zealand is required, QPS will require the details of the current Queensland proceeding: ie: the Court, its district and the date of the hearing, as well as the current offence/s against the accused. No abbreviations will be accepted.

(vi) **Risk of Re-Offending Against Children**

When an offender has been convicted of a sexual offence against a child less than 16 years of age, a judge has the power to make an order under section 19 of the Criminal Law Amendment Act 1945, if there is a **substantial risk** of re-offending against a child. A section 19 order requires the offender to report his or her address and any change of address to police for a specified period.

Such orders allow police to know the offender's whereabouts during the specified period. It also means that the Attorney-General can act under section 20 to provide information to any person with a legitimate and sufficient interest.

Prosecutors should apply for an order under section 19(1) if a substantial risk of re-offending may be identified from the present offences either alone or in conjunction with the criminal history, expert evidence and other relevant facts.

(vii) **Transfer of Summary Matters**

Sections 651 and 652 of the Criminal Code limit the circumstances in which a summary matter can be transferred to a Superior Court for a plea of guilty.

Importantly, the **consent of the Crown** is required.

The ODPP should respond in writing **within 14 days** to any application for transfer.

The Registrar of a Magistrates Court will refuse an application for transfer without the written consent of the ODPP.

Prosecutors should not consent unless the summary matter has **some connection** to an indictable matter set down for sentence. Circumstances in which consent may be given include:-

- (a) An evidentiary relationship: where the circumstances of the summary offence would be relevant and admissible at a trial for the indictable offence.

For example:-

- an offender has committed stealing or receiving offences and during the period of offending he is apprehended with tainted property;
- in the course of committing indictable drug offences (such as production or supply) the offender has committed simple offences such as possession of a utensil, possession of proceeds.

- (b) The facts form part of the one incident:-

For example:-

- the unlawful use of a motor vehicle or dangerous driving committed whilst driving unlicensed;
- the offender is unlawfully using a motor vehicle to carry tainted property.

- (c) The offences overlap or are based on the same facts:-

For example:-

- the unlawful use of a motor vehicle or dangerous driving committed whilst driving unlicensed;
- an indictable assault which also constitutes a breach of a domestic violence order;
- grievous bodily harm and a firearm offence relating to the weapon used to inflict the injury.

- (d) The summary offences were committed in resistance to the investigation, or apprehension, of the offender for the indictable offence:-

For example:-

- upon interception for the indictable offence, the offender fails to provide his or her name, or gives a false name, or resists, obstructs or assaults police in the execution of their duty;

- (e) There is a substantive period of remand custody that could not otherwise be taken into account under section 161 of the Penalties and Sentences Act:-

For example:-

- (i) • the indictable and summary offences were the subject of separate arrests; and
 - the accused was remanded in custody on one type of offence and bail was subsequently cancelled on the other offence; and
- (ii) the unrelated summary matters number 5 or less and would not normally justify a significant sentence of imprisonment on their own; and
- (iii) the period of remand otherwise excluded from a declaration on sentence is greater than 8 weeks.

Consent to a transfer of summary matters should not be given:-

- (a) where all offences could be dealt with in the Magistrates Court. This relates to the situation where:-
 - the defence have an election under section 552B of the Code in respect of the relevant indictable offence/s; and
 - the relevant indictable offence/s could be adequately punished in the Magistrates Court.
- (b) for a breach of the Bail Act. Such offences should be dealt with at the first appearance in the Magistrates Court.

Driving Offences

When the application relates to traffic offences, the following principles should be considered, subject to the above:-

- the Magistrates Court ordinarily will be the most appropriate Court to deal with summary traffic offences;
- it is important that significant or numerous traffic offences be dealt with in the Magistrates Court unless all such offences have strong and direct connection to an indictable offence; and
- traffic matters should be dealt with expeditiously.

(viii) **Serial Offending**

Upon a sentence of 5 or more offences a schedule of facts should be tendered.

(ix) **Section 189 Schedules**

Where an accused person is pleading guilty to a large number of offences, it may be appropriate to limit the indictment to no more than 25 counts, with a schedule of outstanding offences to be taken into account on sentence pursuant to section 189 of the Penalties and Sentences Act 1993; see also section 117 of the Juvenile Justice Act 1992. This is only possible where the accused is represented and agrees to the procedure.

