ANNUAL REPORT

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS

QUEENSLAND 2021–2022

AUDAX AT FIDELIS

Queensland Government

Introduction

Acknowledgement of Country

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

About this report

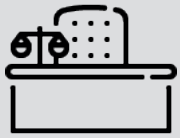
The Director of Public Prosecutions (referred to throughout this report as 'the Director') is required by section 16 of the *Director of Public Prosecutions Act 1984* (Qld) to report each year before 31 October to the Attorney-General and Minister responsible for the operations of the Office of the Director of Public Prosecutions. The report is to be laid before the Legislative Assembly within 14 sitting days after the Minister receives this report.

This report is designed to inform both the Parliament and the community regarding the functions performed by the ODPP and covers operations for the period 1 July 2021 to 30 June 2022. The Director's Guidelines as at 30 June 2022 are also included as required by section 11(2)(b) of the *Director of Public Prosecutions Act 1984* (QLD).

Contents

Highlights

Completed Women's Safety and Justice



Finalised 16 High Court matters

Exceeded SDS target figures

Rolled out expectations agreement program

Two ODPP staff appointed to the bench

New Brisbane chambers structure

Director's Overview

I am pleased to present the annual report for the Office of the Director of Public Prosecutions (ODPP), my third as Director of Public Prosecutions. The 2021-22 reporting year provided both challenges and opportunities and I remain enormously proud of the achievements of our talented staff and the significant contribution they have each made to the delivery of an effective, fair and independent prosecution service for the people of Queensland. Many of the themes of past reporting years remain relevant but as we start to put the direct impacts of the COVID pandemic behind us, we are provided an opportunity to reflect on the key learnings from the experience and the innovations that can be implemented to complement and sustain our strategy to deliver an effective prosecution service and to support and develop our people.

Staff continue to work under pressure to ensure that matters are prosecuted effectively and efficiently and to provide information and support to victims of crime and their families. It is pleasing to see that our performance targets continue to be met and exceeded. Staff well-being remains a priority. We have continued to develop training and other support for staff to assist them to cope with the stress of the work and with vicarious trauma and to ensure their well-being. The collegiate nature of our workforce remains tangibly apparent, and the considerable support that staff provide to each other as we go about the business of doing difficult things, consuming a daily diet of other people's stress and distress, is a valuable support mechanism for staff as well.

Organisational Structure

Whilst the volume and nature of our work continues to present challenges, we have sought to achieve the more effective and efficient disposition of cases with a significant structural realignment. Emerging from the direct impacts of the pandemic, during which the organisational focus was on ensuring business as usual activities were met, we took the opportunity to implement a refined Chambers structure in Brisbane to create smaller groups and to better provide the opportunity for supervision, close mentoring, and support of staff. With current staff redistributed, we were able to create two new chambers (Miller and Butler) and reintroduce Griffith Chambers (aligned in composition with the other chambers) with a focus on complex corruption and fraud prosecutions.

The chambers model, designed to replicate the regional chambers, relies upon multidisciplinary teams of prosecutors, lawyers and legal support staff each headed by a Principal Crown Prosecutor and a Practice Manager. There are now 8 chambers in Brisbane, and 8 chambers across our regional locations. Whilst broad organisational change is anticipated in the years to come as we continue to look critically for opportunities for improvement, it was recognised that existing resources could achieve greater efficiency and closer supervision, mentoring and support by redistributing staff. More chambers, each containing fewer staff, provides a greater opportunity for the managers and leaders of the groups to have more time to be directly involved in the development of the staff in their chambers, whilst also themselves maintaining a strong court presence.

I am indebted to the Principal Crown Prosecutors across the Brisbane office for their leadership in effecting this change, recognising the considerable benefits to be achieved and supporting me and my Directorate team through this initiative. I am also indebted to Business Manager, Helen Kentrotis, also central to the architecture of this refined structure, for her continued support and she and her corporate services team were instrumental in guiding the office through this change.

The reporting year has demonstrated the considerable benefits of the smaller chamber groups which has been universally recognised by staff to realise the improvements in efficiency achieved by closer supervision and support, whilst also reducing individual managerial responsibilities on the chamber leaders who are also some of our most experienced prosecutors. This initiative aligns with our strategy of building an organisational structure that will support us into the future and better support our staff, together with a clear vision that will sustain us as an organisation of professionals committed to the pursuit of excellence, and worthy of community confidence.

Office Performance

Across the reporting year, there were 6650 matters finalised by the ODPP. This represents an increase of 923 over the previous reporting year. Whilst blunt statistics such as that fail to truly represent the extent of the work conducted during the year, further insight is provided in detail of some of the notable cases handled during the year set out on pages 16 to 22 of the Report. The business of the

ODPP included numerous homicide/murder cases, drugs, and sexual and domestic violence cases, as well as 300 appeals to the Court of Appeal, and 16 Special Leave applications filed in the High Court (5 of those applications were finalised following an oral hearing and one matter went to a full hearing in the High Court).

We saw a reduction in the number of incoming files during the reporting year with the overall file numbers managed across the organisation dropping by 5%. That quantitative figure fails to reflect the nature of the files received which, with the increased use of electronic evidence and advances in investigative techniques, continue to increase in complexity and sheer volume of material to be analysed presenting continued challenges to already busy staff.

Despite the slight drop in the number of files overall, the ODPP presented an additional 753 indictments (an increase of 13%) during the reporting year in dealing with the backlog of matters from the previous reporting year. That increase challenged the capacity of the ODPP to present indictments within our target of 4 months from the committal hearing required under the Director's Guidelines, with the compliance rate falling from 85% to 72.6%, though still well above the 60% target.

Trial numbers were consistent with the previous year, as were the outcomes. Staff from all chambers continued to service the circuit centres around the State and fluctuations in regional workloads and circuiting responsibilities were managed with the assistance of other chambers as needed.

The ODPP maintained a conviction rate of 91.5%, the vast majority of which were the result of pleas of guilty.

Professional Development

The reporting year saw a renewed focus on the education and training of our staff. In addition to the ODPP initiatives to develop our staff with training and small-group advocacy workshops, we have supported our staff to engage with external training opportunities and in particular, conducted a three part management training program for all current and future managers. The reporting year has also seen the promotion of an increased culture of close mentoring of junior staff, throughout the organisation, supported by the realigned chambers, which ensures that all staff are supported through their career milestones.

Staff Movement

It is pleasing to note that the reporting year has seen continued recognition of the talented staff developed within the ODPP. The nature of our challenging work, and the relentless nature of it, provides a strong foundation for the development of sound legal reasoning, advocacy and decisive decision-making skills. These qualities are well suited to high office and judicial appointment.

It was especially pleasing to see Jodie Wooldridge QC appointed as a District Court Judge in Southport. Her appointment to the District Court followed a long career with the ODPP and a short appointment as the Work Health Safety Prosecutor, and is a welcome recognition of her considerable talent as a lawyer and a leader. Judge Wooldridge QC commenced her legal career as a Cadet (now known as WEPP) in 2000 and apart from a short time as a Prosecutor in the ODPP of Northern Territory, she worked throughout her career in the Queensland ODPP both in Brisbane and in regional chambers. As previously one of our Consultant Crown Prosecutors, Judge Wooldridge QC prosecuted some of our most complex trials, and appeals in the Court of Appeal and High Court.

Similarly, the appointment of Dzenita Balic to the Magistrates Court was also welcomed by her colleagues and the broader profession. Magistrate Balic commenced with the ODPP as a paralegal in 2005 and shortly thereafter commenced her impressive legal career. Her thirst for knowledge and commitment to her personal and professional development saw her succeed in all the roles she performed. She proved herself to be a talented lawyer and prosecutor and tackled challenges with enthusiasm and considerable skill rising to the level of Principal Crown Prosecutor before her appointment to the Magistrates Court, also in Southport.

Recruitment and retention of staff remains a challenge such that the ODPP continues to be a dynamic workplace. Whilst stability of the workforce remains an elusive goal, opportunities for secondment to other agencies, as well as contribution to Commissions of Inquiry and the Women's Safety and Justice Taskforce continue to be supported in recognition of the development opportunities they provide to

staff and reflecting, as they do, the broad recognition of talent within the staff of the ODPP. It is great to see to the depth of talent coming through the office to fill these important roles; however, it also places a greater burden on our capacity to train and develop our staff, which has necessarily been a focus of the ODPP during the reporting year.

We have continued our close association with the university law schools and the WEPP Program was again run following a hiatus during the pandemic. That program provides an opportunity for late-stage law students to gain experience within the ODPP and, in addition to other traditional strategies, is an important recruitment program for the organisation.

Women's Safety and Justice Taskforce

In March 2021, the Queensland Government established the independent, consultative Taskforce to examine and provide reports on the best legislative responses to coercive control as a form of domestic violence, and to explore women and girls' experiences across the criminal justice system. Staff from this Office were supported and encouraged to contribute to this important work completed on 1 July 2022. Deputy Director, Philip McCarthy QC, was appointed as a Taskforce member and was commended for the generous time, expertise, and wisdom he offered. Other ODPP staff were seconded to the Taskforce to provide expertise in legal research and reporting. In addition, prosecution staff embraced opportunities to participate in consultative forums and workshops, to offer their own unique insight of the challenges facing victim-survivors of sexual and domestic violence.

The resulting reports have made many recommendations which inevitably will positively change the landscape of the prosecution of sexual and domestic crime. The implementation of those changes aligns with our organisational dedication to making positive differences to people's lives and creating safer communities.

Victims Support

Our Victim Liaison Service continued their important work in the provision of information to victims of crime and their families to guide them through the criminal justice process. In addition to the other collaborations with victim support service agencies, the work of the Townsville Chambers and their collaboration with the Sexual Assault Response Team (SART) is particularly noteworthy (further detail appears on page 36 of the Report). This multidisciplinary team comprises interagency professionals who work alongside victims of sexual violence to provide a more streamlined response to those reporting a sexual assault. During the reporting year, the ODPP formally partnered with SART to assist in the provision of a holistic assistance package to survivors of sexual assault making a real difference to the lives of those who come into contact with the Courts and the criminal justice system.

Close

Within the pages of this report are the facts and figures that reflect the work of the ODPP during this past year. What is set out is necessarily a quantitative outline of our work. The qualitative nature of the work is much more difficult to reflect in a report such as this. Some of the complex and serious trials are outlined, as are some of the more significant appeals that contribute to the continued development of the law. They give some insight into the business-as-usual activities of this busy prosecution service. They are, however, only a small proportion of the many thousands of cases that the office deals with each year. They are only a small proportion of the legal analysis, research and decision-making undertaken by staff of the ODPP as we go about the business of providing a highly effective prosecution service of the people of Queensland.

Every day ODPP staff go to work to unravel the trauma of other people's lives, and the contributions that we make, the work that we do, has the potential to profoundly impact on the lives of other people who have become embroiled in a potentially daunting and sometimes hostile environment of the Criminal Justice system. It is the prosecutors and prosecution staff who are the guides through these life changing events. It is a heavy burden of responsibility, under the watchful eye of a community all too ready to judge, and it takes people of considerable strength of character, intellect, and empathy.

I remain enormously proud of the work undertaken by the staff of the ODPP, their achievements, and the considerable contribution they make to the community of Queensland. This annual report records the detail of, and some insight into, the work of the ODPP about which all staff, and the community, should be also be proud.

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, Children's Court of Queensland, Magistrates Court (limited) and Mental Health Court.

The ODPP also assists victims of crime and their families in their interactions with the criminal justice system, primarily by providing information on court events and referral services.

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

Our 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

DJAG Strategic Plan

The ODPP follows the overarching DJAG strategies.

More can be found at DJAG Strategic Plan 2018-2022.

- Safe Communities
- Fair Communities
- Responsible Communities
- Integrated Services

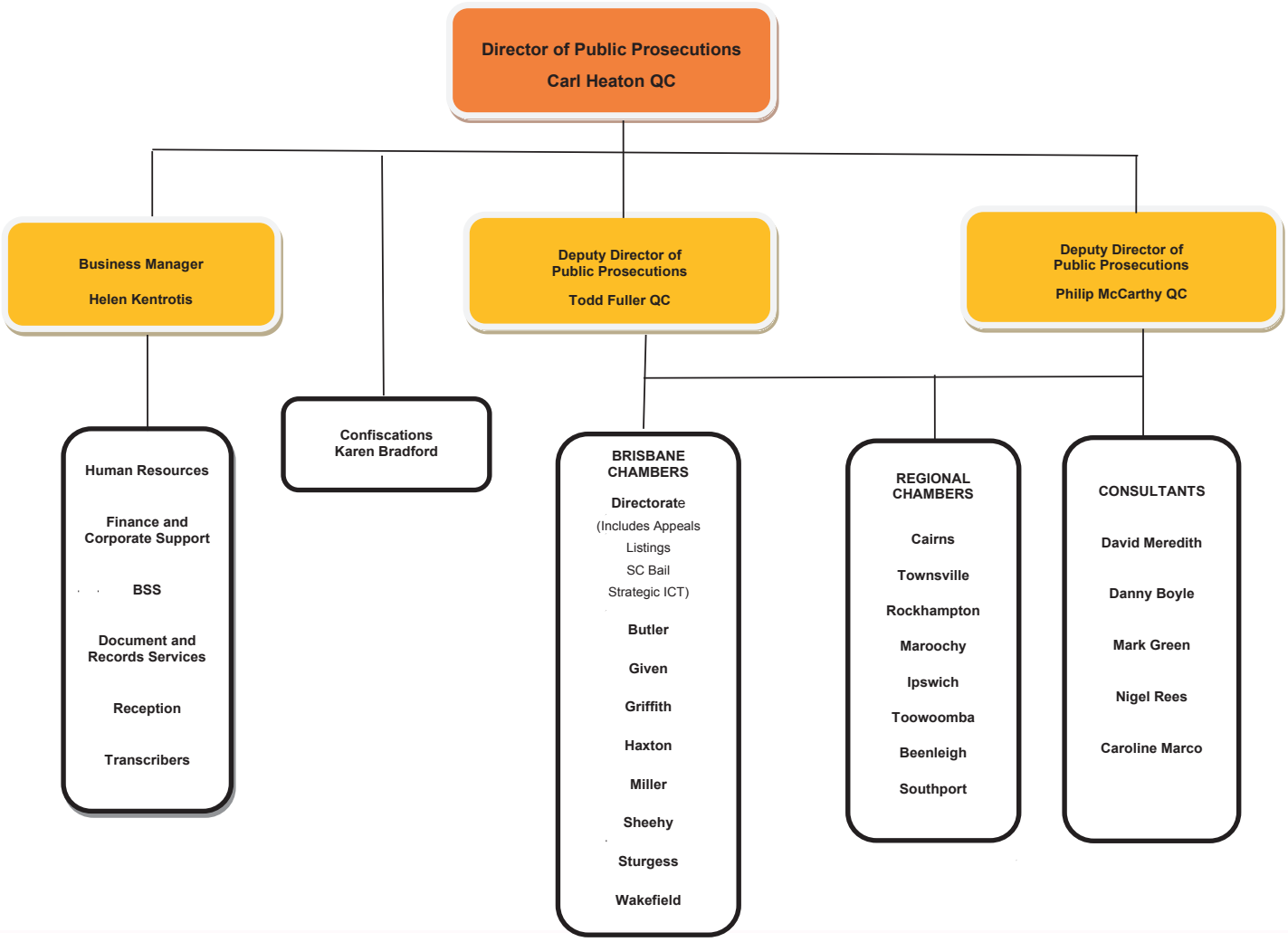
Our Values

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.

Carl Heaton QC, Director of Public Prosecutions

ODPP Organisational Structure



The ODPP implemented changes to the Brisbane chambers on 1 July 2021. The Northpoint office moved back to the State Law Building to join the other the Brisbane Chambers. Butler, Griffith and Miller Chambers were created and Northpoint Chambers was dissolved. Each Brisbane Chamber now comprises 6 Prosecutors, 1 Practice Manager, 6 Legal Officers, 6 Legal Support Officers, 1 Victim Liaison Officer and 1 Record Officer. This change occurred to allocate work equitably amongst the chambers.

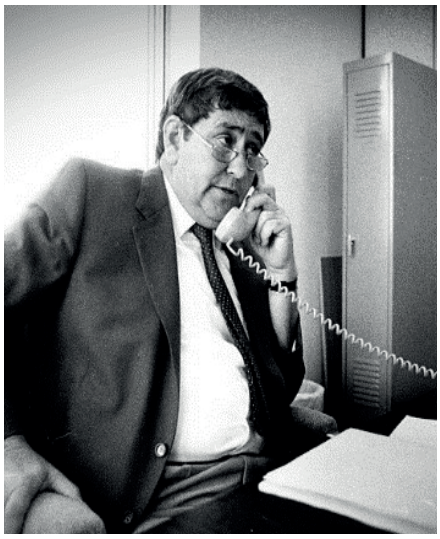
Locations of ODPP

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 4027 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

ODPP Chamber and Circuit 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.

Director Profiles



Des Sturgess QC
January 1985 - May 1990

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 Stugess QC passed away.

Royce Miller QC
May 1990 - June 2000

Royce Miller QC
Appointed May 1990

Royce Miller QC was appointed in 1990 as the Director of Prosecutions, taking over from the outgoing Director Des Sturgess QC. Royce became the longest serving Director to date, serving for a ten-year period until his retirement.

