



ANNUAL REPORT 2023 | 2024

Office of the Director of Public Prosecutions

Queensland

Independence
Integrity
Professionalism
Fairness and Justness
Respect and Inclusivity





Introduction

Acknowledgement of country

The Office of the Director of Public Prosecutions recognises and acknowledges Aboriginal and Torres Strait Islander peoples as the First Peoples of Queensland and as the Traditional Custodians of the Queensland's precious land and waters. We pay our respect to their Elders past, present and emerging.

We recognise and celebrate the unique and continuing positions of Aboriginal and Torres Strait Islander peoples in Australia's history, culture and future, and acknowledge their ongoing strength, resilience and wisdom. We are working to translate this recognition into fair, safe and inclusive practices, policies and services for Aboriginal and Torres Strait Islander peoples.

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 2023 to 30 June 2024. The Director's Guidelines as at 30 June 2024 are also included as required by section 11(2)(b) of the *Director of Public Prosecutions Act 1984* (Qld).

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Director's Overview

I was appointed as the seventh Director of the Office of Public Prosecutions on 19 February 2024 following the appointment of Carl Heaton KC as a Judge of the District Court in August of 2023. I would like to acknowledge the work of Phillip McCarthy KC as the acting Director following Judge Heaton's appointment, and his support of me in that role, and after my formal appointment.

I commenced in the Office in 1988 and have served under each of the previous six Directors in various roles, which have culminated in my latest appointment. I am well versed in not only the responsibilities of the position but also the challenges we face, individually and collectively, in serving the people of Queensland.

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 and Thursday Island, as far west as Mt Isa and Cunnamulla, and south to the Gold Coast and Goondiwindi. We have nine Offices that service 45 court locations across Queensland with staff spending approximately 3000 days on court circuit, away from their home base. Staff of the Office play an important part in the criminal justice system in this State and appear on behalf of the Crown in a limited number of Magistrates Courts, the Childrens Court, the District Court, the Supreme Court, the Mental Health Court, the Court of Appeal and High Court of Australia.

The number of offences being received by the Office to prosecute has been trending upwards following the post COVID-19 pandemic adjustment in 2020/2021. The appointment of three additional District Court Judges, changes in court practices, particularly in relation to victims, and delays in the analysis of DNA have significantly impacted upon the workload of legal and administrative staff of the Office. The ever-increasing creep of technology, particularly in relation to CCTV footage and mobile phone and social media data, has added to the complexity of both the investigation and prosecution of matters and to the burden of disclosure to the defendant material places upon the Queensland Police Service and this Office.

Efforts by the Courts to achieve the efficient disposition of matters and a reduction in backlogs has had an obvious impact upon this Office and its staff. This has included extra sitting weeks, notably in the Mental Health Court,

and the requirement to comply with additional Practice Directions in relation to sentencing and trials in the Supreme Court. That will no doubt be exacerbated further by the legislative reforms being made in the wake of the recommendations of the *Women's Justice and Safety Taskforce* in relation to the prosecution of sexual offences.

Active involvement by the Office in the Magistrates Courts in, Brisbane, Ipswich and Southport have resulted in some limited reduction in matters proceeding to the higher courts and the earlier resolution of matters. The vast majority of matters still remain the responsibility of the Queensland Police Service Police Prosecution Corp. While it may be argued that 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 given the size of the State.

The ODPP presented 5818 indictments in the financial year, a slight decrease on the previous year, which was itself a rebound from the COVID-19 hiatus and is reflective of an upward trend. There has 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 the extra work already absorbed by this Office, without additional staffing, in relation to amendments to the *Evidence Act 1977* in relation to protected counselling notes and the intermediaries' pilot to assist vulnerable children to give evidence.

82% of matters dealt with during the period have proceeded by way of a plea of guilty, which shows the sound decision making undertaken by staff in the Office and their willingness to engage with defence counsel and reduce the impact on victims by the effective and early resolution of matters where possible. The 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.

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 fairness 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.

Our 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. The Office however has a significant turnover of staff due to the amount and nature of the work, and the high-pressure environment in which staff are required to function and their level of remuneration.

Contributions to the criminal justice system

The ODPP is called upon to contribute 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 with Philip McCarthy KC as a standing member
- 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.

Conclusion

The people of Queensland are well served by a committed team of lawyers and administrative staff in this Office. Their commitment and professionalism is evidenced in the long hours that they work, the resilience and dedication they demonstrate, and the high quality prosecution services they deliver. It is my intention as Director to place them in the best position to do their job, to manage the negative impact it has upon them, and provide them with professional development necessary to meet and maintain the high standards expected of them.

Todd Fuller KC
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 Values

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



Respect and Inclusivity



Professionalism



Independence



Integrity



Fairness and Justness

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 Purpose

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

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 and 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 and 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 and work management
- innovative, evergreen, people-centred and interoperable systems prosecution

Director of Public Prosecutions



Todd Fuller KC

Appointed February 2024

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, then was converted to Queens Council on 6 June 2013 and to Kings Council following his majesties ascension to the throne. 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. Mr Fuller KC was appointed as the Director of Public Prosecutions in February 2024.

Management



**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 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.

Significant Appointments

Judge Carl Heaton KC

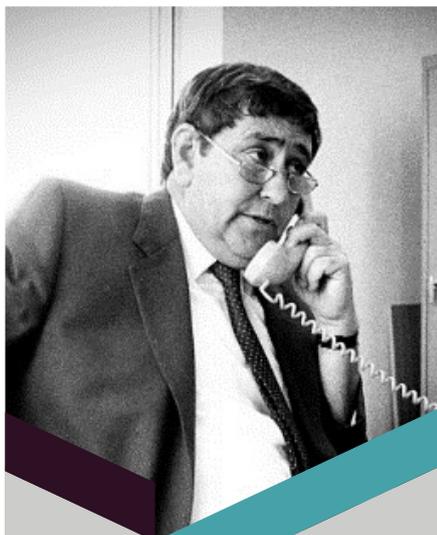
Carl Heaton KC commenced working in the Queensland Office of the Director of Public Prosecutions in 1989. He obtained his Bachelor of Laws degree from the Queensland University of Technology in 1989. Mr Heaton was appointed Senior Counsel in and for the State of Queensland in 2010. In his time with the 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.

In September of 2023 Carl Heaton KC was appointed to be a Judge of the Queensland District Court.





Former 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. 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 interdepartmental 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

His Honour Carl Heaton KC commenced working in the Queensland Office of the Director of Public Prosecutions in 1990. He obtained his Bachelor of Laws degree from the Queensland University of Technology in 1989. Carl 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. 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. In September for 2023 Mr Heaton KC was appointed as a Queensland District Court Judge.

June 2020 - September 2023

Organisational Structure

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Make positive differences to people's lives and create a safer community



Locations of the ODPP



Brisbane Chambers

Meanjin
Level 5 State Law Building
50 Ann Street
BRISBANE QLD 4001
PO Box 2403
P (07) 3035 1122



Beenleigh Chambers

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



Cairns Chambers

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



Ipswich Chambers

Tulmun
Level 2 Ipswich Courthouse
43 Ellenborough Street
IPSWICH QLD 4305
PO Box 27
P (07) 4370 7419



Maroochydore Chambers

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



Rockhampton Chambers

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



Southport Chambers

Bundjalung
Level 1 Southport Court House
Hinze Street
SOUTHPORT QLD 4215
PO Box 4215
P (07) 5675 7000



Toowoomba Chambers

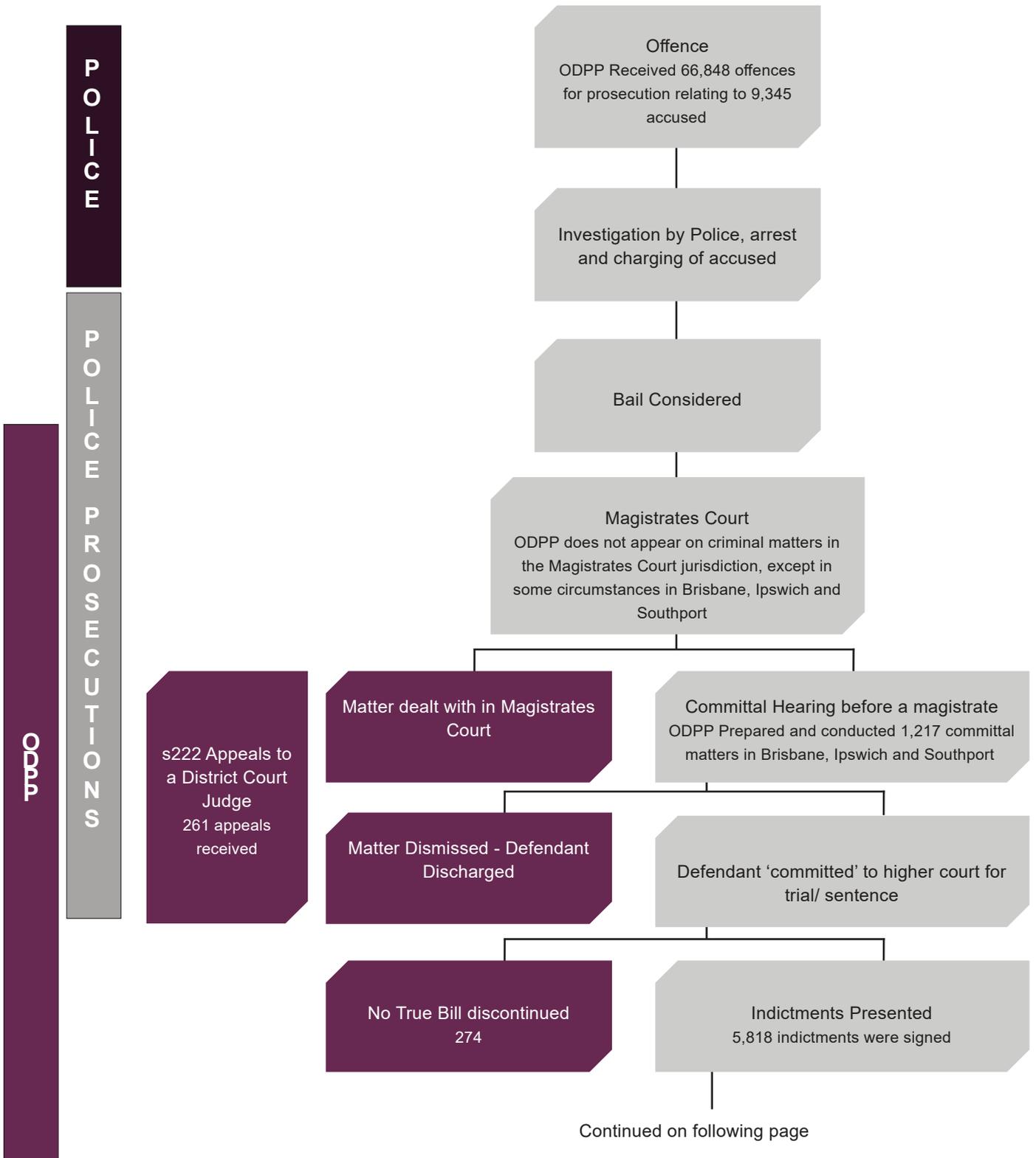
Barunggam
Level 1, 162 Hume Street
TOOWOOMBA QLD 4350
PO Box 4350
P (07) 4591 4758

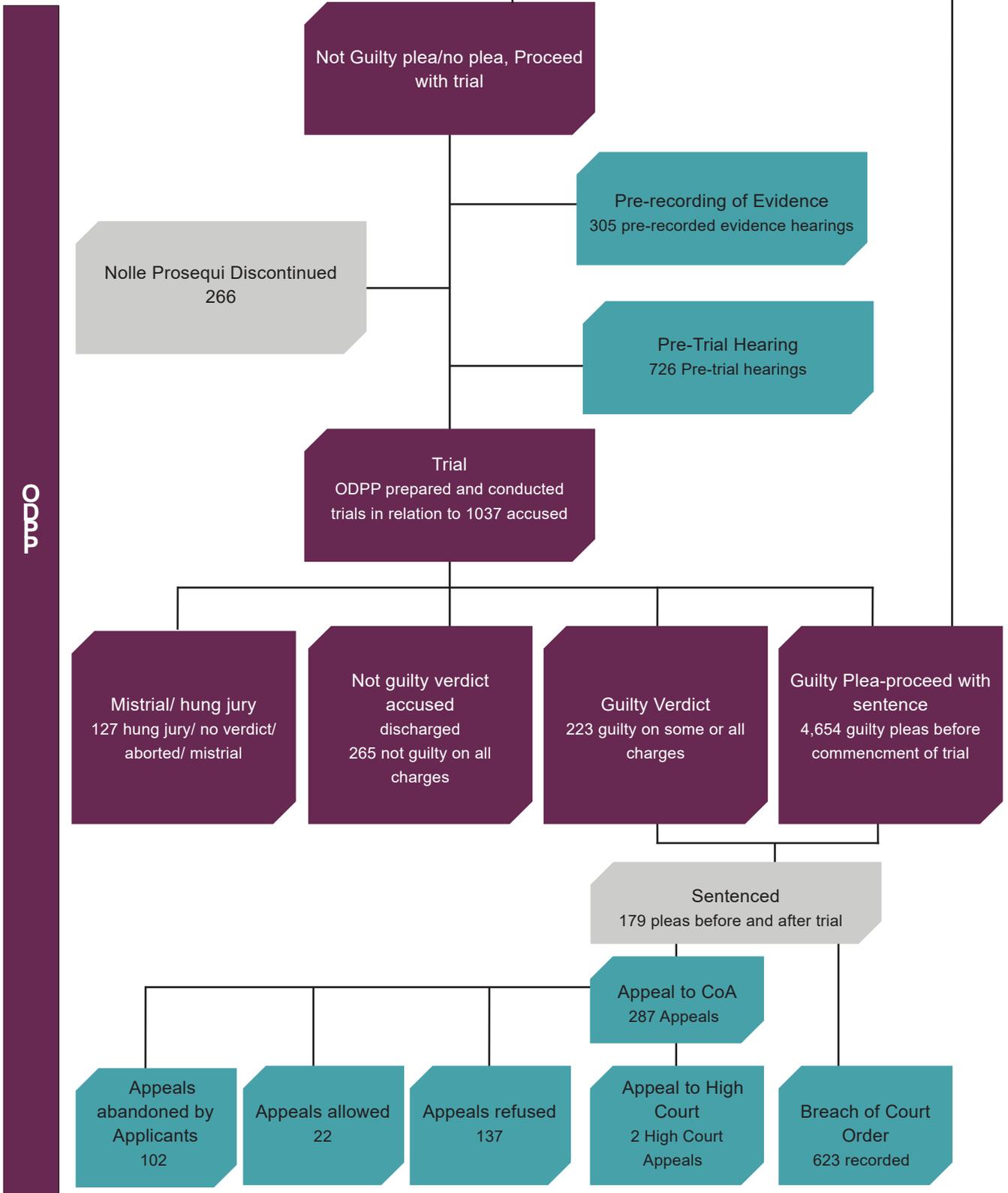


Townsville Chambers

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

Court process flowchart





ODPD

Financial Performance

Income Statement (at close of Financial Period 16)

Revenue	Amount (\$)
Service Revenue :	70,847,000.00
Own Sourced Revenue (Fees and	678,000.00
Special Programs (Included in	
Service Revenue):	
Phase 2 ICT Strategy Implementation	3,035,000.00
Program (ISIP 2):	
Response to Women's Safety Justice	1,083,000.00
Taskforce (WSJT - Report 2:	
Forensic DNA Commission of Inquiry:	760,000.00
Total Revenue:	71,525,000.00

Expenditure	
Employee Related Expenses (1):	56,919,000.00
Depreciation and Amortisation:	694,000.00
Bad & Impaired Debts	1,000.00
Supplies and Services Total:	13,911,000.00
Property Tenancy and Maintenance:	5,504,000.00
Contractors IT Projects (2):	2,669,000.00
Witness Costs* (3):	945,000.00
Legal Barrister Fees (Brief-Outs):	1,097,000.00
Staff Travel*:	1,135,000.00
Printing, Postage and Stationery:	961,000.00
Plant and Equipment:	399,000.00
Subscriptions (Legal Databases):	253,000.00
Document Destruction & Archiving:	168,000.00
IT Services and Support:	284,000.00
Telecommunications:	176,000.00
Other General Supplies and Services:	107,000.00
Motor Vehicles:	69,000.00
Transcription Charges:	144,000.00
Total Expenditure	71,525,000.00

(1) Expenses include Wages and Salaries, Employer Superannuation, Long Service Leave Levy, Workers Compensation Premium, Fringe Benefits Tax, Training, and Study and Research Assistance Scheme Payments.

