ODPP

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Annual Report 2019 – 20

Queensland Government

Introduction

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 2019 to 30 June 2020.

The Director's Guidelines as at 30 June 2020 are also included as required by section 11(2)(b) of the *Director of Public Prosecutions Act 1984* (Qld).

Contents

Director's Overview

In very many ways, 2020 has been a very challenging year for all of us. Of course the COVID-19 pandemic has dominated the community landscape and impacted significantly on the operations of the ODPP during the latter half of the reporting year. It has also been a period which has seen significant change and significant achievements.

I am pleased to present my first annual report for the Office of the Director of Public Prosecutions following my appointment as the Director on 19 June, 2020. It is with great pleasure and admiration that I present this overview of the achievements and challenges of the ODPP during this reporting year.

My appointment as Director follows the appointment of our former Director, Michael Byrne QC, as a Judge of the District Court of Queensland. As with many of the other judicial appointments from this organisation, His Honour was appointed to the District Court following a long and impressive career of almost 31 years of service to the people of Queensland as an employee of the ODPP. I would like to take this opportunity to acknowledge his outstanding leadership and management of the organisation during his term as Director, and Deputy Director before that. His Honour leaves a long legacy of not only professional achievements, but also his advocacy to achieve significant improvements in the resourcing and staffing of the organisation. All in the Office join with me in wishing him every success in his new role.

That change in leadership together with the challenges tackled and lessons learned as a result of the COVID-19 pandemic has given the Office the opportunity to review and renew. We have had to become adept at using new technology and developing new ways to carry out the business of the courts. We have experienced unprecedented levels of cooperation and collaboration across the entire profession as we all worked together to continue to provide justice to the people of Queensland. The continuation of that cooperation and communication stands to provide long-term benefits to the system of justice together with the use of technology to achieve greater efficiencies in the way in which matters are conducted in the criminal courts.

Our People and our Work

A consistent theme in the annual overviews of the ODPP has been the issue of staffing and workload. ODPP staff continue to operate under the constant pressure of a continuing increase in the complexity of cases and impending deadlines. Improvements in the investigation of serious criminal offending has seen more complex and sophisticated offending being prosecuted. In addition to the usual work of the ODPP, we continue our resource intensive involvement in the protracted and complex prosecutions of legal practitioners and members of local government. In particular, during the reporting period, the first of a series of prosecutions against the former Mayor of Ipswich, *Paul Pisasale* was conducted and resulted in his conviction. The practical reality is that the preparation and prosecution of these briefs takes considerably more time and expertise than was once required.

Staff continue to work long hours under immense pressure in their endeavours to ensure matters are prosecuted fairly to all parties as well as in support of victims of crime and their families. The nature of the work can be difficult and, at times, distressing. The health and wellbeing of staff, and the risk of vicarious trauma remain priorities. We continue to develop strategies to support staff and provide methods to prevent and to cope with vicarious trauma and to ensure their wellbeing.

Without seeking to diminish the significance of the more than 7,000 matters conducted by the ODPP in the superior courts during the reporting year, some of the prosecutions worthy of particular note are detailed in this report. They stand to demonstrate, in perhaps only a small way, the challenging work expertly undertaken by ODPP prosecutors. Several 'cold cases' were concluded by lengthy trials, including that of *John Chardon*, who was convicted of the killing of his wife; *Robert Wagner* who was convicted of the murder of his uncle who he claimed went missing in 1999; *Rodney William* who was convicted of the murder of a "*missing*" 16 year old girl, and *Simona Zafirovska* who was convicted of the bludgeoning murder of her mother in the home they shared.

The ODPP continued the important work in the Court of Appeal and also appeared on behalf of the Attorney-General on a number of appeals against the sufficiency of

the penalties imposed by sentencing courts. In particular, the decision in the case of *Sterling Free*, who abducted an 8 year old girl from a shopping centre and indecently dealt with her before returning her, identified and corrected misconceptions in the application of some sentencing principles and will provide helpful guidance to sentencing courts into the future.

The interruption to the work of the courts due to COVID-19 has seen a flow-on effect for the work of the ODPP. In the latter half of the reporting period, the ODPP experienced a reduction in the number of incoming *files*, which corresponded with the suspension of matters being heard in the Magistrates Court. However, simple numbers don't tell the whole story. The number of incoming *offences* increased as compared with the same period in the previous year despite that suspension. Similarly, jury trials were suspended from 16 March to 22 June resulting in a *decrease* in the trials being conducted, but an increase in other matters such as bail applications, pre-trial applications, sentences and judge only trials. Considerable work continued in the courts so that overall there was an increase in the *matters* finalised for the year.

The reduction in the number of incoming files resulted in a positive impact upon the number of indictments presented within four months of the committal proceeding. The Office achieved a record efficiency measure of 82.6%, well ahead of the 60% target. The reduction in the number of jury trials provided an opportunity for us to refocus our prosecutors to the preparation and consideration of matters with a view to identifying, at an earlier time, those matters that can appropriately resolve without the need for a trial. This demonstrates the considerable efficiencies that can result from the early consideration of cases with the increased availability of our more experienced legal staff.

The engagement with the ODPP of the judiciary and the profession resulted in a renewed focus on improved communication with a view to resolving matters, streamlining processes, and identifying issues early so as to continue the work of the courts and the delivery of justice to the people of Queensland. It showed encouraging signs of a more efficient profession, more openly communicating and motivated to keep things moving, despite the considerable challenges presented by the global pandemic, and provides a template for the future operation of our criminal justice system. The challenge will be to retain the innovations in technology, and in thinking, that have enabled the courts to continue to function as we move beyond the confines of the global crisis.

The reporting period saw the continuation of our strategy to build the capability of staff with intensive practical training. We continued our program of court based, practical advocacy training across the State in addition to our well attended in-house training sessions. In the face of the pandemic, we moved to a virtual platform for our training so as to not lose momentum, a move which has been met with encouraging enthusiasm and engagement by staff. This has enabled us to compile an impressive library of professional development material, drawing on the considerable experience of our staff, and to reduce the requirement of staff to provide regular face to face sessions. As educating and encouraging our staff has been a particular focus of mine, I am particularly pleased to see the success that we have achieved in this space and the tangible benefits this renewed focus has produced, not only in the capability of our already talented staff, but in the enthusiasm with which our staff have embraced the opportunity for professional development, and the consequent improvements in the culture of the workplace.

These achievements and the challenges that we have met and overcome, would not be possible without the invaluable support of the Directorate team. I am fortunate to have the continued support of an extremely dedicated and talented Directorate team consisting of Todd Fuller QC, Philip McCarthy QC and the other Consultant Crown Prosecutors who acted in the role of Deputy Director of Public Prosecutions, and Helen Kentrotis, Business Manager, who together provide considerable legal, strategic and operational support to me, and to the Office generally. It is difficult to imagine how we could operate on a day-to-day basis without the support that our close working relationship provides to the functions of the ODPP.

I would like to also acknowledge the close and productive working relationship with the Attorney-General and the Director-General of the Department of Justice and Attorney-General, and with the other senior officers of the department. Their continued support and unwavering respect for the independence of the Director of Public Prosecutions ensures that the day-to-day operations of the Office can continue to function effectively.

The Future

The ODPP could not function as it does without the considerable effort and dedication of all of the staff to the important and challenging work of the ODPP. I am so very proud of them, and particularly when faced with the crisis that COVID-19 brought. Their enthusiasm to embrace new technology and new ways of doing things so as to continue to provide the same high quality prosecution service to the people of Queensland, is a credit to them as individuals and demonstrates the quality of the staff in the ODPP.

I am pleased to be able to lead this team of highly skilled, talented and dedicated staff as we emerge out of this pandemic and move forward into the future. The previous year has shown the capacity for the staff of the ODPP to adapt and to adopt modern, outcome focused thinking, so as to continue to provide a highly professional and effective prosecution service. I wish to particularly express my gratitude for the support and cooperation they have shown for each other, and for me and the whole Directorate team. We, as an organisation, will continue to face many and varied challenges in the coming year. We will continue to strive for greater efficiencies and to meet the challenges of these uncertain times so as to deliver a dynamic, modern and professional prosecution service for the people of Queensland.

Carl Heaton QC
Director of Public Prosecutions

About Us

The *Director of Public Prosecutions Act 1984* (Qld) created the independent Director of Public Prosecutions, who is responsible to the Attorney-General. 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 Service Act 2008* (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, Childrens 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 Vision

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 Values

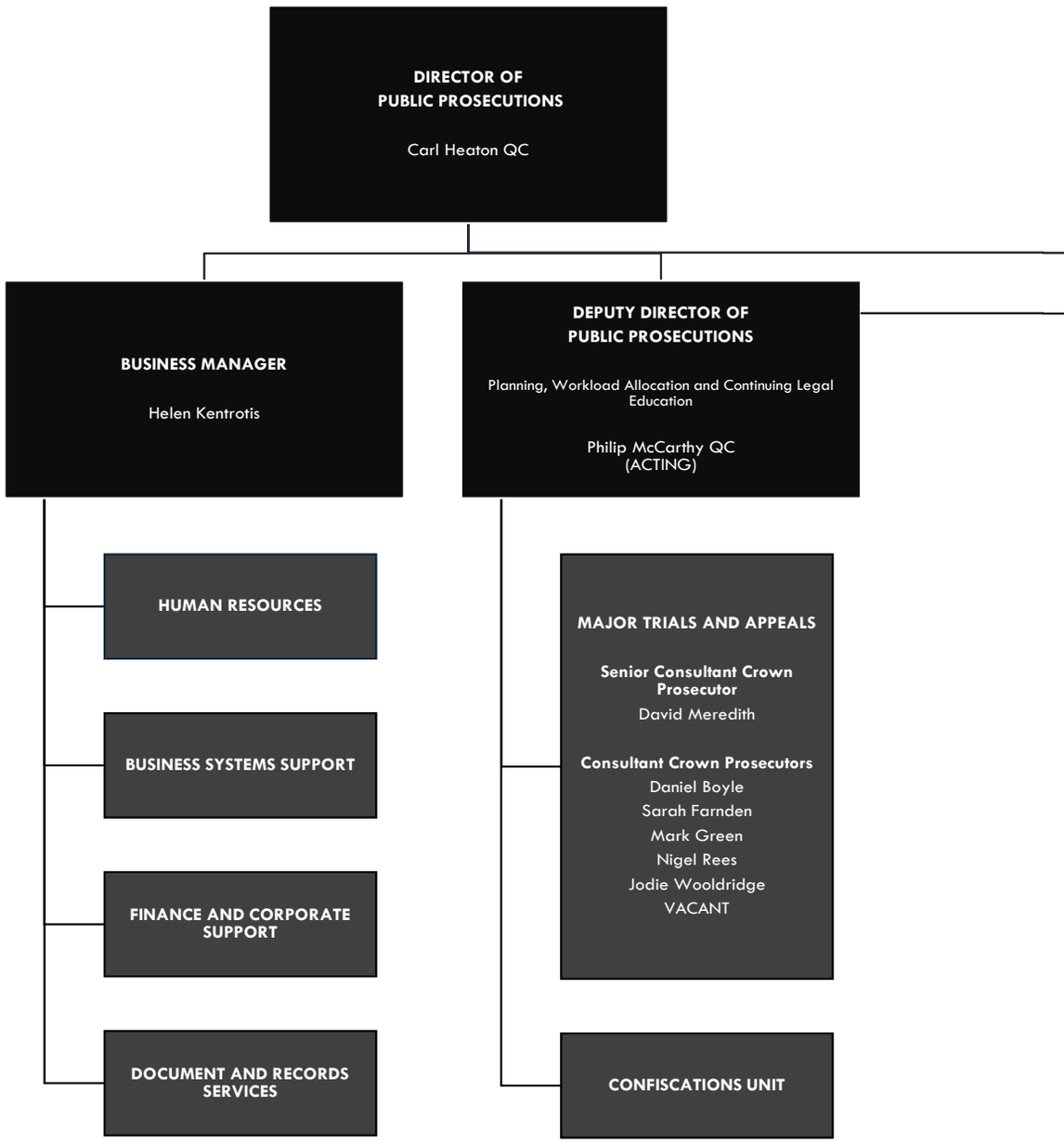
The ODPP values results, professional growth, workforce diversity and a balance between work and life commitments. ODPP staff are actively encouraged and supported, and have access to excellent working conditions, a range of work experiences and learning and development opportunities. The ODPP strives to be fair, dynamic, independent and professional.

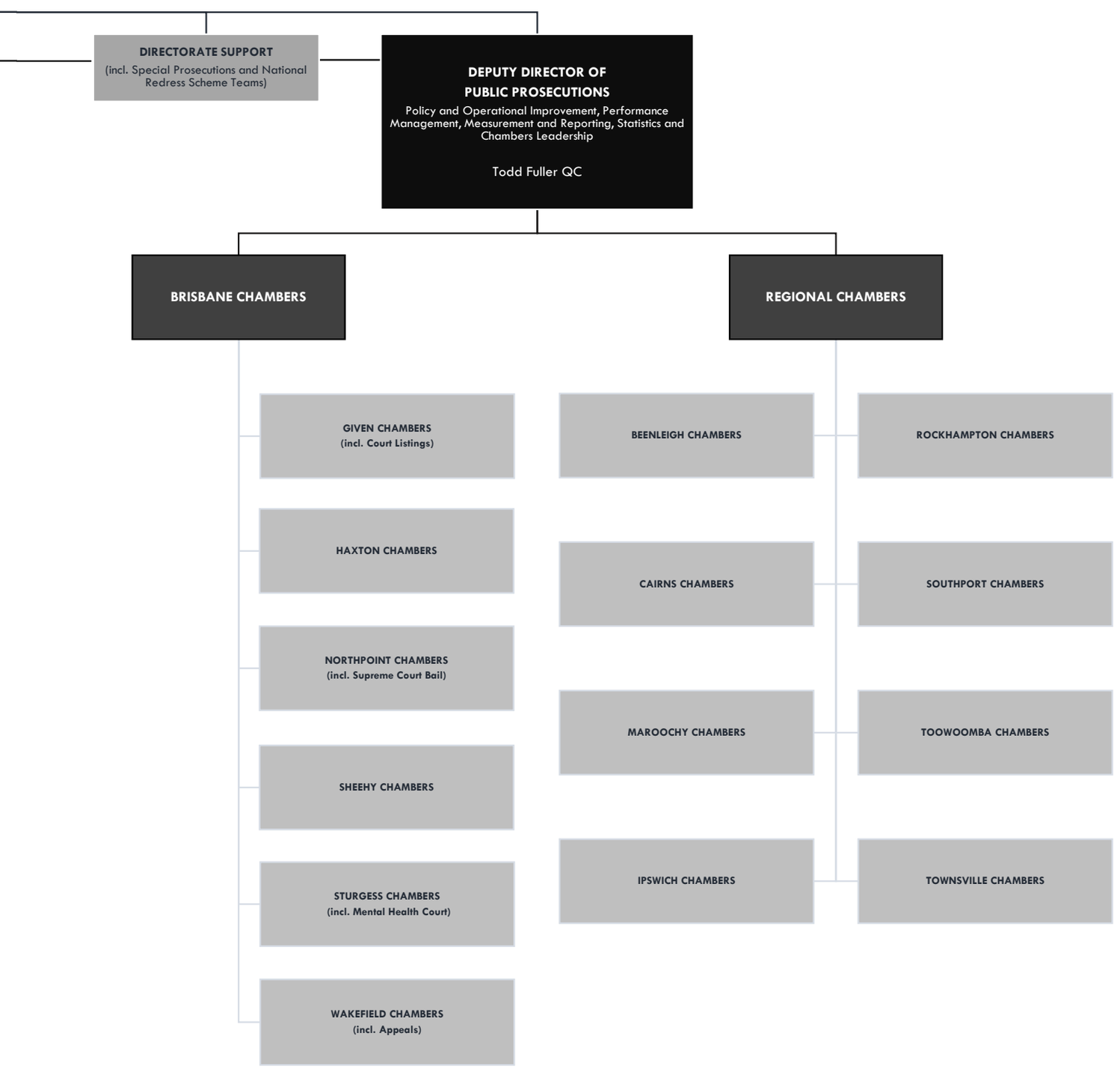
The ODPP also incorporates the Department of Justice and Attorney-General's *'Our Charter'* which launched in 2018. Our Charter aims to provide guidance in the way we do our work and the service we provide.