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

Leanne Clare SC
June 2000 - June 2008

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.

Director Profiles

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.

Anthony Moynihan QC
June 2008 - June 2015

Michael R Byrne QC
Appointed November 2015

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

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

Michael R Byrne QC
November 2015 - January 2020

Carl Heaton QC
Appointed June 2020
Current Director

Carl Heaton QC commenced working in the Queensland Office of the Director of Public Prosecutions in 1989. He obtained his Bachelor of Laws degree from the Queensland University of Technology in 1990. Carl was appointed Senior Counsel in and for the State of Queensland in 2010. In his time with the ODPP he has been based in Maroochydore, Cairns and Brisbane and has appeared in almost every centre in the State where the District and Supreme Courts are held. He is a Member of the Board of the Australian Advocacy Institute and a senior Advocacy Trainer.

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

Carl Heaton QC
June 2020 - Present

Management Profiles

HELEN KENTROTIS

Business Manager

As Business Manager, Helen leads the ODPP's financial and corporate services. Helen first joined the Office in 2006 as part of a project examining senior executive service arrangements. After the success of this project, she was offered the position as the manager of the Human Resources team by the Director at the time, Leanne Clare SC.

Helen's experience and expertise drove multiple initiatives across the Office, including the introduction of the Work Experience Placement Program, and was recognised by her appointment to the Business Manager role in 2009.

Since that time, Helen has overseen various projects and has influenced the organisational structure of the ODPP. She constantly strives to and succeeds in representing the ODPP's interests within the wider Department of Justice and Attorney-General.

TODD FULLER QC

Deputy Director

Todd Fuller QC was appointed as Deputy Director in 2016. He commenced working in the ODPP as a paralegal clerk in 1988 and was appointed as a Crown Prosecutor the following year. He has appeared in all jurisdictional levels of the Queensland Courts as well as the High Court of Australia and regularly conducts high profile and complex prosecutions and appeals.

Todd obtained his Bachelor of Law degree with Honours from the Queensland University of Technology in 1989 and was admitted to the Bar the same year. He was appointed Senior Counsel in and for the State of Queensland in 2010.

He serves on the Queensland Bar Association CPD, New Bar and University Relations Committees in addition to presenting on the Bar Practice Course. He is a member of the Griffith Law School Visiting Committee.

Todd has a wealth of corporate knowledge and oversees the operation of the ODPP and uses his experience of over 30 years within the criminal justice system to foster improvement, mentor and develop staff and engage with a variety of stakeholders.

PHILIP McCARTHY QC

Deputy Director

Philip McCarthy QC commenced with the ODPP as a paralegal in July 1995 after graduating from the University of Queensland with degrees in Law and Science. Philip was admitted as Counsel in 1997, commenced prosecuting trials in 2001 and over the years has developed a reputation for carrying a heavy caseload and prosecuting with fairness, common sense and diligence.

Philip was recognised as a leader within the legal profession through his appointment as Queen's Counsel in December 2019.

Philip is currently a member of the Queensland Sentencing and Advisory Council, appointed by the Governor in Council on recommendation by the Attorney-General. Philip is also a member of the Women's Safety and Justice Taskforce since its formation on 11 March 2011.

Philip shares his experience and expertise through a range of developmental and mentoring programs aimed at developing the capability of ODPP staff and external organisations.

Significant Appointments

During the reporting period, the following staff members were appointed to a significant position within the legal profession. The appointment recognises the talented lawyers within the ODPP, who are leaders in the field of criminal advocacy. These are a remarkable personal and professional achievement for the appointees, and speak of the high regard in which the ODPP and its personnel are held within the profession.

Jodie Wooldridge QC
Previously, Consultant Crown Prosecutor
Now, District Court Judge

Her Honour began her career working in the Office of the Director of Public Prosecutions in a paralegal role as part of the Cadet Program (now known as the WEPP program) in January 2000, while completing a Bachelor of Laws at the University of Queensland. Judge Wooldridge QC graduated with Honours in 2003 and went on to complete the Bar Practice Course through the Queensland University of Technology received awarded the James Archibald Douglas Prize for the course. Her Honour was admitted to the Supreme Court as counsel in September 2003.

Her Honour has practiced throughout Queensland, leading the Cairns Chambers of the ODPP in 2008 for 2 years and Beenleigh Chambers in 2012 for 2 years. In between those times Her Honour gained experience as a Senior Crown Prosecutor in the Northern Territory DPP. Her Honour was appointed Prosecutor to the Special Joint Taskforce into Fraudulent Sub-Contractor Non-Payment in the Construction industry and also the Work Health Safety Prosecutor. Her Honour has been a member of the Bar Association's Access to Justice Committee and has participated in the Bar Association's presentation of continuing professional development lectures for counsel. Her Honour's mastery of law and professional leadership was acknowledged when Her Honour was appointed Queen's Counsel in November 2020.

Significant Appointments

Dzenita Balic
Previously, Principal Crown Prosecutor
Now, Magistrate

Her Honour was appointed to the Southport Magistrate Court on 4 January 2022.

Her Honour commenced with the ODPP in January 2005 as an instructing clerk. She was admitted in 2006 and shortly thereafter commenced as a legal officer in the ODPP. She became Crown Prosecutor in January of 2008. She held various roles thereafter in the ODPP including one of her last roles as the Principal Crown Prosecutor in the Miller Chambers. She has been a Principal Crown Prosecutor across various chambers including regional offices of Ipswich and Maroochydore. She was also the appellate counsel for the ODPP for a period of 18 months in 2020 and 2021.

Her Honour was a member of the Bar Association and continues to be an Associate Member of the Bar Association. She is still active in the diversity space and is still a Board Member chairing that portfolio as part of Women's Law Association Queensland. She is an active community member in the space of interfaith programme and the enhancement of multi-culturalism in the community.

Crown Prosecutor Appointments

During the reporting period, the following staff members were appointed to Crown Prosecutor positions.

Crown Prosecutor	Senior Crown Prosecutor
Carla Ahern	Aleksandra Nikolic
Joshua Francis	Claudia Georgouras
	Julie Aylward
	Lara Soldi
	Samantha O'Rourke
	Stephanie Gallagher
	Stephen Muir

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

Award Nominees

During the reporting period, the following ODPP staff were nominated to receive awards at the Women in Law Award gala. The Women's Law awards celebrate and recognise the outstanding women in the legal profession across a broad range of categories.

Whilst the important work of the ODPP provides its own rewards, it is wonderful to be recognised by peers and by the broader profession, particularly on a national stage and it is a great acknowledgement of the amazing staff that we have within the ODPP.

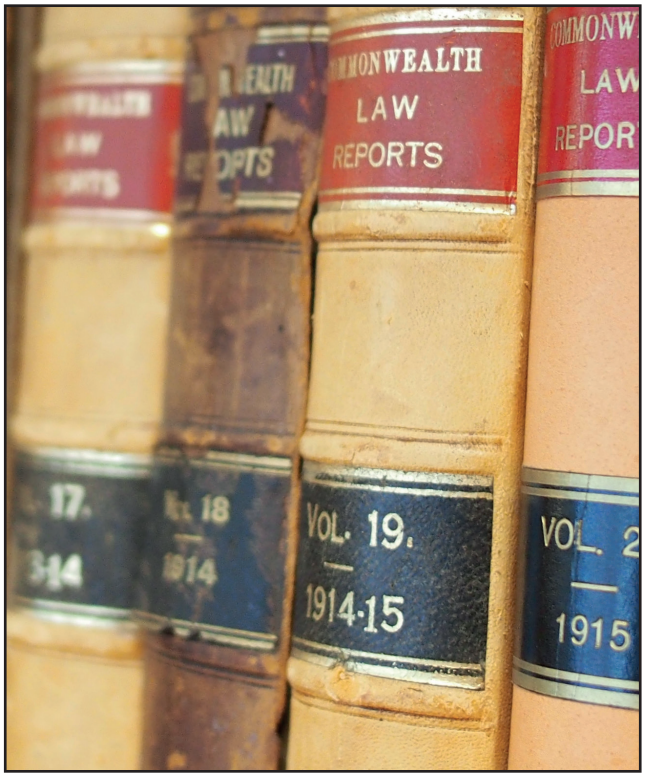
Lauren Hall
Award - Legal Support Professional of the Year

Lauren Hall was awarded the Legal Support Professional of the Year award at the Women in Law Awards gala held in Sydney.

This national award recognises the outstanding results are only possible with the efforts of support staff.

Carly Whelan
Nominee - Barrister of the Year

Carly Whelan was nominated in the category of Barrister of the Year, a wonderful achievement considering the national scope of the award. Carly did not win the award but was a amongst a cohort of 10 barristers who were finalists from across Australia.



Years of Service Honour Board

20 years & over

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

Alan Kent	Marcos Malaxechebarria
Alexander Stark	Mark Whitbread
Amanda Kajewski	Michelle McCormack
Andrew Lowrie	Philip McCarthy QC
Carl Heaton QC	Rebecca Pennell
Caroline Marco	Roderick McPhillips
Catherine Birkett	Ronald Swanwick
David Meredith	Sarah Dennis
David Nardone	Scott Smith
Donna Beale	Shauna Farrelly
Greg Cummings	Stacey Cristaldi
Jane Shaw	Teresa Davis
Lisa Mallett	Todd Fuller QC
Malinda Ralph	Tracey Street

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

Notable Prosecutions

High Court of Australia

Orreal v The Queen

On 8 March 2019 Malcolm Orreal was convicted of three counts of indecent dealing with a child under 16 and two counts of rape after a trial before the District Court at Brisbane. Evidence that both the complainant and Orreal had tested positive for the presence of the herpes simplex virus type 1 (HSV-1) was admitted during the trial. Expert evidence adduced from a doctor at trial put qualifications on, and limitations to, that evidence to such an extent that the HSV-1 evidence had no probative value, and was inadmissible. While the prosecutor acknowledged the neutrality of the evidence in their closing address, the jury were still invited to use the evidence in their determination of the guilt of the accused. There was no direction given during the trial Judge's summing up that the evidence was to be disregarded.

Orreal appealed to the Court of Appeal on two grounds – 1) that the conduct of the appellant's trial counsel gave rise to a miscarriage of justice and deprived the appellant of a fair chance of acquittal, and 2) that the admission of the medical evidence that both the appellant and the complainant had tested positive for the presence of HSV-1 created an unfair prejudice which gave rise to a miscarriage of justice.

The Court of Appeal unanimously agreed that the first ground of appeal could not be established. In respect of the second ground, the Court of Appeal found that a miscarriage of justice occurred because the trial judge failed to direct the jury to disregard the HSV-1 evidence in its entirety. However, the Court of Appeal, by majority, dismissed the appeal by applying the proviso in section 668E(1A) of the Criminal Code, which provides that the Court of Appeal may dismiss an appeal, notwithstanding that the points raised by the appeal might be decided in favour of the appellant, if it considers that no substantial miscarriage of justice actually occurred. The majority concluded that the HSV-1 evidence could not have impacted the jury's assessment of the reliability or credibility of the complainant. The appellant was granted special leave to appeal to the High Court.

The appeal was heard on 11 November 2021 and the High Court delivered their judgment on 16 December 2021. The appeal was allowed. An appellate court is precluded from applying the proviso unless the court itself is persuaded that the evidence properly admitted at trial established guilt beyond reasonable doubt. In that determination, the appellate court is required to consider the nature and effect of the error because in some cases, including those which turn on contested credibility, the nature and effect of the error may render an appellate court unable to assess whether guilt was proved beyond reasonable doubt due to the limitations that arise by proceeding wholly or substantially on the record. The majority of the Court of Appeal erred in placing weight on the verdicts of guilty, as in the absence of a direction to disregard the HSV-1 evidence, those verdicts may have been affected by the misuse of that evidence. The order of the Court of Appeal was set aside, and in its place it was ordered that the appeal be allowed, the appellant's convictions be set aside, and a new trial was ordered.

R v Zafirovska

Simona Zafirovska was found guilty of the murder of her mother at The Gap in Brisbane following a trial before the Brisbane Supreme Court in February 2019, and was sentenced to life imprisonment with a non-parole period of 20 years. An appeal against her conviction was dismissed by the Court of Appeal on 12 June 2020.

On 17 March 2022, the High Court heard and refused an application for special leave to appeal made by Zafirovska. The High Court was not persuaded there was an arguable case that the Court of Appeal fell into error in the application of the well-settled principles in *M v The Queen* (1994) 181 CLR 487.

Queensland Court of Appeal

R v Novley

On 25 February 2022 the Court of Appeal delivered judgment in the matter of Daniel Andrew Novely. Novley had appealed his conviction for murder on the ground that a miscarriage of justice occurred because of the way the learned primary judge had characterised the forensic pathologist's evidence regarding alternative possible causes of death in a direction to the jury. The appellant complained that the characterisation of the concessions made by the forensic pathologist in cross-examination as "theoretical possibilities" unfairly undermined the defence case at trial.

Notable Prosecutions (cont.)

Novley, Swan (a co-accused, whose trial proceeded separately and resulted in a conviction of manslaughter) and the deceased were living at Sturt Lodge. The Crown case at trial was that during the evening when the deceased was in bed, Novley asked Swan to cover a closed-circuit television camera, then picked up a wooden bed slat and beat the deceased to death. Novley, the deceased and others had been involved in an argument earlier the same day. There was evidence the deceased received blows to his head during this earlier confrontation. The various lay witnesses gave differing versions of events, but on the whole of the evidence it was left open that the deceased received one or more blows from his partner, the appellant and/or Swan.

The appellant gave evidence at his trial. He admitted to having punched the deceased earlier in the evening, but said it was in defence of another (the deceased's partner). He gave evidence that he witnessed the deceased receive other blows to his head during the afternoon by the deceased's partner. He admitted to hitting the deceased with the bed slat while the deceased was in bed, however said he was trying to wake him up, but there was no response. The issue was therefore whether there was a reasonable possibility that it was one of the earlier incidents that caused the deceased's death, rather than the appellant striking him with the bed slat.

The Court of Appeal dismissed the appeal. The direction given had to be considered in the context of the summing up as a whole and purpose of the direction, which was to ensure the jury did not use the forensic pathologist's answers in cross-examination (as to other possibilities that may have caused the deceased's death) as a substitute for their own consideration of that issue by reference to all the relevant evidence placed before them, including evidence of the lay witnesses about the events that preceded the deceased being struck with the bed slat. There was no undermining of the appellant's case at trial by the impugned direction, which was evident from the extensive directions the primary judge gave with respect to a series of reasonable possibilities with reference to the evidence of the lay witnesses, after summarising the forensic pathologist's evidence on the 'anatomical possibilities.'

R v Winning

Douglas John Winning was a solicitor in Rockhampton charged with official corruption. He was pulled over by police whereupon he produced three hundred dollars in fifty dollar notes and asked "Can't pay my way out of this, can I?" He later asked if they would like a 'lazy quid.'

He was convicted after trial and appealed his conviction on three alternative grounds. The appeal was heard on 6 October 2021 and the judgment of the Court of Appeal, dismissing the appeal, was delivered on 12 November 2021. An application for special leave to appeal to the High Court was dismissed on the papers on 16 March 2022.

R v Daniels; Latu; Marieti; Mariri; Taiao; Tahiata; Thrupp; and Walker

In early 2016, the bodies of Corey Breton and Iuliana Triscaru were discovered in a toolbox in a dam near Logan. Prior to being placed in the toolbox, they had been lured to a unit in Kingston, restrained and tortured. Eight accused were convicted in earlier reporting periods in relation to their respective involvement in the deaths:

- Tuhirangi-Thomas Tahiata was found guilty of two counts of murder following a trial in February 2020;
- Webbstar Latu, Ngatokoona Mareiti, Tepuna Mariri each pleaded guilty to two counts of manslaughter, which the Crown accepted in satisfaction of their charges of murder. Mariri also pleaded guilty to two counts of torture with which he was charged;
- Stou Daniels, Davy Taiao, Trent Thrupp and Waylon Walker were tried together in February 2021. Daniels, Taiao and Thrupp were each were found guilty of two counts of murder and two counts of torture. Walker was charged with two counts of murder only. He was found not guilty of murder, but guilty of manslaughter on each count.

On 9 October 2020, Latu was sentenced to concurrent terms of 12 years imprisonment for the manslaughter convictions. He applied for leave to appeal against his sentence on the ground that there was an impermissible disparity between his sentence and the sentences imposed on Mariri. Mariri had been sentenced to 13 years imprisonment for each manslaughter offence, and concurrent terms of six years imprisonment for the torture of each victim. The disparity was reflective of the sentencing Judge's finding that Mariri's involvement was significantly more than the applicant's, but the question was whether his Honour erred in concluding that the

Notable Prosecutions (cont.)

difference in their terms of imprisonment should be one year. The appeal was heard on 19 May 2021, and on 24 September 2021, the Court of Appeal delivered their judgment (*R v Latu* [2021] QCA 202), refusing Latu's application and finding that while it was open to the sentencing judge to imposed a sentence lower than 12 years, it had not been demonstrated that his Honour was obligated to do so.

Each of the other accused who were convicted after trial – Daniels, Tahiata, Taiao, Thrupp and Walker – have filed appeals against their convictions. Hearing dates have not yet been set.