(2) Predominantly relates to work performed on Phase 2 ICT Strategy Implementation Program (ISIP 2)

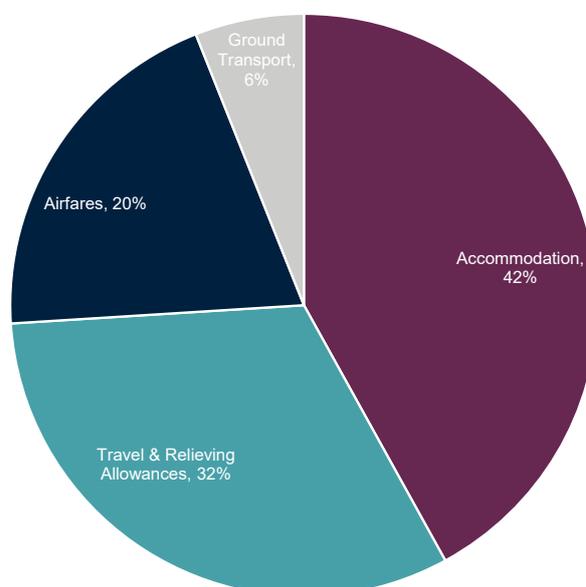
(3) Expenses Include Witness Travel and Allowances, Expert Fees and Reports, Interpreter Fees, and Videolink Costs.

Staff Travel

The below graph is a breakdown of staff travel costs incurred in the reporting period (as shown in the 'Income Statement'). It should be noted that staff travel is predominantly for court purposes and court events.

Percentage of Staff travel expenses incurred by category

1 July 2023 - 30 June 2024



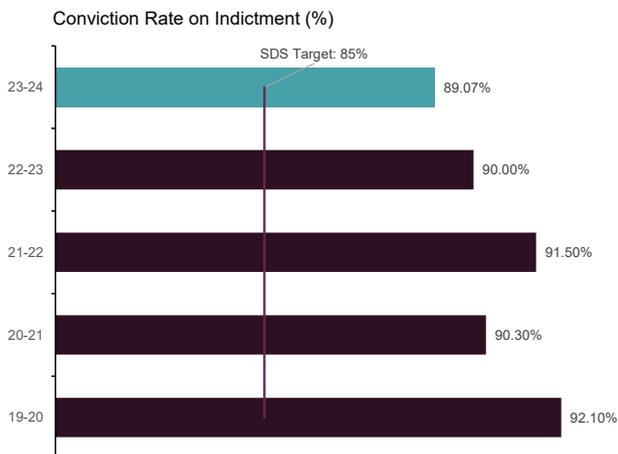
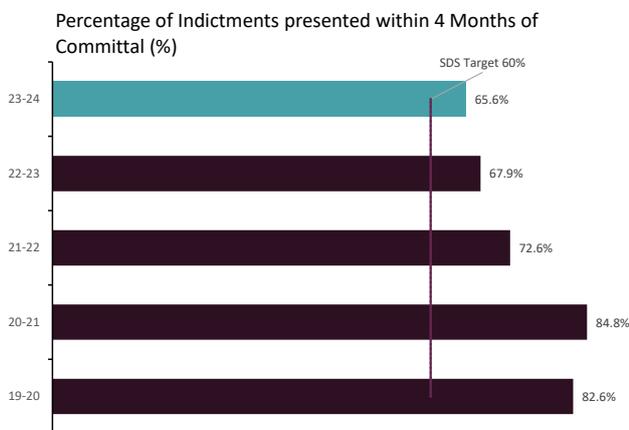
Witness travel and associated costs

The table below shows witness costs by category of cost and traveller type expended during the reporting period (as shown in the 'Income Statement').

Witness Travel	%
Domestic Air Travel	29.00%
Accommodation and meals	21.00%
Expert fees and Reports	18.00%
Videolink and Interpreters	11.00%
Witness Attendance	8.00%
Own Transport	6.00%
Overseas Air Travel	3.00%
Ground Transport	3.14%
Flight Booking Fees	0.10%

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.



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 2023-24 financial year by 5.6%, signing 65.6% 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 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 2023-24 financial year, achieving a conviction rate of 89.07%. The ODPP has maintained a high conviction rate over the last five reporting periods, with an average of 90.6%. 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 2023-24 financial year, the ODPP updated the SDS efficiency measure of indictments signed per Crown Prosecutor; previously measured per quarter, this metric is measured over a financial year. In the 2023-24 financial year, the Crown Prosecutors of the ODPP signed an average of 56.17 indictments, reaching its target of 56 indictments.

The ODPP will strive to continue meeting its SDS targets and commitments to the criminal justice system.

Incoming Offences by category

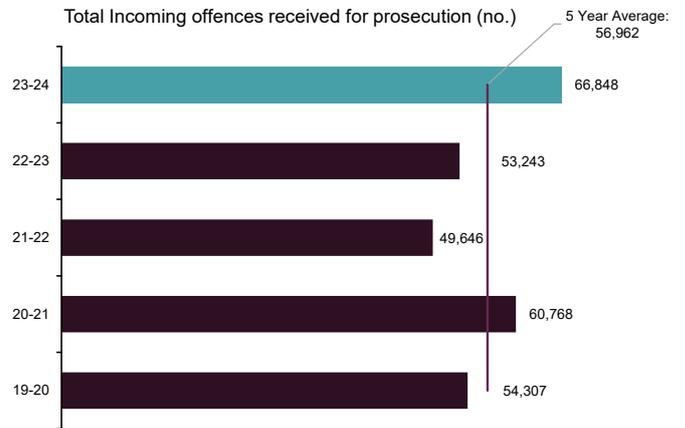
Incoming offences are recorded against established categories determined by the nature of the offence. This table shows the number of new charges received per category and chamber for the financial year of 2023-24.

OFFENCE		Butler	Given	Griffith	Haxton	Miller	Sheehy	Sturgess	Wakefield	Brisbane	Beenleigh	Cairns	Ipswich	Maroochy	Rockhampton	Southport	Toowoomba	Townsville	Directorate	23-24
Homicide	Sum of Murder	4	8	5	4	11	1	15	7	55	1	7	10	4	5		6	2	44	134
	Sum of Attempted murder	4	9	5	4	4	3	8	23	60		6	3				7	3	30	109
	Sum of Manslaughter				1				1	2	1	2	2	1	3		2	2	15	30
	Sum of Dangerous op. c/death	1	1	4	2	4	3	3		18	2	4	4	2	2		9	3	3	47
	Sum of Striking causing death	2				1	1			4									3	7
	Sum of OTHER CH 28 (ss.307-314)	1	1			1		2		5	3							1		7
Sexual Offences	Sum of Rape	93	142	80	112	99	138	169	90	923	206	198	322	75	77	192	130	127	547	2,797
	Sum of Sexual assault	28	38	43	18	47	34	22	53	283	65	38	52	45	11	95	27	38	108	762
	Sum of Unlawful carnal knowledge	19	8		10	26	17	10	3	93	1	12	13	2	12	22	7	7	6	175
	Sum of Unlawful sodomy	3				2			1	6		1				6			1	14
	Sum of Indecent treatment	165	74	99	233	149	239	151	212	1322	317	344	458	124	226	523	334	173	372	4,193
	Sum of CEM (incl. Cth Code)	91	51	39	124	55	145	33	59	597	38	47	108	22	39	89	156	54	167	1,317
Sum of OTHER CH 22 (ss.211-229B)	41	21	24	26	31	48	39	13	243	34	85	35	25	29	344	135	56	168	1,154	
Violence and Offences Endangering Life	Sum of Malicious act w/intent	10	4	9	6	14	13	15	18	89	12	7	36	5	7	4	4	6	65	235
	Sum of Grievous bodily harm	19	21	12	28	16	18	14	28	156	21	34	47	11	19	46	10	33	51	428
	Sum of Dangerous op. (excl. c/death)	16	14	5	9	20	14	32	11	121	15	18	23	18	12	11	17	26	39	300
	Sum of Torture	6	5	3	6	6	12	6	12	56	20	11	22	3	2	9	8	16	19	166
	Sum of Wounding	9	11	11	8	15	14	53	32	153	10	66	18	3	4	16	9	34	25	338
	Sum of Assaults	173	189	116	160	221	179	259	193	1490	222	435	587	152	112	171	198	362	776	4,505
Property Offences	Sum of Choking, suffocation, strangulation	60	58	40	52	68	57	52	32	419	72	153	163	56	53	67	58	124	194	1,359
	Sum of OTHER CH 29 (ss.315-334)	16	22	35	10	3	9	166	17	278	11	8	43	6	8	7	7	8	28	404
	Sum of Robbery	97	151	89	109	136	128	179	87	976	157	133	278	76	75	149	80	148	151	2,223
	Sum of Extortion	3	6	4	6	11	2		12	44	6	6	12	2	3	12	3		16	104
	Sum of Burglary, Enter/being in prem	90	191	80	97	187	126	271	113	1155	225	61	180	79	47	84	136	210	403	2,580
	Sum of UEMV for CIO	4	5	1	3	13	4	9	10	49	8		2	13	3	3	5	7	9	99
Other Offences in the Criminal Code	Sum of Stealing/receiving	120	134	38	56	161	56	136	173	874	46	25	86	55	19	27	45	64	655	1,896
	Sum of UUMV and UPMV	69	121	31	34	107	92	118	77	649	80	39	93	23	32	33	82	108	234	1,373
	Sum of Fraud	149	71	41	55	59	24	205	55	659	20	42	61	18	4	232	17	21	506	1,580
	Sum of Forgery and uttering	33	20	11	21	3	2	121	9	220	2		21	27		9		8	76	363
	Sum of Arson and wilful damage	74	93	24	38	67	78	81	95	550	59	77	116	74	27	45	67	69	219	1,303
	Sum of OTHER PT 6 (ss. 390-553)	41	61	46	15	12	85	278	37	575	10	17	43	12	2	3	12	5	494	1,173
Drug Offences	Sum of Breaches of the peace	9	26		13	25	14	6	4	97	13	26	57	8	7	13	1	31	70	323
	Sum of Corruption, abuse of office		1	3		2				6		1				1			1	9
	Sum of Administration of justice	3	10	6	1	7	3	6	5	41	6	25	21	3	5	7	2	9	45	164
	Sum of Prostitution		1							1	3									4
	Sum of Offences against liberty	17	47	6	28	23	11	49	19	200	35	31	84	8	2	41	37	20	80	538
	Sum of Unlawful stalking	18	22	18	30	22	34	28	32	204	26	35	100	24	18	28	22	23	149	629
All Other Offences	Sum of Marriage, parental rights/duties	1				3			4	1		13	1	2	3	2		6	32	
	Sum of OTHER (Criminal Code Qld)	18	48	57	16	30	2	82	34	287		2	15	23		8	40	218	593	
	Sum of OTHER (Criminal Code Cth)	40	11	19	4	35	4	23	28	164	3	3	25	8	5		13	295	122	638
	Sum of Trafficking DD	53	95	41	62	93	33	63	47	487	16	24	55	20	40	7	23	77	139	888
	Sum of Producing DD	41	20	11	16	25	26	11	7	157	11	3	26	12	7	15	9	14	54	308
	Sum of Supplying DD	644	1090	741	701	1221	673	1079	529	6678	127	322	1841	475	1021	233	2695	1350	1783	16,525
All Other Offences	Sum of Possessing DD	294	320	168	322	359	309	410	242	2424	60	130	306	64	184	68	131	278	967	4,612
	Sum of OTHER (Drugs Misuse Act)	226	196	219	219	272	170	293	139	1734	29	33	285	45	79	69	37	156	898	3,365
	Sum of SUMMARY OFFENCES ACT	21	9	5	30	21	7	49	43	185		2	14		4	3		2	141	351
	Sum of WEAPONS ACT/REG.	44	54	61	66	54	26	43	56	404	18	3	102	15	14	10	33	18	363	980
All Other Offences	Sum of BAIL ACT	24	14	11	23	41	16	166	88	383		19		11		18	11	522	964	
	Sum of TORUM ACT	17	10	12	16	55		24	41	175		48		4	19	16	11	411	684	

Offence Trends

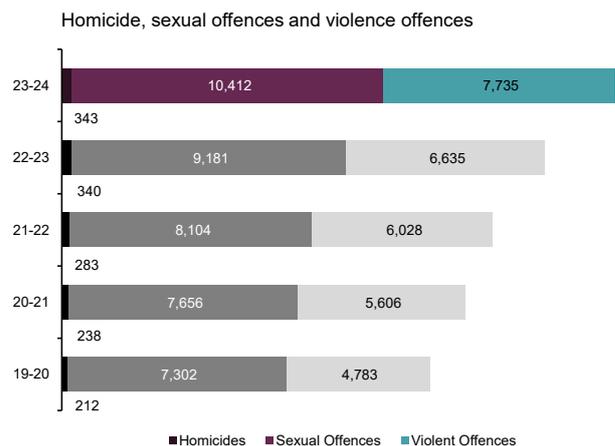
Incoming offences

The ODPP received 66,848 charges for consideration during the reporting period. This is an increase of 25.5% from the previous financial year, and is 14.8% above the five-year average.