ODPP Queen's Counsel as at December 2019
(from left) Carl Heaton QC (Director of Public Prosecutions), His Honour Judge Michael Byrne QC (former Director of Public Prosecutions), Todd Fuller QC (Deputy Director), Philip McCarthy QC (Acting Deputy Director)

Organisational Structure

As at 30 June 2020




DIRECTORATE SUPPORT
(incl. Special Prosecutions and National Redress Scheme Teams)
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS
Policy and Operational Improvement, Performance Management, Measurement and Reporting, Statistics and Chambers Leadership
Todd Fuller QC
BRISBANE CHAMBERS
REGIONAL CHAMBERS
GIVEN CHAMBERS
(incl. Court Listings)
HAXTON CHAMBERS
NORTHPOINT CHAMBERS
(incl. Supreme Court Bail)
SHEEHY CHAMBERS
STURGESS CHAMBERS
(incl. Mental Health Court)
WAKEFIELD CHAMBERS
(incl. Appeals)
BEENLEIGH CHAMBERS
CAIRNS CHAMBERS
MAROOCHY CHAMBERS
IPSWICH CHAMBERS
ROCKHAMPTON CHAMBERS
SOUTHPORT CHAMBERS
TOOWOOMBA CHAMBERS
TOWNSVILLE CHAMBERS

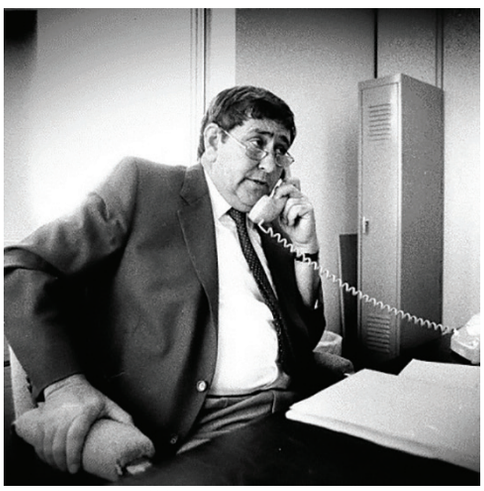
Locations of the ODPP

Brisbane Chambers	Level 5 State Law Building 50 Ann Street BRISBANE QLD 4000 P (07) 3035 1122	GPO Box 2403 BRISBANE QLD 4001 DX 40170 Brisbane Uptown DPP.Mailbox@justice.qld.gov.au
Beenleigh Chambers	Level 1 12-14 James Street BEENLEIGH QLD 4207 P (07) 3081 2300	PO Box 717 BEENLEIGH QLD 4207 DX 40466 Beenleigh
Cairns Chambers	Level 6 Citi Central Building 63-67 Spence Street CAIRNS QLD 4870 P (07) 4038 5731	PO Box 1095 CAIRNS QLD 4870 DX 41340 Cairns
Ipswich Chambers	Level 2 Ipswich Courthouse 43 Ellenborough Street IPSWICH QLD 4305 P (07) 3470 7419	PO Box 27 IPSWICH QLD 4305 DX 41227 Ipswich
Maroochy Chambers	Level 4 Mike Ahern Centre 12 First Avenue MAROOCHYDORE QLD 4558 P (07) 5376 5200	PO Box 1105 MAROOCHYDORE QLD 4558 DX 41876 Maroochydore
Rockhampton Chambers	Ground Floor 149 Bolsover Street ROCKHAMPTON QLD 4700 P (07) 4921 6227	PO Box 1304 ROCKHAMPTON QLD 4700 DX 41184 Rockhampton
Southport Chambers	Level 1 Southport Courthouse Hinze Street SOUTHPORT QLD 4215 P (07) 5675 7000	PO Box 1891 SOUTHPORT QLD 4215 DX 41524 Southport
Toowoomba Chambers	Toowoomba Courthouse 159 Hume Street TOOWOOMBA QLD 4350 P (07) 4591 4758	PO Box 1800 TOOWOOMBA QLD 4350 DX 41061 Toowoomba
Townsville Chambers	Level 3 22 Walker Street TOWNSVILLE QLD 4810 P (07) 4781 8933	PO Box 989 TOWNSVILLE QLD 4810 DX 41427 Townsville

Court Locations

The ODPP's Brisbane and regional chambers are responsible for conducting prosecutions before the Supreme or District Courts in the locations shown on the map below.

Directors' Profiles



Des Sturgess QC
January 1985 - May 1990

Royce Miller QC
May 1990 - June 2000

Leanne Clare SC
June 2000 - June 2008

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 passed away.

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 passed away at the age of 84.

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.

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.

Michael R Byrne QC

Appointed November 2015

Michael Byrne QC commenced working in the Office of the Director of Public Prosecutions in 1988. Michael obtained his Bachelor of Laws from the Queensland University of Technology in 1991. After working as a case lawyer for some years, he commenced prosecuting criminal trials in the District and Supreme Courts in 1995.

Michael was appointed Senior Counsel in and for the State of Queensland in 2009 prior to his appointment as the Deputy Director of Public Prosecutions in 2010. In his role as Deputy Director, he regularly appeared in all jurisdictional levels of courts in Queensland, and on occasion in the High Court of Australia. He was also heavily involved in inter-departmental and government body meetings considering policy and legislative issues. He served as Director for four years and two months before his appointment to the District Court bench in January 2020.

Carl Heaton QC

Appointed June 2020

Carl Heaton QC was appointed in June 2020 as the Director of Public Prosecutions. He commenced working in the Queensland ODPP in 1989. In his time with the ODPP he has appeared in almost every centre in the State where the District and Supreme Courts are held.

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

Carl was appointed Senior Counsel in and for the State of Queensland in 2010. He obtained his Bachelor of Laws degree from the Queensland University of Technology in 1990. Carl is a Member of the Board of the Australian Advocacy Institute and a senior Advocacy Trainer.

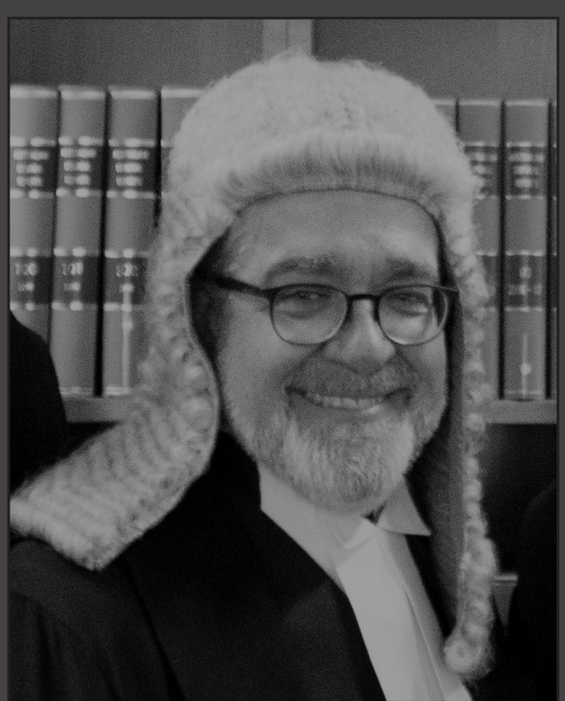
Anthony Moynihan QC
June 2008 - June 2015

Michael R Byrne QC
November 2015 - January 2020

Carl Heaton QC
June 2020 - Present

Significant Appointments

During the reporting period, the following ODPP staff members were appointed to significant positions within the legal profession. These appointments recognise the talented lawyers within the ODPP, who are leaders in the field of criminal advocacy. They are remarkable personal and professional achievements for the staff, and speak of the high regard in which the ODPP and its personnel are held within the profession.



Michael R Byrne QC

On 20 January 2020, His Excellency the Governor, acting on the advice of the Executive Council, appointed the then Director of Public Prosecutions, Michael R Byrne QC, as a Judge of the District Court of Queensland.

Michael obtained his Bachelor of Laws from the Queensland University of Technology in 1991. After working as a case lawyer for some years, he commenced prosecuting criminal trials in the District and Supreme Courts in 1995. Michael has extensive experience in the prosecution of most offence types under the *Criminal Code 1899* (Qld).

Michael was appointed Senior Counsel in and for the State of Queensland in 2009 prior to his appointment as the Deputy Director of Public Prosecutions in 2010. In his role as Deputy Director, he regularly appeared in all jurisdictional levels of courts in Queensland, and on occasion in the High Court of Australia. He was also heavily involved in inter-departmental and government body meetings considering policy and legislative issues.

Michael was appointed Director of Public Prosecutions in November 2015 after having acted in the role since June 2015.

Michael's employment with the Office spanned 31 years and 6 months. Under his leadership as Director, the ODPP enjoyed considerable growth, both in staffing levels and overall funding, and resulted in improved conditions for all staff. He was a significant mentor and friend to many.

Michael is the third successive Director to be appointed as a judicial officer to the District Court.

Carl Heaton QC

Carl Heaton QC was appointed in June 2020 to the statutory position under the *Director of Public Prosecutions Act 1984* (Qld) with powers, functions and responsibilities determined thereunder.

He commenced working in an administrative role in the Queensland ODPP in 1989. 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.

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

Carl was appointed Senior Counsel in and for the State of Queensland in 2010, which was converted to the appointment of Queen's Counsel in 2013. He obtained his Bachelor of Laws degree from the Queensland University of Technology in 1990. Carl is a member of the Queensland Bar Association, a member of the Board of the Australian Advocacy Institute and is also a senior Advocacy Trainer.

Philip McCarthy QC

On 5 December 2019, His Excellency the Governor, acting on the advice of the Executive Council, appointed Philip McCarthy, then a Consultant Crown Prosecutor, as one of Her Majesty's Counsel (a Queen's Counsel).

Philip has been a long term employee of the ODPP. He commenced with the ODPP as a paralegal in July 1995 after graduating from the University of Queensland with degrees in Law and Science. Philip rose through the ranks of the Office to his permanent position as a Consultant Crown Prosecutor and currently an Acting Deputy Director of Public Prosecutions.

Philip was admitted as Counsel in 1997, commenced prosecuting trials in 2001 and over the years he has developed a reputation for carrying a heavy caseload and prosecuting with fairness, common sense and diligence. His appointment rightly recognises him as one of the leading criminal law advocates in the State of Queensland.

Notable Prosecutions

High Court of Australia

De Silva v The Queen

On 13 December 2019, the High Court, by majority, dismissed an appeal from the Court of Appeal of the Supreme Court of Queensland. The appeal concerned whether the trial judge should have given the jury a direction of the type proposed in Liberato v The Queen (1985) 159 CLR 507, known as a "Liberato direction". A Liberato direction is a direction typically given in cases which turn on the conflicting evidence of a prosecution witness and a defence witness. It is to the effect that, even if the jury does not positively believe the defence witness and prefers the evidence of the prosecution witness, they should not convict unless satisfied that the prosecution has proved the defendant's guilt beyond reasonable doubt.

The appellant was convicted by a jury of one count of rape. The prosecution case at trial was dependent upon acceptance of the complainant's evidence. The appellant did not give or call evidence. A recorded interview between the appellant and the police, in which the appellant denied the offending, was in evidence in the prosecution case. The trial judge was not asked to give, and did not give, a Liberato direction.

The appellant appealed against his conviction to the Court of Appeal, arguing that a miscarriage of justice occurred by reason of the trial judge's failure to give a Liberato direction. The Court of Appeal held that, as the appellant had not given sworn evidence before the jury, there was no need for the trial judge to give a Liberato direction.

By grant of special leave, the appellant appealed to the High Court. A majority of the Court observed that in some cases it may be appropriate to give a Liberato direction, notwithstanding that the accused's conflicting version of events is not before the jury on oath. The majority explained that a Liberato direction serves to clarify and reinforce directions on the onus and standard of proof in cases in which there is a risk that the jury may be left with the impression that the evidence upon which the accused relies will only give rise to a reasonable doubt if they believe it to be truthful, or that a preference for the evidence of the complainant suffices to establish guilt. As such, a Liberato direction should be given in cases in which the trial judge perceives that there is a real risk that the jury might view their role in this way, whether or not the accused's version of events is on oath or in the form of answers given in a record of police interview.

In dismissing the appeal, the majority of the High Court found that a Liberato direction was not needed in the circumstances of this case. The trial judge had given repeated correct directions as to the onus and standard of proof. Nothing in the summing-up suggested that the jury might have been left with the impression that its verdict turned on a choice between the complainant's evidence and the appellant's account in the interview. In the result, the trial did not miscarry by reason of the omission of a Liberato direction.