Correction: In the 2020-2021 annual report, it was reported that Walker was convicted of murder after trial. That is incorrect. He was convicted of manslaughter.

R v Peniamina

In the previous reporting period it was reported that on 9 December 2020, the High Court, by majority, allowed an appeal against conviction for murder and granted Peniamina a retrial because of the way in which the partial defence of provocation was left for the consideration of the jury.

Peniamina killed his wife with sustained ferocity in circumstances in which it was open to find that he was angered by a belief that she had been unfaithful to him and that she may have been planning to leave him and take their four children with her. In conversations with police, Peniamina also said that during an argument the deceased had threatened him with a knife and, in trying to disarm her, he sustained a deep cup to his hand. The defence case was that in those circumstances, the jury could be satisfied that the partial defence of provocation had been proved, and they ought to acquit him on the charge of murder, and find him guilty of manslaughter.

On 24 September 2021, the jury returned their verdict in the retrial after five days of evidence and three days of deliberations. They were unable to reach a unanimous verdict in relation to the charge of murder. They returned a verdict of guilty to the alternative charge of manslaughter by majority. The offence was declared a domestic violence offence, and Peniamina was sentenced to 16 years imprisonment. The offence was also declared to be a serious violent offence, the consequence of which was that he will be eligible for parole after serving 80% of the imposed term of imprisonment. 2034 days of pre-sentence custody was declared as time already served.

Supreme Court of Queensland

R v Ngakyunkwokka

Kyle Ngakyunkwokka was convicted of murder and sentenced to life imprisonment on 6 October 2021 following a seven-day trial in the Supreme Court at Cairns.

The defendant and victim were Indigenous males from rival family groups in the Aurukun community. On New Year's Day 2020, the defendant fatally stabbed the victim from behind at a time there was a confrontation between the victim and one of the defendant's associates. The events were recorded on CCTV footage. Several Indigenous witnesses were called who were eyewitnesses to the stabbing or surrounding circumstances. The defendant gave evidence at trial that he primarily was acting in defence of another.

Following the stabbing, riots occurred in the community, which resulted in a number of family and friends of the victim later being jailed.

Several problems were encountered during the trial which needed to be addressed by the prosecution and police in the organisation and conduct of the trial. In particular, there was a potential for further violence against others or property. Extra security measures had to be taken at the court and in the community throughout the trial. Crown witnesses included members from the rival family factions. Special arrangements had to be made to co-ordinate the giving of evidence, flights, and accommodation to ensure minimal contact between them. Consultation with community Elders, including the victim's father, was also undertaken to minimise the risk of any conflict.

Another difficulty was in organising a totally independent interpreter. The defendant and some Crown witnesses required an interpreter to translate between English and Wik Mungkan. The interpreter also came from the Aurukun community, so knew the defendant, victim, and some Crown witnesses. It was necessary that the interpreter provide interpretation on behalf of both the prosecution and defence.

Notable Prosecutions (cont.)

Ngakyunkwokka filed an appeal against his conviction on 15 October 2021 on two grounds – that the verdict of the jury was unreasonable and cannot be supported by the evidence, and that the learned trial judge erred in declining to give the jury further direction as the requirement of section 273 of the Criminal Code (aiding in self-defence) and in particular, in respect of the issue of the use of a like degree of force for the purpose of defending another person. A hearing date is yet to be set.

R v Grills and Lewis

Three-year-old Maliq 'Meeky' Nicholas Floyd Namok-Malamoo died on 18 February 2020 after he was left on a Goodstart Early Learning Centre minibus and died of heat stress.

On 24 February 2021, Michael Lewis, Director of the Goodstart Early Learning Centre Edmonton, and driver of the minibus, pleaded guilty to manslaughter and was sentenced to six years imprisonment, with parole eligibility after serving 18 months.

Dionne Grills, a Lead Educator employed by Lewis, accompanied him on the minibus to collect Maliq from home on the day he died. She was also charged with manslaughter. Lewis gave evidence during the six-day trial before the Supreme Court at Cairns that he had told Grills to get Maliq off the bus when they had arrived back at the centre. On 21 April 2022 the jury returned a verdict of not guilty.

R v Tracey and Moore

On 23 March 2022, Paul Moore and Emily Tracey were convicted of murder following a ten-day trial in the Supreme Court at Brisbane. The trial was conducted as a Judge-alone trial at a time of suspended jury trials due to COVID-19.

Tracey and the deceased were previously married, and they had a six-year-old child. Both accused had also been in a relationship and had five-year-old twins. The deceased was killed inside his own unit from eight stab wounds to the back of his head and upper back. It was the prosecution case that Moore stabbed the deceased in the presence, and with the assistance, of Tracey. Important evidence recovered by police were deleted text messages between the accused which showed pre-planning of the murder. Both accused gave evidence at trial. Moore alleged he was acting in self-defence and Tracey denied any knowledge of what Moore intended to do. In an 82-page judgment, Justice Flanagan convicted both accused (*R v Moore; Tracey* [2022] QSC 35).

On 24 March 2022 and 31 March 2022 respectively, Moore and Tracey filed notices to appeal against their convictions on the ground the verdict was unreasonable and could not be supported having regard to the whole of the evidence. Hearings dates have not yet been set.

R v Andrew Cobby

Andrew Cobby was convicted of the murder of his estranged wife, Gaylene ('Kym') Cobby, following a trial over 18 days before the Supreme Court at Brisbane. Her body was found on the roadway a few hundred metres from her driveway within minutes of her death. She had suffered lacerations to her face and head, likely caused by a hammer located at the scene, but ultimately the cause of her death was manual strangulation.

Cobby was located by police in a nearby driveway a few hours later. He was covered in her blood, and had sustained some injuries consistent with fingernail scratches to his hip and hand. He told police he and the deceased had been attacked by an unknown assailant, and that after a brief scuffle with their attacker he had cowardly fled as the deceased was attacked. However, in the preceding hours since the attack, he'd made no attempt to get medical help for the deceased (or himself), or alert police or neighbours. The Crown argued that his version was a fabrication and he was the sole perpetrator of the attack on the deceased.

The jury heard evidence from family members of the deceased, neighbours, forensic experts and police, as well as a group of people who the accused alleged had been extorting him in the lead up to the murder, and were ostensibly 'behind' the attack on himself and the deceased. The evidence of that group of people was that, rather than extorting Cobby as he alleged, the written demands made by them for payment of money in truth related to funds owed to them by him, and were indeed dictated to them by Cobby in a recording played to the jury, in accordance with an agreement between them. Crucial evidence included a CCTV recording which captured audio of the murder, Cobby's DNA being detected in samples from underneath the deceased fingernails, and the hammer located at the scene likely belonging to Cobby's roommate.

The jury returned a guilty verdict on 15 November 2021,

and the murder was declared a domestic violence offence. Cobby was sentenced to life imprisonment and 1463 days in pre-sentence custody was declared as time already served on the sentence imposed.

Cobby filed an appeal against his conviction on 25 November 2021 on the grounds that the verdict was unreasonable and could not be supported, having regards to the evidence. The appeal is scheduled to be heard on 1 November 2022.

R v Benjamin McCasker

Benjamin McCasker was charged on indictment with one count of unlawful striking causing death pursuant to section 314A of the Criminal Code.

The deceased worked as a security guard at Caboolture Square Shopping Centre. The defendant, then aged 30, was at the shopping centre, became angry with his partner and threw a nearby chair.

The deceased approached the defendant in a calm and non-threatening manner. The defendant charged towards the deceased and punched him in the face. This violent punch immediately rendered him unconscious and caused his body to fall backwards, pivoting from his feet so that the back of his head struck the ground. He began to seize and members of the public went to his aid. The defendant left the scene in a violent rage.

When he later spoke to police the defendant made admissions, but at various points wrongfully suggested the deceased had provoked him, however no such conduct by the deceased was borne out by the CCTV footage.

The medical evidence was that Mr Lewis suffered a very severe brain injury that had a high likelihood of death even with the maximum medical intervention. Mr Lewis passed away on 27 October 2020.

On 12 November 2021, McCasker entered a plea of guilty and was sentenced before the Supreme Court to 13 years imprisonment with 331 days in pre-sentence custody declared as time already served on the sentence imposed.

McCasker filed an application for extension of time within which to appeal and an appeal against sentence on 21 February 2022. The appeal is yet to be heard.

Juvenile Prosecutions

Prosecution in relation to the death of Angus Beaumont

On 16 June 2022, two juvenile males were convicted of the murder of 15-year-old Angus Beaumont after a nine-day jury trial before the Brisbane Supreme Court.

Shortly after 8pm on 13 March 2020, the deceased was stabbed during a confrontation between the offenders and the deceased and his associates near a skate-park at Redcliffe. Beaumont died from a single stab wound to his heart. Prior to the confrontation, one of the deceased's associates sold a 'stick' of cannabis to the juvenile offenders, who were then 14 years old. After the drug deal, the juvenile offenders, who were both armed with knives, pursued the group because the deceased's associate was carrying a bag containing a further quantity of cannabis. The deceased was carrying knuckledusters and was given a knife by one of his associates after they were chased. He warned the offenders to leave, he did not start to wield the weapons until he was attacked.

The Crown's case was that the principal had stabbed the deceased with intent to do at least grievous bodily harm. The case against the second accused was that he had either a) aided, enabled or encouraged the first accused in the murder, or b) that he and the first accused engaged in the common unlawful purpose of an armed robbery, that in the course of that common unlawful purpose the first accused had stabbed the deceased (with the intent of doing at least grievous bodily harm) and caused his death, and that the stabbing by the first accused, with such an intent, was a probable consequence of engaging in the common unlawful purpose of armed robbery.

The Crown called 14 witnesses who gave evidence during the trial. This included three of the deceased juvenile's associates, an associate of the accused children and four witnesses who were present in the area at the time. A doctor, and five police witnesses also gave evidence.

The accused children did not give or call evidence in their trial.

They were sentenced on 25 October 2022. They face a

Notable Prosecutions (cont.)

maximum of 10 years detention, or life imprisonment if the court considers the offence to be a 'particularly heinous offence' having regard to all the circumstances.

Prosecution in relation to the deaths of Matthew Field and Kate Leadbetter

On 8 June 2022, an 18-year-old male was sentenced in relation to an eight count indictment, charging him with the manslaughter of Matthew Field and Kate Leadbetter, as well as unlawful use of a motor vehicle, dangerous operation of a motor vehicle while adversely affected by intoxicating substances, excessively speeding and with a previous conviction, unlawful entry of a motor vehicle with intent to commit an indictable offence, wilful damage, and two counts of burglary and stealing. He had pleaded guilty to the offences on 4 February 2022.

The defendant stole a car from a house in Cleveland. He then engaged in a course of dangerous driving over a period of 20 minutes, which included colliding with another car, speeding, driving on the wrong side of the road and weaving through traffic. The driving culminated with his going through a red-light intersection at speed. He hit a truck and his car rolled in the air. As a result, his car struck and killed a pedestrian couple in their 30s and their unborn child. He fled the scene of the crash and was arrested after entering a nearby house and unsuccessfully trying to take another vehicle. His blood alcohol content was estimated to be between 0.151 and 0.192 at the time of the crash, and there was evidence he had recently consumed cannabis.

At the sentence hearing on 7 June 2022, the Crown submitted that the offences of manslaughter were particularly heinous offences, having regard to all the circumstances. The judge made such a finding – the consequence of which was that the maximum penalty the court could impose for those offences was one of life imprisonment. The judge also concluded that special circumstances existed, meaning an order could be made for the release of the defendant after serving less than the usual 70% of the term of detention in custody. The defendant was sentenced to a head sentence of 10 years detention, with an order that he be released from custody after serving 60% of that time. Lesser concurrent terms were imposed in relation to the other offences. By the time he was sentenced, he had spent 497 days on remand, to be automatically counted as part of the period to be served in custody. He was also disqualified absolutely from holding a driver's licence.

On 16 June 2022 the Attorney-General filed an appeal against the sentence on the ground that it was manifestly inadequate. On 1 July 2022, the defendant filed an appeal against the sentence on the grounds that the judge erred in finding that the offence was particularly heinous and that such a finding caused the sentencing discretion to miscarry and rendered the sentence manifestly excessive. A hearing date has not yet been set.

Prosecution in relation to the death of Jack Beasley

On 13 December 2019, 17-year-olds Jack Beasley and Ariki Waiariki-Katuke were stabbed by a 15-year-old male during a short but violent street confrontation between two groups of young people in Surfers Paradise. Beasley died from a single stab wound to his heart, and Waiariki-Katuka sustained two stab wounds to his chest and back, each amounting to grievous bodily harm.

On 9 May 2022, the principal offender who wielded the knife and inflicted the stab wounds to both victims pleaded guilty to the murder of Beasley and to two counts of malicious act with intent in relation to the grievous bodily harm of Waiariki-Katuka. A 17-year-old male co-offender pleaded guilty to charges of manslaughter and two counts of grievous bodily harm on 21 April 2022.

Three other accused – Maljay Toala, and two juveniles aged 16 at the time of the offences – were tried for offences of manslaughter and grievous bodily harm before the Supreme Court at Brisbane in a Judge-alone trial that proceeded over nine days in May and June 2021 and included a site visit of the crime scene at Surfers Paradise. The issue at trial was whether they were criminally responsible for the actions of the principal by virtue of section 8 of the Criminal Code. On 7 July 2022, Justice Ryan delivered a 92-page judgment, acquitting the three accused (*R v OCP & Ors* [2022] QSC 138). Her Honour was satisfied of one of the elements required to find them responsible, namely, that each of the accused formed a common intention with the principal and another co-accused to prosecute an unlawful purpose with each other (that purpose being to pursue, assault and cause physical harm to members of the rival group). However, her Honour was not satisfied beyond reasonable doubt

of the other elements required to find them responsible – namely a) that the principal had killed the deceased and caused grievous bodily harm in the prosecution of the unlawful common purpose, and b) that viewed objectively, manslaughter and the doing of grievous bodily harm were probable consequences of the prosecution of the unlawful common purpose.

On 5 August 2022, the principal offender and his co-offender were sentenced before the Supreme Court at Brisbane. The principal offender was sentenced to concurrent terms of 10 years and 4 years detention for murder and malicious acts respectively, and required to serve 70% of that term in custody. He has appealed against the sentence on the grounds that the learned sentencing judge erred a) in failing to find that there were 'special circumstances' (which would have allowed an order to be made that he serve less than 70% of the term in custody), and b) failed to reduce the applicant's sentence to take into account his plea of guilty. A hearing date has not yet been set.

The co-offender, who was an adult by the time, he was sentenced to concurrent terms of 7 years imprisonment for manslaughter and 3 years for grievous bodily harm. He was also sentenced to lesser concurrent terms for unrelated offending that was taken into account in arriving at the head sentence of 7 years imprisonment for the manslaughter.