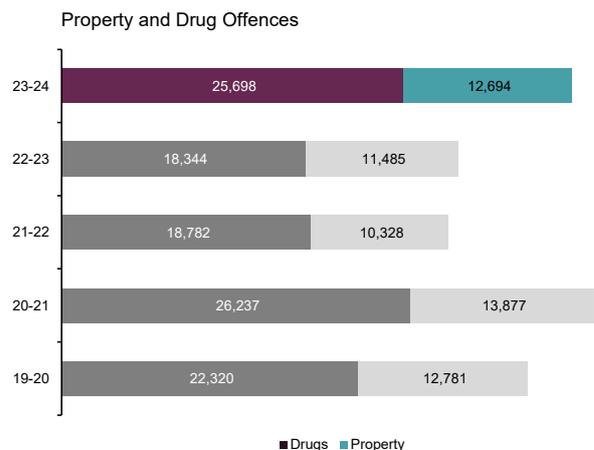
Incoming violent offences

The ODPP observed an increase in the number of homicide offences received during the reporting period. The 2023-24 period saw 343 homicide charges, which is an increase of 0.9% from the previous financial year's figure of 340. This is well above the five-year average of 281.4. Similar increases can be observed in violent offences and sexual offences. The number of violent offences received has increased by 16.6% in the past financial year, and the number of sexual offences received has increased by 13.4%. 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 42.5%.



Incoming property and drug offences

The number of drug offences at 25,698 increased substantially this financial year by 40.1%, rising just above the five-year average. The number of property offences was 12,694, which increased by 10.5%, and also sits just above the five year average. When these trends are viewed holistically over the past five years, they continue to indicate a shift in the type of offences referred to the ODPP for prosecution. While the proportion of 'volume crimes' involving drug and property offences has started to increase in this reporting period, the proportion of violent, sexual, and homicide offences has risen at a significant rate over the five-year period. This effect is again most notable with the increase in the proportion of sexual offences referred for prosecution.

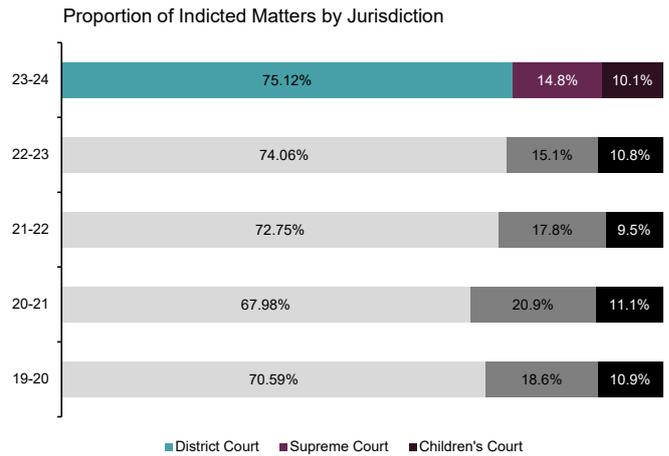
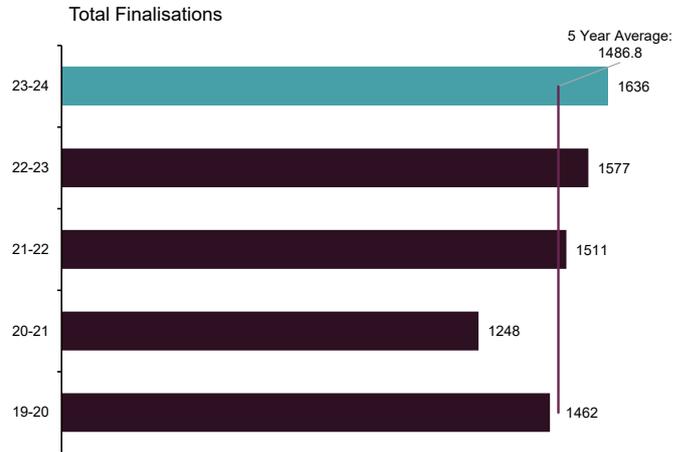


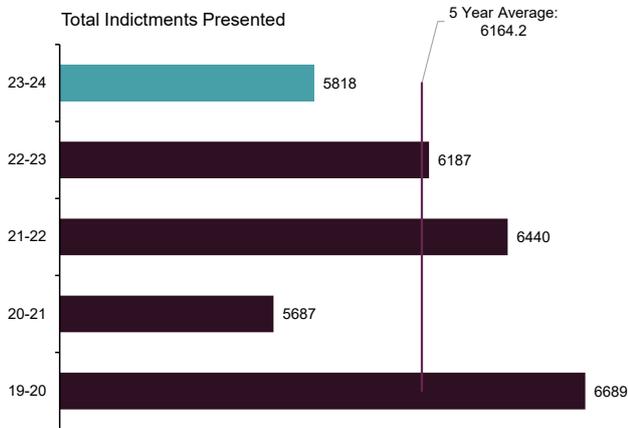
Preparation of matters

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 1,636 summary matters during the reporting period.

- **1116 matters committed for trial**
- **239 summary pleas of guilty**
- **117 defendants discharged on all charges or had charges withdrawn**
- **4 summary trials**
- **101 committed for sentence**
- **59 matters returned to police prosecutions**

The indicted matters in the current reporting period consisted of 4,370 District Court matters, 860 Supreme Court matters and 587 Children's Court of Queensland matters.

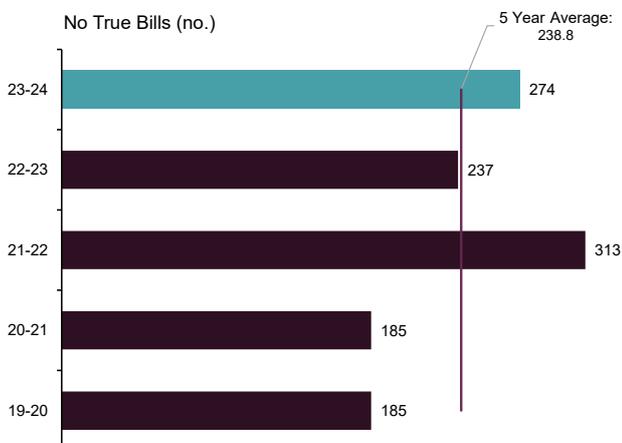
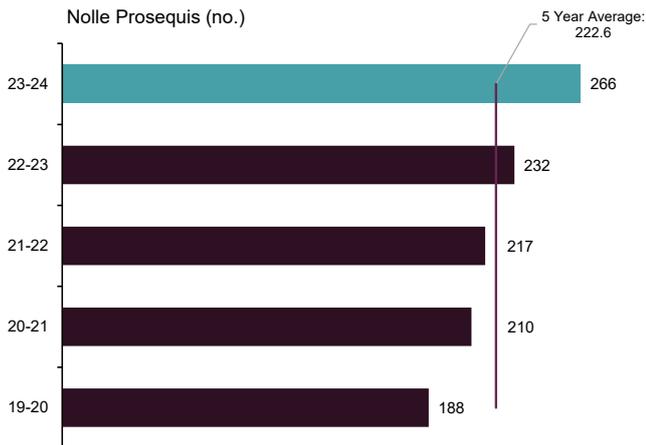




Presentation of Indictments

The ODPP presented 5,818 indictments to the Supreme, District and Children's Court of Queensland in the 2023-24 financial year. This is a decrease of 5.9% from the last reporting period.

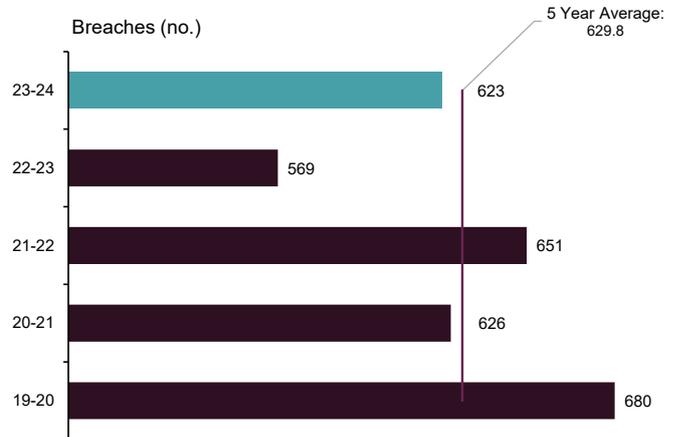
274 committed matters were not presented for indictment (referred to as 'no true bill'). A further 266 committed matters were discontinued after an indictment was presented (referred to as 'nolle prosequi').



Hearing Appearances

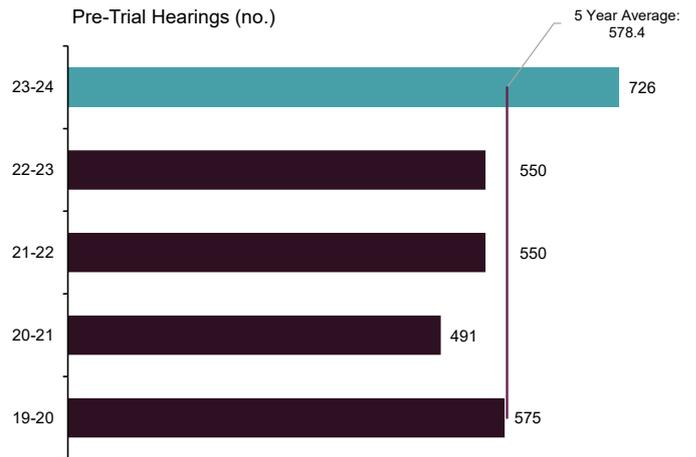
Breach proceedings

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 623 breach hearings in 2023-24, a 2.5% increase from 2022-2023.



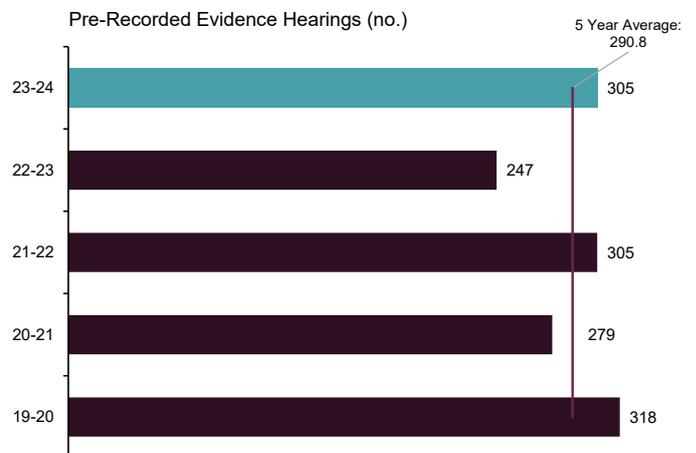
Pre-trial hearings

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 726 pre-trial hearings in 2023-24, a substantial increase of 21% from 2022-23. This figure also remains above the five-year average of 585.



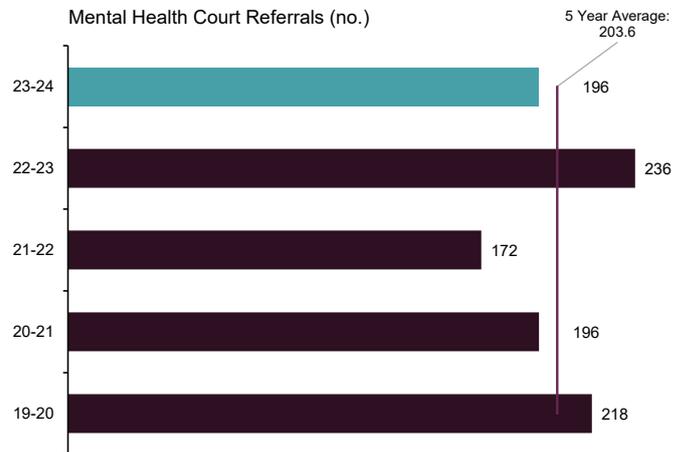
Pre-recorded evidence hearings

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 305 pre-recorded evidence hearings in 2023-24, a 5.9% increase from the 288 recorded in 2022-23.



Mental Health Act proceedings

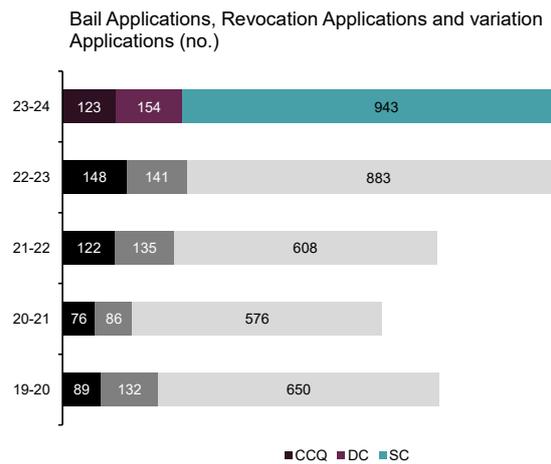
Section 110 of the *Mental Health Act 2016* (Qld) allows the matter of a person’s mental state in relation to a serious offence to be referred to the Mental Health Court. The ODPP is a party to these proceedings. The purpose of referrals is to determine whether a person who is alleged to have committed 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 196 references to the Mental Health Court during the 2023-24 reporting period.



Bail Hearings

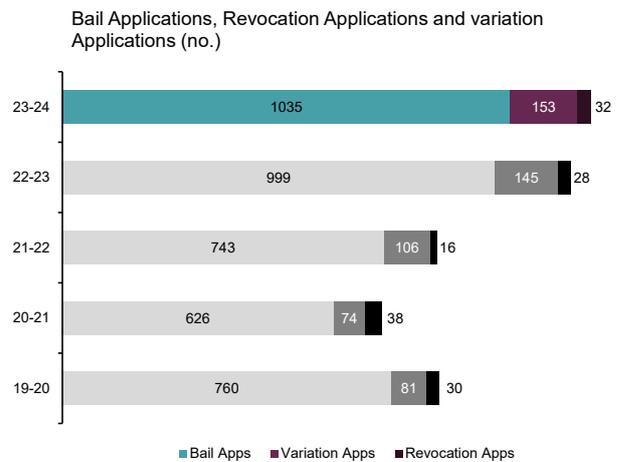
The ODPP is the respondent to all bail applications in the District, Supreme and Childrens Court of Queensland, as well as for matters of which the ODPP retains carriage in the Magistrates Court. The ODPP may also apply to vary or revoke bail where appropriate.

In 2023-24, the ODPP appeared on 1,227 bail hearings, a slight increase of 4.7% from the previous financial year, yet exceeding the five year average of 923.