(Source: High Court of Australia – Judgment Summary – http://www.hcourt.gov.au)

Queensland Court of Appeal

R v Zafirovska

Simona Zafirovska was charged on indictment with the murder of her mother at The Gap in Brisbane in October 2016. The matter proceeded to trial in the Brisbane Supreme Court in February 2019. At the conclusion of the trial, Zafirovska was found guilty of her mother's murder and sentenced to life imprisonment with a non-parole period of 20 years. Zafirovska appealed against her conviction. The appeal was heard by the Court of Appeal on 21 February 2020. Judgment was delivered on 12 June 2020 and the appeal was dismissed.

R v Akehurst

Shane Akehurst was charged on indictment with the violent manslaughter of his son, Corby Mitchell, as well as an offence of torture. Corby died after being hit against the frame of a bed. He was declared brain dead two days later and his life support was switched off. Akehurst pleaded guilty to the offences and was sentenced to 12 and a half years imprisonment. As a serious violent offender, Akehurst is required to serve at least 80% of his sentence in custody before being eligible for parole. On 9 May 2019, Akehurst lodged an appeal against his sentence. The appeal is listed for hearing on 30 October 2020.

R v Wagner

Robert Wagner was charged on indictment with the murder of his uncle, who was last seen in 1999. Wagner

pleaded not guilty to the offence and a trial commenced on 10 June 2019. The jury returned a verdict of guilty on 1 July 2019 and Wagner was sentenced to life imprisonment. Wagner appealed against his conviction and sentence on 10 July 2019, and later lodged a second appeal against his conviction on an additional ground. As at 30 June 2020, Wagner's appeal is yet to be heard.

R v Williams

Rodney Williams was charged on indictment with the murder of pregnant teenager, Tiffany Taylor. Williams pleaded not guilty to the offence and a trial commenced on 24 February 2020. The jury returned a verdict of guilty on 20 March 2020 and Williams was sentenced to life imprisonment with parole eligibility after serving 30 years imprisonment. Williams appealed against his conviction and sentence on 6 April 2020. As at 30 June 2020, Williams' appeal is yet to be heard.

R v Chardon

John Chardon was charged with the murder of his wife Novy Chardon. On 9 September 2019, following a trial in the Brisbane Supreme Court, Chardon was convicted on the alternative count of manslaughter. He was later sentenced to 15 years imprisonment. Chardon has lodged an appeal against his conviction and sentence. The appeal was heard by the Court of Appeal on 16 April 2020. Judgment was reserved.

R v Smith

Mark Smith was charged with the murder of his roommate, Bradley Lester. On 23 July 2019, following a trial in the Townsville Supreme Court, Smith was convicted of murder. He was sentenced to life imprisonment. Smith has lodged an appeal against his conviction. As at 30 June 2020, the appeal was not yet listed for hearing.

R v Free

Sterling Free was charged on indictment with one count each of taking a child under 12 years for an immoral purpose, deprivation of liberty, and indecent treatment of a child under 12 years. Free pleaded guilty to the offences and was sentenced to 8 years imprisonment, with parole eligibility after serving two years and eight months in custody. On 24 October 2019, the Attorney-General lodged an appeal against the sentence. The appeal was heard on 6 March 2020. On 31 March 2020, the Court of Appeal delivered its judgment and allowed the Attorney-General's appeal. The sentence of eight years imprisonment was confirmed, however the two years and eight months parole eligibility order was removed, meaning that Free is now required to serve at least 50% of his eight year sentence before being eligible for parole.

R v Patrick (a pseudonym)

A juvenile, "Patrick" (a pseudonym), was charged on two indictments with one count each of burglary and stealing, robbery, unlawful use of a motor vehicle and malicious act with intent. This matter involved serious injuries being inflicted on an on-duty police officer, Constable Peter McAulay. "Patrick" pleaded guilty to the offences in the Childrens Court of Queensland at Ipswich and was sentenced on 9 August 2019 to 3 years detention, to be released after serving 50% of that sentence pursuant to the *Youth Justice Act 1992*. "Patrick" lodged an appeal against his sentence on the basis that it was manifestly excessive. The Attorney-General lodged an appeal against the sentence on the basis that it was manifestly inadequate. The appeals were heard on 28 November 2019. On 24 March 2020, the Court of Appeal delivered its judgment. "Patrick's" appeal against sentence was dismissed, however the Court of Appeal allowed the Attorney-General's appeal. The sentence of three years detention was set aside and substituted with a five year term of detention with an order that "Patrick" be released after serving 50% of that sentence.

Supreme Court of Queensland

R v Strbak

Heidi Strbak was charged on indictment with the manslaughter of her four-year-old son, Tyrell Cobb. Strbak pleaded guilty to the offence, however she contested a number of the factual allegations surrounding the incident. She was sentenced to nine years imprisonment.

Strbak lodged an appeal against her sentence, arguing that it was manifestly excessive. Her appeal was heard by the Court of Appeal on 6 November 2018 and on 12 March 2019, the Court of Appeal dismissed her appeal. Strbak appealed to the High Court of Australia. On 18 March 2020, following a Full Court hearing, the High Court of

Australia allowed Strbak's appeal and set aside the order of the Court of Appeal. The Court ordered that the sentence imposed by the Supreme Court be quashed and that the matter be remitted to the Supreme Court for re-sentencing.

On 6 October 2020, the matter proceeded as a contested sentence in the Brisbane Supreme Court, with several witnesses called to give evidence. On 9 October 2020, after four days of evidence and submissions from both parties, the decision on sentence was reserved. As at the date of printing of this report, no decision has been delivered.

R v Daniels; R v Latu; R v Mareiti; R v Tahiata; R v Taiao; R v Thrupp; R v Mariri; R v Walker (Toolbox Murders)

Stou Daniels, Webbstar Latu, Ngatokoona Mareiti, Tuhiringi-Thomas Tahiata, Davy Taiao, Trent Thrupp, Tepuna Mariri & Waylon Walker are conjointly charged with the murders of Corey Breton and Iuliana Triscaru, whose bodies were discovered in a toolbox in a dam near Logan in early 2016. All eight defendants were committed for trial to the Brisbane Supreme Court and indictments have been presented. The prosecutions of Tahiata, Mariri, Mareiti and Latu have since been finalised. Tahiata was convicted by a jury of two counts of murder following a trial in February 2020, while Mariri, Mareiti and Latu each pleaded guilty to two counts of manslaughter.

The four remaining defendants – Daniels, Taiao, Thrupp and Walker – are listed for trial in the week commencing 19 October 2020.

R v Saxon

Jamie Saxon was charged with the road rage murder of a German backpacker, Dominik Schulze, after stabbing him multiple times on Milton Road in Brisbane in October 2017.

Saxon was convicted of murder following a trial in October 2019 and was sentenced to life imprisonment. He appealed against his conviction on the basis that the verdict was unreasonable and not supported by the evidence. The Court of Appeal, in its judgment dated 27 April 2020, quashed the conviction and ordered a retrial. The matter is back before the Supreme Court and is currently listed for trial on 7 December 2020.

R v O'Meara

Troy O'Meara is charged with the cold case rape and murder of Linda Doris Reed on the Gold Coast in December 1983. O'Meara was charged following a lengthy investigation. The matter is currently before the Brisbane Supreme Court.

R v Timberlake

Quincy Timberlake is charged with the murder of his three year old son, Sinclair, in 2014. Timberlake is a former Kenyan presidential candidate. The matter is currently before the Brisbane Supreme Court.

District Court of Queensland

R v Crilley

Nicholas Crilley was charged with multiple violent and sexual offences against a woman who he had kept restrained in a Brisbane unit for three weeks. He pleaded guilty to more than 50 offences in the Brisbane District Court on 1 May 2020 and was sentenced to life imprisonment. Crilley has appealed his sentence to the Court of Appeal on the basis that it is manifestly excessive. The appeal is not yet listed for hearing.

Ipswich City Council Prosecutions

A number of defendants are currently being prosecuted concerning multiple allegations, all in connection with Ipswich City Council. The alleged offences include extortion, attempting to pervert the course of justice, misconduct in relation to public office, official corruption and fraud.

The most high profile defendant is Paul Pisasale, former Mayor of Ipswich, who was committed for trial from the Magistrates Court to the Brisbane District Court on 16 September 2019. Eight indictments were later presented against Pisasale in the Brisbane District Court. Pisasale pleaded guilty to all eight indictments on a date outside this reporting period.

On 30 September 2020, Pisasale was sentenced to seven and a half years imprisonment. He will be eligible for parole in October 2022.

There are defendants before the District Court and as the date of printing of this report:

- William Shuck is listed for sentence in the Brisbane District Court on 24 November 2020.
- Ben Hayward and Craig Maudsley are listed for trial on 17 June 2021.
- Salvatore Di Carlo is listed for mention on 9 November 2020.
- James Lindsay is listed for mention on 15 December 2020.

There are also a number of matters in the Magistrates Court:

- Andrew Antoniolli had his matter heard in the Ipswich Magistrates Court. On 6 June 2019, his Honour Magistrate Gett ruled that each charge against Antoniolli was proven. On 9 August 2019, Antoniolli was sentenced to six months imprisonment, wholly suspended, for an operational period of 18 months. Antoniolli has appealed against his conviction to the District Court. His appeal was heard on 23 April 2020. Judgment was reserved.

Logan City Council Prosecutions

Timothy Luke Smith, suspended Logan City Lord Mayor, is charged with official corruption and perjury. The matter is currently listed for hearing (part heard) in the Beenleigh Magistrates Court on 17 November 2020. Smith has also been charged with seven other suspended Logan City Councillors (Stephen Swenson, Laurence Smith, Trevina Schwarz, Phillip Pidgeon, Russell Lutton, Cherie Dalley and Jennifer Breen) with multiple counts of fraud and misconduct in relation to public office. Their matters are currently listed for committal hearing in the Brisbane Magistrates Court.

Upcoming in 2020-21

R v Crabtree

Maree Crabtree is charged with multiple offences, including the murder of two of her adult children and the torture of her third adult child. The matter is currently before the Brisbane Magistrates Court.

R v Dunn

Mark James Dunn is charged with the murder of his four year old daughter who had Down Syndrome. The matter is currently before the Brisbane Magistrates Court.

Wilsonton 9

Nine people were charged with the murder of Debbie Combarngo in 2018. Three of the defendants have since been committed for trial for her murder. The remaining defendants were committed for sentence for her manslaughter. They will be sentenced in the Toowoomba Supreme Court over three days from 26 October to 28 October 2020.

Operation Lima Violin II

Operation Lima Violin II has so far seen 14 people charged with fraud and one other person charged with money laundering, all in connection with alleged serious organised investment fraud and money laundering rackets. One matter has been resolved and one matter has been discontinued. All other matters are currently listed for either committal mention in the Brisbane Magistrates Court in October 2020 or for committal hearing in February 2021.

Performance

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 two 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.

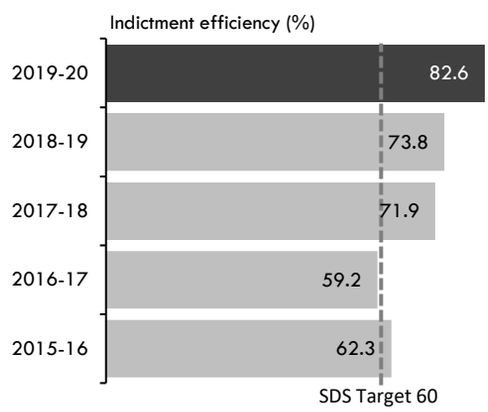
- 82.6% of indicted matters were signed within 4 months of committal
- The ODPP achieved a conviction rate of 92.1%

Efficiency measure

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

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

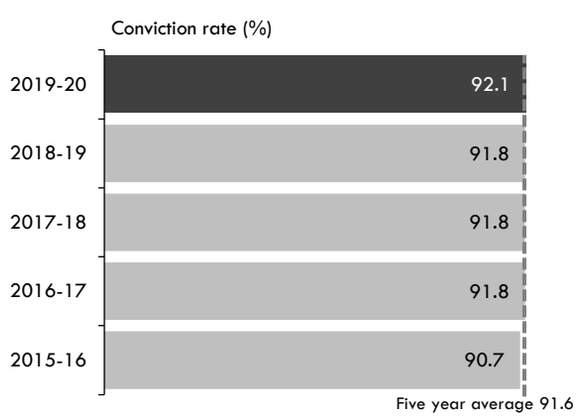
The ODPP exceeded its efficiency target for the 2019-20 financial year by 8.8 percent, signing 82.6 percent of indictments within four months of committal. Throughout the reporting period, the ODPP has continued to address increased workloads and improve efficiency.



Effectiveness measure

The ODPP's effectiveness measure requires an 85 percent conviction rate for prosecutions on indictment in the Supreme Court, District Court and Childrens Court of Queensland. The ODPP exceeded this target for the 2019-20 financial year, achieving a conviction rate of 92.1 percent.

The ODPP has maintained a high conviction rate over the last five reporting periods, with an average of 91.6 percent and consecutive conviction rates of 91.8 percent for the previous three reporting periods. 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.



The ODPP saw a positive increase in Indictment Efficiency and Conviction Rate during the height of COVID-19 between 16 March 2020 and 22 June 2020. This increase can be attributed to decreased prosecution services relating to court activities.

Incoming Offences

Quantity

The ODPP received 54,307 charges for consideration during the reporting period, up 2.7 percent from 52,887 in the previous reporting period. This figure includes 38,662 charges received for prosecution, in addition to Supreme or Childrens Court of Queensland bail applications, appeals, breach hearings and mental health referrals.

INCOMING OFFENCES BY OFFENCE TYPE

Total defendants	9,320
Summary and committal	9,336
Committed for trial	28,802
Committed for sentence	2,204
Ex-officio	1,067
Breach proceedings	2,597
Bail	633
Section 222 appeal	1,932
Appeal	1,375
Mental Health	893

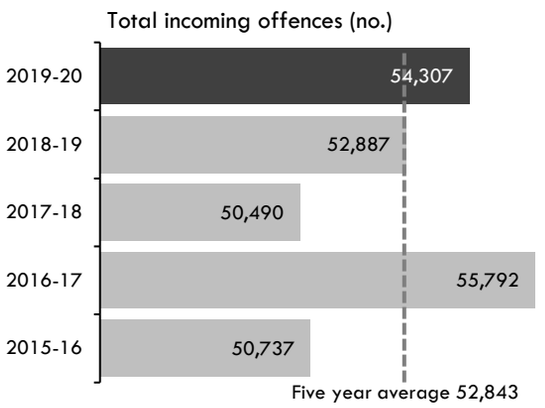
Recent trends

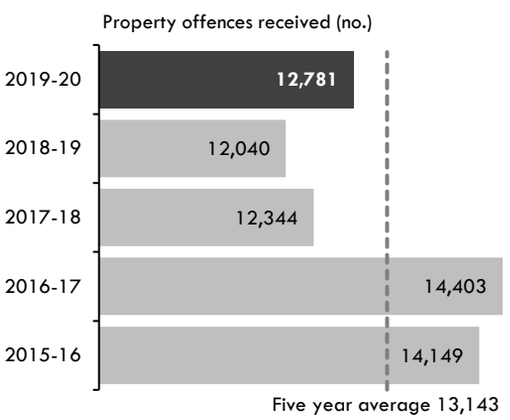
The ODPP observed an increase in the number of property offences received for prosecution during the reporting period, with an increase of six percent to 12,781 in 2019–20 from 12,040 in 2018–19.