District Court of Queensland

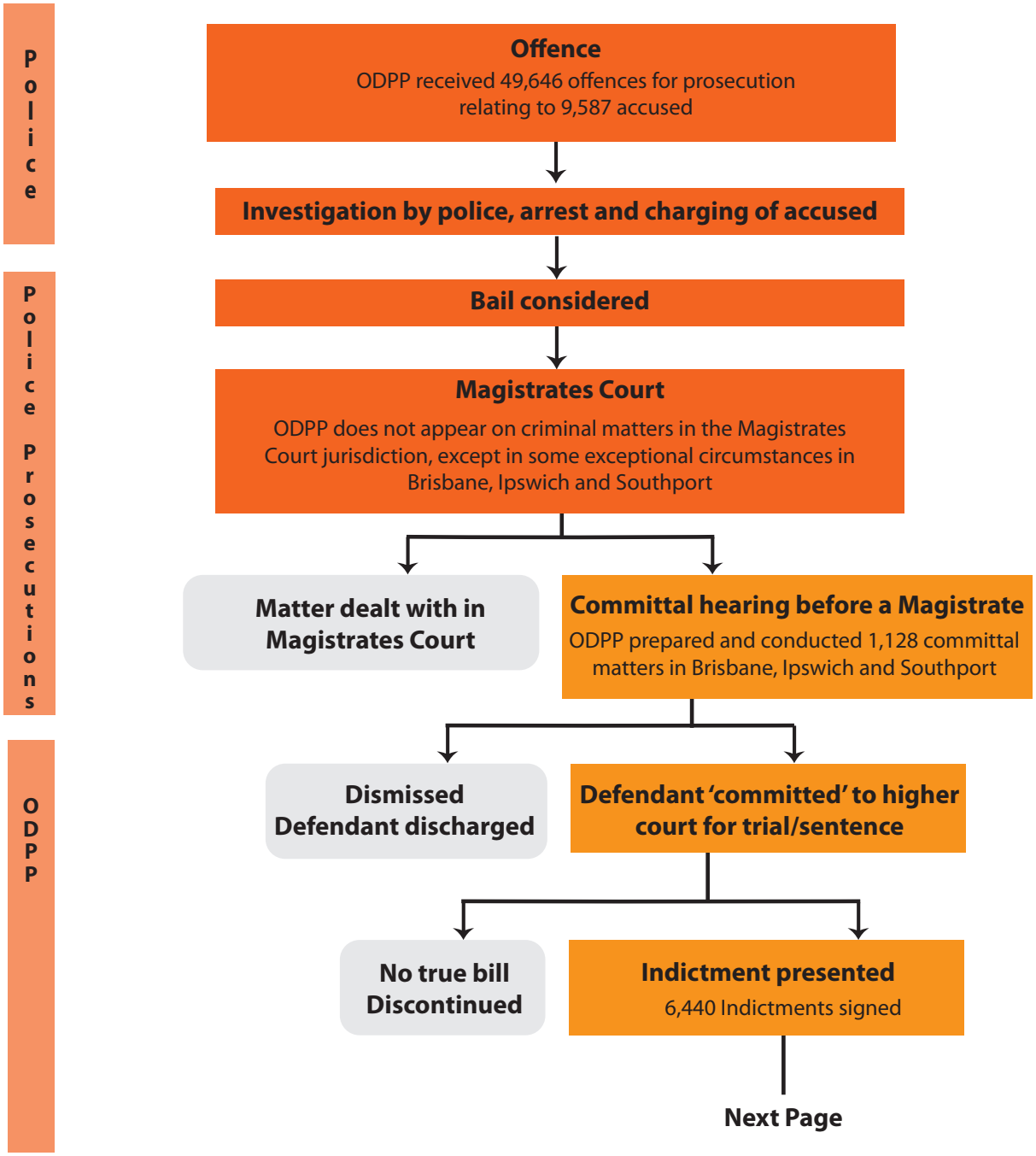
R v Stenner

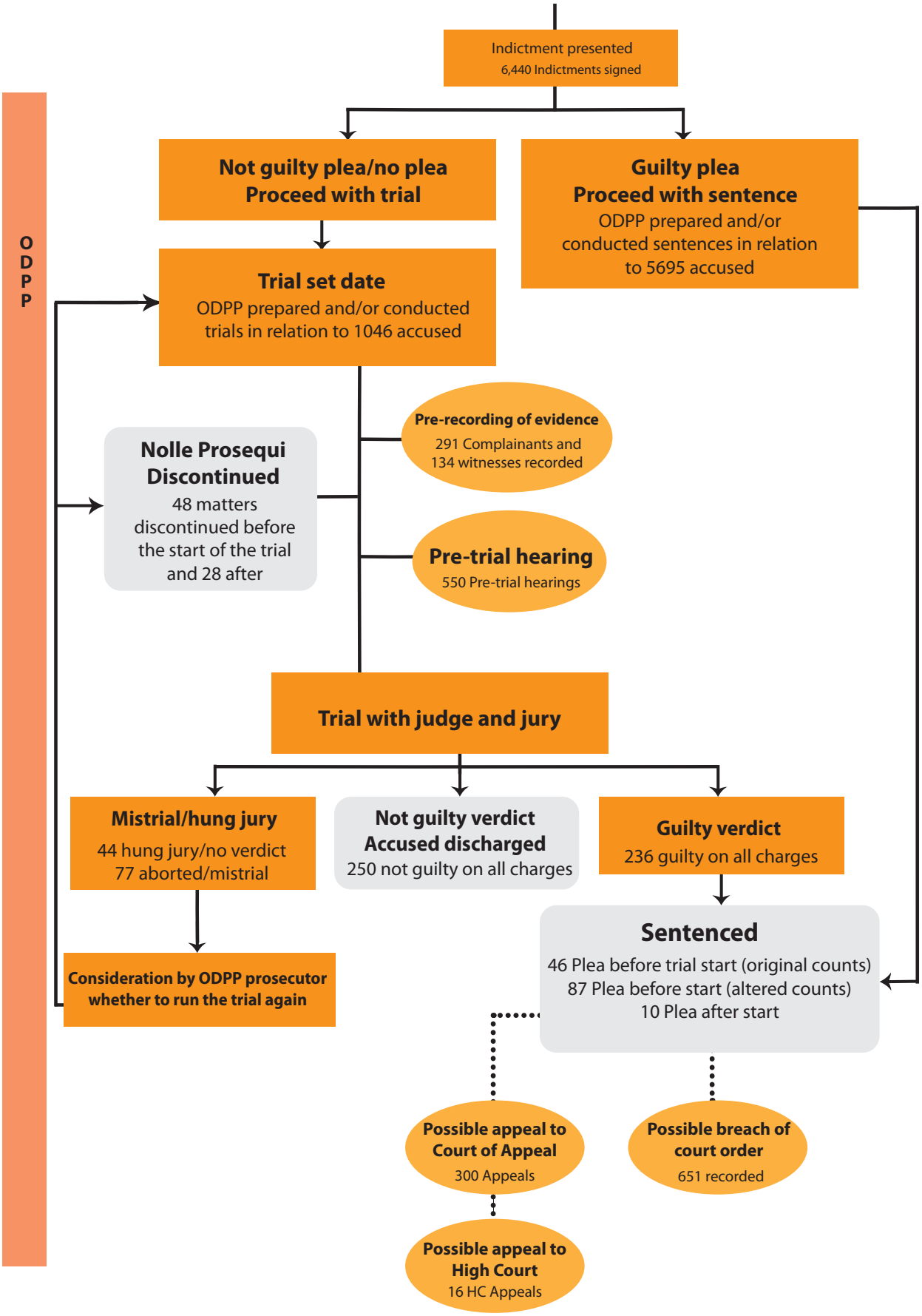
Michelle Stenner was charged on indictment with three counts of perjury in relation to what was alleged to be false testimony she gave before a Crime and Corruption Commission (CCC) hearing in 2017. The CCC hearing was conducted regarding the appointment of an administrative officer within the Queensland Police Service while Stenner was acting in the role of Chief Superintendent, Gold Coast District – a position substantively held by the father of the appointed administrative officer. The case had previously resulted in a mistrial in June 2021 because of conduct of a juror during jury deliberations.

The re-trial commenced on 18 October 2021 and lasted three days. After the Crown closed its case, the defence made an application to the trial judge that there was no case to answer. The application was successful, and the jury were directed to return a verdict of not guilty to all three counts on the indictment. Stenner was discharged on 21 October 2021.

Performance

Court Process & 2021-22 statistics




ODPP
Indictment presented
6,440 Indictments signed
Not guilty plea/no plea
Proceed with trial
Guilty plea
Proceed with sentence
ODPP prepared and/or conducted sentences in relation to 5695 accused
Trial set date
ODPP prepared and/or conducted trials in relation to 1046 accused
Pre-recording of evidence
291 Complainants and 134 witnesses recorded
Nolle Prosequi
Discontinued
48 matters discontinued before the start of the trial and 28 after
Pre-trial hearing
550 Pre-trial hearings
Trial with judge and jury
Mistrial/hung jury
44 hung jury/no verdict
77 aborted/mistrial
Not guilty verdict
Accused discharged
250 not guilty on all charges
Guilty verdict
236 guilty on all charges
Consideration by ODPP prosecutor whether to run the trial again
Sentenced
46 Plea before trial start (original counts)
87 Plea before start (altered counts)
10 Plea after start
Possible appeal to Court of Appeal
300 Appeals
Possible breach of court order
651 recorded
Possible appeal to High Court
16 HC Appeals

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.

Efficiency Measure

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

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

The ODPP exceeded its 60% efficiency target for the 2021-2022 financial year by 12.4%, signing 72.6% of indictments within 4 months of committal. Throughout the reporting period, the ODPP has continued to address increased workloads and improve efficiency.

Effectiveness Measure

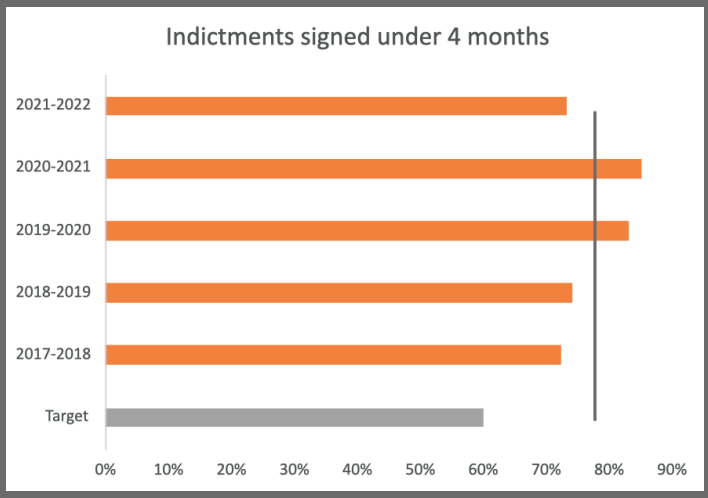
The ODPP's effectiveness measure requires an 85% conviction rate for prosecutions on indictment in the Supreme, District and Children's Court of Queensland. The ODPP exceeded this target for the 2021-2022 financial year, achieving a conviction rate of 91.5%.

The ODPP has maintained a high conviction rate over the last five reporting periods, with an average of 91%. 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.

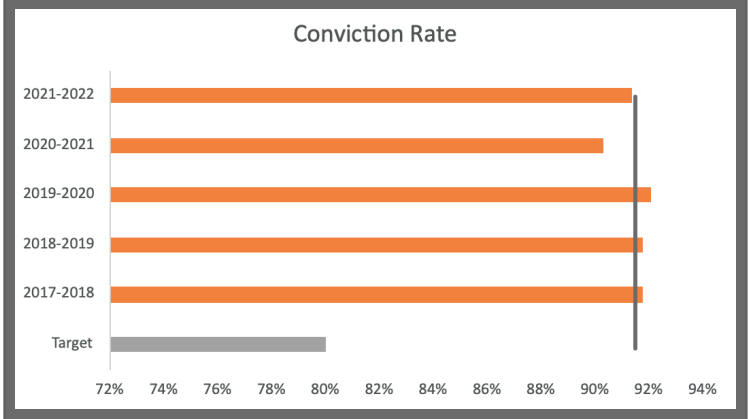
SDS figures

» 72.6% of indictments signed within 4 months of committal

» Conviction rate of 91.5%



The grey line represents the 5 year average



The grey line represents the 5 year average

Incoming Offences during 2021-2022 by category

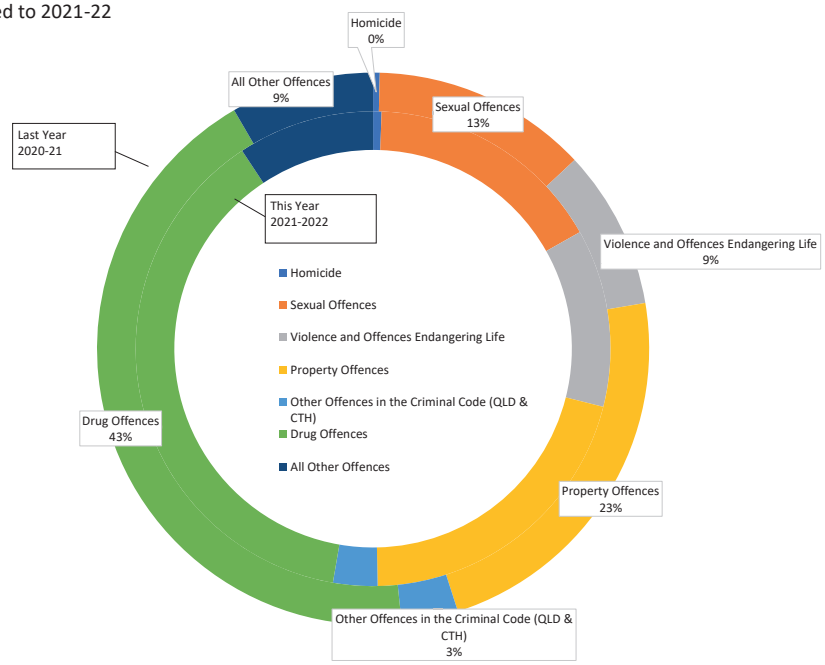
Incoming offences are recorded against established categories determined by the nature of the offence. This table shows the number of new charges received per category and chamber for the financial year of 2021-22.

Category	Offence	Brisbane	Beenleigh	Cairns	Ipswich	Maroochy	Rockhampton	Southport	Toowoomba	Townsville	Total
Homicide	*Sum of Murder*	87	2	3	7	4	5	5	1	3	117
	Sum of Attempted murder	56			4		4				64
	Sum of Manslaughter	21		3	1			1		2	28
	Sum of Dangerous op. c/death	16	5	3	3	2	11	1	3	6	50
	Sum of Striking causing death	4									4
	Sum of OTHER CH 28 (ss.307-314)	18	1			1					20
Sexual Offences	*Sum of Rape*	949	137	133	173	92	109	119	71	146	1929
	Sum of Sexual assault	352	34	34	48	19	32	64	22	45	650
	Sum of Unlawful carnal knowledge	51	21	10	7	9	18	11	13	17	157
	Sum of Unlawful sodomy	15	5	7					1		28
	Sum of Indecent treatment	1293	336	205	265	239	199	234	121	346	3238
	Sum of CEM (incl. Cth Code)	539	72	81	40	98	91	56	187	148	1312
	Sum of OTHER CH 22 (ss.211-229B)	415	15	53	47	82	32	74	8	64	790
Violence and offences endangering Life	*Sum of Malicious act w/intent*	110	11	15	26	5	10	3	8	12	200
	Sum of Grievous bodily harm	181	29	33	44	37	44	36	19	56	479
	Sum of Dangerous op. (excl. c/death)	126	18	11	3	19	22	6	15	36	256
	Sum of Torture	40	13	6	18	10	1	21	1	4	114
	Sum of Wounding	86	20	36	22	25	11	35	5	45	285
	Sum of Assaults	1486	254	415	347	158	179	207	160	267	3473
	Sum of Choking, suffocation, strangulation	395	79	113	102	76	49	68	53	80	1015
	Sum of OTHER CH 29 (ss.315-334)	116	5	4	31	13	2	13	5	17	206
Property Offences	*Sum of Robbery*	939	154	125	153	89	76	249	72	93	1950
	Sum of Extortion	31	2	1	5	3	2	8	3	2	57
	Sum of Burglary, Enter/being in prem	1105	109	94	92	80	231	158	138	184	2191
	Sum of UEMV for CIO	34	9	3	12	3	3	2	4	11	81
	Sum of Stealing/receiving	871	29	48	61	29	137	75	19	52	1321
	Sum of UUMV and UPMV	568	45	51	36	22	104	133	84	80	1123
	Sum of Fraud	976	94	44	46	27	34	207	16	17	1461
	Sum of Forgery and uttering	141	6	3		12	1	120	2	192	477
	Sum of Arson and wilful damage	531	77	65	115	71	42	43	43	65	1052
	Sum of OTHER PT 6 (ss. 390-553)	430	5	14	132	7	1	3	16	7	615
Other offences in the criminal codes (QLD & CTH)	*Sum of Breaches of the peace*	94	13	35	4	5	11	21	1	20	204
	Sum of Corruption, abuse of office	6			1		1			1	9
	Sum of Administration of justice	109	4	25	1	5	22	2	2	14	184
	Sum of Prostitution	6									6
	Sum of Offences against liberty	171	38	17	30	6	3	38	8	13	324
	Sum of Unlawful stalking	140	21	26	26	34	11	9	4	12	283
	Sum of Marriage, parental rights/duties	6	4					1			11
	Sum of OTHER (Criminal Code Qld)	252	4	17	4	16	5		12	14	324
	Sum of OTHER (Criminal Code Cth)	69	1	4		2	8		1	64	149
Drug Offences	*Sum of Trafficking DD*	451	9	60	29	32	105	12	34	81	813
	Sum of Producing DD	163	14	49	30	38	28	35	8	22	387
	Sum of Supplying DD	4999	302	823	668	337	1455	198	780	1478	11040
	Sum of Possessing DD	2477	42	194	145	160	368	135	109	239	3869
	Sum of OTHER (Drugs Misuse Act)	1832	23	85	177	86	160	75	70	165	2673
All other offences	*Sum of SUMMARY OFFENCES ACT*	261		21	27	30	10		7	3	359
	Sum of WEAPONS ACT/REG.	452	9	18	41	17	52	18	9	17	633
	Sum of BAIL ACT	492		3		7	5	1	10	7	525
	Sum of TORUM ACT	365	2	19	1	3	20	9	8	7	434
	Sum of ALL OTHER OFFENCES	1515	71	201	297	173	72	81	48	218	2676
	Grand Total	25842	2144	3210	3321	2183	3786	2587	2201	4372	49646

Incoming Offences

The ODPP received 49,646 charges for consideration during the reporting period, down 23.8% from 61,457 in the previous reporting period.