(a) Defence Consent: If the prosecutor elects to proceed by section 189 schedule, the defence must be given a copy of:-

- the draft indictment;
- the draft section 189 schedule;
- evidence establishing the accused's guilt for the schedule offences (if not already supplied); and
- the draft consent form.

The matter can only proceed if the defence have filled out the consent form.

If the accused will plead to only some of the offences on the draft schedule, the prosecutor must consider whether the section 189 procedure is appropriate. If it is, a new draft schedule and form should be forwarded to the defence for approval.

A copy of the defence consent must be delivered to the Court, at least **the day before** sentence.

(b) Limitations of the Schedule: If a section 189 schedule is used, the following instructions apply:-

- the most serious offences must appear on the indictment, not in the schedule;
- generally, all serious indictable offences should be on the indictment, not the schedule: for example: Vougdis (1989) 41 A Crim R 125 at 132; Morgan (1993) 70 A Crim R 368 at 371;
- all dangerous driving offences must be on the indictment, not the schedule;
- the indictment should reflect the full period of offending;

- Supreme Court offences cannot be included in a schedule for the District or Children's Court;
- the schedule must not contain offences of a sexual or violent nature involving a victim under the VOCA legislation; and
- the schedule must not contain summary offences.

(x) **Financial Loss**

The arresting officer should provide ODPP with details of a complainant's financial loss caused by the offence together with supporting evidence.

The ODPP should provide those details to the defence and to the court.

Compensation must have priority over the imposition of a fine: section 48(4) of the Penalties and Sentences Act 1993.

(xi) **Submissions on Penalty**

A prosecutor should not fetter the discretion of the Attorney-General to appeal against the inadequacy of a sentence.

While an undue concession by a crown prosecutor at the sentence hearing is not necessarily fatal to an appeal by the Attorney-General, it is a factor which strongly militates against such appeals. McPherson JA said in R v Tricklebank ex-parte Attorney-General:-

"The sentencing process cannot be expected to operate satisfactorily, in terms of either justice or efficiency, if arguments in support of adopting a particular sentencing option are not advanced at the hearing but deferred until appeal".

Judges have the duty of fixing appropriate sentences. If they are manifestly lenient the error can be corrected on appeal. But if a judge is led into the error by a prosecutor, justice may be denied to the community.

- Concessions for non custodial orders should not be made unless it is a clear case.
- In determining the appropriate range, prosecutors should have regard to the sentencing schedules, the appellate judgments of comparable cases, changes to the maximum penalties and sentencing trends.
- The most recent authorities will offer the most accurate guide.

48. REPORTING OF ADDRESS OF SEXUAL OFFENDERS AGAINST CHILDREN

- (i) At any sentence proceeding in the District or Supreme Court which involves sexual offences against children, the prosecutor must consider whether an application for reporting under section 19(1) of the Criminal Law Amendment Act 1945 should be made.
- (ii) If an order is sought, a draft order should be prepared with the duration of the reporting period left blank.
- (iii) An order cannot be made unless the Court is satisfied a **substantial risk** exists that the offender will, after his or her release, re-offend against a child.
- (iv) In assessing the risk, all relevant circumstances should be considered including:-
 - (a) the nature and circumstances of the present offence;
 - (b) the nature of any past criminal record; and
 - (c) any expert reports.

A reporting order will allow police to know the offender's whereabouts during the reporting period. It will also allow the Attorney-General to release information about the sexual offences to any person with a legitimate interest: section 20. This might include a potential employer or a neighbour.

49. YOUNG SEX OFFENDERS

The Griffith Adolescent Forensic Assessment and Treatment Centre is the joint venture of Griffith University (Schools of Criminology and Criminal Justice and Applied Psychology) and the Department of Communities. Its objective is the rehabilitation of young sexual offenders.

To formulate a program of assessment and treatment, the Centre requires information about the offence. That information would, most conveniently, be available in the form of the statements or transcripts of interviews with complainant(s) and transcripts of interviews with the accused, where available.

The prosecutor should tender clean copies of such documents upon the conviction of a child for sexual offences. This is for all cases: whether the conviction is by plea or by jury.

This then allows the Court to control the sensitive information that may be released. Requests for such information should be directed to the Court rather than the ODPP.

If the Court requires a pre-sentence assessment, the Court can order that copies of relevant statements or interviews be forwarded to the Centre for that purpose.