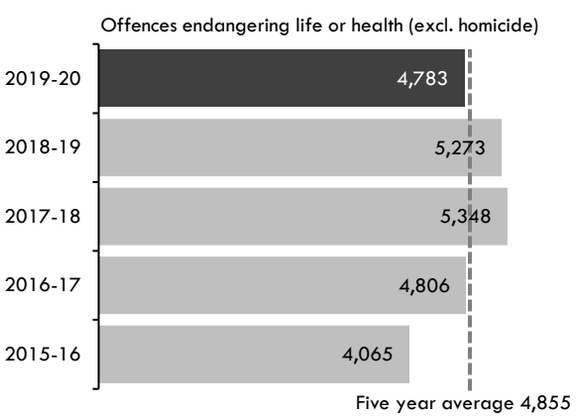
Consistent with previous years, the ODPP again received a high volume in drug offences received for prosecution during 2019–20, despite a decrease of 0.16 percent from 2018–19 in total charges.

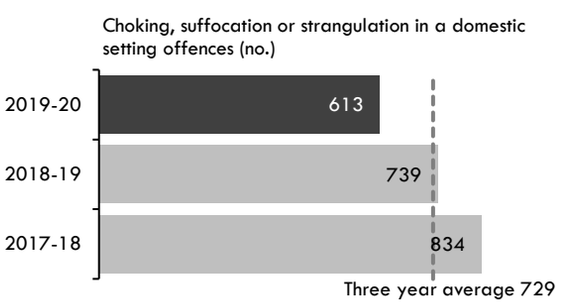
The ODPP again received a high volume of charges of violence and offences endangering life or health (excluding homicide), despite a 9.3 percent decrease from 2018–19. Such offences include assault, grievous bodily harm, and dangerous operation of a vehicle.

The number of offences of choking, suffocation or strangulation in a domestic setting decreased 17.4 percent from the previous reporting period to 613 charges, with a three-year average of 729 charges.









The ODPP saw a decrease in some figures which is attributed to the COVID-19 pandemic at its peak between 16 March 2020 and 22 June 2020.

Offences received during 2019-20 (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.

CATEGORY	OFFENCE	Brisbane	Beenleigh	Cairns	Ipswich	Maroochy	Rockhampton	Southport	Toowoomba	Townsville	TOTAL
HOMICIDE	*Murder*	79		8	9	3	4	6		2	111
	Attempted murder	39		6	3		4			3	55
	Manslaughter	11								2	13
	Dangerous op. causing death	7		2	3	1	2		2	3	20
	Striking causing death	2	2					1			5
	Other Chapter 28 (ss.307-314)	7			1						8
SEXUAL OFFENCES	*Rape*	777	79	121	129	103	206	117	32	241	1,805
	Sexual assault	211	10	22	19	19	11	46	1	68	407
	Unlawful carnal knowledge	47	16	19	9	8	41	8	6	20	174
	Unlawful sodomy	11			1	1	1	19		4	37
	Indecent treatment	1297	236	170	288	173	252	188	56	289	2,949
	CEM (incl. Cth Code)	445	44	55	132	53	141	57	48	163	1,138
	Other Chapter 22 (ss.211-229B)	518	19	20	32	54	42	33	47	27	792
VIOLENCE AND OFFENCES ENDANGERING LIFE	*Malicious act w/intent*	56	11	11	7	2	3	1	3	7	101
	Grievous bodily harm	165	21	36	29	24	50	51	2	44	422
	Dangerous operation of a vehicle	154	15	14	15	25	28	6	15	36	308
	Torture	60	8	3	1	8	3	9	1	17	110
	Wounding	107	21	42	16	10	13	24	10	42	285
	Assaults	1390	159	276	144	127	176	137	50	372	2,831
	Choking/suffocation/strangulation	254	39	70	39	38	52	47	17	57	613
	Other Chapter 29 (ss.315-334)	71		1	6	5	11	16		3	113
PROPERTY OFFENCES	*Robbery*	1006	200	125	165	97	121	202	46	138	2,100
	Extortion	64	6	2	5	8	3	4			92
	Burglary, Enter/being in premises	1513	251	261	161	99	270	69	53	174	2,851
	UEMV for CIO	70	12	1	5		4	3		4	99
	Stealing/receiving	1351	269	61	130	48	123	58	46	107	2,193
	UUMV and UPMV	687	120	62	94	35	85	39	40	102	1,264
	Fraud	1758	69	68	61	19	83	142	157	94	2,451
	Forgery and uttering	264	17	1	12	2		12		14	322
	Arson and wilful damage	526	55	62	55	57	84	45	11	63	958
	Other Part 6 (ss. 390-553)	374	7	12	8	15	16	3	10	6	451
OTHER OFFENCES IN THE CRIMINAL CODES (QLD & CTH)	*Breaches of the peace*	48	9	7	27	4	10	10	2	15	132
	Corruption, abuse of office	6		1				2		3	12
	Administration of justice	56	5	11	7	2	10	3		13	107
	Prostitution	2	2			1					5
	Offences against liberty	259	20	17	20	27	18	18	5	22	406
	Unlawful stalking	115	9	17	21	11	13	11	2	12	211
	Marriage, parental rights/duties	5			5	2	3				15
	Other Criminal Code (Qld)	224	7	8	137	36	13		1	16	442
	Other Criminal Code (Cth)	47	9	2	2	3	22			7	92
DRUG OFFENCES	*Trafficking DD*	583	6	31	43	24	90	15	31	94	917
	Producing DD	168	15	36	7	18	34	19	15	16	328
	Supplying DD	7208	425	262	1229	248	974	286	1533	1061	13,226
	Possessing DD	3279	86	194	139	142	338	105	118	289	4,690
	Other Drugs Misuse Act	2378	45	47	173	48	150	62	70	186	3,159
ALL OTHER OFFENCES	*SUMMARY OFFENCES ACT*	567		3	17	16	13	9	40	3	668
	WEAPONS ACT/REGULATION	556	21	9	56	10	39	28	29	22	770
	BAIL ACT	585	4	6	7	7	21	15	17	5	667
	TORUM ACT [1]	560	8	9	81	20	55	11	11	7	762
	OTHER	1599	33	128	218	57	151	52	18	364	2,620

[1] *Transport Operations (Road Use Management) Act 1995* (Qld)

Preparation of Matters

Magistrates Court Outcomes

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 1,462 committal matters during the reporting period.

Magistrates Court finalisations included:

- 1,032 matters committed for trial
- 92 matters committed for sentence
- 163 summary pleas of guilty
- 71 defendants discharged on all charges

Presentation of indictments

The ODPP presented indictments to the Supreme, District and Childrens Court of Queensland in relation to 6,689 matters during the reporting period. This is a decrease of 4.5 percent compared to the previous reporting period.

The indicted matters in the current reporting period consisted of:

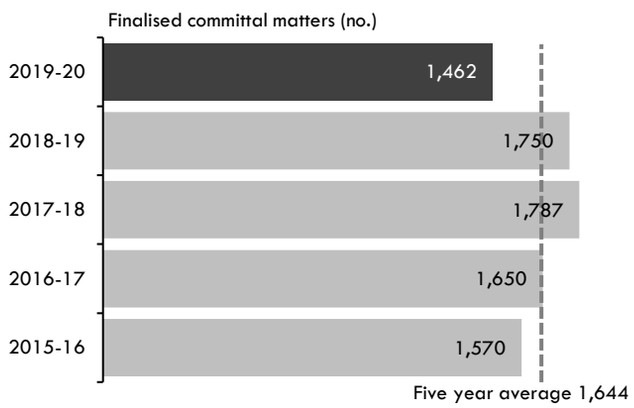
- 1,241 Supreme Court matters
- 4,722 District Court matters
- 726 Childrens Court of Queensland matters

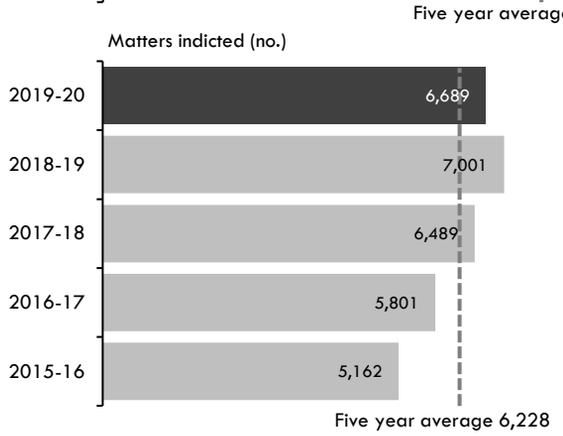
An additional 185 committed matters were finalised after it was determined that an indictment should not be presented (referred to as 'no true bill').

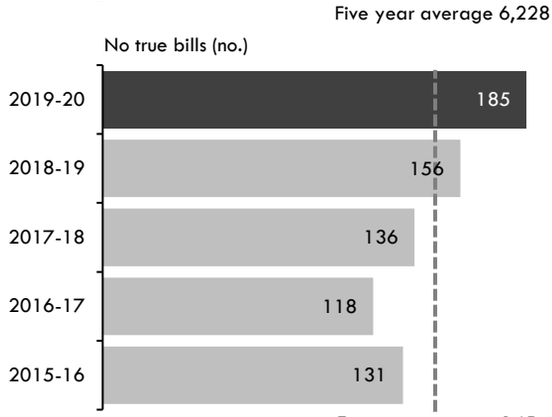
The decision whether to present an indictment was made in relation to 6,874 committed matters during the reporting period. This equates to 59.3 decisions per full time equivalent Legal Officer, down from 69.9 decisions in 2018–19.

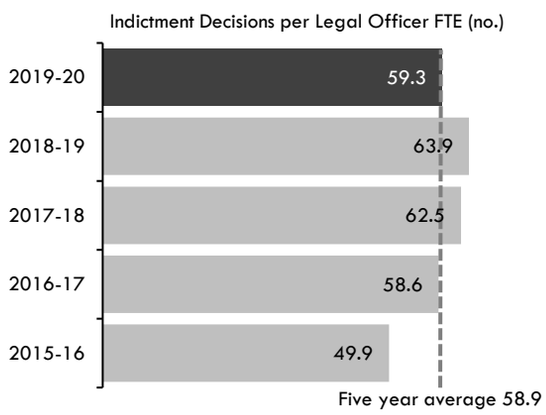
Director's consent

The Director's consent to prosecute the offence of maintaining a sexual relationship with a child pursuant to section 229B(6) of the *Criminal Code 1899* (Qld) was granted in 104 matters, involving 109 complainants.









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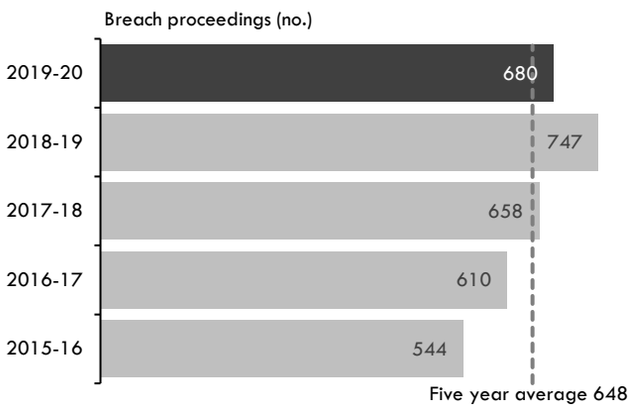
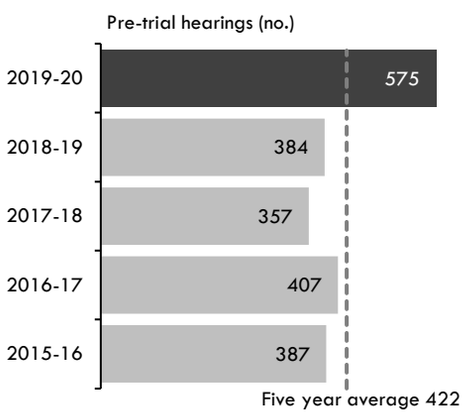
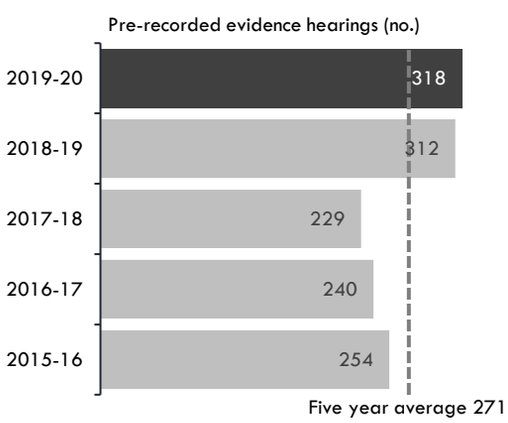
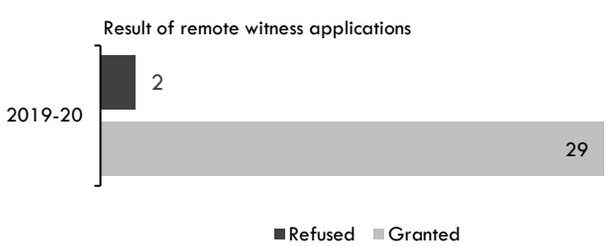








Hearing Appearances

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 680 breach hearings during the reporting period, down nine percent from the previous reporting period.

Pre-trial hearings

Pre-trial hearings are conducted via application under section 590AA of the *Criminal Code 1899* (Qld), usually in relation to a matter of law. The ODPP is required to prepare a written outline of submissions and appear before the court for legal argument. In some cases, the ODPP may also call evidence.