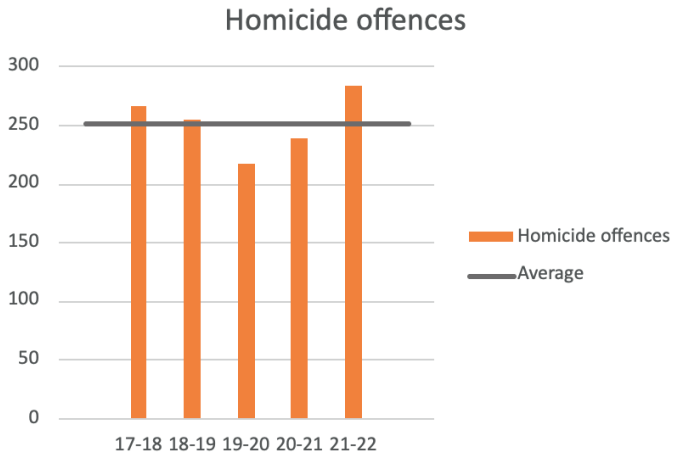
Distribution of Offences by Category
2020-21 compared to 2021-22

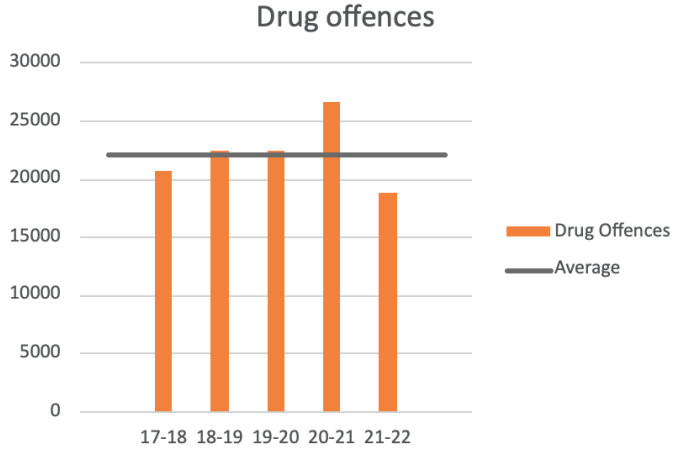


Recent trends

The ODPP observed a decrease in the number of drug related offences during the reporting period. The 2021-22 period saw 18,989 charges which is a decrease of 29% from 26,583 in 2020-21 reporting period.

The ODPP also received a high volume of charges in relation to homicide offences, with an increase of 20% from the previous reporting period, with 286 charges in 2021-22 in comparison to 238 in 2020-21. Such offences include murder, attempted murder, manslaughter, dangerous driving causing death and striking causing death.





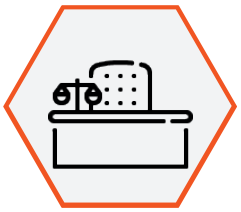
Preparation of Matters

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 1,511 matters during the reporting period.

Some Magistrate Court finalisations include:

1,128 Matters committed for trial	80 Matters committed for sentence	172 Summary pleas of guilty
71 Defendants discharged on all charges	43 to Police Prosecutions Corps	9 Total summary trials



Presentation of indictments

The ODPP presented 6,440 indictments to the Supreme, District and Children's Court of Qld in comparison to 5,687 last reporting period (an increase of 13.2%).

The indicted matters in the current reporting period consisted of:

610 Children Court of Queensland	4,685 District Court matters	1,145 Supreme Court matters

An additional 313 committed matters were finalised after it was determined that an indictment should not be presented (referred to as 'no true bill').

Directors Consent

The Directors 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 117 matters, involving 150 complainants.

Hearing Appearances

Breach Proceedings

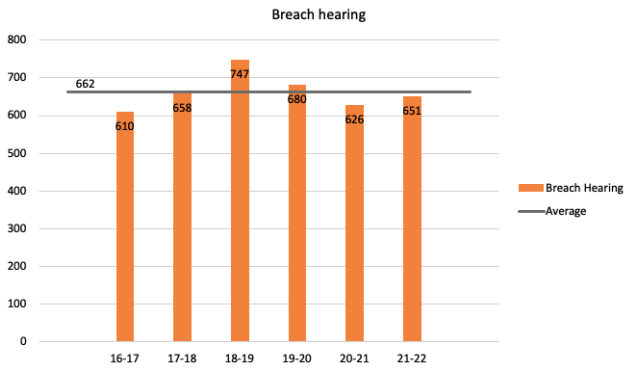
Breach proceedings are conducted if a person has been convicted of an offence and fails to act in accordance with a court order, such as a community service, probation or a suspended sentence. The ODPP is required to prove the breach and make submissions for appropriate re-sentencing of the offender.

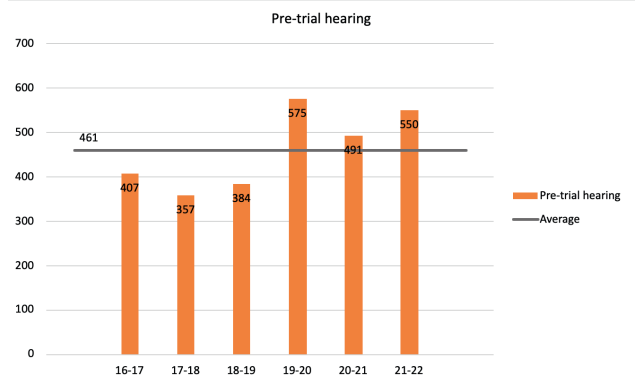
The ODPP conducted 651 breach hearings in 2021-22, a 4% increase from 626 in 2020-2021.

Pre-trial hearings

Pre-trial hearings are conducted via application under section 590AA of the Criminal Code, 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 550 pre-trial hearings in 2021-22, a 12% increase from 491 in 2020-21.





Pre-recorded evidence hearings

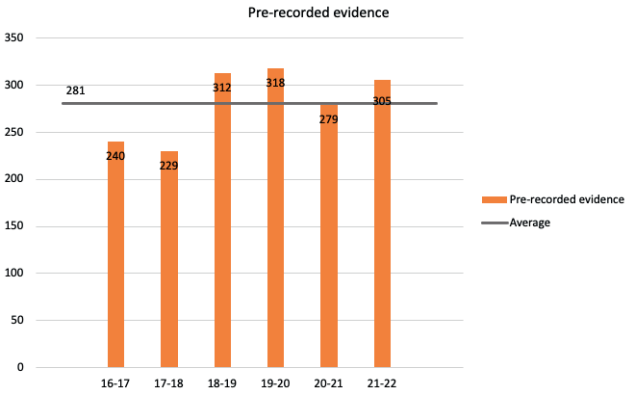
Pre-recorded evidence hearings are conducted pursuant to the *Evidence Act 1977*(Qld). These hearings are held in a closed court and allow special witnesses, including affected child witnesses, to testify in the absence of a jury. This evidence is recorded, and the recording played to the jury at trial.

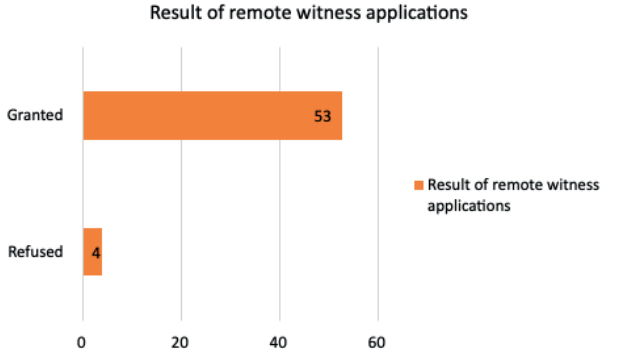
The ODPP conducted 305 pre-recorded evidence hearings in 2021-22, a 9% increase from 279 in 2020-21.

Remote witness applications

The ODPP made applications for 57 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 57 applications made, only 4 were refused.



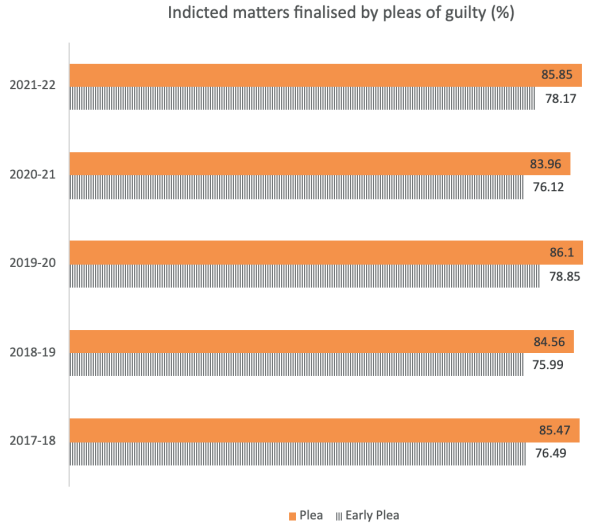


Finalisation of Superior Court Matters

Finalisation prior to trial

During the reporting period, the ODPP prepared 6,110 matters for sentence, and finalised 5,695 indicted matters by a plea of guilty prior to the commencement of a trial. This represents 85.8% of all indicted matters that were finalised during reporting period.

A plea of guilty is considered an 'early plea' if the ODPP is advised of the defendant's intention to plead guilty before the matter is listed for trial. This results in significant cost and time benefits for the criminal justice system, and can reduce emotional impact on victims and their families. An early plea of guilty was indicated in 5186 of the matters finalised by a plea of guilty prior to the commencement of a trial over the reporting period. This accounts for 78.2% of all finalised matters.



Finalisation by trial

ODPP Crown Prosecutors prepared 1,046 matters for trial during the reporting period, an increase of 3% from 1,019 matters in the previous reporting period.

Of the total indicted matters finalised during the reporting period, 10.8% were disposed of by trial. This is a slight decrease from 12.2% reported during the previous reporting period.

: Trial outcomes for the reporting period consisted of

236 Guilty verdicts	154 Guilty pleas to all or some counts	250 Not Guilty on all counts
76 Discontinuances	4 Permanent stay of proceedings	77 Mistrials

The conviction rate after trial for the reporting period was 54.7%, an increase of 1.1% from the previous reporting period.

Summary of indictment outcomes

During the reporting period, the ODPP finalised 6650 prosecution matters involving defendants charged on indictment.

Of these indicted matters:

705 were finalised after the commencement of a trial	5,695 were finalised by a plea of guilty prior to the first day of trial	48 were finalised by a nolle prosequi being entered prior to the first day of trial

Mental Health Act Proceedings

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

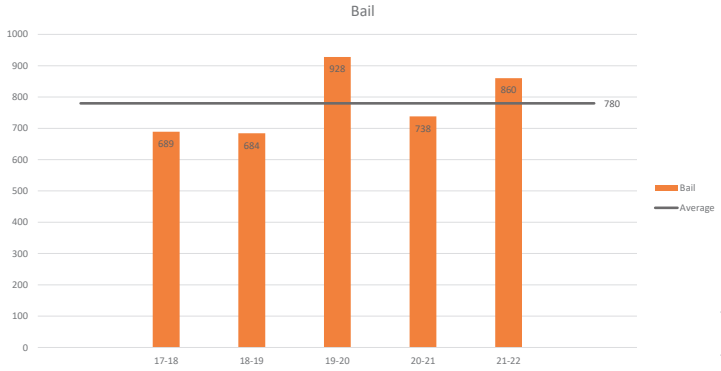
The purpose of such a reference is to determine whether a person who is alleged to have committed a serious offence was of unsound mind at the time of the offence, and if not, whether the person is unfit for trial. The Mental Health Court is also required to determine whether a person charged with murder was of diminished responsibility when the offence was committed.

The ODPP received 172 references to the Mental Health Court during the 2021-22 reporting period.

Bail hearings

The ODPP appeared at 860 bail hearings in the Supreme, District and Children's Courts of Queensland. This figure includes 739 bail applications and 121 applications to vary or revoke bail.

119	135	606
Children's Court	Distict Court	Supreme Court



Appeals

Appeals to the District Court

The ODPP has carriage of criminal appeals brought under section 222 of the *Justice Act 1886*(Qld), where a decision of a Magistrate is appealed to a single judge of the District Court. The ODPP received 386 appeals under section 222 during the reporting period.

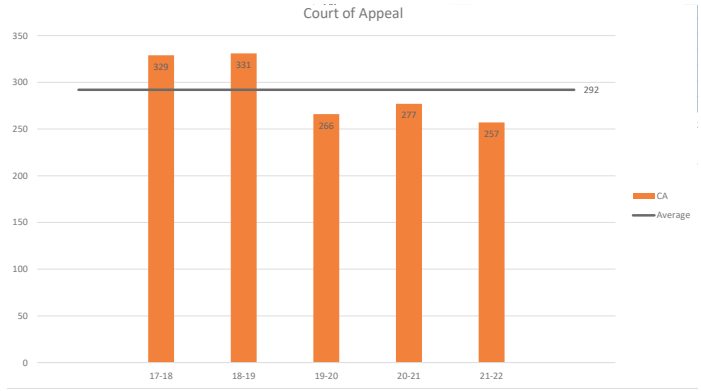
Appeals to the Queensland Court of Appeal

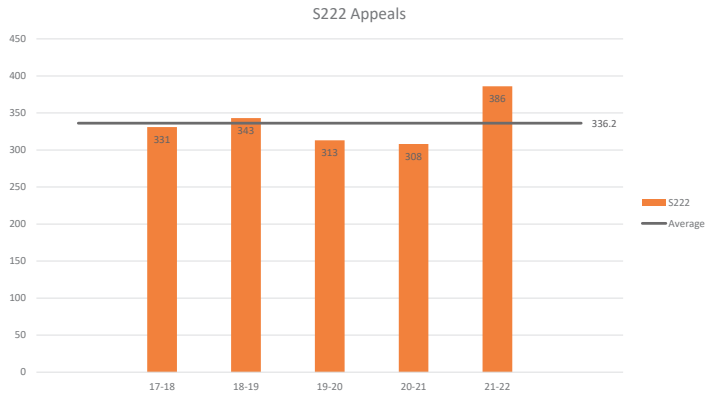
The ODPP received 257 appeals to the Court of Appeal during the reporting period, a decrease from 277 appeals received during the previous reporting period. Of the appeals received during 2021-22, a total of 36 involved an appeal against both conviction and sentence.

Appeals to the High Court of Australia

During the reporting period, the ODPP received 16 applications for special leave to appeal to the High Court of Australia.

Judgments were delivered in relation to six special leave applications during the reporting period. All six were refused.





Attorney-General appeals and references

The Attorney-General may appeal against a sentence imposed, pursuant to section 669A of the Criminal Code. The ODPP filed one appeal against sentence on behalf of the Attorney-General during the reporting period. The appeal was refused. Section 669A of the Criminal Code further allows the Attorney-General to refer a point of law to the Court of Appeal for its consideration and opinion. During the reporting period, one reference was filed in the Court of Appeal.

Judgments

Judgments were delivered in relation to 367 appeals during the reporting period. A further 133 appeals were abandoned or discontinued during the reporting period.

Confiscating Proceeds of Crime

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

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 CPA that achieve this;

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

Unlike the conviction-based scheme in Chapter 2A and 3 of the CPCA, the non-conviction-based scheme in Chapter 2 does not depend on a change in 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.

Outcomes
During 2021-22, under Chapter 2 and 2A:

- 14 new confiscations proceedings were commenced
- 16 restraining orders were obtained
- 1124 serious drug offence certificates were issued

During 2021-22, under Chapter 3:

- $5.073 million in forfeiture orders collected
- $119,804 in pecuniary penalty orders collected

CRIMINAL PROCEEDS CONFISCATION ACT HISTORICAL RESULTS

Type	2017-18	2018-19	2019-20	2020-21	2021-22
Chapter 2 and 2A Outcomes					
Restrained property	$9.712m	$28.248m	$8.994m	$20.159m	$8.786m
Confiscated property	$9.454m	$13.651M	$7.181M	$6.854m	$7.419m
Chapter 3 Outcomes					
Forfeiture orders collected	$2.607m	$3.696m	$4.993m	$3.788m	$5.073m
Pecuniary penalty orders collected	$237,572.00	$191,750.00	$131,485.00	$76,914.00	$119,804.00

Work with 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 involving violent, sexual or domestic violences offences have a number of rights. Victims have the rights: to be treated with compassion, courtesy, respect, and dignity; not to have their personal details disclosed without authority; and to receive information about services and remedies available.

Victim Liaison Service

The ODPP Victim Liaison Service provides a critical link between victims of crime, their families and the prosecution, and assists the ODPP in meeting its obligations under the Charter. The ODPP's Victim Liaison Officers around the State ensure that victims and their families receive timely information about the prosecution of the offender, the court process, and, if applicable, the victims' roles as a 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 2021-22 reporting period, the ODPP Victim Liaison Officers recorded 57,858 instances of contact with victims of crime and their family members or support persons, providing information on the court process. 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 2021-22 reporting period. The purpose of this survey is to obtain feedback from victims or their families, or their carers or guardians, 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

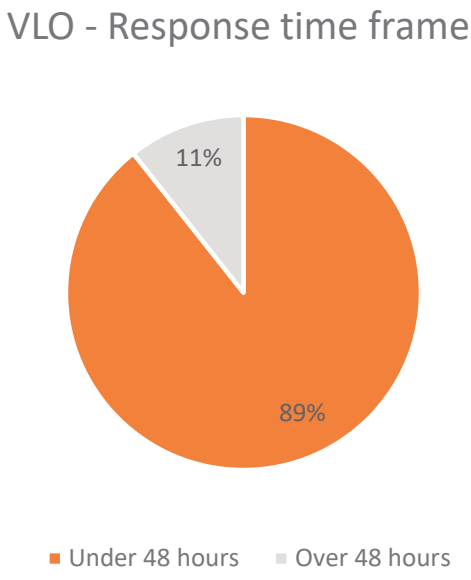
During the 2021-22 reporting period, the survey received 72 responses, a decrease of 6 responses from the previous reporting period. Analysis of the responses to the survey are shown on the following page.