If after sentence, the Department of Communities makes a referral to the Centre as part of the rehabilitation program for a probation or first release order, it is again appropriate for the Court to determine what material, including Court transcripts, is released.

50. APPEALS AGAINST SENTENCE

In every case the prosecutor must assess the sufficiency of the sentence imposed. The transcript should be ordered and a report promptly provided to the Director if it is considered that either:-

- (i) there are reasonable prospects for an Attorney-General's appeal; or
 - (ii) the case is likely to attract significant public interest.
- The report should be finalised within **2 weeks** of the sentence. It should follow the template, and include the transcript and sentencing remarks (if available), any medical or pre-sentence reports, the criminal history, victim impact statements and a copy of any judgments relied upon.
 - The report should only be forwarded through the relevant Legal Practice Manager.
 - An analysis of the prospects for an Attorney's appeal should have regard to the following principles:-
 - (a) An Attorney-General's appeal is exceptional: it is to establish and maintain adequate standards of punishment and to correct sentences that are so disproportionate to the gravity of the crime as to undermine confidence in the administration of justice;
 - (b) The Court of Appeal will not intervene unless there is:-
 - (i) a material error of fact;
 - (ii) a material error of law; or
 - (iii) the sentence is manifestly inadequate.
 - (c) The sentencing range for a particular offence is a matter on which reasonable minds might differ;
 - (d) For reasons of double jeopardy the Court of Appeal will be reluctant to replace a non custodial sentence with a term of actual imprisonment, particularly if the offender is young or if the proper period of imprisonment is short;

- (e) The Court of Appeal will be reluctant to interfere where the judge was led into error by the prosecutor, or the judge was unassisted by the prosecutor; and
- (f) The issue on appeal in relation to fact finding, will be whether it was reasonably open to the judge to find as he or she did.

51. RE-TRIALS

- (i) Where a trial has ended without verdict, the prosecutor should promptly furnish advice as to whether a re-trial is required.

Relevant factors include:-

- the reason why the trial miscarried (for example: whether the jury was unable to agree or because of a prejudicial outburst by a key witness, etc);
- whether the situation is likely to arise again;
- the attitude of the complainant;
- the seriousness of the offence; and
- the cost of re-trial (to the community and the accused).

The prosecutor must provide a report to the Directorate after a **second hung jury**. A third trial will not be authorised except in special circumstances.

In **other** cases of mistrial, the prosecution should not continue after the **third trial**, unless authorised by the Director or Deputy Director.

- (ii) Where a conviction has been quashed on appeal and a re-trial ordered, the prosecutor on appeal should promptly furnish advice as to whether a re-trial is appropriate or viable.

52. DISTRICT COURT APPEALS

- (i) The ODPP may represent police on appeals to the District Court from a summary hearing involving a prosecution under any of the following:-
 - Bail Act 1980
 - Corrective Services Act 2000
 - Crimes (Confiscation) Act 1989
 - Criminal Code
 - Domestic Violence (Family Protection) Act 1989
 - Drugs Misuse Act 1986
 - Peace and Good Behaviour Act 1982

- Police Powers and Responsibilities Act 2000
 - Regulatory Offences Act 1985
 - Transport Operation (Road Use Management) Act and related legislation
 - Summary Offences Act 2005
 - Weapons Act 1990
- (ii) The ODPP may decline to accept the brief if it involves any issue of constitutional law.
- (iii) The ODPP will not appear in respect of any other District Court Appeals.
- (iv) Costs
- (a) The maximum award for costs under section 232A of the Justices Act is \$1800.
 - (b) No order for costs can be made if the appeal relates to an indictable offence dealt with summarily (see section 232(4) (a) of the Justices Act) or if the relevant charge is under the Drugs Misuse Act 1986 (section 127).
 - (c) A prosecutor cannot settle any agreement as to costs without prior instructions from the Queensland Police Service Solicitor.
- (v) Police Appeals
- (a) A police request for an appeal against a summary hearing must be in writing and forwarded to the ODPP by the Queensland Police Service Solicitor. Direct requests from police officers, including police prosecutors, will not be considered but returned to the Queensland Police Service Solicitor.
 - (b) Such requests must be received at least **5 business days** before the expiration of the 1 calendar month time limit.
 - (c) The ODPP will then consider whether or not the proposed appeal has any merit. If so, the ODPP shall draft a notice of appeal. If not, the ODPP shall advise both the Queensland Police Service Solicitor and the officer initiating the request as to the reasons it was declined.
 - (d) Where a Notice of Appeal has been drafted, the ODPP shall send it to the Queensland Police Service Solicitor who shall then make the necessary arrangements for service of the notice of appeal on both the respondent and the clerk of the court. The ODPP shall also send a blank pro-forma recognisance with the notice of appeal to the Queensland Police Service Solicitor. It will then be the responsibility of the appellant police officer to enter into the recognisance within the applicable time limit.