The ODPP conducted 575 pre-trial hearings during the reporting period, up 49.7 percent from the previous reporting period.

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 318 pre-recorded evidence hearings during the reporting period, an increase of 1.9 percent from the previous reporting period.

Remote witness applications

The ODPP made applications to the court for 31 witnesses to give evidence via phone or video-link during the reporting period. Having witnesses give evidence remotely in appropriate cases is a practical solution for the witness. Of the applications made, 93.5 percent were granted.

The ODPP saw a decrease in some figures which is attributed to the COVID-19 pandemic at its peak between 16 March 2020 and 22 June 2020.

Finalisation of Superior Court Matters

Summary of indictment outcomes

During the reporting period, the ODPP finalised 6,567 prosecution matters involving defendants charged on indictment. This represents an increase of 1.5 percent compared to the previous reporting period. Of these indicted matters:

- 701 were finalised after the commencement of a trial
- 5,654 were finalised by a plea of guilty prior to the first day of a trial
- 212 were finalised by a nolle prosequi being entered prior to the first day of a trial

Finalisation by trial

ODPP Crown Prosecutors prepared 945 matters for trial during the reporting period, a decrease of 6.4 percent from 1,010 matters in the previous reporting period.

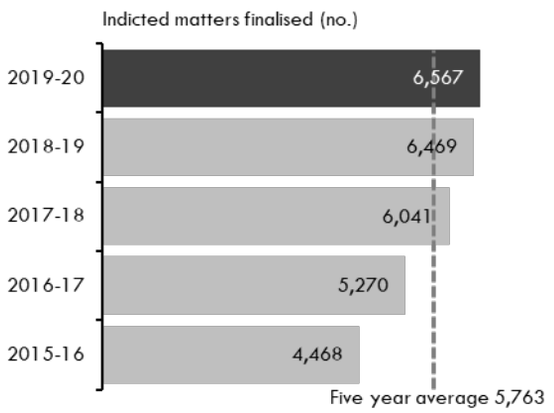
Of the total indicted matters finalised during the reporting period, 10.7 percent were disposed of by trial. This is a slight decrease from 12.4 percent reported during the previous reporting period.

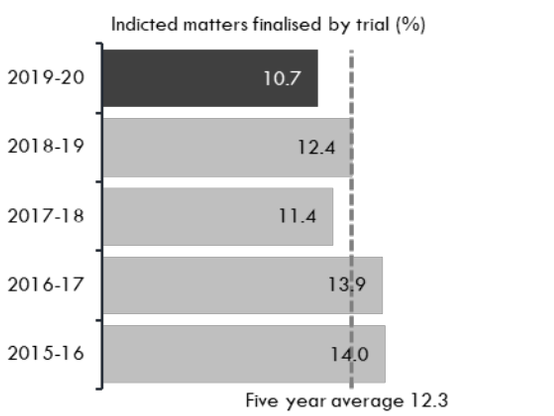
Trial outcomes for the reporting period consisted of:

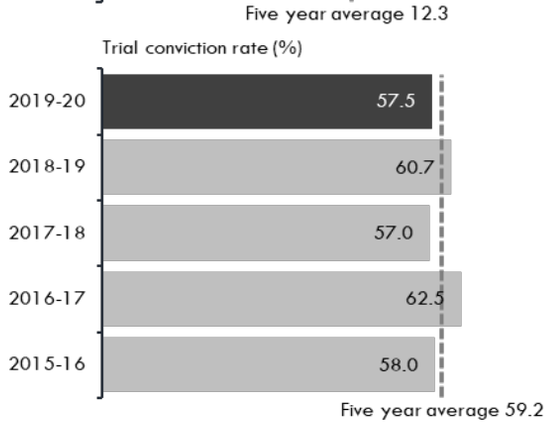
- 205 guilty verdicts returned for at least one count
- 198 guilty pleas to all or some counts
- 228 acquittals on all counts
- 69 discontinuances
- 1 permanent stay of proceedings

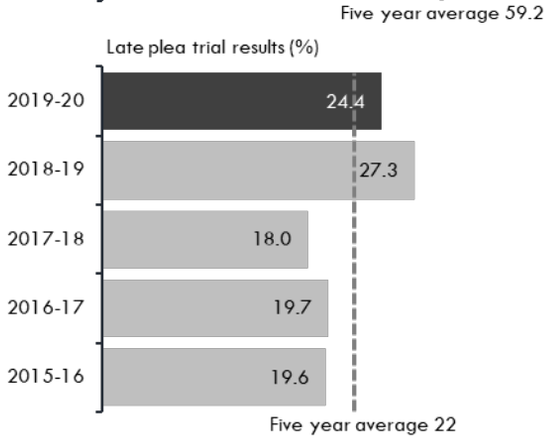
The conviction rate after trial for the reporting period was 57.5 percent, a decrease of 3.2 percent from the previous reporting period.

A total of 24.4 percent of trials resulted in a late plea of guilty on the morning of the trial. This is a decrease of 2.9 percent from the previous reporting period.









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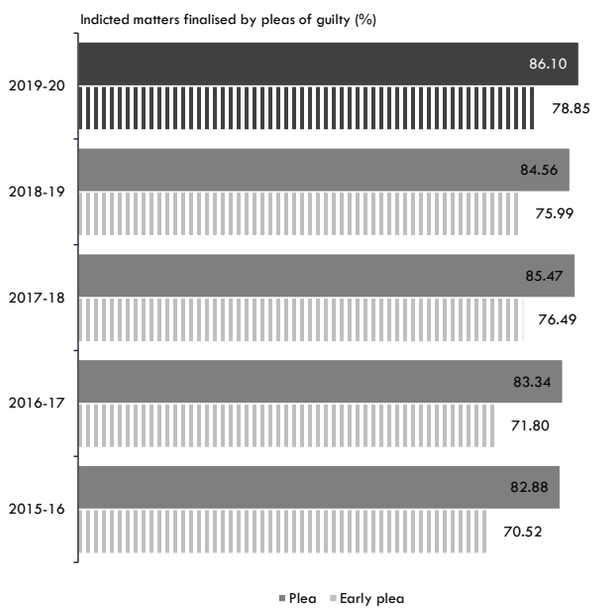
Finalisation prior to trial

During the reporting period, the ODPP prepared 6,172 matters for sentence, and finalised 5,654 indicted matters by a plea of guilty prior to the commencement of a trial. This represents 86.1 percent of all indicted matters that 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 the emotional impact on victims and their families. An early plea of guilty was indicated in 5,178 of the matters finalised by a plea of guilty prior to the commencement of a trial over the reporting period. This accounts for 78.85 percent of all finalised matters.



Judge alone trials

During the reporting period, COVID-19 impacted court operations. This led to a number of judge alone trials being conducted.

During the peak of COVID-19 from 16 March to 22 June 2020, 139 no jury applications were made, with 118 applications granted.

Mental Health Act Proceedings

References to the Mental Health Court

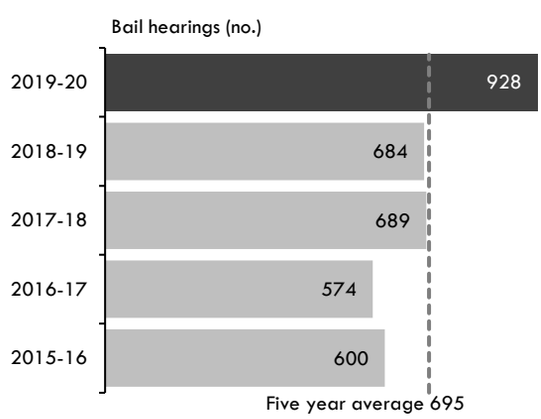
Section 110 of the *Mental Health Act 2016* (Qld) allows the matter of a person's mental state in relation to a serious offence to be referred to the Mental Health Court. The Director is a party to these proceedings.

The purpose of such references 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 if not, 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 218 references to the Mental Health Court during the 2019–20 reporting period.

Bail hearings

The ODPP appeared at 928 bail hearings in the Supreme, District and Childrens Court of Queensland. This figure includes 811 bail applications and 117 applications to vary or revoke bail. Of the total hearings, 687 occurred in the Supreme Court at Brisbane, up 34 percent from 453 appearances during the previous reporting period.



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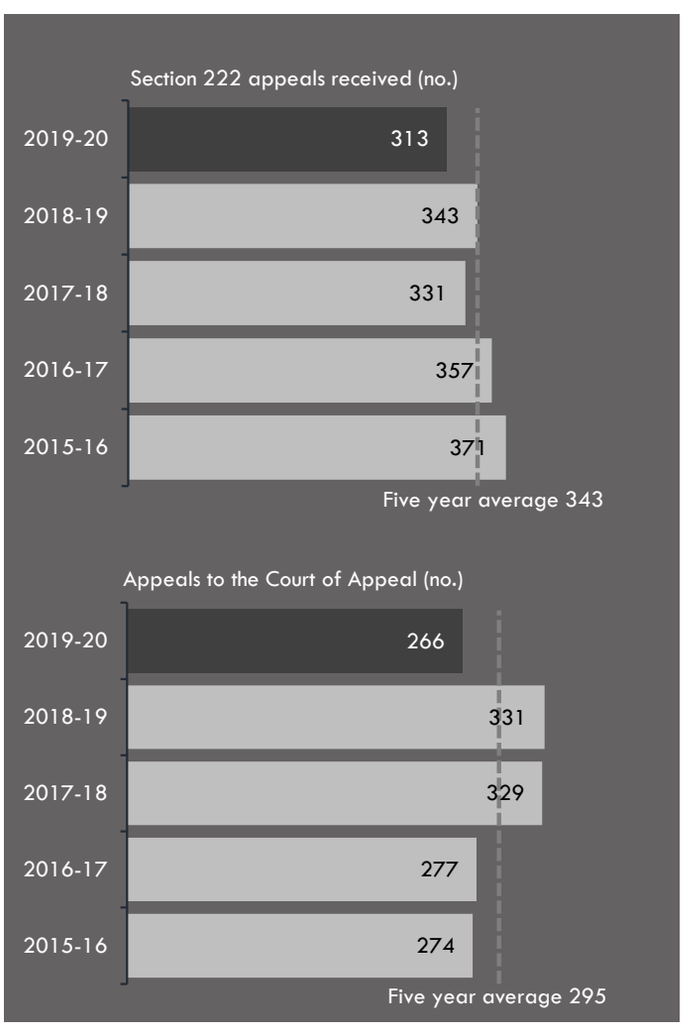
Appeals

Appeals to the District Court

The ODPP takes carriage of criminal appeals brought under section 222 of the *Justices Act 1886* (Qld), where a decision of a Magistrate is appealed to a single judge of the District Court. The ODPP received 313 appeals under section 222 during the reporting period.

Appeals to the Queensland Court of Appeal

The ODPP received 266 appeals to the Court of Appeal during the reporting period, a decrease from 331 appeals received during the previous reporting period. Of the appeals received during 2019–20, a total of 31 involved an appeal against both conviction and sentence.



Attorney-General appeals and references

The Attorney-General may appeal against a sentence imposed, pursuant to section 669A of the *Criminal Code 1899* (Qld). The ODPP filed three appeals against sentence on behalf of the Attorney-General during the reporting period. A judgment was delivered on all three of those appeals during the reporting period, of which two were allowed and one dismissed.

Section 669A of the *Criminal Code 1899* (Qld) 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, two such references were filed in the Court of Appeal. A judgment was delivered to both references, with both refused.

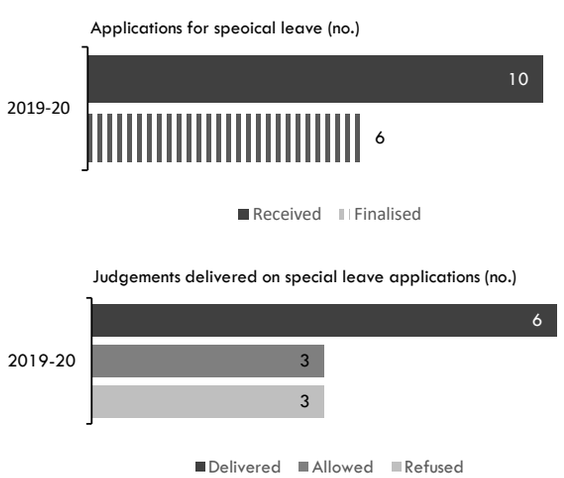
Appeals to the High Court of Australia

During the reporting period, the ODPP received 10 applications for special leave to appeal to the High Court of Australia. Of these applications, six were finalised during the reporting period.

Judgments were delivered in relation to six special leave applications during the reporting period. Three of these applications were allowed and three were refused.

Judgments

Judgments were delivered in relation to 549 appeals during the reporting period. A further 150 appeals were abandoned or discontinued during the reporting period.



The ODPP saw a decrease in some figures which is attributed to the COVID-19 pandemic at its peak between 16 March 2020 and 22 June 2020.

Confiscating Proceeds of Crime

Criminal Proceeds Confiscation Act

The *Criminal Proceeds Confiscation Act 2002* (Qld) ('CPCA') commenced on 1 January 2003. The Director is 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.

The primary focus of the CPCA is to remove the financial gain and increase the financial loss associated with illegal activity. There are three principal and separate schemes within the CPCA 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 a conviction. 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 2019-20, under Chapters 2 and 2A:

- 113 new confiscation proceedings were commenced
- 53 restraining orders were obtained
- 1,166 serious drug offence certificates were issued

During 2019-20, under Chapter 3:

- $4.993 million in forfeiture orders collected
- $131,485 in pecuniary penalty orders collected

CRIMINAL PROCEEDS CONFISCATION ACT HISTORICAL RESULTS

Type	2015-16	2016-17	2017-18	2018-19	2019-20
Chapter 2 and 2A Outcomes					
Restrained property	$19.052m	$21.120m	$9.712m	$28.248m	$8.994m
Confiscated property	$10.01m	$8.994m	$9.454m	$13.651m	$7.181m
Chapter 3 Outcomes					
Forfeiture orders collected	$589,185	$1.840m	$2.607m	$3.696m	$4.993m
Pecuniary penalty orders collected	$82,265	$92,416	$237,572	$191,750	$131,485

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 crime have the rights to be treated with courtesy, compassion, respect and dignity, not to have their personal information disclosed without authority, and to be provided with information about available services and remedies.