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 131 instances in the reporting period where the ODPP has participated in the scheme by making referrals.

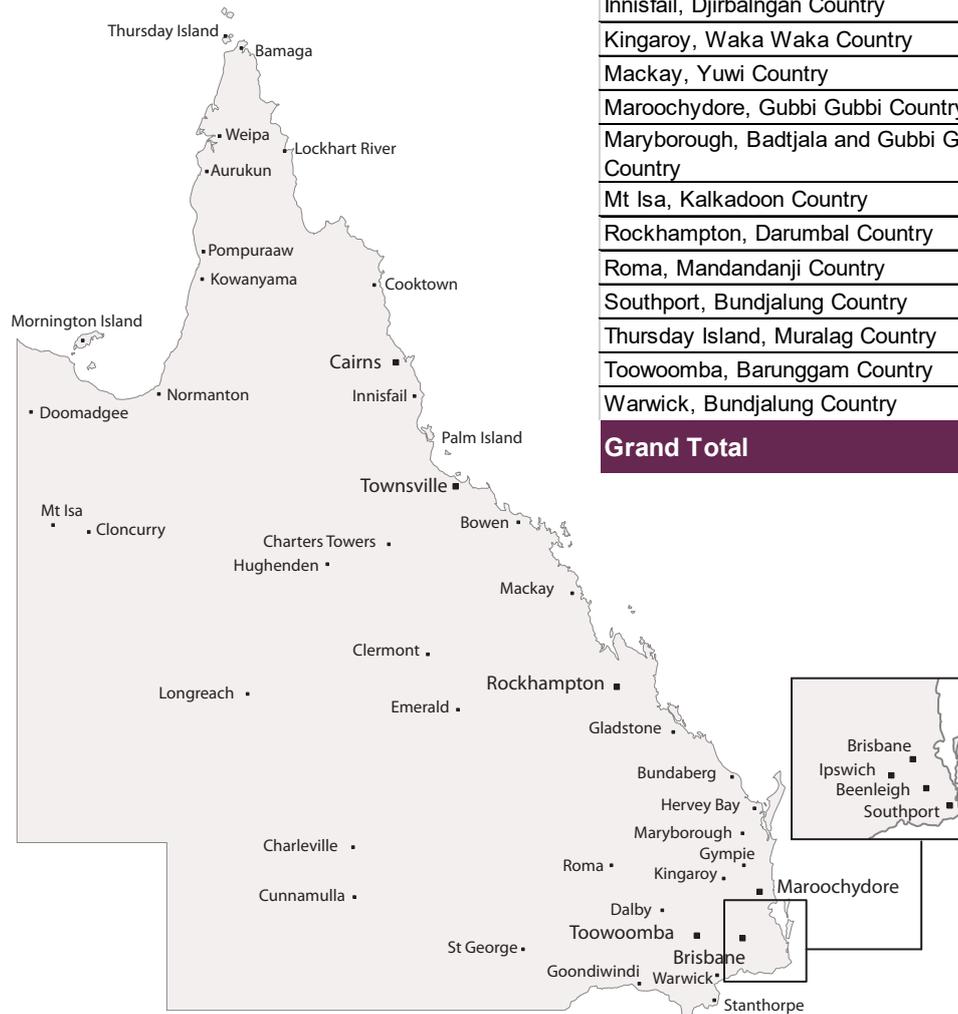


Circuit Appearances

ODPP Crown Prosecutors and support staff regularly travel to Queensland's 38 District Courts and 11 Supreme Courts for trials, sentences and hearings throughout the year.

Throughout the 2023-24 year, 156 staff spent an equivalent of 2419 days on circuit, with an average of 10 days across 25 different locations around Queensland.

Location	Number of Days (Actual)
Bowen, Giya and Yuru Country	26
Bundaberg, Gureng Gureng Country	270
Cairns, Yidinjdji Country	16
Charleville, Gunggari Country	46
Clermont, Wangan Country	46
Cunnamulla, Kunja Country	26
Dalby, Barunggam Country	112
Emerald, Gayiri Country	38
Gladstone, Gureng Gureng, Bayali and Gangulu Country	170
Goondiwindi, Bigambul Country	38
Gympie, Gubbi Gubbi Country	182
Hervey Bay, Badtjala Country	161
Hughenden, Yirandali Country	18
Innisfail, Djirbalangan Country	52
Kingaroy, Waka Waka Country	146
Mackay, Yuwi Country	341
Maroochydore, Gubbi Gubbi Country	10
Maryborough, Badtjala and Gubbi Gubbi Country	78
Mt Isa, Kalkadoon Country	354
Rockhampton, Darumbal Country	12
Roma, Mandandanji Country	32
Southport, Bundjalung Country	13
Thursday Island, Muralag Country	18
Toowoomba, Barunggam Country	99
Warwick, Bundjalung Country	115
Grand Total	2419



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Finalisation of superior court matters

Finalisation prior to trial

During the reporting period, the ODPP prepared 4,938 matters for sentence, and finalised 4,654 indicted matters by a plea of guilty prior to the commencement of a trial, representing 82.2% 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 4,244 of the matters finalised by a plea of guilty prior to the commencement of a trial over the reporting period, which accounts for 75% of all finalised matters.

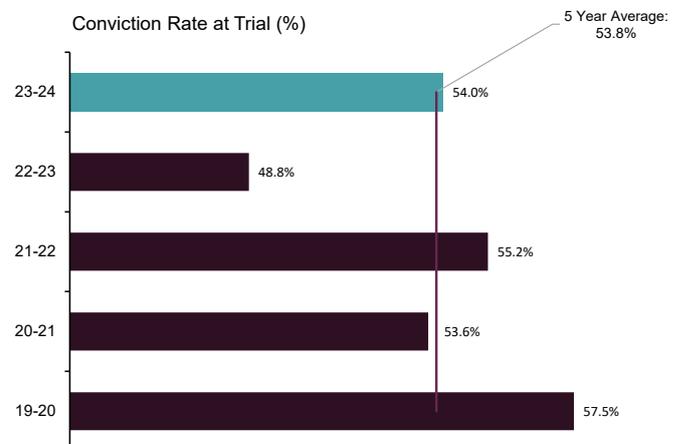
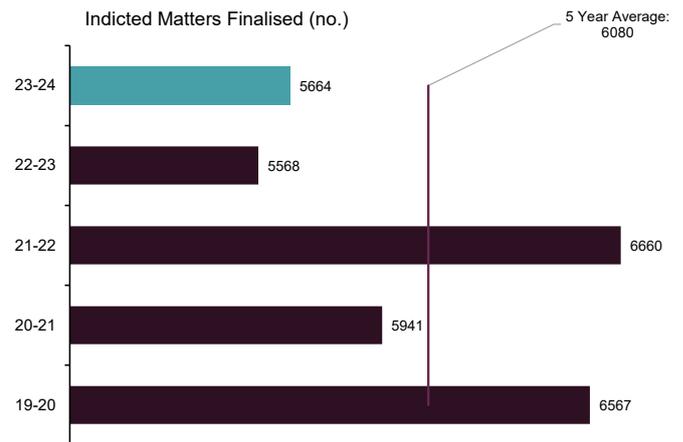
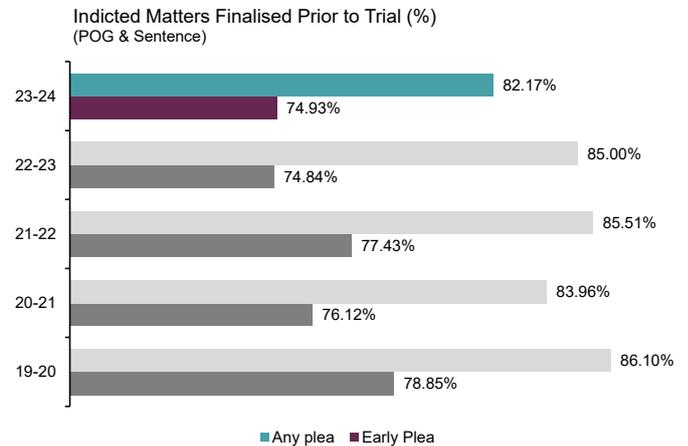
Finalisation by trial

ODPP Crown Prosecutors prepared 1037 matters for trial during the reporting period, an increase of 25% from the 824 matters in the previous reporting period.

Of the total indicted matters finalised during the reporting period, 13% were disposed of by trial; a 2.2% increase from 10.8% reported during the previous reporting period.

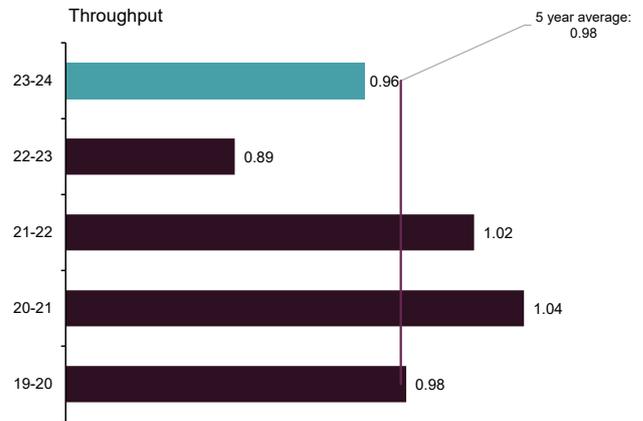
The conviction rate after trial for the reporting period was 54%, an increase from the previous reported figure of 48.8%.

2023-24 Finalised by Trial:	
Guilty	223
Guilty plea at trial	179
Not Guilty	265
Discontinued	74
Mistrial	71
Hung Jury	56



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 2023-24 reporting period, the ODPP recorded a throughput of 0.96.



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 261 such appeals during the reporting period.

Queensland Court of Appeal

The ODPP received 287 appeals to the Court of Appeal during the reporting period, an increase of 5.9% from the 271 appeals received during the previous reporting period. Of the appeals received to the Court of Appeal during 2023-24, 28 were appeals against both conviction and sentence. The ODPP finalised 261 appeals to the Court of Appeal during the reporting period.

- 102 appeals were abandoned by the applicants
- 22 appeals were allowed
- 137 appeals were refused

High Court of Australia

During the reporting period, the ODPP received 10 applications for special leave to appeal to the High Court of Australia. Judgments were delivered in relation to 13 special leave applications during the reporting period. With 3 allowed and 10 refused. There were 4 full hearings in the High Court within the reporting period, and all 4 were refused.

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 1 appeal against sentence on behalf of the Attorney-General during the reporting period, for which a judgment was delivered; this 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, 1 reference was filed on behalf of the Attorney-General.

Judgments

Judgments were delivered in relation to 295 appeals in all courts during the reporting period. A further 124 appeals were abandoned or discontinued during the reporting period.

Notable prosecutions

High Court

R v Dayney [2024] HCA 22

The appeal concerned the proper construction of s272(2) of the *Criminal Code* (Qld). Section 272(1) affords a protection from criminal responsibility for the use of force in response to a provoked assault. Section 272(2) provides that the protection in s 272(1) “does not extend to a case in which the person using force which causes death or grievous bodily harm first begun the assault with intent to kill or to do grievous bodily harm to some person”, nor where that person “endeavoured to kill or to do grievous bodily harm to some person before the necessity of so preserving himself or herself arose; nor, in either case, unless, before such necessity arose, the person using such force declined further conflict, and quitted it or retreated from it as far as was practicable”.

The appellant was convicted of murder after a violent altercation resulting in the death of another. He appealed his conviction on the basis that the trial judge erroneously directed the jury that the defence of self-defence against provoked assault, would not be made out unless, pursuant to s 272(2), they were satisfied that the appellant had first retreated before retaliating to an assault from the victim. A majority of the Court of Appeal (Fraser and McMurdo JJA) held that the trial judge had not erred. Their Honours held that the third clause of s 272(2), which requires retreat before self-defence becomes necessary, applies in any case where a person has inflicted death or grievous bodily harm. After the appellant was convicted a second time following a retrial, a differently constituted Court of Appeal unanimously upheld Fraser and McMurdo JJA’s interpretation.

The High Court upheld the Court of Appeal’s interpretation of s 272(2). Section 272(2) has three distinct clauses, each expressing a distinct category of case to which the protection afforded by s272(1) does not extend.

On this construction, an accused who creates conflict through a provocative act, and then responds with force that causes death or grievous bodily harm, cannot plead self-defence without demonstrating that, so far as was practicable, they first attempted to de-escalate and undo their part in the conflict before resorting to such force.

R v Huxley [2023] HCA 40

This was an appeal from a judgment of the Court of Appeal of the Supreme Court of Queensland. The appeal concerned whether there had been a “wrong decision of any question of law”, within the meaning of s 668E of the *Criminal Code* (Qld), or a miscarriage of justice, in the appellant’s conviction for murder.

The alleged error arose from a direction given by the trial judge that the jury could only act on the evidence of a certain witness if they were satisfied beyond reasonable doubt that the witness’ evidence was truthful, reliable and accurate. The appellant was charged with the murder of Mr McCabe. He was tried with two co-accused, including Mr Rewha, who was charged with the assault occasioning bodily harm of Mr McCabe. The Crown case was that Mr McCabe was assaulted by Mr Rewha in a unit in Townsville. A witness, Ms Greer, gave evidence about this assault that was central to the Crown case. In his summing-up to the jury, the trial judge referred to Ms Greer’s evidence and directed them that “[i]n particular, consistent with the directions I will give you in relation to the case against Mr Rewha, as a matter of law, you should only act upon her evidence if you are satisfied beyond reasonable doubt that her evidence is truthful, reliable and accurate. If you are not satisfied beyond reasonable doubt that the evidence of Ms Greer is truthful, reliable and accurate, then you should disregard it.”

In the Court of Appeal and the High Court, the appellant submitted that the direction, while correct in relation to the case against Mr Rewha, limited the use of Ms Greer’s evidence in his defence, specifically his argument that Mr McCabe could have died as a result of the assault in the Townsville unit. To be satisfied of his innocence, the jury only had to be convinced that this theory was a reasonable possibility. As such, the appellant submitted that the direction was contrary to law.

The majority of the High Court (Gordon, Steward and Gleeson JJ) found that the direction would not have been understood by the jury to apply to the appellant’s defence and held that there was no wrong decision of a question of law and no miscarriage of justice. The majority reasoned that the entirety of the summing-up made it clear that the impugned direction was directed only to the use of Ms Greer’s evidence in the Crown case against Mr Rewha, and the appeal was dismissed accordingly.

R v Lang [2023] HCA 29

This matter was an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland. Two grounds were raised on appeal: first, whether the verdict of the jury was unreasonable (“the unreasonable verdict ground”); and, second, whether the opinion evidence of a forensic pathologist, Dr Ong, was inadmissible on the basis that it was not based on Dr Ong’s expert knowledge (“the expert evidence ground”).