(e) The appellant police officer shall then, as soon as possible, advise the ODPP in writing of the details of the steps taken as per paragraph (d) above, including:-

- the date and time the notice of appeal was served on the respondent;
- the place where service was effected;
- the method of service, ie: person service (for example, “*by personally handing a copy of the notice of appeal to ...*”); and
- full details of the police officer effecting service including full name, station, rank and contact details.

The purpose of this information is so that the ODPP can attend to the drafting of an affidavit of service which will then be sent to the officer effecting service for execution and return. A copy of the recognisance must also be sent to the ODPP.

53. EXHIBITS

All non-documentary exhibits are to be kept in the custody of police. The ODPP must not retain any dangerous weapons or dangerous drugs.

54. DISPOSAL OF EXHIBITS

(i) A Trial Judge may make an order for:-

- (a) the disposal of exhibits under rule 55 of the Criminal Practice Rules 1999; or
- (b) the delivery of property in possession of the Court under section 685B of the Code.

Rule 55(2) of the Criminal Practice Rules 1999 allows for the return of exhibits to the tendering party in the event that no specific order is made.

(ii) Where exhibits have been tendered, the prosecutor should make an application at the conclusion of proceedings. The usual form of order sought would be the return of the exhibits:-

- (a) upon the determination of any appeal; or
- (b) if no appeal, at the expiration of any appeal period;

to:-

- (a) the rightful owners; or

- (b) the investigating officer (in the case of weapons, dangerous drugs or illegal objects etc).
- (iii) Where the prosecutor is aware of further related property held by police and not tendered as an exhibit, he or she should apply for an order for the delivery of the property to the person lawfully entitled to it.

If the identity of the person lawfully entitled to it is unknown, the prosecutor should seek such order with respect to the property as to the Court seems just.

- (iv) All other “exhibits” not tendered in Court should be returned to police.

55. CONVICTION BASED CONFISCATIONS

- (i) Legal officers preparing matters for trial or sentence are required to address confiscation issues in preparation as per observations form and where confiscation action is appropriate, prepare a draft originating application and draft order and forward copies of those documents to the defence with a covering letter advising that it is proposed to seek confiscation orders against the accused at sentence.
- (ii) If the benefit from the commission of the offence is more than \$5,000, a real property and motor vehicle search is to be obtained by the legal officer preparing the case and the Confiscation Unit is to be consulted regarding the obtaining of a restraining order.
- (iii) Crown Prosecutors (including private counsel briefed by the Director of Public Prosecutions) and legal officers are instructed **to apply** for appropriate confiscation orders **at sentence**.
- (iv) Where a confiscation order is made at sentence, instructing clerks are required to forward a draft order, with the words “order as per draft” written on it, to the Confiscation Unit, as soon as possible.
- (v) The forfeiture provisions of the Criminal Proceeds Confiscation Act 2002 are not to be used as a means of disposing of exhibits. As a general guide, only property approximated to be \$100 or greater is to be so forfeited.
- (vi) When property is not forfeited or returned to the accused, an order for disposal should be sought under section 685B of the Criminal Code or section 428 of the Police Powers and Responsibilities Act 2000 (see also Guideline 48).
- (vii) No application should be brought after the sentence proceeding **unless** the property exceeds:-
 - in the case of a forfeiture order – \$1000

- in the case of a pecuniary penalty – \$2000
 - in the case of a restraining order – \$5000
- (viii) In the case of a restraining order, any **undertaking** as to costs or damages should be authorised by the Legal Practice Manager or Principal Crown Prosecutor. Where the property is income producing or there is a real risk that liability will be incurred, the commencement of the proceeding and the giving of the undertaking must be approved by the Director or Deputy Director.
- (ix) Once a restraining order has been obtained, the **Confiscations Unit** must be included in any negotiations regarding confiscations orders.
- (x) Negotiations should proceed on the understanding that there is a reversal of onus in respect of restrained property that has been acquired within 6 years of a serious criminal offence (maximum of 5 years or more imprisonment).
- (xi) Similarly, under the Criminal Proceeds Confiscations Act 2002, property will be automatically forfeited 6 months after conviction for a serious drug offence unless the respondent demonstrates that property was lawfully acquired.