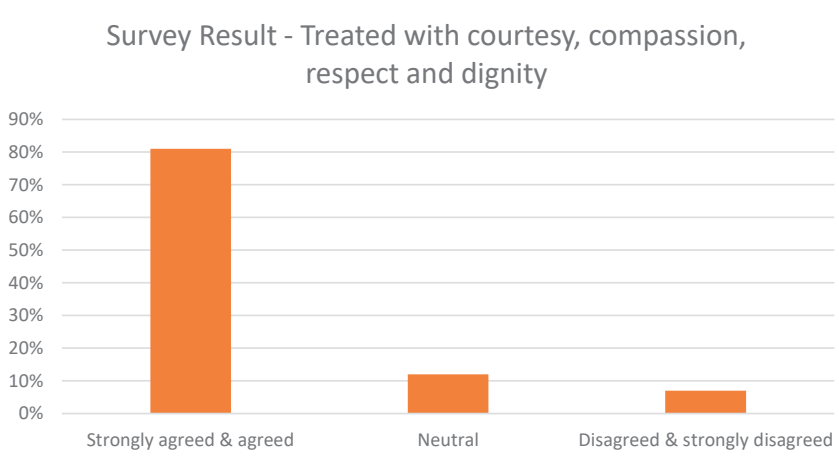
Several survey responses thanked Victim Liaison Officers, Crown Prosecutors, and other staff at the ODPP for their work in assisting victims. Some critical feedback was also received. The ODPP uses this survey information to identify potential shortfalls in service delivery and to inform process decisions. This allows the ODPP to provide a more effective and appropriate service to victims, their families and the community generally.

57,858 instances of contact

25,112 emails sent

19,260 phone or video calls





Notable victim opinion survey results

Respondents were asked whether they believed that ODPP staff treated them with courtesy, compassion, respect and dignity. Of the 58 of 72 respondents who answered, 81% strongly agreed or agreed, 12% were neutral, and 7% disagreed or strongly disagreed. A total of 19% of respondents did not answer this question.

A total of 41 respondents advised that their matters proceeded to sentence. Of these, 95% noted that they were informed of their right to provide a Victim Impact Statement to the relevant sentencing court, 2% indicated that they were not informed, and 2% indicated that they were unsure.

Of the 57,858 instances of contact, 89% were responded to within the 48 hour time period in alignment with ODPP policy ensuring that victim-survivors are responded to in a timely manner.

9,872 letters sent via post

3,614 text messages

2,562 surveys sent at conclusion of matter

Sexual Assault Response Team

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

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

The evident need for interagency collaboration and specialised crisis support

The complex nature of sexual assault and the number of organisations with which a survivor commonly must interact with, particularly at the time of crisis, is a daunting and confusing process. The process itself is often intensified by involved organisations continuing to work in isolation, merely attempting to join up operationally when necessary. Such an approach ultimately places survivors at a heightened risk for inappropriate, inadequate and potentially harmful intervention, with limited access to essential services and specialist sexual assault support.

The need for greater interagency cooperation and service coordination in the provision of responses to survivors of sexual assault (as articulated in the Queensland Government Interagency Guidelines), has long been apparent within our local communities, and indeed more broadly across the state.

About SART

SART was established in Townsville in July 2016. Initially the focus of the organisation was on providing a more streamlined, consistent and comprehensive approach to persons first reporting a sexual assault. When first reporting to the police or hospital in relation to sexual offending, protocols were established whereby the police or hospital staff would contact immediately a Sexual Assault Support Service worker (who are on call 24 hours a day) who would attend directly and speak to the person reporting. This allowed the process ahead to be fully and consistently explained and allowed that person the agency to make informed choices.

Data gathered since SART's introduction in 2016 indicated a noticeable increase in the reporting rates of sexual crimes and in completed forensic medical examinations and a significant decrease in withdrawn complaints to the police, including a significant decrease in same day withdrawals.

SART expansion

In 2021 the Office of the Director of Public Prosecutions was formally brought in to the SART model to assist with SART's objective of providing holistic assistance to the survivors of sexual assault throughout the whole criminal justice process.

It was acknowledged that throughout this often long and arduous process a survivor of sexual offending is required to engage with a multitude of different agencies both before and after committal and it was recognised therefore that there would be a significant advantage in having a dedicated SASS worker assist and accompany the survivor throughout the entire process. A close collaboration between the ODPP and the Sexual Assault Support Service would allow SASS workers to have a greater understanding of the criminal justice system in general, and the complainant's matter specifically, through continued communications with and presentations by the ODPP. Further this greater understanding from the SASS worker would allow the complainant to have more understanding and agency in navigating their way through the criminal justice system and allow them to be more comfortable and informed about the process when meeting representatives of the ODPP for the first time. Feedback from the SASS workers on behalf of the complainants outlining the perceived strengths and weaknesses of the ODPP processes would allow the ODPP to evaluate and where appropriate refine the best practice in engaging with complainants.

A multidisciplinary, interagency model of care

Strong working relationships with SASS workers allow the ODPP to make more informed decisions on how to communicate effectively with the complainant. SASS workers can often anticipate how the complaint might feel at a conference or when giving evidence and can communicate this to the prosecutor so that strategies and advice to help the complainant to cope can be considered more fully. SASS workers can also anticipate and advise prosecutors on any potential issues or sensibilities of a particular complainant, be they historical, cultural etc. The SART process would also allow continued care and assistance to the complainant after the finalisation of criminal matters.

One difficult issue often faced by prosecutors is when a complainant wishes to withdraw from a prosecution and there is the need to balance public interest considerations in proceeding with a desire not to excessively re-traumatise the complainant. Discussions with the SASS worker allow the prosecutor to make a more accurate assessment as to the likely effect proceeding with the matter may have on the complainant's wellbeing and a more accurate view as to whether the request from the complainant is the result of outside influences.

Engaging with Stakeholders

Ongoing initiatives

Pre-Qualified Panel of Barristers Scheme

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

During this reporting period, the ODPP briefed out a total of 288 matters.

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 2021-22 reporting period.

Advice
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.

Consent to prosecute in relation to one matter has been provided to the Attorney-General. As of writing, this matter is still being considered.

Training and presentation sessions	No.
Queensland Police Service	7
PACT, Court Network, Qld Homicide Victim Support Group	2
Australia Bar Association	1
ISACURE (QPSA)	1

Responding to requests for information

During the reporting period, the ODPP complied with requests for information from the following;

(The data adjacent does not detail all various forms of correspondence)

Bluecard 139

Working with Children section 318

Blue Card Services require information from the ODPP to make assessments on individuals with a criminal history applying for a Blue Card.

Crown Law 35

Dangerous Prisoners (Sexual Offences) Act 2003 (Qld)

Crown Law requests information relating to possible applications pursuant ot the Act.

VOCA 122

Section 67 VOCA Act

Victim Assist Queensland require information from the ODPP to make assessments on applications for financial assistance from victims survivors.

Subpoenas 91

Notice to Produce and Notices of Non-Party Disclosure from various agencies and law firms relating to civil proceedings.

Right to Information 149

Right to Information Act 2009 (Qld)

Unless it is not in the public interest, RTI and Privacy Unit is committed to making it easy and quick to access information from DJAG.
Right to Information Act 2009 & Information Privacy Act 2009

Brief Outs 288

ODPP Brief Out Scheme

The ODPP commenced briefing out matters to Counsel from the Private Bar in August 2018. In the 2021-22 period 288 matters were briefed out to the Private Bar.

Intermediary Program

Since July 2021, the ODPP has been involved in the Queensland Intermediary Scheme (QIS) pilot program in Brisbane and Cairns.

The scheme was developed by the Queensland Courts to assist witnesses with communication needs. The pilot program is limited to prosecution witnesses in child sexual offence matters who are under 16, have an impairment of mind or have difficulty communicating.

The aim of the QIS is to improve the quality of evidence given in court, reduce the trauma of vulnerable witnesses and improve access to justice by using intermediaries that are professionals with qualifications in speech pathology, psychology, occupational therapy or social work.

The two-year pilot scheme was one of the recommendations of the Royal Commission into Institutional Responses to Child Sexual Abuse (2013-17) which is being independently evaluated with the final evaluation being conducted in July 2023. The intermediaries are engaged upon request from police officers, lawyers, and the court. There have been 10 instances where the ODPP has participated in the scheme.

The QIS scheme works alongside existing support services available to witnesses in Queensland, such as Victim Assist Queensland (VAQ), Protect All Children Today (PACT) and Court Network. Intermediary schemes have been implemented in most Australian states, the United Kingdom and New Zealand with a common objective to assist vulnerable witnesses to access justice and give their best evidence.

Training and assisting PACT

PACT (Protect All Children Today – https://pact.org.au) is another key support agency, providing services and court support to children and adults who are victims or otherwise required to give evidence in criminal proceedings.

The ODPP works closely with PACT on a large number of matters each year to ensure that victims and witnesses are provided with the information and support they need.

Prosecutors and Victim Liaison Officers from the ODPP regularly provide training sessions to new and existing PACT volunteers about the work of the ODPP and court process, including training presentations on more than three occasions in the last year.

PACT have also introduced a pilot programme in late 2021 for support dogs to provide emotional support for children and vulnerable witnesses when they are giving evidence.

The ODPP has worked closely with PACT to help facilitate the programme, including applying for orders from presiding judges to allow the presence of the support dogs during evidence.

The ODPP will be gathering feedback from its staff to help PACT evaluate the pilot programme.

Training Commitments

The Director is supported by a leadership group comprising the two Deputy Directors, and the Consultant and Principal Crown Prosecutors. The ODPP fostered strong relationships with its partner agencies to build upon its commitment in keeping our community safe. Despite the challenges of the COVID environment, the leadership group continued to appear and present as subject matter experts in training of its partner agencies.

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

Opportunities to share experiences and learnings continued with many of the support service providers for victim-survivors of serious crime.

Whilst the regular commitment to training had associated resource impacts, with more than 50 hours of training delivered, the benefit of ensuring a strengthened understanding of the prosecution of serious criminal offending, continued to enhance both the efficiency and quality of the interagency response to those engaged in the criminal justice system.

The ODPP has developed a strong collegiate relationship with the Bar Association of Queensland, with members participating in the Bar Practice Course and Sentencing workshops.

The Women's Safety and Justice Taskforce

The Women's Safety and Justice Taskforce provided a unique opportunity to hear the voices of women and girls in Queensland involved in the justice system. Staff from the ODPP participated in symposiums across the State to offer their own personal insights of the experienced challenges when supporting women and girls in the justice system. Philip McCarthy QC, Deputy Director, was a member of the Taskforce. Additional experienced staff of the ODPP were seconded to the secretariat of the Taskforce.

The ODPP has embraced the recommendations made by the Taskforce as adopted by the Queensland Government and is already developing implementation strategies. The ODPP expects that strong partner relationships with support agencies will be integral in achieving better outcomes for victim-survivors of criminal offending.

Resources and Training

As at 30 June 2022, the ODPP had a funded establishment of 434 full time equivalent positions, comprising the senior leadership team, prosecutors, legal officers, legal support staff, victim liaison officers and corporate service officers.

The ODPP welcomed 90 new employees during the reporting period.

Full time equivalent positions [1]	434
Director	1
Deputy Director	2
Business Manager	1
Crown Prosecutor	86
Practice Manager / Solicitor Advocate	15
Legal Officer	114
Legal Support[2]	161
Victim Liaison Officer	24
Corporate Services	30

[1] One position in National Redress scheme ceased

[2] Legal Support includes 17 FTE transcriber positions

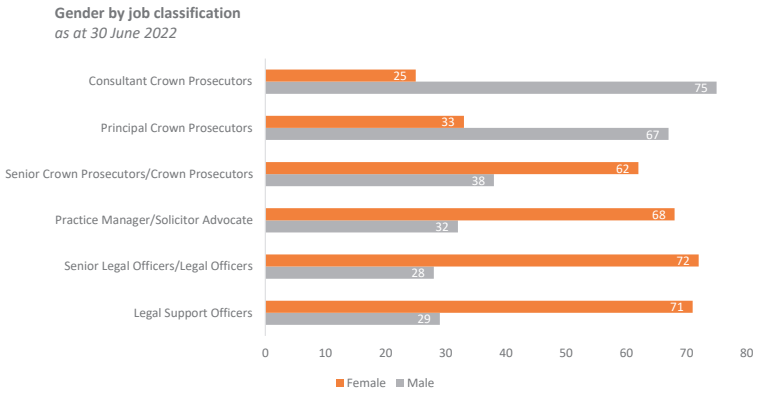
90
New employees

434
Full time positions

Workforce profile

Gender Identification Profile

As at 30 June 2022, 68% of all staff employed by the ODPP were female and 32% were male.

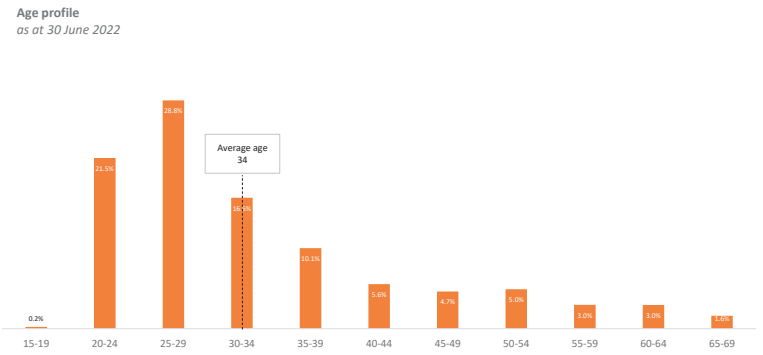


Age Profile

As at 30 June 2022, the average age of the ODPP's workforce was 33 years.

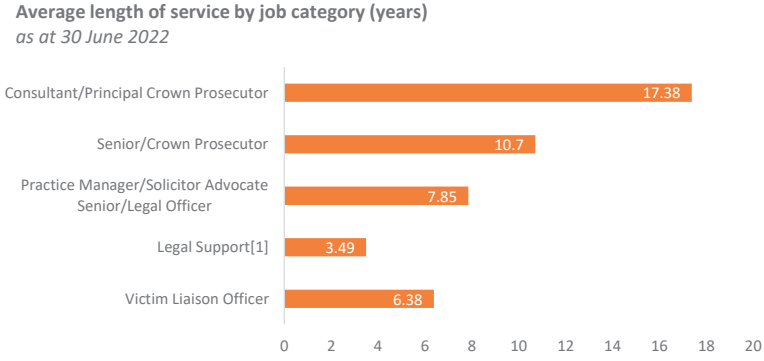
A total of 8% of staff were aged 55 years or older, while 5% of staff were aged 60 years or older.

The age profile of the ODPP at 30 June 2022 is shown in the adjacent graph.



Length of Service

The average length of service by legal job classification as at 30 June 2022 is shown in the adjacent graph.



Workforce planning and performance

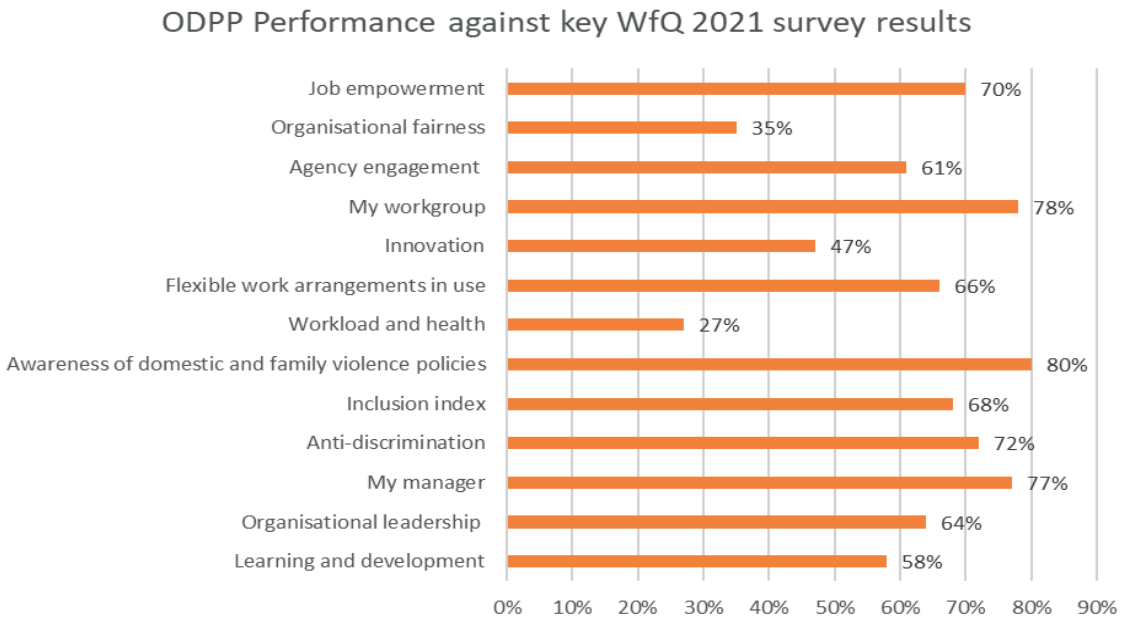
Workforce strategies at the ODPP are guided by the Department of Justice and Attorney-General's (DJAG) Strategic Workforce Plan 2021-25. Strategies include leadership and capability, culture, new ways of working and talent management. To ascertain performance against departmental workforce strategies in 2021, DJAG asked agencies to compare results from the Working for Queensland (WfQ) employee opinion survey for factors and topics identified to align with each of the four workforce strategies. Analysis of ODPP results highlighted that more work is required in the topic of workload and health.