The deceased was 68 years of age when she died from blood loss resulting from stab wounds to her abdomen. The injuries were inflicted in the early hours of 22 October 2015 while she was lying in her bed in her apartment in Brisbane. The appellant and the deceased were the only two people in the apartment at the time of her death. It was accepted at trial in the Supreme Court of Queensland and on appeal that, in the circumstances of the case, there were only two possibilities: either the deceased was murdered by the appellant, or she had died by suicide. The appellant was convicted of the murder of the deceased and sentenced to life imprisonment. The Court of Appeal unanimously dismissed the appellant’s appeal. On the unreasonable verdict ground, the Court of Appeal found that the appellant’s guilty verdict was not unreasonable. On the expert evidence ground, the Court of Appeal held that there was no error in the trial judge’s ruling that Dr Ong could give the expert opinion evidence at trial. The appellant sought, and was granted, special leave to appeal to the High Court.

On the unreasonable verdict ground, the High Court unanimously found that the verdict of the jury was not unreasonable and, accordingly, dismissed the ground of appeal. The test for whether the verdict of a jury is unreasonable was set out by the Court in *M v The Queen* (1994) 181 CLR 487: the question “which the court must ask itself is whether it thinks that upon the whole of the evidence it was open to the jury to be satisfied beyond reasonable doubt that the accused was guilty”. Taken as a whole, the evidence admitted at the appellant’s trial was sufficient for the jury to exclude as a reasonable hypothesis that the deceased died by suicide.

On the expert evidence ground, a majority of the Court (Kiefel CJ, Gageler and Jagot JJ, Gordon and Edelman JJ dissenting) held that the admission of Dr Ong’s evidence involved no “wrong decision of any question of law” (Criminal Code (Qld), s 668E). Dr Ong’s opinion – that the deceased’s wounds were more likely inflicted by another person than self-inflicted – was substantially founded on his specialised knowledge within the field of forensic pathology.

Accordingly, the expert evidence ground was also dismissed.

R v HCF [2023] HCA 35

This appeal concerned whether there had been a miscarriage of justice in the appellant's convictions, following a trial by a jury, of six sexual offences out of 19 counts on an indictment.

The alleged miscarriage arose from an undisputed irregularity in the jury's conduct. The day after the jury returned their verdicts, a juror delivered a note to the Acting Deputy Registrar concerning the jury's deliberations. This note caused the trial judge to authorise the Sheriff of Queensland to conduct an investigation under s 70(7) of the *Jury Act 1995* (Qld). The trial judge sentenced the appellant the following day. The investigation subsequently revealed a combination of conduct involving: (1) one juror, juror X, undertaking internet research about the definitions of and sentences for rape and unlawful carnal knowledge; (2) juror X informing the other members of the jury about this research; and (3) the other members of the jury not informing the trial judge of this conduct of juror X, all contrary to the directions of the trial judge. The appellant appealed his convictions to the Court of Appeal, arguing that the conduct gave rise to a miscarriage of justice. The appeal was subsequently dismissed.

Before the High Court, a majority (Gageler CJ, Gleeson and Jagot JJ) held no miscarriage arose. The majority held that, in all cases of jury or juror misconduct, what is required to establish a miscarriage of justice, and what will also establish a substantial miscarriage of justice, is that a fair-minded and informed member of the public might reasonably apprehend that the jury (or juror) might not have discharged or might not discharge the jury function of rendering a verdict according to law, on the evidence, and in accordance with the directions of the judge. The majority answered that question in the negative as the objective nature and extent of the misconduct meant that it only might provide a basis upon which someone might speculate that the jury might not have discharged its function as required.

The minority (Edelman and Steward JJ) considered that the conduct was plainly a departure from the strict application of the law to which an accused is entitled. The minority considered that the three serious acts of disobedience of the trial judge's directions supported, at the very least, a conclusion that the impugned conduct had the capacity to prejudice the jury's consideration of the appellant's case and involved a serious denial of

procedural fairness to both the appellant and the Crown. As such, the minority held that a miscarriage of justice had occurred.

Supreme Court

R v Leeanne Eatts

This prosecution involved a defendant was on trial for manslaughter over the drowning deaths of her two sons and was heard in the Townsville Supreme Court in September 2023.

The two brothers' aged 3 and 5 years were found drowned in the recently flooded Ross River. Ms Eatts, their mother, was prosecuted for the manslaughter of each. She was charged and prosecuted on the basis that she failed to take precautions that were reasonable to avoid danger to the life, health and safety of her two children.

The Crown case was that in breach of her duty as a mother she did not reasonably supervise these little boys to avoid danger to them. The defendant did nothing to prevent them accessing the river in which they drowned. In this way she was said to have unlawfully caused their death.

At the conclusion of a trial in the Supreme Court at Townsville, that ran for just shy of two weeks, a jury convicted her of each count of manslaughter.

The defendant was sentenced following her conviction after trial of two counts of manslaughter, as well as three offences (that the defendant had previously pleaded guilty to) of supplying a dangerous drug to a minor and possessing a dangerous drug.

At the defendant's sentence hearing in June 2024, an overall head sentence of 8 years imprisonment was imposed on both counts of manslaughter, with a parole eligibility date set at 3.5 years (16 December 2026). Lesser concurrent periods of imprisonment for the remaining counts were imposed.

R v Sharon Graham

This matter involved the trial of a defendant charged with murder over the death of a man, Bruce Saunders, at a property outside Gympie. The deceased was located by police deceased after having previously been inserted into a woodchipper.

The Crown case against the defendant was that she had counselled/procured her two co-accused to commit the murder.

The defendant's trial was conducted in October 2023 in the Brisbane Supreme Court, after the defendant's co-accused (Gregory Roser and Peter Koenig) had their proceedings finalised, with Roser convicted of murder and sentenced to life imprisonment, and Koenig sentenced to an accessory after the fact charge, before later being called as a Crown witness.

The defendant was alleged to have been the mastermind of a plot to kill the deceased, whereby Roser and Koenig eventually killed the deceased by putting his body through a woodchipper in a property outside of Gympie after being counselled and procured to do so by the defendant.

After a three-week trial, the applicant was convicted of murder and sentence to life imprisonment.

R v Christopher Hughes and Gregory Clubb

This matter involved the separate prosecution of two defendants involved in causing the death of Townsville resident Jennifer Board in February 2021. Jennifer Board, 22, was killed when her motorcycle was hit by a car that veered onto the wrong side of Ross River Road, Townsville.

The driver of the vehicle that struck the deceased was Christopher Hughes, a self-proclaimed vigilante who was chasing a stolen car, driven by the defendant Gregory Clubb, at high speeds (around 160 km/hour in 60-70 km/hour zones) and engaged in dangerous manoeuvres over a period of time throughout the evening. Defendant Hughes eventually lost control of his vehicle during the chase and veered onto the wrong side of the road, striking the deceased.

Hughes was prosecuted for manslaughter as the driver of the vehicle that struck the deceased, while Clubb was also prosecuted for manslaughter on the basis that was responsible for the deceased death due to his actions preceding the crash.

Hughes pleaded guilty to manslaughter on 3 November 2023 and was sentenced to 12 years imprisonment. Clubb was convicted after trial of manslaughter (after the jury held him responsible for the deceased death) in August 2024 and is due to be sentenced on 23 October 2024.

District Court

R v John Mugambi Mwamba

This matter involved the prosecution of the former Deputy CEO of the Palm Island Council following investigations of misconduct whilst the defendant was in office in that role after a five-year investigation into the defendant.

The 55-year-old defendant was a senior figure on Palm Island - described as a "kingpin of the island" in court - for twelve years between 2007 and 2019. The defendant was investigated and charged with offences including, misconduct in public office for his under-the-counter involvement with Palm Island's only petrol station, two counts of fraud as an employee for abusing corporate credit cards and frequent flyer points, and one count of receiving a secret commission when he accepted a \$40,000 bribe to help sell a sports bar.

It is conservatively estimated that the defendant profited almost \$250,000 from being secretly involved in the petrol station, defrauded the council of \$38,000 through credit card misuse and frequent flyer fraud, and pocketed the \$40,000 bribe.

After being committed and listed to stand trial, the defendant pleaded guilty to all charges against him on day 16 of his trial.

In sentencing, Judge Coker called the defendant a "Jekyll and Hyde-type", contrasting the praise he received from Townsville's Kenyan community and his current employer to the destruction defendant caused on Palm Island.

On 7 June 2024, the defendant was sentenced to five and a half years imprisonment, with a parole eligibility date of November 30, 2026.

R v James Daniel Bonassi

This matter involved the prosecution of a defendant charged with multiple offences of sexual violence against multiple different complainants, against both his sisters, before later progressing to repeated penetrative acts against his own biological daughter, and other acts of sexual violence involving animals and children introduced to the defendant through his employment as a childcare centre educator.

On 23 July 2024 the defendant was sentenced to life imprisonment for the following offences across numerous indictments against different complainants:

- Maintaining a sexual relationship with a child (Domestic Violence Offence)
- Indecent treatment of a child under 16, under 12, who is a lineal descendant (DVO)
- Making child exploitation material (Domestic Violence Offence) [x13]
- Rape (Domestic Violence Offence) [x9]
- Indecent treatment of a child under 16 (procure), under 12, lineal descendant (DVO)
- Distributing child exploitation material (Domestic Violence Offence) [x13]
- Possessing child exploitation material (Domestic Violence Offence) [x3]
- Indecent treatment of a child under 16 (procure to commit), under 12
- Making child exploitation material [x2]
- Supplying dangerous drugs [x2]
- Distributing child exploitation material [x4]
- Unlawful Stalking
- Supplying dangerous drugs [x2]
- Burglary, by breaking
- Sexual Assault
- Recording in breach of privacy
- Indecent treatment of a child under 16, under 12
- Rape
- Making child exploitation material [x2]
- Bestiality [x4]
- Distributing child exploitation material [x7]
- Supply DD [x12].

R v Tony William Stringer

This matter involved the prosecution of a man alleged to have committed numerous acts of domestic violence against his former partner whilst the pair were in a relationship. The offending occurred between July 2002 – March 2018.

During the course of their relationship, the defendant committed numerous instances of abhorrent domestic violence against the complainant.

The defendant pleaded not guilty to the offences, and the matter proceeded to trial in the Townsville District Court between 24 November 2023 – 27 November 2023. After trial, the defendant was found guilty of all 27 counts (nine counts of common assault, five counts of assault occasioning bodily harm and 13 counts of rape), and sentenced to a total head sentence of 16 years imprisonment, with a serious violence offence declaration made automatically.

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 2023-2024, under Chapter 2 and 2A:

- 9 new confiscation proceedings were commenced
- 10 restraining orders were obtained
- 799 serious drug offence certificates were issued

During 2023-2024, Under Chapter 3: \$4,837,250.11 was collected during the reporting period.

- Forfeiture Orders collected: \$4,754,761.04
- Pecuniary Penalty orders collected: \$82,489.07

Type	2019-20	2020-21	2021-22	2022-23	2023-24
Chapter 2 and 2A outcomes					
Restrained Property	\$8.994m	\$20.159m	\$8.786m	\$5.223m	\$8.461m
Confiscated Property	\$7.181m	\$6.845m	\$7.419m	\$4298m	\$10.514m
Chapter 3 outcomes					
Fofeiture orders collected	\$4.993m	\$3.788m	\$5.073m	\$10.082m	\$4.754m
Pecuniary penalty orders collected \$82,489.07	\$131,485	\$76,914	\$119,804	\$90,265	\$82,489

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 2023-24 reporting period, the ODPP Victim Liaison Officers recorded 85,288 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 44% from the previous reporting period.

- 42,009 emails sent
- 27,294 phone or video calls made
- 6,436 text messages sent
- 6,383 letters sent by post
- 3,166 surveys sent at the conclusion of matters

Totalling 85,288 instances of contact during the reporting period.

Survey for Victims and Families

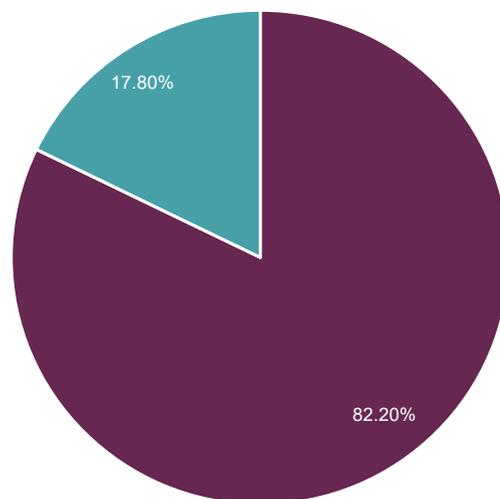
Since 2017, the ODPP has surveyed victims of crime, to collect results for which feedback from victims or their families, and or their carers or guardians, on the service provided by their allocated Victim Liaison Officer and the ODPP in general. The survey allows the ODPP to measure its compliance with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

Of the 85,288 instances of contact, 82.2% were responded to within the 48 hour time period in alignment with ODPP policy ensuring that victim are responded to in a timely manner.

VLO Response Time Frame



■ Under 48 hrs ■ Over 48 hrs

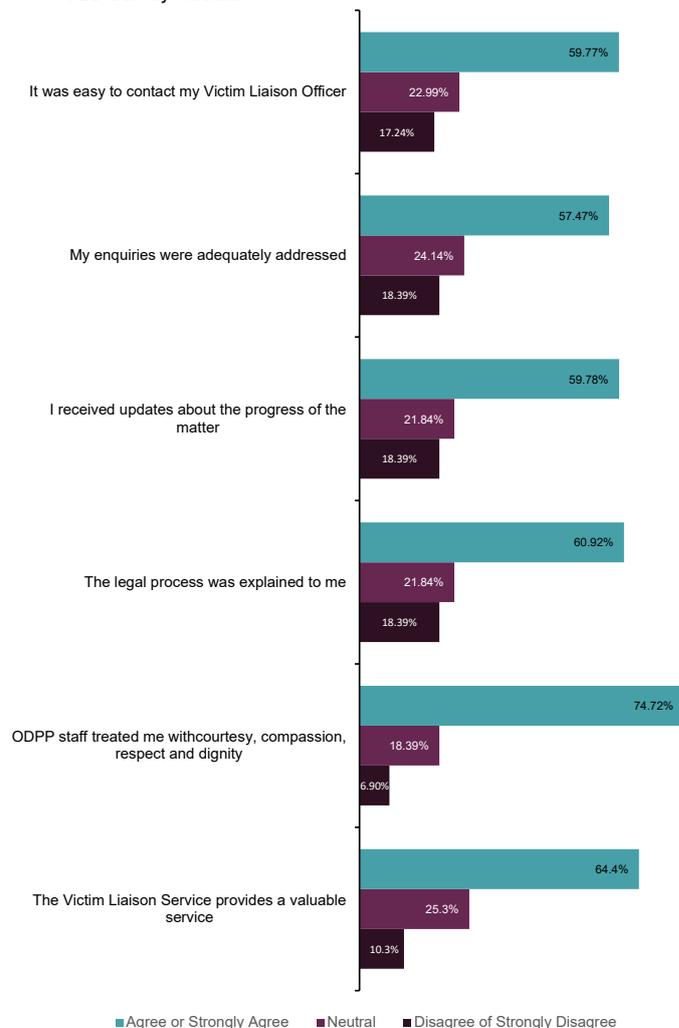
Victim opinion survey results

- 68.9% of respondents agreed or strongly agreed that ODPP staff treated them with courtesy, compassion, respect and dignity.
- 64.4% of respondents agreed or strongly agreed that the Victim Liaison Service provides a valuable service.
- 59.8% of respondents agreed or strongly agreed that they received updates about the progress of their matter.