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 with the *Charter of Victims' Rights*. The ODPP's Victim Liaison Officers around the State ensure that victims and their families receive timely information regarding the prosecution of an offender, the trial process, and the victims' roles as prosecution 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*. These include treating victims in a way that is responsive to their age, sex or gender identity, race or indigenous background, cultural or linguistic identity, sexuality, relevant disability, or religious belief.

During the 2019–20 reporting period, the ODPP Victim Liaison Officers recorded 44,435 instances of contact with victims of crime and their family members or support persons, providing relevant information on the prosecution. These instances of contact included contact by telephone, through correspondence, in person or via SMS messaging.

Survey for Victims and Families

In January 2017, the ODPP developed a survey for victims of crime, the collection of results for which continued during the 2019–20 reporting period. The purpose of this survey is to obtain feedback from victims and their families or support persons on the service provided by their allocated Victim Liaison Officer and the ODPP generally. It also 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

During the 2019–20 reporting period, the survey received 75 responses, a decrease of 15 responses from the previous reporting period. Analysis of the responses to the survey are shown on the following page.

Notably, the ODPP and the Victim Liaison Service was provided with some critical feedback arising out of the survey. The ODPP uses this survey information to identify potential shortfalls in service delivery and to inform process decisions. This allows the ODPP to provide a more effective and appropriate service to victims, their families and the community generally.

During 2019-20, the ODPP:

- Recorded 44,435 instances of contact with victims, family members, or support persons
- Received 75 responses to the survey for victims of crime

Notable victim opinion survey results

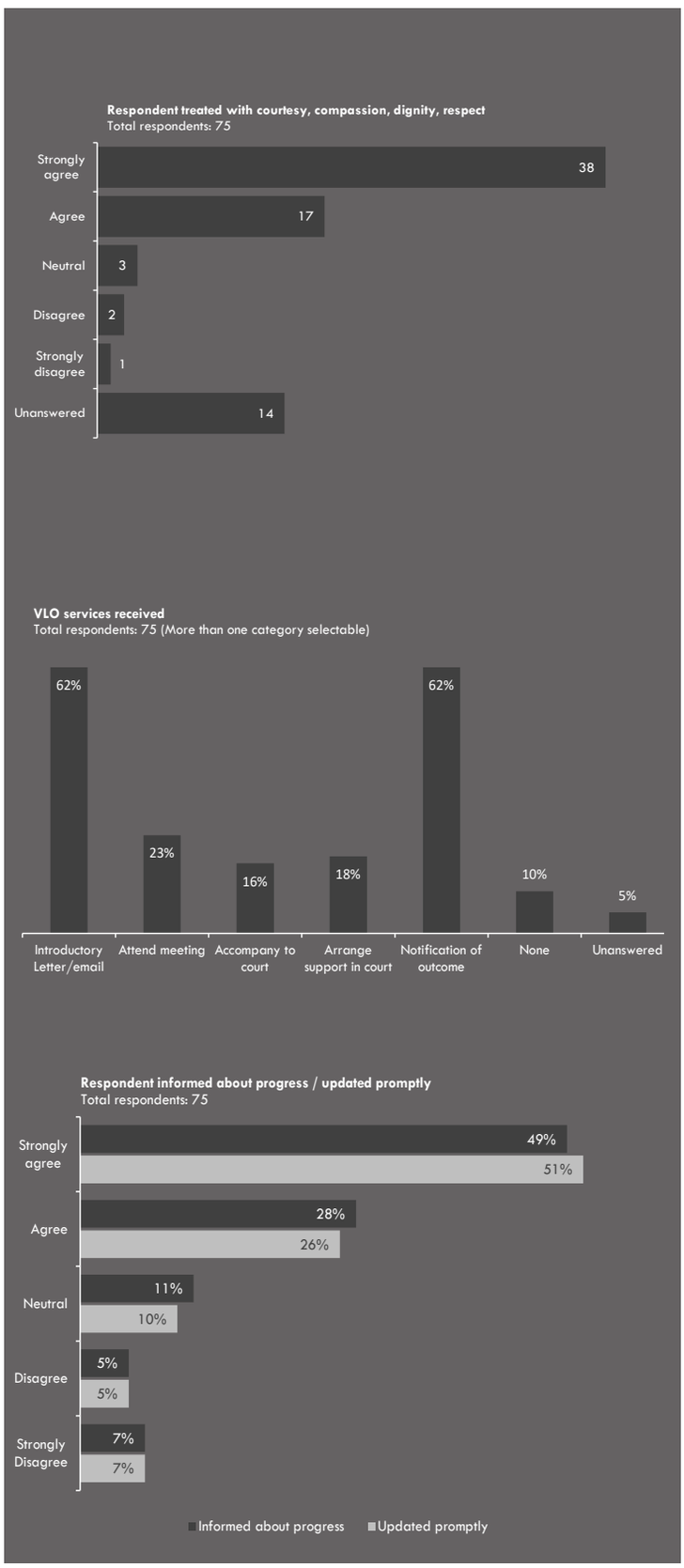
Respondents were asked whether they believed that ODPP staff treated them with courtesy, compassion, respect and dignity. Of the total 75 respondents, 90 percent strongly agreed or agreed, 4 percent were neutral, and 4 percent disagreed or strongly disagreed. 2 percent of respondents did not answer this question.

Victims are notified about services available through correspondence from Victim Liaison Officers. Out of the total 75 respondents, 62 percent indicated that they had received an introductory letter or email from their Victim Liaison Officer, and 62 percent responded that they received a notification of an outcome. A further 23 percent responded that the Victim Liaison Officer attended a meeting with the victim and case lawyer or Crown Prosecutor, and 18 percent responded that their Victim Liaison Officer arranged for support during court proceedings.

In response to a question asking if the respondents believed they were adequately informed about the progress of their matter, 77 percent of a total 75 respondents strongly agreed or agreed, 11.5 percent were neutral, and 11.5 percent disagreed or strongly disagreed. In response to being asked whether they believed they were updated promptly after a relevant court event, 77 percent of the total 75 respondents strongly agreed or agreed, 10 percent were neutral and 12 percent disagreed or strongly disagreed.

18 respondents indicated that they were required to give evidence in trial. A total 10 responded answered whether they were or were not informed about their role as a witness in the proceedings, with 100 percent confirming that an ODPP staff member spoke to them about their role as a witness.

A total of 50 respondents advised that their matters proceeded to sentence. Of these, 90 percent noted that they were informed of their right to provide a Victim Impact Statement to the relevant sentencing court, 4 percent indicated that they were not informed, and six percent indicated that they were unsure.



Engaging with Stakeholders

Responding to Requests for Information

During the reporting period, the ODPP complied with:

- 235 requests from Queensland Corrective Services relating to the Eligible Persons Register
- 80 requests from Blue Card Services relating to employment-screening decisions
- 127 requests from Victim Assist Queensland relating to applications for financial assistance
- 100 requests from the Right to Information & Privacy Unit
- 43 requests from Crown Law relating to possible applications pursuant to the *Dangerous Prisoners (Sexual Offenders) Act 2003* (Qld)
- 71 subpoenas, Notices to Produce and Notices of Non-Party Disclosure from various agencies and law firms relating to civil proceedings

Advice

Indemnities

The Attorney-General, in determining whether indemnities or use-derivative-use undertakings should be granted, considers advice provided by the Director.

During the reporting period, the Attorney-General granted one use-derivative-use undertakings on the recommendation of the Director.

Attorney-General's consent

The Attorney-General's consent is required if the Director intends to prosecute a defendant for:

- conspiracy to commit a crime, or
- extortion with a circumstance of aggravation.

The Attorney-General's consent to prosecute was granted in relation to two investigations, involving two defendants, on advice from the Director.

Ongoing initiatives

Pre-Qualified Panel of Barristers Scheme

During the reporting period, the ODPP received additional funding for the scheme to continue following the success of the trial in the previous reporting period.

During this reporting period, the ODPP briefed out a total of 246 matters, with a value of $930,000.

Training Provided to Stakeholders

ODPP staff, including Crown Prosecutors, regularly deliver training sessions or presentations to key internal and external stakeholders. The table below shows some of the notable sessions delivered during the 2019-20 reporting period.

TRAINING & PRESENTATIONS FOR STAKEHOLDERS

Training and presentation sessions	No.
Queensland Police Service	15
Not for Profit and Volunteer Organisations - PACT, Court Network, Qld Homicide Victims Support Group - Domestic Violence Action Centre / Service Against Sexual Violence forum	2
Queensland Health	1
Australian Bar Association	1

Resources and Training

Establishment

Full time equivalent positions

As at 30 June 2020, the ODPP had a funded establishment of 435 full time equivalent positions, comprising the senior leadership team, prosecutors, legal officers, legal support staff, victim liaison officers and corporate services officers.

The ODPP welcomed 71 new employees during the reporting period. Of these new employees, 33 had completed the ODPP work experience placement program ('WEPP') during the current and previous reporting periods.

Additional funding

In the 2019/20 reporting period, the ODPP was allocated funding for an additional 21 full time equivalent positions. 12 were allocated as a result of additional Judicial positions. A further 9 positions were in response to the Royal Commission into Institutional Responses to Child Sexual Abuse.

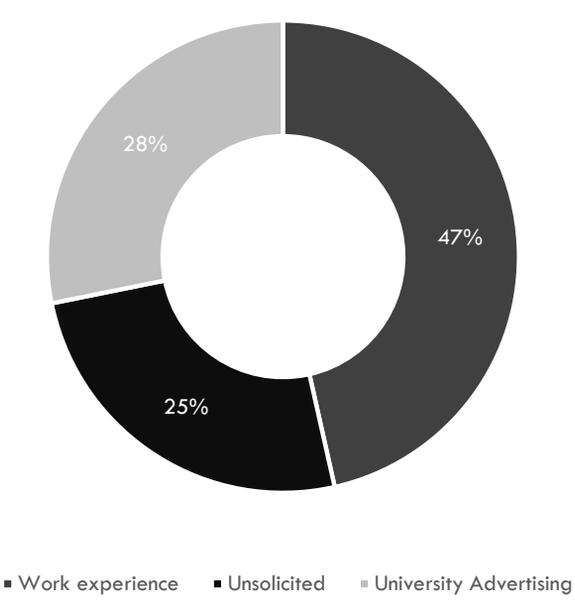
FULL TIME EQUIVALENT POSITIONS BY CLASSIFICATION [1]

Full time equivalent positions	435
Director	1
Deputy Director	2
Business Manager	1
Consultant Crown Prosecutor	7
Crown Prosecutor	78
Practice Manager / Solicitor Advocate	16
Legal Officer	116
Legal support[2]	160
Victim Liaison Officer	24
Corporate Services	30

[1] Establishment includes 3 FTE positions allocated to the National Redress Scheme.

[2] Legal Support includes 17 FTE transcriber positions.

Sources of New Employee Recruitment 2019-20 (%)

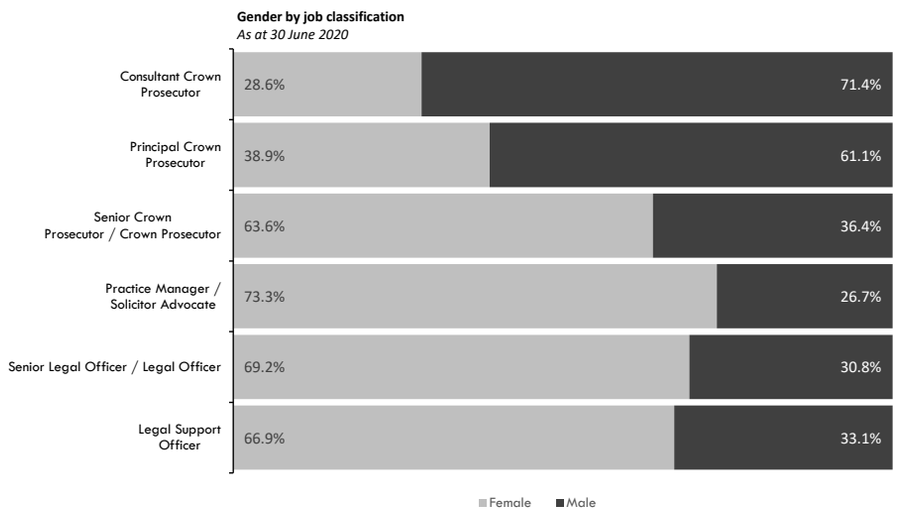


Staff Demographics

Gender Profile

As at 30 June 2020, 67 percent of all staff employed by the ODPP were female and 33 percent were male, unchanged from the previous financial year.

The gender breakdown of ODPP legal staff by job classification as at 30 June 2020 is shown in the adjacent graph.

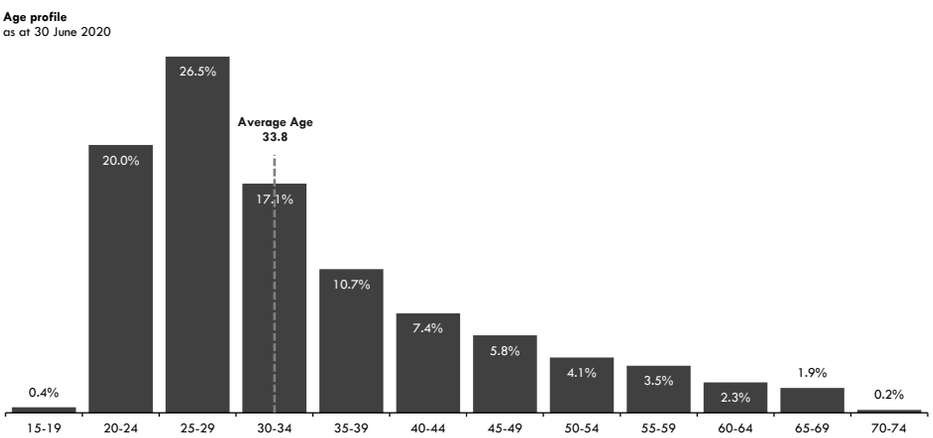


Age Profile

As at 30 June 2020, the average age of the ODPP's workforce was 33.8 years.