56. NON-CONVICTION BASED CONFISCATIONS – Chapter 2 Criminal Proceeds Confiscations Act 2002

- (i) Where substantial assets are identified, the Confiscations Unit should be advised.
- (ii) The ODPP is the solicitor on the record for the CMC. Instructions should therefore be obtained from the CMC throughout the course of the proceedings regarding any step in the action.
- (iii) No matter is to be settled or finalised without first obtaining **instructions from the CMC**. No undertaking in support of a restraining order should be given without instructions.
- (iv) Where possible, no more than one confiscation matter per day should be set down on the chamber list.
- (v) Examinations are to be conducted before a Registrar of the Supreme Court. They are to be set down on Monday and Tuesday afternoons. If they will take longer than 2 hours, a letter should be sent to the Deputy Registrar advising of the requirement to set the examination down for an extended date.
- (vi) Directions as to the conduct of the matter are to be agreed upon between the parties, where possible.
- (vii) Matters are not to be set down for trial unless they are ready to proceed.

- (viii) All telephone conversations and attendances should be file noted.
- (ix) Details of orders made and applications filed should be entered into the confiscations system as they occur.

57. LISTING PROCEDURES AND APPLICATIONS FOR INVESTIGATION

It is undesirable that a matter should be listed for hearing before a Judge who has previously heard an application to authorise any investigative step in the case, such as an application for a warrant under Part 4 of the Police Powers and Responsibilities Act 2000.

- (i) The officer in charge of an investigation must forward to the ODPP with the brief of evidence:-
 - a note to the prosecutor setting out the nature of any application, when it was made and the name of the Judge who heard it; and
 - a copy of any warrant or authority, if obtained.
- (ii) The ODPP should submit to the listing Judge that it would not be suitable to list the trial before the Judge who heard the application.
- (iii) Investigators should be mindful of the fact that there is only one Supreme Court Judge resident in each of Cairns, Townsville and Rockhampton. Where any resulting trial is likely to be held in one of those Courts, the investigative application should be made to a Judge in Brisbane or in a district not served by the Judge in whose Court the case might be tried.

58. MEDIA

- (i) Public servants are not permitted to make public comment in their professional capacity without approval from the Director-General of the Department.
- (ii) Section 24 A of the Director of Public Prosecutions Act imposes a duty of confidentiality.
- (iii) There is no prohibition against confirming facts already on the public record. Indeed the principle of open justice and the desirability of accurate reporting would support this. But there is no obligation to provide information to the media.
- (iv) Staff may confirm:-
 - information given in open court; or

- the terms of charges on an indictment that has been presented (but not the name of any protected complainant).
- (v) Matters which **should not be discussed** with the media, include:-
- the likely outcome of proceedings;
 - the intended approach of the prosecution (for example: discontinuance, ex-officio indictment, appeal/reference);
 - the correctness or otherwise of any judicial decision;
 - any part of the trial which was conducted in the absence of the jury;
 - the name or identifying particulars of any juvenile offender unless authorised: see Juvenile Justice Act 1992;
 - the name or identifying particulars of a complainant of a sexual offence;
 - the contact details for any victim or lay witness;
 - any details which would breach the protection given to informants under section 13A of the Penalties and Sentences Act 1993; and
 - details of any person who carries some personal risk: for example: informants: section 120 of the Drug Misuse Act 1986.
- (vi) The media should not be given copies or access to tapes of any recorded interviews, re-enactments, demonstrations or identifications.
- (vii) The media should not be given any medical, psychological or psychiatric reports on offenders or victims.

59. RELEASE OF DEPOSITIONS

The ODPP is the custodian of depositions. A request to access those depositions by anyone not directly involved in the proceedings must be by way of a Right to Information application. This is because of the potentially sensitive nature of the material which may include things such as protected evidence from victims, investigative methodology and the names of informants.