30 respondents indicated their matters proceeded by way of trial; of which 53.3% received not guilty jury verdicts. 56.2% 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 102 responses, an increase of 16 responses from the previous reporting period. 77.6% of respondents identified as women, 15.3% of respondents identified as indigenous, and 14.1% of respondents identified as speaking a language other than English at home.

VLS Survey Results



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 23/24 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 the 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.

Sexual Assault Response Team

The Sexual Assault Response Team (SART) is a multidisciplinary, interagency group of professionals, established to work alongside survivors of sexual violence to provide a response that is sensitive, holistic and timely. SART has been operational in the Townsville area since 2016.

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 including the Emergency Department and representatives from the Townsville Office of the Director of Public Prosecutions. The services provided by SART span therapeutic, general and forensic medical and criminal support needs throughout the criminal justice system.

The Women's Safety and Justice Taskforce described the SART model as an excellent example of meeting the needs of victim/survivors and made recommendation that this service model should be replicated throughout the state. As a result, during 2023/24, the members of SART Townsville have presented at and/or taken part in numerous consultations and workshops with various government and non-government entities such as the Chief Medical Officer, Queensland Health; Office of the independent Implementation Supervisor; Ernest and Young and the Department of Justice and Attorney General.

Townsville SART is effective because they interact frequently, meeting monthly. A central role is that of the interagency co-ordinator who ensures the basic ethos of the collaboration is maintained and consistently reviewed; who liaises with the members of SART outside meeting times as well as other interested agencies or entities; who runs meetings in an independent, efficient and non-judgmental way; and who coordinates the gathering of data and information such as from reflective practice tools and who conducts research to ensure the decisions of the organisation are evidenced based.

Continued emphasis is placed on reciprocal training between the member organisations to promote a culture of shared knowledge and continuous learning. As a result prosecutors become more trauma informed and SASS workers become more informed about the criminal justice system and they are able to communicate that information to the victim/survivors. This is honed further through constant reflective practice at monthly SART meetings where evaluations can be made as to what is going well and also where improvements can be made. All the members of SART are able to respond quickly to each other with information that is needed when the victim has questions about the process.

One major concern facing a victim in navigating the criminal justice system is the trauma involved in having to interact with different agencies throughout the course of the process. The SART model ensures that one member organisation, the SASS workers, are with the victim/survivor from when the complaint is first made until well after the court process has ended. That knowledge and that support and the manifest presence of multiple agencies working cohesively with the victim gives to them agency and dignity when navigating what can sometimes appear as a confusing and clinical justice system. It also allows each member agency to focus more effectively on their own area of expertise, role and responsibilities.

The members of SART acknowledge further that the trial process is not the end of the journey for the victim. A positive legal outcome may do little to alleviate the trauma or suffering already experienced. Continuing aftercare is also a vital aspect of the SART approach and that is something also carried out by the SASS workers.

Special projects

Women's Safety and Justice Project

The Women's Safety and Justice Project (WSJP) was launched in July 2023 to implement recommendations from the Women's Safety and Justice Taskforce (Taskforce) to enhance training and development, interagency co-operation, cultural capability and our victim liaison service.

The ODPP is implementing recommendations from the Taskforce Hear her voice reports as part of whole of Queensland Government initiative to address coercive control and domestic and family violence in Queensland and to improve women and girls' experiences across the Queensland criminal justice system.

The ODPP appointed Ms Sarah Kay as the Project Executive Lawyer, to lead the implementation of the recommendations led by the ODPP, and manage stakeholder engagement across government agencies, and in the domestic and family violence and sexual violence support sector. Sarah is supported by a multi-disciplinary team of lawyers, learning and development officers, change and communication experts and project management professionals. The WSJP has been funded by the Queensland Government until 2027.

Recommendations led by the ODPP	
Rec no	Recommendation
41, 67, 118	Training on domestic and family violence (DFV), sexual violence (SV), and gendered issues affecting women and girls as accused persons and communication with First Nations peoples
45	Review of the Memorandum of Understanding (MOU) with Queensland Police Service (QPS) to ensure effective interagency collaboration and communication
69, 47	Review of Director's Guidelines and development of additional guidance about the prosecution of sexual violence
49	Review of the victim liaison service to ensure that timely and correct information is provided at critical points in the criminal justice process
50	Development of a 'Right to Review' Process for victims
51	Development of an ODPP cultural capability plan
74	Design and implementation of a new operating model for the prosecution of sexual violence matters

Focus Areas for Reporting Period

The key focus area for the reporting period was standing up the project, including the development of core project governance, project planning, scoping activities, establishing a reporting framework, and recruiting the project team. The ODPP has a multi-year roadmap for the effective design, build and delivery of prosecutorial reforms and outputs.

The project formed seven steering committees, with representation by legal and non-legal staff from across the ODPP's legal chambers, including from the regional chambers. The committees are responsible for guiding the implementation of the Taskforce's recommendations, project governance, assessment of progress, and shaping the development of the project outcomes.

Engagement with stakeholders across government and within the support sectors for sexual violence, domestic and family violence was an important focus for the team, to achieve awareness of the ODPP's plans and to invite feedback. The ODPP has consulted with peak bodies such as Queensland Sexual Assault Network (QSAN), Queensland Council of Social Service (QCOSS), and Protecting All Children Today (PACT). Additionally, the ODPP has consulted with academic experts from across Australia and has prioritised consultation with First Nations Community Justice Groups. Interjurisdictional collaboration and consultation with prosecution services in other Australian States and Territories, has provided insights and important lessons learned, from the implementation of similar policies across the country.

Highlights and progress in the reporting period

Legal and non-legal staff have received training in four of an eight-module series focused on the most recent legislative amendments to the *Criminal Code*, *Bail Act 1980*, *Penalties and Sentences Act 1992*, *Youth Justice Act 1992* and *Evidence Act 1977*. In response to recommendations 41, 67, 118 training has targeted domestic and family violence, sexual violence, and gendered issues affecting women and girls across Queensland. Members of Queensland Police Prosecution Corps have also participated in the ODPP training.

The ODPP has collaborated with QSAN representatives on the implementation of its training on sexual violence reforms. Representatives from across the QSAN support services network contributed to the training, providing

attendees with an opportunity to learn about QSAN's support services and gain insights about the victim-survivor perspective on the criminal justice process.

A review of the Victim Liaison Service (VLS) was completed in response to recommendation 49, which included an analysis of relevant recent inquiry findings, consultation with ODPP legal and non-legal staff, discussions with representatives from several Queensland justice agencies and with government victim support services. Additionally, senior representatives of victim and witness support services in New South Wales, Victoria and South Australian were consulted. The final review has been provided to Queensland Government for consideration of its findings and recommendations.

Regular inter-agency working group meetings have been held with the Queensland Police Service (QPS) to review the Memorandum of Understanding (MOU) in place between the respective agencies in response to recommendation 47. The draft MOU will better articulate the purpose of the collaboration, the roles and responsibilities of each agency in communicating consistently with each other, and communicating with victims, in a trauma-informed manner, during the investigation and prosecution of sexual offences. This work has included development of a draft Terms of Reference for the formation of a new Sexual Offence Review Committee with the mandate to continue to review and identify opportunities for systemic improvement and share examples of exceptional investigation or prosecution practices. The MOU and Terms of Reference are expected to be approved and implemented by the end of the next reporting period.

Significant work has been completed towards the development of comprehensive guidance for the prosecution of sexual violence cases and the treatment of victim-survivors in these cases, in response to recommendation 47. The guidance document will provide prosecutors, practitioners acting on behalf of the Director, and QPS with an understanding of trauma informed and culturally safe treatment of victim-survivors of sexual violence.

In response to recommendation 50, the ODPP has drafted a clear, robust, transparent, and easily accessible internal 'Right to Review' process of selected prosecutorial decisions for victim-survivors of sexual violence. The ODPP has consulted with the New South Wales and Western Australian ODPPs about the practical operation

of their respective right to review policies.

ODPP staff work with First Nations peoples who engage with the justice system as witnesses and victims of crime. In line with recommendation 51 the ODPP has commenced the development of a draft Reframing the Relationship plan, with activities and actions, to target the provision of culturally safe, trauma-informed responses and services to First Nations peoples. The ODPP has also initiated connection with First Nations Community Justice Groups around Queensland to build its own sustainable community relationships over time.

Digital Case Management Project

The DCM project now known as the Themis project is an ICT initiated business transformation project under the DJAG ICT Strategy Implementation Program Tranche 2 (ISIP2). The project will deliver enabling technology to provide a more efficient and reliable case management solution (CMS). This includes, future proofing technology, improving frameworks and streamlining processes to allow sharing of the new digital capability throughout the case management lifecycle. The project commenced on 25 July 2022 with an expected end date of 30 June 2025. The implementation of the DCM solution is likely to impact all staff within ODPP. Following are some of the key objectives of this project:

- Enable ODPP to develop a fit-for-purpose case management system
- Enhance digital interoperability across the criminal justice sector, especially with the QPS and Queensland Courts (digital tendering of evidence from ODPP to Courts).

The project focuses on delivering the objective of 'Digital first, data-driven and sustainable services' stated as a key goal in the ODPP Service Transformation Strategy. The project is likely to provide the following four benefits:

- improved workforce efficiency and productivity
- improved decision making resulting in better outcomes for community and individuals
- reduced risk related to legacy IT systems and environments
- more responsive service delivery

Key achievements include:

- Commenced collaboration with Microsoft delivery partner.
- Delivered, solution requirements, project plan, roadmap and cost estimates.
- Completed 30 workshops, more than 60 stakeholders were consulted which resulted in finalisation of 761 requirements for the Digital Case Management System.
- Established that Microsoft Dynamics is a 97% fit of the business requirements.
- Commenced detail design phase (to be completed end of July 2024).
- Prepared for solution build to commence in August 2024.

The next steps for this project are:

- Finalise detail design phase
- Progress towards build commencement from August 2024 with expected build completion around April 2025.

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

The DNA Review Team commenced in the 2023-2024 financial year with a staff of 3. Following the finding and recommendations of The Commission of Inquiry into Forensic DNA Testing in Queensland, Forensic Science Queensland began identifying finalised criminal law matters from 1997 to 30 April 2023 where impugned DNA evidence was provided. The DNA Review Team began reviewing the identified historical files to determine whether these matters required reviewing. Out of 358 matters that were reviewed, four were recommended for retesting (1.1%).

Additionally, as a result of the Enquiry, there was a significant impact upon the provision of DNA statements in matters that are still before the Courts. This included matters where statements had been provided prior to 1 May 2023 and also for new matters that still required DNA testing. The ODPP has developed and is maintaining a 'Current Matters Registry' capturing all prosecutions that involved DNA evidence along with a 'Priority List' to triage the provision of formal expert statements. As at 30 June 2024, 460 matters were on the Current Matters Register from a total of 791 matters that had been added during the year. During the financial year 223 matters were identified, after analysis of the evidence, as not being relevant to the triable issues and were therefore removed from the list and 108 statements were received from Forensic Services Queensland.

As at 30 June 2024, 72 matters were on the priority list with a confirmed statement delivery date up to, and including, 31 December 2024.

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 2023-24 reporting period, 203 barristers were applicants within the scheme.

274 matters were briefed to the Private Bar during the reporting period. Of which, 27.0% of these matters were for matters not dealt with in the Brisbane courts.

Matters Briefed out included:

- 96 Sentences
- 177 Trials
- 1 pre-recorded hearings

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 23-24 year, 37.44% 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 2023-24 period the ODPP gave advise to 148 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 2023-24 period the ODPP actioned 33 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 2023-24 period the ODPP provided advice for 47 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 185 Subpoenas during the 2023-24 operational period.

RTI | *Right to Information Act 2009 (Qld)*

The 2023-24 period saw the ODPP responded to 122 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 185 Parole Board requests for information during the 2023-24 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.

Complaints

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).

In the 2023-24 financial year, the ODPP received a total of 53 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

Awards and nominees

Divisional Staff Excellence Awards

Divisional Excellence Awards are held annually to recognise and reward the efforts of staff for demonstrating excellence, by meeting or exceeding their goals and values.

During the reporting period, ODPP staff were recognised for their contribution to the ODPP, the Department of Justice and Attorney-General, and the Queensland Public Sector at the Divisional Excellence Awards.

Customer Focus Award

Winner - Victim Liaison Service

The ODPP's Victim Liaison Service (VLS) Team were recognised for their hard work, very high standards of customer service and dedication to victims. The VLS team are continually challenged to provide a high-quality service to victims of violent and sexual crimes in an ever-changing legal landscape, and maintain relationships with public and private sector stakeholders in order to communicate with victims and assist them in accessing financial and other support.

Regular positive feedback from victims confirms the VLS Team's commitment to an empathetic and trauma-informed approach to providing a professional liaison service.

Highly commended – Finance and Corporate Support Team

The Finance and Corporate Support Team were highly commended for their work and support of the Digital Case Management project, providing regular budget and financial support and advice to the project to enable better oversight of project funding and expenditure, and accurate and reliable reporting to the Project Board and Project Management Office.

Performance Award

Winner – Supreme Court Bail Team

The Supreme Court Bail Team were recognised for their efforts in processing high volumes of Supreme Court Bail applications during the busy December period. Historically, December has been a high-volume month for Supreme Court Bail applications, and the team were faced with an exponential increase in applications and variations. The team prepared and appeared on a range of simple and complex matters throughout the period, conducting each matter in a professional manner under constant time constraints, while managing and maintaining good relationships with internal and external stakeholders.

In addition to the Court workload, the team managed the exponential increase of bail variations, which required urgent attention and constant reprioritisation of workload. Throughout this period, the team remained enthusiastic, motivated and supportive of each other while provided an important service to victims of crime and the community at large. The team were awarded a highly commended award for performance at the DJAG staff excellence awards.

Highly commended – Ms Emily Conran

Ms Conran was highly commended for her high calibre work across matters, in court, and in the mentoring and support of others within her chambers. In addition to managing a large and varied workload, Ms Conran worked collaboratively with other members of her team to prioritise work and streamline task processes.