Conversions from fixed-term temporary to permanent appointment

In the 2021-22 reporting period, the ODPP converted two staff from fixed-term temporary to permanent appointments under Directive 09/20 Fixed-term temporary employment.

Appointments to higher classification level

In the 2021-22 reporting period, the ODPP appointed 3 staff to higher classification level positions under Directive 13/20 Appointing a public service employee to a higher classification level.



Learning and Development

Leadership development activities included a two-day program in December 2021 followed by promotion of various webinars and delivery of the three-part series 'Leader as Coach'. Staff continued to participate in professional development activities with internal legal sessions recognised by the Bar Association of Queensland.

ODPP staff attended various external training and presentations during the 2021-22 reporting period:

ODPP Staff attendance at external training
Women in Public Sector Leadership Summit
QHRC Human Rights and Mental Health
Abusive Head Trauma – Helfer Society
National Proceeds of Crime Conference
Creating a Positive Culture workshop
Moving from Busyness to Effectiveness Workshop
Women's Safety and Justice Taskforce symposium (Townsville and Gold Coast)
QLD Homicide Victims' Support Group Awareness Day
Deal with Difficult Behaviours
Developing Emotional Intelligence

Secondment opportunities

ODPP is committed to enhancing staff development. 197 internal expressions of interest for short-term acting arrangements were advertised to ODPP staff during the reporting period and secondments were provided to 64 permanent staff.

Work Experience Placement Program (WEPP)

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

The WEPP is offered to students from Queensland universities, including the University of Queensland, Queensland University of Technology, Griffith University, 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 62 students in the Brisbane and regional chambers during the reporting period.

Study and Research Assistance Scheme

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

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

- **Bar Practice Course**
- **Bachelor of Business**
- **Postgraduate Diploma in Legal Practice**

Health and Wellbeing

Survey results again highlighted the need for ODPP to enhance focus on workload and health. High workloads continued to be regularly monitored and managed, and services and information from Benestar, BUPA, Medibank and QSuper continued to be promoted.

ODPP also continued participation in the Department's Safety Implementation Leadership Team and Trained Safety Advisor (TSA) annual forum. Goals and actions identified at the TSA Forum included activities to prepare for the introduction of the Queensland psychosocial risk code of practice, investigation into high-risk and duress incidents that saw a review of key policies and procedures commence, and the need for ODPP to reinvigorate reporting of incidents, injuries and near misses in Salvus (the Departments' safety system).

The impact of COVID-19 and seasonal illness continued to impact on workloads and health among staff and their families. The Department's mandatory vaccination requirements policy was approved and came into effect on 7 March 2022, mandating that employees who attend courts or tribunals, or otherwise in the course of their work have in-person contact with witnesses, victims, their families and supporters were to maintain vaccination requirements. In April 2022, the Department's response to mandatory vaccination relaxed and the revised policy removed the requirement for ODPP staff to meet mandatory vaccination requirements. ODPP offices enable staff to distance physically at all times and staff continued to be encouraged to get vaccinated, wear masks and maintain good hygiene in additional to physical distancing, especially during periods of increased community transmission.

ODPP Events and community interaction

Attendance at QHVSG Awareness Day

Each year, the ODPP has been invited and gladly agreed to participate in Awareness Day functions organised by the Queensland Homicide Victims' Support Group (https://qhvsg.org.au). QHVSG is one of the key support agencies providing services to victims of crime and their families and often liaises with the ODPP in relation to helping the families of victims through the criminal justice process.

The event this year took place at Parliament House on 11 May 2022. The ODPP was one of several government agencies which attended, along with a number of other support groups providing services to victims of crime. Staff from the ODPP were available to speak to attendees, including invited members of QHVSG, Members of Parliament, and other stakeholders about the Office and the nature of the liaison service we provide to victims.

The ODPP wishes to thank to QHVSG for organising this annual event.

R U OK? Day Initiative

The ODPP in conjunction with Crown Law and the Office of the Director of Child Protection Litigation, organises dogs from the Animal Welfare League Queensland to come into the office for the R U OK? day initiative. This is a welcome activity to assist in reducing stress, improving staff morale and raising awareness of the importance of asking R U OK?.

Financial Performance

Income Statement

Analysis of Costs Incurred

Income Statement	**Amount ($)**
Revenue	
Service Revenue (1):	$55,513,000
Own Sourced Revenue:	$643,000
Total Revenue:	**$56,156,000**
Expenditure	
Employee Related Expenses (2):	$46,660,000
Operational Expenses:	$9,496,000
Depreciation and Amortisation:	$490,000
Supplies and Services Total:	**$9,006,000**
Property Tenancy and Maintenance:	$4,782,000
*Witness Costs:	$454,000
Legal Barrister Fees (Brief-Outs):	$954,000
*Staff Travel:	$681,000
Printing, Postage and Stationery:	$786,000
Telecommunications:	$153,000
Plant and Equipment:	$324,000
Document Destruction:	$152,000
IT Services and Support:	$147,000
Subscriptions (Legal Databases):	$222,000
Expert Examination Reports:	$106,000
Other General Supplies and Services:	$115,000
Interpreters Fees:	$69,000
Motor Vehicles:	$46,000
Videoconferencing Costs:	$15,000
Total Expenditure	**$56,156,000**

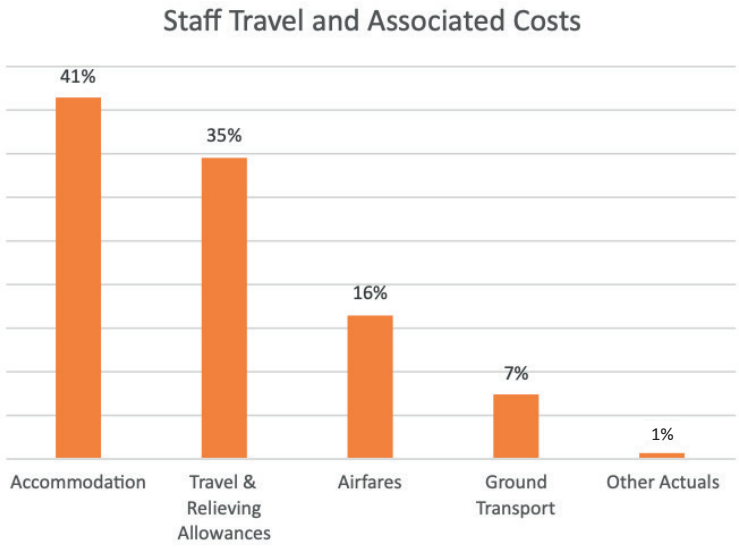
(1) The ODPP made savings of $285,000 on the 2021-22 adjusted budget allocation and these savings were adjusted in the service revenue provided for operations. The savings essentially reflect the impact of the pandemic on operations.

(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 purposes follows:

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

Financial Performance



Staff Travel

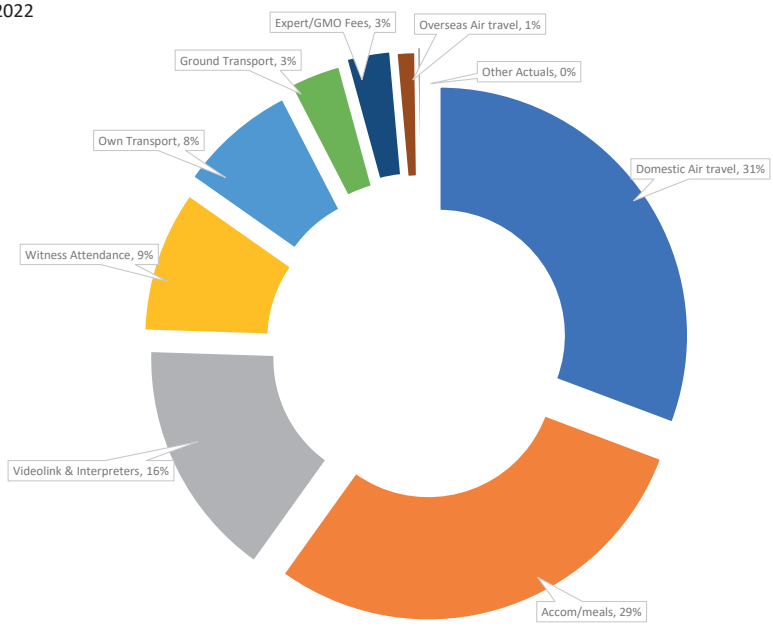
The graph below shows staff travel costs by category of cost. This graph is a breakdown of staff travel costs expended in the reporting period (as shown in the Income Statement).

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

Witness Travel and Associated Costs

The charts below show witness travel costs by category of cost and traveller type. 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 2021 - 30 June 2022



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 the person's behalf, that lawyer is said to have appeared for that person. The action of that person or that person's lawyer, as the case may be, is called an appearance.

bail
A legal authority for a person to remain out of custody after they have been arrested and charged with an offence. 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.

Criminal Code
Criminal Code is a referene to the *Criminal Code Act 1899* (Qld) schedule 1 ('Criminal Code').

Crown
The Crown refers to the Queensland Government representing the community of Queensland. All criminal proceedings on indictment are brought in the name of the Crown.

defendant/accused
A person who is alleged to have committed an offence. In this report, a convicted person is also referred to as a defendant for ease of reference.

Director
The person appointed as the Director of Public Prosecutions for the State of Queensland.

discontinuance
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 against a person presented to a court without that person having being committed for trial or committed for sentence. Such indictments require the approval of the Director of Public Prosecutions before they can be presented to the relevant court.

indemnity
When providing evidence against a defendant, a person may admit to having committed criminal acts themselves. An

Glossary of terms

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-direivative-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 2022

UNDER REVIEW

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 <u>unless the conduct could not be adequately punished</u> other than on indictment having regard to:

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

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

Procedure – Prosecution Election:

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

The DERM request for advice from the DPP should include:

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

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

Where DPP advises that summary jurisdiction should be elected:

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

Where DPP advises that charges should be indicted:

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

Procedure – Accused Election / Magistrate Determination:

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

If a Matter is Committed for Trial on Indictment:

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

- The Director will decide, after consulting with the nominee of the DERM, whether an indictment should be presented.

- If an indictment is to be presented, it will be presented by the ODPP.

- The Director, in consultation with the DERM, will brief counsel to appear for the prosecution.

- The DERM will be responsible for all costs of the prosecution.

- The prosecution cannot be discontinued without the approval of the Director.

14. CHARGES REQUIRING DIRECTOR'S CONSENT

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

(a) For a charge under section 229B of the Code there must be sufficient credible evidence of continuity ie: evidence of the maintenance of a relationship rather than isolated acts of indecency.

(b) Consent will **not** be given where:-

- the sexual contact is confined to **isolated** episodes; or

- the period of offending is **brief** and can be **adequately particularised** by discrete counts on the indictment.

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

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

- the breach is minor or technical only: section 442J; or

- an accused holds a certificate under section 442L.

15. WORKPLACE HEALTH AND SAFETY PROSECUTIONS

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

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

16. CONSENT TO CALLING A WITNESS AT COMMITTAL

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

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

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

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

1. The nature of the offence;
2. The nature of the witness, including-

- Whether the evidence can be confined to an identified and limited issue;
- Whether the witness is the best person to give the evidence concerning that issue; and
- The purpose for which the evidence is to be used.

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

17. CHARGE NEGOTIATIONS

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

Early negotiations (within this guideline) are therefore encouraged.

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

(i) **The Principles**

- The prosecution must always proceed on those charges which fairly represent the conduct that the Crown can **reasonably prove**;

- A plea of guilty will only be accepted if, after an analysis of all of the facts, it is in the general **public interest**.

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

(a) the fresh charge adequately reflects the essential criminality of the conduct and provides sufficient scope for sentencing;

(b) the prosecution evidence is deficient in some material way;

(c) the saving of a trial compares favourably to the likely outcome of a trial; or

(d) sparing the victim the ordeal of a trial compares favourably with the likely outcome of a trial.

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

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

(ii) **Prohibited Pleas**

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

(a) it does not adequately reflect the gravity of the provable conduct of the accused;

(b) it would require the prosecution to distort evidence; or

(c) the accused maintains his or her innocence.

(iii) **Scope for Charge Negotiations**

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

(a) where the prosecution has to choose between a number of appropriate alternative charges. This occurs when the one episode of criminal conduct may constitute a number of overlapping but alternative charges;

(b) where new reliable evidence reduces the Crown case; or

(c) where the accused offers to plead to a specific count or an alternative count in an indictment and to give evidence against a co-offender. The acceptability of this will depend upon the importance of such evidence to the Crown case, and more importantly, its credibility in light of corroboration and the level of culpability of the accused as against the co-offenders;

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

(iv) **File Note**

- Any offer by the defence, the supporting argument and the date it was made should be clearly noted on the file.

- The decision and the reasons for it should also be recorded and signed.

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

(v) **Delegation**

(a) In cases of **homicide, attempted murder or special sensitivity, notoriety or complexity** an offer should not be accepted without consultation with the Director or Deputy Director. The matter need not be referred unless the Legal Practice Manager or allocated prosecutor sees merit in the offer.

(b) In **less serious cases** the decision to accept an offer may be made after consultation with a senior crown prosecutor or above. If the matter has not been allocated to a crown prosecutor, the decision should fall to the Legal Practice Manager.

(vi) **Consultation**

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

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

18. SUBMISSIONS

(i) Any submission from the defence must be dealt with expeditiously;

(ii) If the matter is complex or sensitive, the defence should be asked to put the submission in writing;

(iii) Submissions that a charge should be discontinued or reduced should be measured by the two tiered test for prosecuting, set out in Guideline 4; and

(iv) Unless there are special circumstances, a submission to discontinue because of the triviality of the offence should be refused if the accused has elected trial on indictment for a charge that could have been dealt with in the Magistrates Court.

19. CASE REVIEW

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

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

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

- Admissibility of the evidence - the likelihood that key evidence might be excluded may substantially affect the decision whether to proceed or not.

- The reliability of any confession.

- The liability of any witness: is exaggeration, poor memory or bias apparent?

- Has the witness a motive to distort the truth?

- What impression is the witness likely to make? How is the witness likely to stand-up to cross-examination? Are there matters which might properly be put to the witness by the defence to undermine his or her credibility? Does the witness suffer from any disability which is likely to affect his or her credibility (for example: poor eyesight in an eye witness).

- If identity is an issue, the cogency and reliability of the identification evidence.

- Any conflict between eyewitnesses: does it go beyond what reasonably might be expected and hence thereby materially weaken the case?

- If there is no conflict between eyewitnesses, is there cause for suspicion that a false story may have been concocted?

- Are all necessary witnesses available and competent to give evidence?

20. TERMINATION OF A PROSECUTION BY ODPP

(i) A decision to discontinue a prosecution or to substantially reduce charges on the basis of *insufficient evidence* cannot be made without consultation with a Legal Practice Manager. If, and only if, it is not reasonably practicable to consult with the Legal Practice Manager, the consultation may be with a principal crown prosecutor, in lieu of the Legal Practice Manager.

(ii) Where the charges involve ***homicide, attempted murder*** or matters of ***public notoriety*** or high ***sensitivity***, the consultation must then extend further to the Director or Deputy Director. The case lawyer should provide a detailed memorandum setting out all relevant issues. The Director may assemble a consultative committee to meet with case lawyer and consider the matter. The consultative committee shall comprise the Director, Deputy Director and two senior principal prosecutors.

(iii) In all cases the person consulted should make appropriate notes on the file.

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

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

(v) The decision to discontinue a prosecution is final unless:

(a) There is fresh evidence that was not available at the time the decision was made; or
(b) The decision was affected by fraud; or
(c) There is a material error of law or fact that would lead to a substantial miscarriage of justice:

And It is in all the circumstances in the interests of justice to review the decision.

21. CONSULTATION WITH POLICE

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

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

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

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

22. CONSULTATION WITH VICTIMS

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

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

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

23. REASONS FOR DECISIONS

(i) Reasons for decisions made in the course of prosecutions may be disclosed by the **Director** to persons outside of the ODPP.

(ii) The disclosure of reasons is generally consistent with the open and accountable operations of the ODPP.

(iii) But reasons will only be given when the inquirer has a legitimate interest in the matter and it is otherwise appropriate to do so.

- Reasons for not prosecuting must be given to the **victims** of crime;

- A legitimate interest includes the interest of the media in the open dispensing of justice where previous proceedings have been **public**.

(iv) Where a decision has been made not to prosecute prior to any public proceeding, reasons may be given by the Director. However, where it would mean publishing material too weak to justify a prosecution, any explanation should be brief.

(v) Reasons will **not** be given in any case where to do so would cause unjustifiable harm to a victim, a witness or an accused or would significantly prejudice the administration of justice.