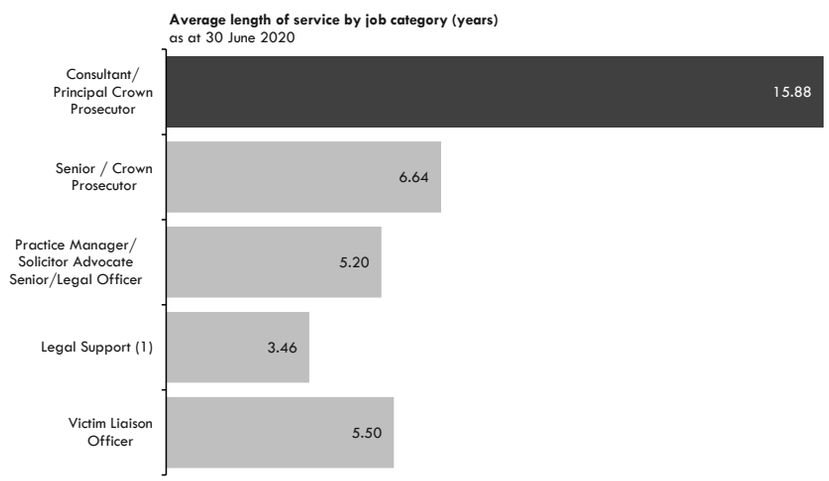
Seven percent of staff were aged 55 years or older, while 4 percent of staff were aged 60 years or older.

The age profile of the ODPP as at 30 June 2020 is shown in the adjacent graph.



Length of Service

The average length of service by legal job classification as at 30 June 2020 is shown in the adjacent graph.



Health and Wellbeing

The ODPP promotes mental health and wellbeing in the workplace. Throughout the reporting period, staff were provided with a range of sessions, activities and information aimed at improving their physical and mental health and wellbeing. Over 2019–20, ODPP staff were encouraged to attend health and wellbeing training sessions, both in person and via webinar, from organisations including Benestar, BUPA, Medibank and QSuper. A greater range of online resources were made available to staff during the COVID-19 pandemic, with a focus on supporting staff health and wellbeing during this unusual year.

R U OK? Day Initiative

The ODPP continued to support the R U OK? Day initiative during the reporting period, to raise awareness of the importance of discussing health related issues at work. The ODPP promoted R U OK? Day on 11 September 2019 with a visit from the Animal Welfare League Queensland puppies to our Brisbane offices. This was a joint venture with Crown Law and the Office of the Director of Child Protection Litigation to reduce stress, improve staff morale and raise awareness of the importance of asking R U OK?.

International Women's Day

The ODPP supported International Women's Day as part of the Queensland Women's Week program, celebrating our diverse community of strong women. The ODPP program during this week included, amongst other activities, fundraising breakfasts in our Brisbane and Ipswich offices, clothing donation drive for the Dress for Success charity and a free yoga session for staff provided by Snap Fitness.

Bushfire Relief Fundraising

The bushfires across Australia during 2019–20 had a devastating impact on communities throughout the country. The ODPP organised fundraising activities throughout the State and together we donated $5,500 to bushfire relief charities.

Learning and Development

Continuing Internal Training

Learning and development opportunities were provided to ODPP staff during the reporting period. Professional development was delivered through a variety of methods, including opportunities for staff to act in higher duties, on-the-job training, presentations delivered by internal experts, mentoring, and external specialist providers.

Internal professional development sessions were video-linked in real-time to ODPP chambers across Queensland. Sessions were also recorded and retained on the ODPP online training library for future access. Internal legal training sessions have been recognised by the Bar Association of Queensland.

During the reporting period, the ODPP held 10 internal development sessions and workshops.

INTERNAL TRAINING

Sessions conducted	10
ODPP Advocacy Training Program	4
Continuing Professional Development	6

External Training

The ODPP is regularly invited by external organisations to attend training and presentations, some of which are hosted interstate and internationally. In the 2019-20 reporting period, ODPP staff, including Crown Prosecutors, attended a range of external sessions including conferences, workshops and information sessions.

ODPP STAFF ATTENDANCE AT EXTERNAL TRAINING

ODPP participants
Australian Association of Crown Prosecutors Annual Conference
International Society for the Reform of Criminal Law (ISRCL) Conference
National Witness Assistance Service (WAS) Conference
National Proceeds of Crime Conference
The 35th Annual San Diego International Conference on Child and Family Maltreatment
Bar Association of Queensland / Australian Bar Association Annual Conference
Public Defenders Criminal Law Conference 2020
Australian Advocacy Institute (AAI) Workshop – Advocacy and the Vulnerable Witness
Health and Safety in our Workplace (HSW) for Managers / HSW for Everyone
Human Rights Act 2019 – Information Sessions
Leadership Development for Women in Unprecedented Times
Evolve, Elevate, Empower – National Council of Young Women of Qld (Qld Women's Week Event)

Secondment Opportunities

The ODPP provides permanent employees with the opportunity to gain professional development for defined periods by undertaking secondments.

In the 2019–20 reporting period, a total of 13 staff were seconded to various government departments and other business units within the Department of Justice and Attorney-General, while 7 staff members continued on secondments approved during the previous reporting period.

Work Experience Placement Program

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, University of Sunshine Coast, 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 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 again offered to business students, including those studying human resource management. These students were exposed to business practices and had the opportunity to work on individual projects within a government department.

The WEPP was offered to 72 students in both the Brisbane and regional chambers during the reporting period. From the 71 employees recruited during the reporting period, 33 had participated in WEPP in either current or previous reporting periods.

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 7 staff in the following areas of study:

- Postgraduate Diploma in Legal Practice
- Master of Philosophy in Criminology

Financial Performance

Analysis of Costs Incurred

INCOME STATEMENT		Amount ($)
Revenue		
Service Revenue [1]		**52,319,000**
Own Sourced Revenue		**521,000**
Total Revenue		**52,840,000**
Expenditure		
Employee Related Expenses [2]		**44,392,000**
Operational Expenses		**8,448,000**
Depreciation and Amortisation	*265,000*	
Supplies and Services	*8,183,000*	
Property Tenancy and Maintenance	4,214,000	
*Witness Travel	661,000	
Legal Barrister Fees (Brief-Outs)	930,000	
*Staff Travel	612,000	
Printing, Postage and Stationery	521,000	
Telecommunications	161,000	
Plant & Equipment	239,000	
Document Destruction	135,000	
IT Services & Support	140,000	
Subscriptions (Legal databases)	188,000	
Expert Examination Reports	87,000	
Other General Supplies and Services	98,000	
Interpreters Fees	126,000	
Motor Vehicles	40,000	
Videoconferencing Costs	31,000	
Total Expenditure		**52,840,000**

[1] The ODPP made savings of $1,943,000 on the 2019-20 adjusted budget allocation and these savings were adjusted in the service revenue provided for operations. The savings essentially reflect the impact of COVID-19 on operations.

[2] Expenses include Wages and Salaries, Employer Superannuation, Long Service Leave Levy, Workers Compensation Premium, Fringe Benefits Tax, and Study and Research Assistance Scheme Payments.

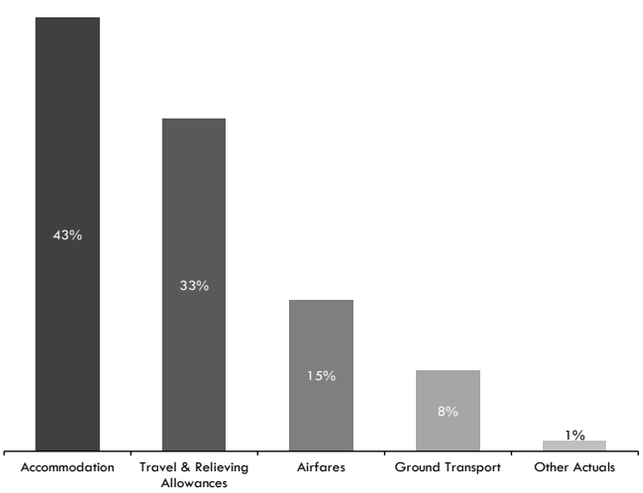
* Breakdown of costs associated with staff and witness travel for court purpose follows:

Staff Travel

The graph below shows staff travel costs by category of cost. This graph is a breakdown of staff travel costs incurred during the reporting period, rather than expended (as shown in the 'Income Statement').

It should be noted that staff travel is predominantly for court purposes and court events.

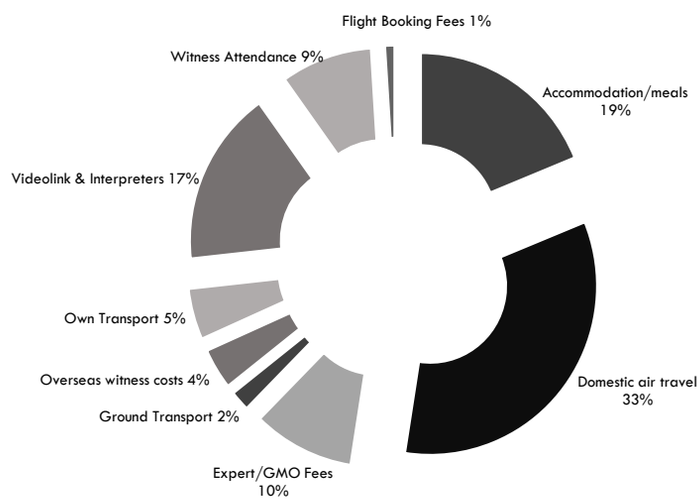
Percentage of staff travel expenses incurred by category
1 July 2019 - 30 June 2020



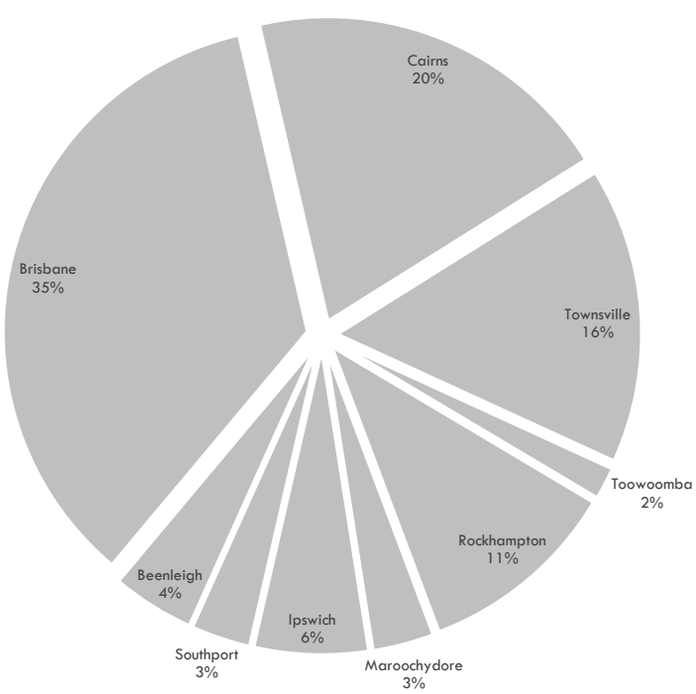
Witness Travel and Associated Costs

The charts below show witness travel costs by category of cost, traveller type and regional centre. These show a breakdown of witness costs incurred during the reporting period, rather than expended (as shown in the 'Income Statement').

Percentage of witness costs incurred by category
1 July 2019 - 30 June 2020



Percentage of witness costs incurred per court location
1 July 2019 - 30 June 2020



Glossary of Terms

appeal (upheld/dismissed)	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 courts in Queensland, from highest to lowest, is the High Court of Australia, Court of Appeal (Queensland), Supreme Court (Queensland), District Courts (Queensland), and the Magistrates Courts (Queensland). Appeals can be made against sentence, conviction, or both sentence and conviction. 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, 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, the appeal is dismissed and the decision of the lower court confirmed.
appear/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 their 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. That 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 a 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.
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	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	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. If an indictment has been presented, a written record of the discontinuance is also entered. This record is called a nolle prosequi, Latin for 'we shall no longer prosecute'. 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.

ex officio indictment	An indictment presented to a court without a person 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 relevanat 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 *Criminal Code 1899* (Qld) or other legislation, the defendant has a right to stand trial before a judge and jury. An offence may be indictable even if the defendant or some other person can determine that the defendant will stand trial before a magistrate only.
mention/adjournment/ list/sittings	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.
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 saying he or she is 'guilty' or 'not guilty'.
prosecutors	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 (inc. 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').

Director's Guidelines

As at 30 June 2020

GUIDELINE INDEX

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) **<u>Sufficient Evidence</u>**

- 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 loosing 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 of 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 0f 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) Criminal Code	(a) Assault: Section 335 Code (3 years imprisonment) (b) Public Nuisance: Section 6 Summary Offences Act 2005 (6 months imprisonment)
Threats: Section 359 Code	Public Nuisance: Section 6 Summary Offences Act (6 months imprisonment)
Stalking (simpliciter only): Section 359E Code	Section 85ZE Crimes Act 1914 (Commonwealth) Improper use of telecommunications device (1 year imprisonment)
Unlawful use of motor vehicle (simpliciter): Section 408A Code	Unlawful use of motor vehicle: Section 25 Summary Offences Act (12 months imprisonment and compensation)
Stealing: Section 391 Code	Sections 5 & 6 Regulatory Offences Act (value to $150 wholesale)
Stealing: Section 391 Code Receiving: Section 433 Code Burglary: Section 419 Code Break and enter: Section 421 Code	Unlawful possession of suspected stolen property: Section 16 Summary Offences Act (I year imprisonment) Unlawfully gathering in a building/structure: Section 12 Summary Offences Act (6 months imprisonment) Unlawfully entering farming land: Section 13 Summary Offences Act (6 months imprisonment) Possession of tainted property: Section 92 Crimes (Confiscation) Act (2 years imprisonment)
Fraud: Section 408C Code	False advertisements (births, deaths etc): Section 21 Summary Offences Act (6 months imprisonment) Imposition: Section 22 Summary Offences Act (I year imprisonment)
Production of a dangerous drug: Section 8 Drugs Misuse Act	Possession of things used/for use in connection with a crime: Section 10 Drugs Misuse Act

"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
Environmental Protection Act 1994	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
Aboriginal Cultural Heritage Act 2003	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
Coastal Protection and Management Act 1995	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
Marine Parks Act 2004	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
Nature Conservation Act 1992	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
Torres Straight Islander Cultural Heritage Act 2003	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
Water Act 2000	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
Wet Tropics World Heritage Protection and Management Act 1993	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
Environmental Protection Act 1994	495(1)
Aboriginal Cultural Heritage Act 2003	156(2)
Coastal Protection and Management Act 1995	145(1)
Marine Parks Act 2004	131(1)
Nature Conservation Act 1992	165(1)
Torres Straight Islander Cultural Heritage Act 2003	156(2)
Water Act 2000	931(2)
Wet Tropics World Heritage Protection and Management Act 1993	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
Environmental Protection Act 1994	495(2)
Aboriginal Cultural Heritage Act 2003	156(5)
Coastal Protection and Management Act 1995	145(2)
Marine Parks Act 2004	131(2)
Nature Conservation Act 1992	165(2)
Torres Straight Islander Cultural Heritage Act 2003	156(5)
Water Act 2000	931(5)
Wet Tropics World Heritage Protection and Management Act 1993	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) <u>The Principles</u>

- 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) <u>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</u>:-

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 <u>Bail Act</u>. Such offences should be dealt with at the first appearance in the Magistrates Court.