The Right to Information model is designed to strike a balance between the interests of the applicant seeking the release of the documents and any contrary public interest. It provides for transparency of process and the right of external review. It also gives legislative protection to the decision maker who releases the documents

60. LEGISLATIVE RESTRICTIONS ON PUBLICATION

The Criminal Law (Sexual Offences) Act 1978 (CLSOA) prohibits publication of the name of the accused in two ways – one is for the protection of the accused and the other is for the protection of the complainant.

Other prohibitions on naming offenders are contained in the Juvenile Justice Act 1992 (JJA) and the Child Protection Act 1999 (CPA).

ODPP staff should be aware of the statutory restrictions on publication.

(i) Protection for the Accused

- Persons accused of a prescribed sexual offence (ie: **rape, attempted rape, assault with intent to commit rape and sexual assault**) cannot have their name or identifying details published until after being committed. This protection **does not apply to sexual offences generally**. Persons charged with incest, indecent dealing or sodomy are **not protected** unless they fall within the protection afforded to complainants.
- Specifically, under section 7 of the CLSOA, any report made or published concerning an examination of witnesses (ie: the committal) in relation to a **prescribed sexual offence**, other than an exempted report (see section 8) shall not reveal the name, address, school or place of employment of a defendant or any other particular likely to lead to the identification of the defendant unless the Magistrate conducting the committal “for good and sufficient reason shown” orders to the contrary.

The protection ends once the person is committed for trial.

- An accused is also protected under section 10(3) of the Act, which prohibits the making of a statement or representation revealing identifying particulars (other than in a report concerning a committal or trial), **before the defendant is committed for trial** upon the charge. There are some exceptions, set out in section 11.
- **Juvenile accused** are protected from being identified by section 62 of the JJA. No “identifying matter” (name, address, school, or place of employment or any other particular likely to lead to the identification of the child charged, or any photo or other visual representation of the child or of any person that is likely to identify the child charged) can be published about a criminal proceeding. “Criminal proceeding” should be taken to include the process of a person being charged.

(ii) Protection for the Complainant

- Accused persons may also benefit from the protection afforded to complainants in sexual offences, which protection extends indefinitely.

This will usually occur when there is a relationship between the accused and the complainant.

- Section 6 of the CLSOA prohibits the making or publishing of any report concerning a committal or trial, other than an exempted report, which reveals the name, address, school or place of employment of a complainant, **or any other particular likely to lead to the identification of the complainant**, unless the Court “for good and sufficient reason shown” orders to the contrary.
- Section 10 protects the complainant from publication at any other time, even if no-one is actually charged with an offence.

This protection **is not restricted to prescribed sexual offences**.

- Child witnesses **in any proceeding** in a Court are also protected under section 193 of the CPA.
- For offences of a sexual nature, if a child is a witness or the complainant, a report of the proceeding must not disclose prohibited matter relating to the child, without the Court’s express authorisation. “Prohibited matter” means the child’s name, address, school or place of employment, **or other particular likely to lead to the child’s identification**, or any photo or film of the child or of any person that is likely to lead to the child’s identification.
- For any other offences, the Court may order that any report not include any prohibited matter relating to a child witness or complainant.
- The accused may benefit from these provisions if identifying the adult would inevitably identify the child.

61. CONFIDENTIALITY

ODPP has obligations in respect of confidentiality (section 24A of the Director of Public Prosecutions Act 1994) and privacy (Queensland Government policy).

Information about a case **other than what is on the public record** should not be released without authority from either the Director or Deputy Director subject to the following exceptions:-

- (i) the release of information to **complainants** to meet VOCA obligations, as set out in guidelines;
- (ii) the release of information to **police** as required or investigative, prosecution and consultative processes; and
- (iii) the duty of full and early disclosure of the prosecution case to the **defence**.

This means that any request from individuals, other agencies or the media for information which is not a matter of public record should be referred to the Directorate.

Internal memoranda should not be released in any circumstances without prior approval.

Further information on privacy can be accessed from the Department's website www.justice.qld.gov.au or contact the Privacy Unit on 07 3247 5474.

Director's Guidelines – current as at 30 June 2023

A handwritten signature in blue ink, appearing to be 'P. McCarthy', written in a cursive style.

Philip McCarthy KC
ACTING DIRECTOR OF PUBLIC PROSECUTIONS

Independence
Integrity
Professionalism
Fairness and Justness
Respect and Inclusivity

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