Highly commended – Business System Support Team

The ODPP's Business System Support Team (BSST) were highly commended for their work in upgrading two essential services, within existing resources and strict timelines, in the reporting period. The team drew on their experience and the experience of their professional networks to facilitate the upgrades, demonstrating innovation in process and skills across different software packages.

Innovation Award

Winner – Ms Olivia Loweke

Ms Olivia Loweke was recognised for her work in supporting and encouraging staff wellbeing and mental health. Ms Loweke recognised the difficulty staff in Maroochy Chambers were having in taking breaks or making time to focus on mental health and wellbeing, and took the initiative to develop innovative strategies to assist her colleagues. Through the creation of a dedicated Teams Channel, Ms Loweke uploaded various content, snapshots and activities for staff to use as a circuit breaker, in addition to articles and reading on wellbeing and good mental health. Ms Loweke also started a lunchtime walking group, encouraging her colleagues to get moving for the benefit of their mental health.

Workplace Culture Award

The Workplace Culture Award is a new award introduced during the reporting period, to recognise those who have fostered a workplace that embraces our people, seeks out and celebrates inclusion, diversity, and equity to make our workplace more representative, robust, and resilient.

Winner – Human Resources

The ODPP's Human Resources team was recognised for their work in championing diversity, inclusion and equity through the 'A Taste of Harmony' ODPP Recipe Book. During Harmony Week, ODPP staff were invited to submit their recipes, in an effort to promote harmony, diversity and inclusion through the universal language of food.

When planning for Harmony Week, the team acknowledged the event fell within the Muslim holy month of Ramadan and serving food at morning teas or lunchtime celebrations would have unintentionally excluded some members of staff at the ODPP who observe Ramadan.

The final result is the 'A Taste of Harmony' Recipe Book, with the team receiving recipes hailing from cultures across the globe including Mexico, Sri Lanka, South Korea, India, Italy, the Philippines, Thailand and Australia.

Leadership Award

Winner – Mr Philip McCarthy KC

Mr Philip McCarthy KC was recognised for his support, mentorship, coaching and leadership in his role as a Deputy Director of Public Prosecutions. Mr McCarthy supports staff in navigating complex legal challenges, coaching them through the analysis of complex criminal case law with respect to specific matters, as well as assisting staff to plan and achieve personal and career goals. Mr McCarthy was integral in providing expert legal advice to the Women's Safety and Justice Taskforce on which he was a contributing member, and remains the senior officer responsible for the ODPP Women's Safety and Justice Project, tasked with the implementation of initiatives associated with the recommendations detailed in the Hear Her Voice reports.

Mr McCarthy has served as part of the Queensland Sentencing Advisory Committee, the DNA Commission of Inquiry Advisory Board and the Queensland Courts Forensic Advisory Board, while maintaining prosecutorial service delivery in high profile matters and leadership to the most the senior crown prosecutors in Queensland.

Highly commended – Ms Maria Gilson-Garza

Ms Gilson-Garza is highly commended for her leadership in her role as Legal Support Supervisor with Sheehy Chambers. Ms Gilson-Garza's experience and workload management skills ensured she was able to support the Legal Support Officers within Chambers, assisting her colleagues to find innovative solutions to issues, and training new staff and students participating in the Work Experience Placement Program.

David Meredith awarded Public Service Medal

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 for 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.

Mr Meredith was awarded a Public Service Medal in the Australia Day 2024 Honours List for outstanding public service to public prosecutions in Queensland.



John Anderson awarded the National Emergency Medal

John Anderson was awarded the National Emergency Medal for his voluntary service in responding to natural disasters and disaster recovery. Mr Anderson has been employed with the ODPP since May 2008 and is currently the Senior Confiscations Officer, with the ODPP Confiscations Unit.

Alan Kent - 50 Years of Service

Alan Kent is recognised this year for 50 years of service to the public sector. Commencing as an accounts clerk in 1973, as a young man of 17, with the Department of Local Government, Mr Kent has worked in the area of administration and finance for multiple Queensland Government departments. He performed special duties for the World Expo '88 between 1985 and 1988, and he commenced with the ODPP in September 1997 as a Senior Administration Officer. Mr Kent currently leads the Finance and Corporate Support team as the Manager, and has also performed the role of Business Manager and Senior Corporate Support Officer during his time with the ODPP.

Jim Nicol - 50 Years of Service

James (Jim) Nicol is recognised this year for 50 years of service to the public sector. Mr Nicol joined the ODPP in January 2009, after a lengthy period of service with the Department of Primary Industries and Forestry Plantations Queensland. Mr Nicol is an information management and records management expert and has worked tirelessly to maintain the obligations placed on public sector employees to care for public records. He has performed a number of roles while employed with the ODPP, including Documents and Records Supervisor, Forensic Liaison Officer and Manager, Document and Records Services.

Our people

Staff Demographics

As at 30 June 2024, the ODPP had a funded establishment of 488 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 190 new employees during the reporting period. This is an onboarding rate of 39%, an increase of 9.9% from the previous reporting period. 124 staff left the ODPP in the 2023-24 financial year. This is a staff turnover rate of 25.4%. 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%).

Gender Identification Profile

As at 30 June 2024, 71.3% of all staff employed by the ODPP were female and 28.7% were male.

Age Profile

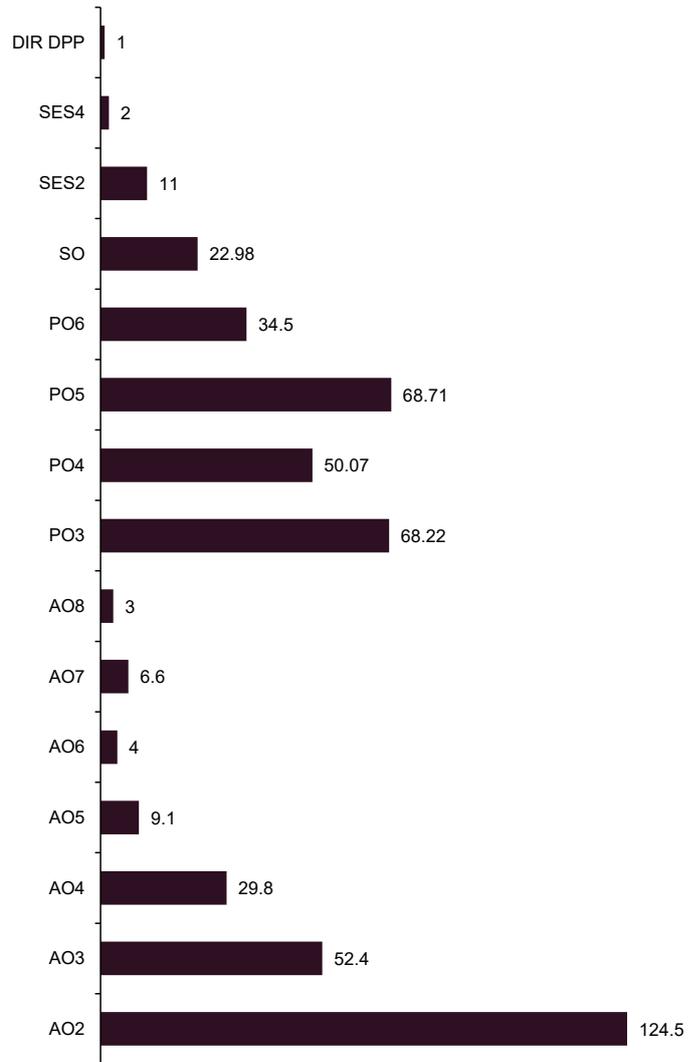
As at 30 June 2024, the average age of the ODPP's workforce was 34 years.

7.03% of staff were aged 55 years or older, while 3.6% were aged 60 years or older.

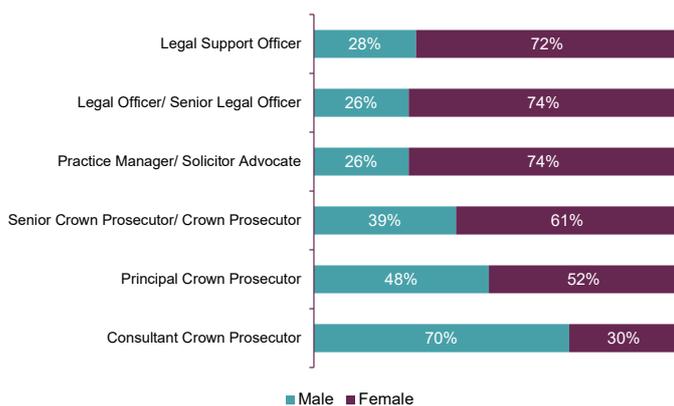
14.45% of our workforce are part-time employees.

This year's growth saw the ODPP increase by 9.1% during the 2023-24 period.

Funded FTEs by Classification



Gender by Job Classification



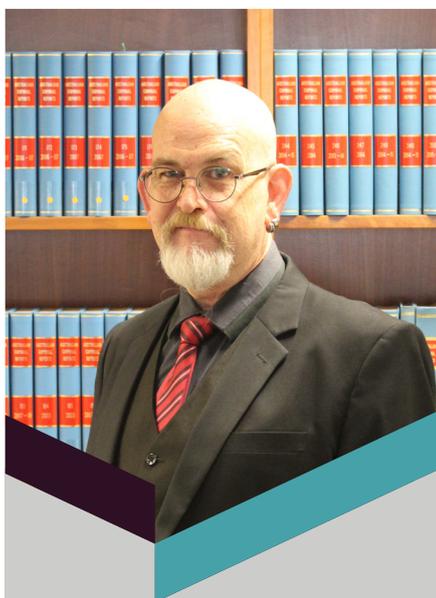
Full-time Equivalent Positions	Number
Director	1
Deputy Director	2
Executive Manager	1
Crown Prosecutor	106
Practice Manager/ Solicitor Advocate	19
Legal Officer	132
Legal Support	125
Victim Liaison Officer	26
Corporate Services	76
Total	488

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	Principal Crown Prosecutor
Elizabeth Kelso	Aleksandra Nikolic
Dejana Kovac	Stephen Muir
Christopher Cook	Sarah McFarland
Michael Lehane	Benjamin Jackson
Senior Crown Prosecutor	Crown Prosecutor
Michael Andronicus	Thomasina Papadimitriou
Jordan Daniels	Michelle Parfitt
Carla Ahern	Samuel Rigby
James Bishop	Seamus McManus
Jessica Guy	Nicole Butler
Rachel Boivin	Ryan Godfrey
Jodie Crane	Grace Ollason
Zachary Kaplan	Sinead Butler
Amy Stannard	Caitlin Usher
Joshua Francis	Emily Coley
	Luke Smoothy

Consultant Crown Prosecutors



Mark Green
Appointed 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 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 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 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.



Nathan Crane
Appointed 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 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.



David Finch
Appointed 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.



Elizabeth Kelso
Appointed November 2023

Ms Kelso started at the ODPP as a Legal Support Officer in Haxton Chambers in April 2008. In January 2010 Ms Kelso was appointed as a Legal Officer in Ipswich Chambers, returning to Brisbane as a Senior Legal Officer in Sheehy Chambers in January 2012. In April 2014 Ms Kelso started relieving as a Crown Prosecutor in several Brisbane and regional chambers. In January 2017 Ms Kelso managed the Toowoomba Chambers as a Senior Crown Prosecutor, and in 2018 she was part of the Northpoint Pilot program as a Senior Crown Prosecutor. In June 2019 Ms Kelso was appointed as a Principal Crown Prosecutor, and since has performed that role in Beenleigh Chambers, Haxton Chambers and Appeals. In 2023 she was appointed as Consultant Crown Prosecutor in Brisbane.



Dejana Kovac
Appointed November 2023

Dejana Kovac commenced her legal career at the Brisbane Office of the Director of Public Prosecutions (ODPP) as a legal support officer in September 2006, becoming a Crown Prosecutor in October 2008. Her career progression continued, and in 2017, she became a Principal Crown Prosecutor, followed by her appointment as Consultant Crown Prosecutor in November 2023. As lead counsel, Ms Kovac has been involved in many high-profile prosecutions. For example, she led Queensland's first successful case against a woman who took her daughters to Somalia for genital mutilation.



Christopher Cook
Appointed November 2023

Originally from regional Queensland. He obtained degrees in both Laws and Justice from QUT. During his university years Mr Cook spent time abroad including working in the copy room in a law firm in London. Mr Cook joined the Office in 2007 as a Listings Officer. He was admitted in 2008 and immediately commenced as a Legal Officer in Cairns. Mr Cook commenced as a Crown Prosecutor in 2012 initially in Ipswich and since then he has kept a busy practice in the superior courts throughout Queensland. Mr Cook has been lead counsel in notable trials and appeals. Mr Cook is dedicated to community protection and mentoring other lawyers.



Michael Lehane
Appointed November 2023

Micheal Lehane was admitted as a barrister in December 1990, before joining the Director of Public Prosecutions as a legal officer in May 1995. He was appointed as a Principal Crown Prosecutor in October 2003 where he worked regionally as well as in various Brisbane Chambers including those that handle appeals and the Mental Health Court. He was appointed as a Consultant Crown Prosecutor in November 2023. Mr Lehane has appeared on many significant trials and appeals such as Queensland's first counselling suicide trial and the state's first majority verdict appeal.

Years of Service

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.