<u>Driving Offences</u>

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

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

(viii) **Serial Offending**

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

(ix) **Section 189 Schedules**

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

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

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

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

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

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

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

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

- Supreme Court offences cannot be included in a schedule for the District or Children's Court;

- the schedule must not contain offences of a sexual or violent nature involving a victim under the VOCA legislation; and

- the schedule must not contain summary offences.

(x) **Financial Loss**

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

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

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

(xi) **Submissions on Penalty**

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

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

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

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

- Concessions for non custodial orders should not be made unless it is a clear case.

- In determining the appropriate range, prosecutors should have regard to the sentencing schedules, the appellate judgments of comparable cases, changes to the maximum penalties and sentencing trends.

- The most recent authorities will offer the most accurate guide.

48. REPORTING OF ADDRESS OF SEXUAL OFFENDERS AGAINST CHILDREN

(i) At any sentence proceeding in the District or Supreme Court which involves sexual offences against children, the prosecutor must consider whether an application for reporting under section 19(1) of the Criminal Law Amendment Act 1945 should be made.

(ii) If an order is sought, a draft order should be prepared with the duration of the reporting period left blank.

(iii) An order cannot be made unless the Court is satisfied a **substantial risk** exists that the offender will, after his or her release, re-offend against a child.

(iv) In assessing the risk, all relevant circumstances should be considered including:-

(a) the nature and circumstances of the present offence;

(b) the nature of any past criminal record; and

(c) any expert reports.

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

49. YOUNG SEX OFFENDERS

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

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

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

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

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

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

50. APPEALS AGAINST SENTENCE

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

(i) there are reasonable prospects for an Attorney-General's appeal; or

(ii) the case is likely to attract significant public interest.

- The report should be finalised within **2 weeks** of the sentence. It should follow the template, and include the transcript and sentencing remarks (if available), any medical or pre-sentence reports, the criminal history, victim impact statements and a copy of any judgments relied upon.

- The report should only be forwarded through the relevant Legal Practice Manager.

- An analysis of the prospects for an Attorney's appeal should have regard to the following principles:-

  (a) An Attorney-General's appeal is exceptional: it is to establish and maintain adequate standards of punishment and to correct sentences that are so disproportionate to the gravity of the crime as to undermine confidence in the administration of justice;

  (b) The Court of Appeal will not intervene unless there is:-

  (i) a material error of fact;

  (ii) a material error of law; or

  (iii) the sentence is manifestly inadequate.

  (c) The sentencing range for a particular offence is a matter on which reasonable minds might differ;

  (d) For reasons of double jeopardy the Court of Appeal will be reluctant to replace a non custodial sentence with a term of actual imprisonment, particularly if the offender is young or if the proper period of imprisonment is short;

(e) The Court of Appeal will be reluctant to interfere where the judge was led into error by the prosecutor, or the judge was unassisted by the prosecutor; and

(f) The issue on appeal in relation to fact finding, will be whether it was reasonably open to the judge to find as he or she did.

51. RE-TRIALS

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

Relevant factors include:-

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

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

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

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

52. DISTRICT COURT APPEALS

(i) The ODPP may represent police on appeals to the District Court from a summary hearing involving a prosecution under any of the following:-

- Bail Act 1980
- Corrective Services Act 2000
- Crimes (Confiscation) Act 1989
- Criminal Code
- Domestic Violence (Family Protection) Act 1989
- Drugs Misuse Act 1986
- Peace and Good Behaviour Act 1982

- Police Powers and Responsibilities Act 2000
- Regulatory Offences Act 1985
- Transport Operation (Road Use Management) Act and related legislation
- Summary Offences Act 2005
- Weapons Act 1990

(ii) The ODPP may decline to accept the brief if it involves any issue of constitutional law.

(iii) The ODPP will not appear in respect of any other District Court Appeals.

(iv) Costs

(a) The maximum award for costs under section 232A of the Justices Act is $1800.

(b) No order for costs can be made if the appeal relates to an indictable offence dealt with summarily (see section 232(4) (a) of the Justices Act) or if the relevant charge is under the Drugs Misuse Act 1986 (section 127).

(c) A prosecutor cannot settle any agreement as to costs without prior instructions from the Queensland Police Service Solicitor.

(v) Police Appeals

(a) A police request for an appeal against a summary hearing must be in writing and forwarded to the ODPP by the Queensland Police Service Solicitor. Direct requests from police officers, including police prosecutors, will not be considered but returned to the Queensland Police Service Solicitor.

(b) Such requests must be received at least **5 business days** before the expiration of the 1 calendar month time limit.

(c) The ODPP will then consider whether or not the proposed appeal has any merit. If so, the ODPP shall draft a notice of appeal. If not, the ODPP shall advise both the Queensland Police Service Solicitor and the officer initiating the request as to the reasons it was declined.

(d) Where a Notice of Appeal has been drafted, the ODPP shall send it to the Queensland Police Service Solicitor who shall then make the necessary arrangements for service of the notice of appeal on both the respondent and the clerk of the court. The ODPP shall also send a blank pro-forma recognisance with the notice of appeal to the Queensland Police Service Solicitor. It will then be the responsibility of the appellant police officer to enter into the recognisance within the applicable time limit.

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

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

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

53. EXHIBITS

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

54. DISPOSAL OF EXHIBITS

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

(a) the disposal of exhibits under rule 55 of the Criminal Practice Rules 1999; or

(b) the delivery of property in possession of the Court under section 685B of the Code.

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

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

(a) upon the determination of any appeal; or

(b) if no appeal, at the expiration of any appeal period;

to:-

(a) the rightful owners; or

(b) the investigating officer (in the case of weapons, dangerous drugs or illegal objects etc).

(iii) Where the prosecutor is aware of further related property held by police and not tendered as an exhibit, he or she should apply for an order for the delivery of the property to the person lawfully entitled to it.

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

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

55. CONVICTION BASED CONFISCATIONS

(i) Legal officers preparing matters for trial or sentence are required to address confiscation issues in preparation as per observations form and where confiscation action is appropriate, prepare a draft originating application and draft order and forward copies of those documents to the defence with a covering letter advising that it is proposed to seek confiscation orders against the accused at sentence.

(ii) If the benefit from the commission of the offence is more than $5,000, a real property and motor vehicle search is to be obtained by the legal officer preparing the case and the Confiscation Unit is to be consulted regarding the obtaining of a restraining order.

(iii) Crown Prosecutors (including private counsel briefed by the Director of Public Prosecutions) and legal officers are instructed **to apply** for appropriate confiscation orders **at sentence**.

(iv) Where a confiscation order is made at sentence, instructing clerks are required to forward a draft order, with the words "order as per draft" written on it, to the Confiscation Unit, as soon as possible.

(v) The forfeiture provisions of the Criminal Proceeds Confiscation Act 2002 are not to be used as a means of disposing of exhibits. As a general guide, only property approximated to be $100 or greater is to be so forfeited.

(vi) When property is not forfeited or returned to the accused, an order for disposal should be sought under section 685B of the Criminal Code or section 428 of the Police Powers and Responsibilities Act 2000 (see also Guideline 48).

(vii) No application should be brought after the sentence proceeding **unless** the property exceeds:-

- in the case of a forfeiture order – $1000

- in the case of a pecuniary penalty – $2000
- in the case of a restraining order – $5000

(viii) In the case of a restraining order, any **undertaking** as to costs or damages should be authorised by the Legal Practice Manager or Principal Crown Prosecutor. Where the property is income producing or there is a real risk that liability will be incurred, the commencement of the proceeding and the giving of the undertaking must be approved by the Director or Deputy Director.

(ix) Once a restraining order has been obtained, the **Confiscations Unit** must be included in any negotiations regarding confiscations orders.

(x) Negotiations should proceed on the understanding that there is a reversal of onus in respect of restrained property that has been acquired within 6 years of a serious criminal offence (maximum of 5 years or more imprisonment).

(xi) Similarly, under the Criminal Proceeds Confiscations Act 2002, property will be automatically forfeited 6 months after conviction for a serious drug offence unless the respondent demonstrates that property was lawfully acquired.

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

(i) Where substantial assets are identified, the Confiscations Unit should be advised.

(ii) The ODPP is the solicitor on the record for the CMC. Instructions should therefore be obtained from the CMC throughout the course of the proceedings regarding any step in the action.

(iii) No matter is to be settled or finalised without first obtaining **instructions from the CMC**. No undertaking in support of a restraining order should be given without instructions.

(iv) Where possible, no more than one confiscation matter per day should be set down on the chamber list.

(v) Examinations are to be conducted before a Registrar of the Supreme Court. They are to be set down on Monday and Tuesday afternoons. If they will take longer than 2 hours, a letter should be sent to the Deputy Registrar advising of the requirement to set the examination down for an extended date.

(vi) Directions as to the conduct of the matter are to be agreed upon between the parties, where possible.

(vii) Matters are not to be set down for trial unless they are ready to proceed.

(viii) All telephone conversations and attendances should be file noted.

(ix) Details of orders made and applications filed should be entered into the confiscations system as they occur.

57. LISTING PROCEDURES AND APPLICATIONS FOR INVESTIGATION

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

(i) The officer in charge of an investigation must forward to the ODPP with the brief of evidence:-

- a note to the prosecutor setting out the nature of any application, when it was made and the name of the Judge who heard it; and
- a copy of any warrant or authority, if obtained.

(ii) The ODPP should submit to the listing Judge that it would not be suitable to list the trial before the Judge who heard the application.

(iii) Investigators should be mindful of the fact that there is only one Supreme Court Judge resident in each of Cairns, Townsville and Rockhampton. Where any resulting trial is likely to be held in one of those Courts, the investigative application should be made to a Judge in Brisbane or in a district not served by the Judge in whose Court the case might be tried.

58. MEDIA

(i) Public servants are not permitted to make public comment in their professional capacity without approval from the Director-General of the Department.

(ii) Section 24 A of the Director of Public Prosecutions Act imposes a duty of confidentiality.

(iii) There is no prohibition against confirming facts already on the public record. Indeed the principle of open justice and the desirability of accurate reporting would support this. But there is no obligation to provide information to the media.

(iv) Staff may confirm:-

- information given in open court; or

- the terms of charges on an indictment that has been presented (but not the name of any protected complainant).

(v) Matters which **should not be discussed** with the media, include:-

- the likely outcome of proceedings;
- the intended approach of the prosecution (for example: discontinuance, ex-officio indictment, appeal/reference);
- the correctness or otherwise of any judicial decision;
- any part of the trial which was conducted in the absence of the jury;
- the name or identifying particulars of any juvenile offender unless authorised: see Juvenile Justice Act 1992;
- the name or identifying particulars of a complainant of a sexual offence;
- the contact details for any victim or lay witness;
- any details which would breach the protection given to informants under section 13A of the Penalties and Sentences Act 1993; and
- details of any person who carries some personal risk: for example: informants: section 120 of the Drug Misuse Act 1986.

(vi) The media should not be given copies or access to tapes of any recorded interviews, re-enactments, demonstrations or identifications.

(vii) The media should not be given any medical, psychological or psychiatric reports on offenders or victims.

59. RELEASE OF DEPOSITIONS

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

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

60. LEGISLATIVE RESTRICTIONS ON PUBLICATION

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

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

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

(i) Protection for the Accused

- Persons accused of a prescribed sexual offence (ie: **rape**, **attempted rape**, **assault with intent to commit rape** and **sexual assault**) cannot have their name or identifying details published until after being committed. This protection **does not apply to sexual offences generally**. Persons charged with incest, indecent dealing or sodomy are **not protected** unless they fall within the protection afforded to complainants.

- Specifically, under section 7 of the CLSOA, any report made or published concerning an examination of witnesses (ie: the committal) in relation to a **prescribed sexual offence**, other than an exempted report (see section 8) shall not reveal the name, address, school or place of employment of a defendant or any other particular likely to lead to the identification of the defendant unless the Magistrate conducting the committal "for good and sufficient reason shown" orders to the contrary.

  The protection ends once the person is committed for trial.

- An accused is also protected under section 10(3) of the Act, which prohibits the making of a statement or representation revealing identifying particulars (other than in a report concerning a committal or trial), **before the defendant is committed for trial** upon the charge. There are some exceptions, set out in section 11.

- **Juvenile accused** are protected from being identified by section 62 of the JJA. No "identifying matter" (name, address, school, or place of employment or any other particular likely to lead to the identification of the child charged, or any photo or other visual representation of the child or of any person that is likely to identify the child charged) can be published about a criminal proceeding. "Criminal proceeding" should be taken to include the process of a person being charged.

(ii) Protection for the Complainant

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

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

- Section 6 of the CLSOA prohibits the making or publishing of any report concerning a committal or trial, other than an exempted report, which reveals the name, address, school or place of employment of a complainant, **or any other particular likely to lead to the identification of the complainant**, unless the Court "for good and sufficient reason shown" orders to the contrary.

- Section 10 protects the complainant from publication at any other time, even if no-one is actually charged with an offence.

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

- Child witnesses **in any proceeding** in a Court are also protected under section 193 of the CPA.

- For offences of a sexual nature, if a child is a witness or the complainant, a report of the proceeding must not disclose prohibited matter relating to the child, without the Court's express authorisation. "Prohibited matter" means the child's name, address, school or place of employment, **or other particular likely to lead to the child's identification**, or any photo or film of the child or of any person that is likely to lead to the child's identification.

- For any other offences, the Court may order that any report not include any prohibited matter relating to a child witness or complainant.

- The accused may benefit from these provisions if identifying the adult would inevitably identify the child.

61. CONFIDENTIALITY

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

Information about a case **other than what is on the public record** should not be released without authority from either the Director of 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

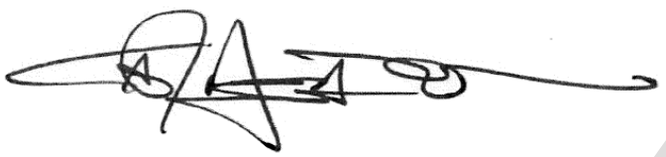
(iii) the duty of full and early disclosure of the prosecution case to the **defence**.

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 2020



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