Years of service to ODPP			
Todd Fuller KC	36	Lisa Mallett	25
Susan Gillies	35	Rebecca Pennell	25
Marcos Malaxechebarria	32	Shauna Farrelly	24
Greg Cummings	30	Amanda Kajewski	24
Ronald Swanwick	30	Caroline Marco	24
Teresa Davis	30	Stacey Cristaldi	23
Michelle McCormack	30	Larissa Peddell	22
Alan Kent	29	Sarah Dennis	22
Philip McCarthy KC	29	Catherine Birkett	21
Scott Smith	28	David Finch	21
Roderick McPhillips	28	Julie Aylward	21
Andrew Lowrie	28	Frances Chatterton	21
David Nardone	27	Thye Chan	20
Malinda Ralph	26	Jade Wraight	20
Jane Shaw	26	Melissa Crispe	20
Alexander Stark	26		

Learning and development

External training opportunities

ODPP staff attended various external training and presentation opportunities during the 2023-24 reporting period:

- Legal Profession Breakfast, supporting Women's Legal Service QLD - 2023
- Legalwise Continuing Professional Development Session, Criminal Law Evidence Intensive and Critical Update - 2023
- Cultural Awareness Training, delivered by First Nations Barrister, Avelina Tarrago - 2024
- Queensland Bar Association Conference, Brisbane - 2024
- North Queensland Law Association Conference (NQLA) 2024
- Court Seminar: Working with Interpreters in Court - 2024
- QLD Bar Association Gold Coast Conference - 2024
- Trauma Strategy - LGBTQIA+ Consultation Session, presented by the Queensland Mental Health Commission - 2024
- Mullenjaiwakka (Lloyd McDermott) Oration, presented by the Indigenous Lawyers Association of Queensland - 2024
- Child Protection Practitioners Association of Queensland Presentation about the Impact of Coercive Control - 2024
- Opportunity for ODPP staff to attend Mental Health First Aid Training
- FNQLA Solicitor Advocate Course - 2023
- Leading People and Culture Workshop by Proteus Leadership - 2023
- Australian Association of Crown Prosecutors Conference - 2023

Internal training opportunities

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:

- Parole Board Presentation by Deputy President of Parole Board, Mr Peter Shields - 2023
- Queensland Intermediary Scheme presentation about referrals and how the scheme is operating - 2024
- ODPP presentation on refining the art of file noting, by Nathan Crane - 2024
- Criminal Law (Coercive Control and Affirmative Consent) training, presented by the Women's Safety and Justice Project - 2024
- Supreme Court Directive 5 Training, presented by Bronwyn Currie and Nathan Crane - 2024
- Cause and Effect Compulsory Training: Prosecuting Dangerous Driving, presented by Chris Cook - 2024
- Training Session: A New Regime for Expert Evidence in Supreme Court Proceedings, presented by Burns J - 2024
- Teams Session - Jury Directions - Domestic and Family Violence and Sexual Violence training, presented by WSJP - 2024
- Interagency Guidelines Presentation, presented by Todd Fuller KC - 2024
- Peer to Peer Support Network Presentation, presented by Queensland Law Society - 2024
- MATE Bystander Webinar - How to be a mate who does something great - 2024
- Restorative Justice Training by Youth Justice Restorative Justice Team and Adult Restorative Justice Team - 2023
- Invest in Us Conference 2024

Employee Attraction

ODPP is committed to enhancing staff development. 112 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 21 staff and secondment extensions approved for 11 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 the 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 63 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 23/24:

- Bar Practice Course (5)
- Graduate Diploma of Legal Practice (1)

Workplace planning and 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.

Conversions from non-permanent employment to permanent appointment

In the 2023-24 reporting period, the ODPP converted 39 staff from non-permanent employment to permanent appointments under Directive 02/23 Review of non-permanent employment.

Appointments to higher classification level

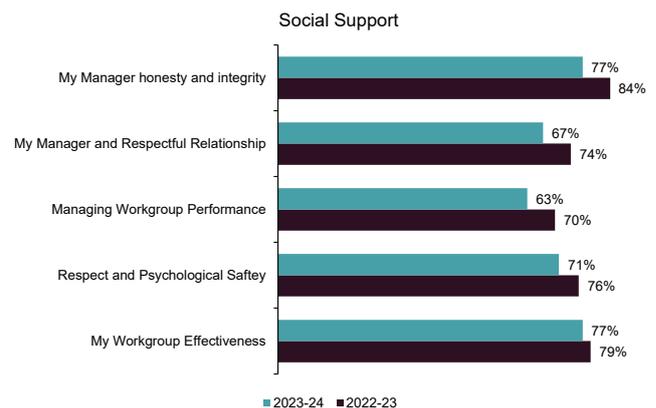
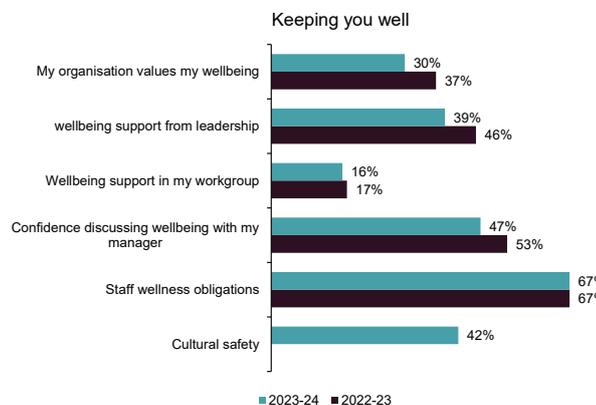
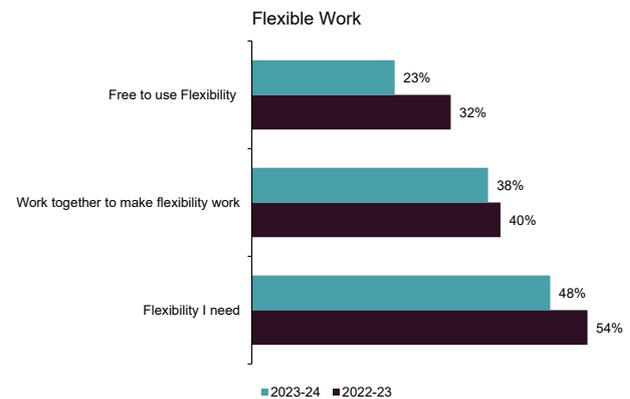
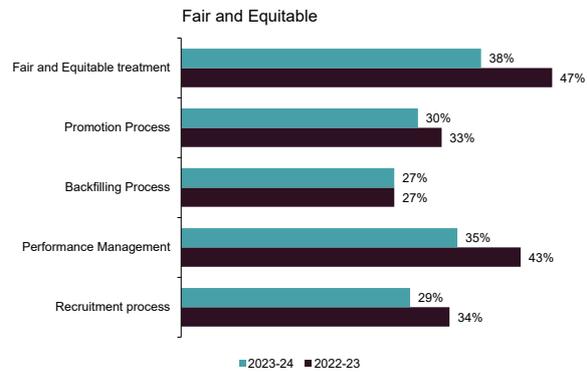
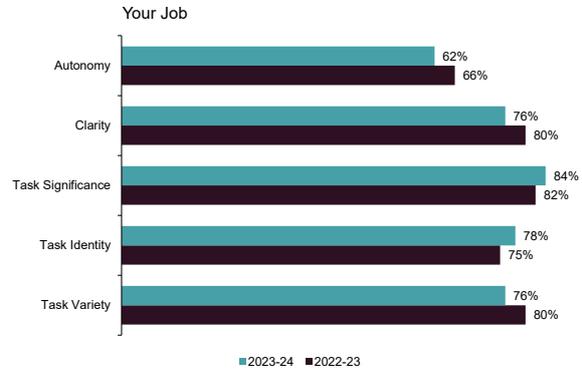
In the 2023-24 reporting period, the ODPP appointed 29 staff to higher classification level positions under Directive 03/23 Review of acting or secondment at higher classification level.

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 2023-24, 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 2023-24, 75% of ODPP staff responded to the WfQ survey; An increase from the 60% of staff who responded in 2022-23. 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

Wear it Purple Day 2023

The ODPP celebrated Wear It Purple Day in 2023, encouraging staff to wear purple to the office to celebrate diversity and young people across the LGBTIQ+ community. The ODPP recognises the importance of safe, inclusive and diverse workplaces, and understands the wider impact these attitudes have across the community and to staff wellbeing. The ODPP remains committed to ensuring staff are supported and feel safe to bring their whole selves to work.

Daffodil Day 2023

To mark the Cancer Council's annual Daffodil Day on 31 August 2023, the ODPP encouraged staff to brighten the office by wearing yellow and donate to the cause.

R U OK? Day 2023

The 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, have conversations that can help others through difficult times and genuinely listen. For 2023, the ODPP hosted a visit from the Greyhound Adoption Program in the Brisbane office. Two greyhounds that were in the program and their carers set up in a meeting room for afternoon tea where staff could drop by for a pat, chat and break from their busy days.

Empower Hour: Advocating for your health at work

Sponsored by the DJAG Women's Network, September 2023's Empower Hour event gave ODPP staff the opportunity to hear from a panel of women about their experience in advocating for themselves in the Public Service through illness, injury and chronic health conditions, including disabilities. While sponsored by the DJAG Women's Network, all staff were welcome to attend both in person or online.

Qld Bar Association Annual Conference 2024

The Queensland Bar Association annual Brisbane conference was held on 1 and 2 March 2024, 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 Attorney-General of Queensland, a presentation on recent developments in the conduct of criminal and civil proceedings by John McKenna KC, Richard Douglas KC and Ruth O'Gorman KC, the keynote address by Steven Schleicher, who was the Special Prosecutor in the case of the State of Minnesota v Dereck Chauvin, speaking about the experience of conducting an emotionally charged criminal trial that was watched by the entire world and share the prosecution teams' trial strategy, from jury selection to closing argument, and sessions discussing unrepresented (vexatious) litigants, DNA, ethics and reflections and perspectives of the court.

Queensland Women's Week and International Women's Day 2024

To launch Queensland Women's Week (3-10 March 2024), the ODPP held The Great ODPP Bake Sale. The goods were generously donated by staff members within the Brisbane office and all proceeds of the bake sale, totalling \$330.25, were donated to the Women's Legal Service Queensland.

To celebrate International Women's Day (IWD) within the same week, morning tea was held across all offices, with each staff member receiving an IWD themed cupcake to enjoy while the Director, Todd Fuller KC, Deputy Director, Philip McCarthy KC, Executive Manager, Carla Norbury and the Women's Safety and Justice Program Project Lawyer, Sarah Kay addressed staff about IWD, the impact of women and 'counting her in' as well as officially launching the Women's Safety and Justice Program.

Harmony Day 2024

For Harmony Day 2024, staff were encouraged to submit their favourite family recipe or dish from their favourite cuisine to be collated into a cookbook. The 'Taste of Harmony - ODPP Cookbook' was created with 25 recipes from cultures across the globe, including Mexico, Sri Lanka, India, South Korea, Italy, the Philippines, Thailand and Australia.

This project was intended to promote harmony, diversity and inclusion through the universal language of food and highlights the incredible cultural diversity amongst our staff.

Darkness to Daylight 2024

A number of ODPP staff participated in the Darkness to Daylight event, walking/running a combined 150kms through the night and raising funds to support Challenge DV, a social enterprise that envisions a world without domestic and family violence. Participation in this event, in their own time, assists Challenge DV to drive community awareness and raise crucial funds to help prevent domestic and family violence.

Lesbian Visibility Day 2024

The ODPP acknowledged and celebrated Lesbian Visibility Day by hosting an afternoon tea and presentation that was streamed to all regional locations. The Director, Todd Fuller KC and the Head of the Pride Collective, Crown Prosecutor Annica Fritz spoke to the office on the importance of lesbian visibility and the challenges past and present.

Pride Month 2024

For 2024 Pride Month, the ODPP launched its Pride Collective. The collective is a staff led group with a commitment to bringing inclusivity of the LGBTQIA+ community to our workplace, be a platform for those who may feel underrepresented and create and be a safe space for members and the community within our workforce.

The launch of this group coincided with a panel discussion of Pride Collective members discussing the theme 'I am not the champion of my own individuality' which was live streamed to all regions.

North Queensland Law Association 2024 Conference

The North Queensland Law Association conference was held on 24 and 25 May 2024 in Townsville, providing ODPP staff an opportunity to network with other members of the legal profession, and participate in a number of workshops over the two days. The ODPP sponsored four staff to attend the conference, and in addition partially sponsored two Consultant Crown Prosecutors to attend on the condition they each present to ODPP legal staff on a topic they engaged with at the conference.

Sessions included a presentation on practical legal ethics chaired by Judge Dean Morzone KC and presented by Judge Joshua Treviño KC, Cate Heyworth-Smith KC and Rebecca Fogerty, and a panel discussion focussing on criminal law chaired by Judge John Coker, featuring Judge Gregory Lynham, Andrew Walklate and Clair Grant.

Queensland Bar Association: Gold Coast Conference

The 2024 Queensland Bar Association Gold Coast Conference was held on 25 May 2024 in Main Beach, providing ODPP staff an opportunity to connect with other members of the legal profession and participate in workshops and panel discussions across a variety of topics. The ODPP sponsored five staff to attend the conference as part of their career development.

Sessions included a panel discussion on advocacy with Judge Rowan Jackson KC, Judge Deborah Holliday KC, Judge Jodie Wooldridge KC and Judge Katarina Prskalo KC, and a presentation on Transformative Changes in Criminal Law: Advocacy in Bail and Sentencing post taskforce presented by Deputy Director of Public Prosecutions, Philip McCarthy KC.

Bond University Career Fair

Bond University held a student Career Fair on 13 March 2024 at the university's Robina campus. Crown Prosecutor Amalia Baker-Smith and HR Officer Sarah Prasad attended, engaging with students about careers with the ODPP. Students had the opportunity to speak with Amalia about her career and journey to Crown Prosecutor, and find out what a typical day in the life of someone working at the ODPP was like.

Students were also provided with information about the ODPP's Work Experience Placement Program commencing in June, current vacancy opportunities within the ODPP and how to apply for these.

Queensland Law Society: Peer to peer support network

On 23 May 2024, the Queensland Law Society hosted an inaugural, guided, peer to peer support network presentation, focused on enhancing wellbeing in the legal profession, and featured several prominent members of the legal profession. Legal staff at the ODPP were encouraged to attend, either in person or online, with the aim of learning how to handle difficult cases more effectively, and develop a deeper understanding of professional relationships, vicarious trauma and conflict.

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 the 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').

Crown	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.
Defendant/Accused	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.
Director	The person appointed as the Director of Public Prosecutions for the State of Queensland
Discontinuance	<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>
Ex-officio Indictment	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.
Indemnity	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’).
Indictment	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.
Indictable Offence	An offence whereby, under the <i>Criminal Code 1899</i> (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.
Mention	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.’
Nolle prosequi	See ‘discontinuance.’
Offence	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.

Office of the Director of Public Prosecutions

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*.

Plea

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'.

Prosecutor

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.

Summary trial

A trial held in a Magistrates Court before a magistrate sitting alone.

Superior Courts

The District Court (including the Childrens Court of Queensland) and the Supreme Court.

Trial

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.

Use-Derivative-Use Undertaking

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').

Department of Justice and Attorney General

Director's Guidelines

As at 30 June 2024

The Guidelines are currently being reviewed by a Steering Committee which has been established for the implementation of the Women's Safety and Justice Taskforce' recommendations relating to the work of the ODPP. It is anticipated that all three recommendations will be finalised by the end of 2025.



**Queensland
Government**

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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: Vouglis (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 2024



Todd Fuller KC
DIRECTOR OF PUBLIC PROSECUTIONS

UNDER REVIEW

*Independence
Integrity
Professionalism
Fairness and Justness
Respect and Inclusivity*

Office of the Director of Public Prosecutions
Level 5, State Law Building
50 Ann Street
BRISBANE QLD 4000

GPO Box 2403
BRISBANE QLD 4001

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Office of the Director of Public Prosecutions

Level 5, State Law Building
50 Ann Street
BRISBANE QLD 4000

GPO Box 2403
BRISBANE QLD 4001