24. DIRECTED VERDICT/NOLLE PROSEQUI

If the trial has not commenced, ordinarily, a nolle prosequi should be entered to discontinue the proceedings.
In the absence of special circumstances, once the trial has commenced, it is desirable that it end by verdict of the jury. Where a prima facie case has not been established, this will be achieved by a directed verdict.

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

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

(b) a prosecution of a serious offence has failed because of some minor technicality that is curable; or

(c) matters emerge during the hearing that cause the Director or Deputy Director to advise that it is not in the public interest to continue the hearing.

25. VICTIMS

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

(a) because a crime is committed against the person; or

(b) because the person is a family member or dependant of a person who has died or suffered harm because a crime is committed against that person; or

(c) as a direct result of intervening to help a person who has died or suffered harm because a crime is committed against that person.

(i) General Guidelines for Dealing with Victims

The ODPP has the following obligations to victims:-

(a) To treat a victim with courtesy, compassion, respect and dignity;

(b) To take into account and to treat a victim in a way that is responsive to the particular needs of the victim, including, his or her age, sex or gender identity, race or indigenous background, cultural or linguistic diversity, sexuality, impairment or religious belief;

(c) To assist in the return, as soon as possible, of a victim's property which has been held as evidence or as part of an investigation.

- Where appropriate, an application must be made under Rule 55 or 100 of the Criminal Practice Rules 1999 for an order for the disposal of any exhibit in the trial or appeal.

- Where a victim's property is in the custody of the Director of Public Prosecutions and is not required for use in any further prosecution or other investigation, it should be returned to the victim as soon as is reasonably possible.

- If the victim inquires about property believed to be in the possession of the police, the victim is to be directed to the investigating police officer. The victim should also be told of section 39 of the Justices Act 1886, which empowers a court to order the return of property in certain circumstances.

(d) To seek all necessary protection from violence and intimidation by a person accused of a crime against the victim.

- Where a **bail** application is made and there is some prospect that if released, the defendant, would endanger the safety or welfare of the victim of the offence or be likely to interfere with a witness or obstruct the course of justice, all reasonable effort must be made to investigate whether there is an **unacceptable risk** of future harm or interference. Where sufficient evidence of risk has been obtained, bail should be opposed under section 16(1) (a) (ii) or 16(3) of the Bail Act 1980. If it has not been practicable in the time available to obtain sufficient information to oppose bail on that ground, an adjournment of the bail hearing should be sought so that the evidence can be obtained.

- Where bail has been granted over the objection of the prosecution and there is a firm risk of serious harm to any person, a report must be given as soon as possible to the Director for consideration of an appeal or review.

- When a person has been convicted of an offence involving **domestic violence** and there is reason to believe that the complainant remains at significant risk the prosecutor should apply to the Court for a **domestic violence order** pursuant to section 30 of the Domestic Violence (Family Protection) Act 1989. If there is a current domestic violence order and a person has been convicted of an offence in breach of it, section 30 requires the Court to consider whether there ought to be changes to it. A copy of the **original order** is therefore required. If at the time of sentencing a prosecutor is aware of the existence of such an order he or she must supply the Court with a copy of it.

- If at the conclusion of a prosecution for **stalking** there is a significant risk of unwanted contact continuing, the prosecutor should apply for a restraining order under section 248F of the Code. This is so even if there is an acquittal or discontinuance.

(e) To assist in protecting a **victim's privacy** as far as possible and to take into account the victim's welfare at all appropriate stages.

Protection for victims of violence

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

Closed Court for sex offences

- The Court must be closed during the testimony of any victim in a sexual offence case: see section 5 Criminal Law (Sexual Offences) Act 1978; section 21A Evidence Act 1977

- The Prosecutor must be vigilant to ensure this is done.

- In the pre-hearing conference, the victim must be asked whether he or she wants a support person. A "support person" includes external support persons.

- If the victim is a child, he or she should also be asked whether he or she wants his or her parent(s) or guardian(s) to be present (unless that person is being called as a witness in the proceeding). If the victim does not want such person(s) present then information as to why this is so should be obtained and file noted. If the victim does want such person(s) present, the prosecutor must make the application to the Court.

Anonymity for victims of sex offences

- In the initial contact, the victim must be told of the prohibition of publishing any particulars likely to identify the victim. The Court may permit some publication only if good and sufficient reason is shown.

- During criminal proceedings, the prosecutor should object to any application for publication unless the victim wants to be identified. In such a case, the prosecutor is to assist the complainant to apply for an order to allow publication.

Improper questions

- Prosecutors have a responsibility to protect witnesses, particularly youthful witnesses, against threatening, unfair or unduly repetitive cross-examination by making proper objection: see section 21 of the Evidence Act 1977.

- Questions should be framed in language that the witness understands.

- Prosecutors need to be particularly sensitive to the manner of questioning children and intellectually disabled witnesses.

- The difficulties faced by some Aboriginal witnesses in giving evidence are well catalogued in the government publication "*Aboriginal English in the Courts – a handbook"* and the Queensland Justice Commission's report *"Aboriginal Witnesses in Queensland's Criminal Courts"* of June 1996.
- Generally, questions about the sexual activities of a complainant of sexual offences will be irrelevant and inadmissible. They cannot be asked without leave of the Court. The only basis for leave is

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

Special witness

- Special witnesses under section 21A of the Evidence Act are children under the age of 16 and those witnesses likely to be disadvantaged because of intellectual impairment or cultural differences.

- The provision gives the Court a discretion to modify the way in which the evidence of a special witness is taken.

- The prosecutor must, before the proceeding is begun, acquaint himself or herself with the needs of the special witness, and at the hearing, before the special witness is called, make an application to the court for such orders under section 21A, subsection (2) as the circumstances seem to require.

- The prosecutor must apply for an order under section 21A, subsections (2)(c) and (4), for evidence via closed circuit television where the witness is:-

  (a) 15 years old or younger; and

  (b) to testify in relation to violent or sexual offences.

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

(f) To minimise inconvenience to a victim.

Information for Victims

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

(a) Every victim who is a witness must be advised of the trial process and his or her role as a prosecution witness.

(b) Where appropriate, victims must also be provided with access to information about:-

  - victim-offender conferencing services;

  - available welfare, health, counselling, medical and legal help responsive to their needs;

  - Victims Assist Queensland, for advice and support in relation to financial assistance under the Victims of Crime Assistance Act 2009

- Penalties and Sentences Act 1992 - section 9(2) which requires the court, in sentencing an offender, to have regard to any damage, injury or loss caused by the offender; section 35 relating to the court's power to order the offender to pay compensation; and

- Juvenile Justice Act 1992 - section 192 relating to the power of the court to order that a child make restitution or pay compensation.

(c) In the case of a complainant of a sexual offence, the victim should be told:-

- that the Court will be closed during his or her testimony;

- that there is a general prohibition against publicly identifying particulars of the complainant.

(d) As soon as a case lawyer has been allocated to the case any victims involved must be advised of:-

- the identity of the person charged (except if a juvenile);

- the charges upon which the person has been charged by police, or, as appropriate, the charges upon which the person has been committed for trial or for sentence;

- the identity and contact details of the case lawyer; and

- the circumstances in which the charges against the defendant may be varied or dropped;

(e) If requested by the victim, the following information about the progress of the case will be given, including:-

- details about relevant court processes, and when the victim may attend a relevant court proceeding, subject to any court order;

- details of the availability of diversionary programs in relation to the crime;

- notice of a decision to substantially change a charge, or not to continue with a charge, or accept a plea of guilty to a lesser charge;

- notice of the outcome of a proceeding relating to the crime, including any sentence imposed and the outcome of any appeal.

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

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

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

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

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

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

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

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

(ii) **Pre-trial Conference**

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

(iii) **Victim Impact Statements**

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

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

(iv) **Sentencing**

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

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

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

- Juvenile Justice Act 1992 - section 109(1) (g), which states that in sentencing a child a court must have regard to any impact of the offence on the victim.

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

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

- To ensure, so far as it is possible, that victims and prosecution witnesses proceeding to court, at court and while leaving court, are protected against unwanted contact occurring between such person and the accused or anyone associated with the accused. The assistance of police in this regard might be necessary.

- In any case where a substantial reduction or discontinuance of charge is being considered, the victim and the charging police officer should be contacted and their views taken into account before a final determination is made (see Guidelines 20 and 21).

- In any case where it is desirable in the interests of the victim and in the interests of justice that the victim and some witnesses, particularly experts, are conferred with before a hearing, a conference should be held.

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

26. ADVICE TO POLICE

(i) Appropriate References

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

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

(ii) Form of Request and Advice

(a) Advice will not be given without a **full brief of evidence**;

(b) All requests for advice must be answered within one month of receipt of the police material;

(c) Any **time limit** must be included in the referral; and

(d) As a general rule, both the police request for advice and the ODPP advice must be in **writing**.

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

(iii) Nature of ODPP Advice

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

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

(iv) Source of Advice

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

27. HYPNOSIS AND REGRESSION THERAPY

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

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

(1) (i) The victim **had recalled the evidence prior to any such therapy**; and

(ii) his or her prior memory can be established independently; or

(2) Where a "recollection" of the witness has **emerged for the first time during or after hypnosis**:-

1. The hypnotically induced evidence must be limited to matters which the witness has recalled and related prior to the hypnosis – referred to as "the original recollection". In other words evidence will not be tendered by the Crown where its subject matter was recalled for the first time under hypnosis or thereafter. The effect of that restriction is that no detail recalled for the first time under hypnosis or thereafter will be advanced as evidence.

2. The substance of the original recollection must have been preserved in written, audio or video recorded form.

3. The hypnosis must have been conducted with the following procedures:-

(a) the witness gave informed consent to the hypnosis;

(b) the hypnosis was performed by a person who is experienced in its use and who is independent of the police, the prosecution and the accused;

(c) the witness's original recollection and other information supplied to the hypnotist concerning the subject matter of the hypnosis was recorded in writing in advance of the hypnosis; and

(d) the hypnosis was performed in the absence of police, the prosecution and the accused, but was video recorded.

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

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

28. BAIL APPLICATIONS

(i) Section 9 of the Bail Act 1980 prima facie confers upon any unconvicted person who is brought before a Court the right to a grant of bail.

(ii) Pursuant to section 16, the Court's power to refuse bail has three principal aspects:-

- the risk of re-offending;
- the risk of interfering with witnesses; and
- the risk of absconding.

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

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

(iii) Where a **bail** application is made and there is some prospect that if released, the defendant would endanger the safety or welfare of the victim of the offence or be likely to interfere with a witness or obstruct the course of justice, all reasonable effort must be made to investigate whether there is an **unacceptable risk** of future harm or interference. Where sufficient evidence of risk has been obtained, bail should be opposed under section 16(1) (a) (ii) or 16(3) of the Bail Act 1980. If it has not been practicable in the time available to obtain sufficient information to oppose bail on that ground, an adjournment of the bail hearing should be sought so that the evidence can be obtained.

(iv) Where bail has been granted over the objection of the prosecution and there is a firm risk of serious harm to any person, a report must be given as soon as possible to the Director for consideration of an appeal or review.

(v) **Reversal of Onus of Proof**

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

(vi) **Reporting Conditions**

Reporting conditions are imposed to minimise the risk of absconding.

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

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

(vii) **Overseas Travel**

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

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

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

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

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

(i) **Criminal Histories**

The criminal history of the accused must be disclosed.

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

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

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

(ii) **Immunity**

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

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

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

(iii) **Exculpatory Information**

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

The prosecutor must however disclose to the defence:-

(a) the person's statement, if there is one, or

(b) the nature of the information:-

- the identity of the person who possesses it; and
- when known, the whereabouts of the person.

These details should be disclosed in good time.

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

(iv) **Inconsistent Statement**

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

(v) **Particulars**

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

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

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

Sensitive evidence:-

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

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

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

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

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

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

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

(ix) **Committal Hearings**

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

(a) it is unlikely to influence the result of the committal proceedings and it is contrary to the public interest to disclose it. (See paragraph 25 (viii) above);

(b) it is unlikely to influence the result of the committal proceedings and the person who can give the evidence is not reasonably available or his or her appearance would result in unusual expense or inconvenience or produce a risk of injury to his or her physical or mental health, provided a copy of any written statement containing the evidence in the possession of the prosecution is given to the defence;

(c) it would be unnecessary and repetitive in view of other evidence to be produced, provided a copy of any written statement containing the evidence in the possession of the prosecution is given to the defence;

(d) it is reasonably believed the production of the evidence would lead to a dishonest attempt to persuade the person who can give the evidence to change his or her story or not to attend the trial, or to an attempt to intimidate or injure any person;

(e) it is reasonably believed the evidence is untrue or so doubtful it ought to be tested upon cross-examination, provided the defence is given notice of the person who can give the evidence and such particulars of it as will allow the defence to make its own inquiries regarding the evidence and reach a decision as to whether it will produce the evidence.

- Any doubt by the prosecutor as to whether the balance is in favour of, or against, the production of the evidence should be resolved in favour of production.

- Copies of written statements to be given to the defence including copies to be used for the purposes of an application under *section 110A* of the *Justices Act 1886*, are to be given so as to provide the defence with a reasonable opportunity to consider and to respond to the matters contained in them: they should be given at least 7 clear days before the commencement of the committal proceedings.

- In all cases where admissible evidence collected by the investigating police officers has not been produced at the committal proceedings, a note of what has occurred and why it occurred should be made by the person who made the decision and attached to the prosecution brief.

(x) **Legal Professional Advice**

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

(xi) **Witness Conferences**

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

(a) an inconsistent statement on a material fact;

(b) an exculpatory statement; or

(c) further allegations.

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

(xii) **Disclosure Form**

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

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

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

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

(xiii) **Ongoing Obligation of Disclosure**

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

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

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

(xiv) **Confidentiality**

- It is an offence to disclose confidential ODPP information other than in accordance with the duty of disclosure or as otherwise permitted by legislation: *section 24A of the Director of Public Prosecutions Act 1984.*

- Inappropriate disclosure of confidential information may affect the safety or privacy of individuals, compromise ongoing investigations or undermine confidence in the office. This means sensitive material must be carefully secured. It must not be left unattended in Court, in cars or in any place where it could be accessed by unauthorised people.

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

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

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

- In the case of committal proceedings or indictable offences dealt with summarily through police prosecutors, the obligation falls on the Commissioner of Police.

- In all other cases, the responsibility rests with the ODPP case lawyer.

31. UNREPRESENTED ACCUSED

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

(i) Staff should seek to avoid any contact with the accused unless accompanied by a witness;

(ii) Full notes should be promptly made in respect of:-

- any oral communication;

- all information and materials provided to the accused; and

- any information or material provided by the accused.

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

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

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

32. JURY SELECTION

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

33. OPENING ADDRESS

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

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

34. PRISON INFORMANT/CO-OFFENDER

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

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

35. IMMUNITIES

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

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

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

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

The application must summarise:-

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

The application must contain:-

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

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

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

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

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

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

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

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

36. SUBPOENAS

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

37. HOSPITAL WITNESSES

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

(i) All hospital witnesses (other than Government Medical Officers) are to be served with a **subpoena**;

(ii) All subpoenas are to be accompanied by the appropriate form letter;

(iii) The subpoena should be prepared and served with as much notice as reasonably possible;

(iv) Service of the subpoena is to be arranged through the Hospital Liaison Officer where appropriate or through the Arresting Officer otherwise;

(v) Such subpoenas are to be accompanied by the form letter addressed to the Liaison Officer or Investigating Officer requesting confirmation of the service.

(vi) A file "**bring up**" should be actioned 2 weeks from the date of the letter, if there is no response.

(vii) Where the ODPP is advised of the hospital witness's unavailability, the file should be referred to a Legal Practice Manager or a Crown Prosecutor for consideration as to whether the witness is essential or whether alternative arrangements can be made. Such advice should be given to the relevant workgroup clerk within a week, or sooner, depending upon the urgency of the listing.

(viii) If the witness is essential and alternative arrangements cannot be made, the matter should be listed immediately for mention in the appropriate Court.

38. OTHER MEDICAL WITNESSES

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

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

39. WITNESSES

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

The prosecutor should not call:-

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

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

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

40. EXPERT WITNESSES

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

41. INTERPRETERS

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

42. CROSS-EXAMINATION

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

(i) they are based on information reasonably assessed to be accurate; and

(ii) they are justified in the circumstances of the trial.

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

43. DEFENDANT'S PRE-TRIAL MEMORANDUM

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

44. ARGUMENT

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

45. ACCUSED'S RIGHT TO SILENCE

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

- Where an accused has declined to answer questions, no evidence of this should be led as part of the Crown case (it will be sufficient to lead that the accused was seen by police, arrested and charged);

- Where a defence has been raised for the first time at trial:-

  (a) if the accused has previously exercised his right to silence, the prosecutor should **not** raise recent invention;

  (b) if the accused has previously given a version, but omitted the facts relied upon for the defence at trial, it may be appropriate for the prosecutor to raise recent invention.

46. JURY

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

(a) communicate outside of the trial with any person known to be a juror in a current trial;

(b) obtain or solicit any particulars of the private deliberations of a jury in any criminal trial;

(c) release personal particulars of any juror in a trial.

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

47. SENTENCE

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

(a) inform the court of all of the relevant circumstances of the case;

(b) provide an appropriate level of assistance on the sentencing range;

(c) identify relevant authorities and legislation; and

(d) protect the judge from appealable error.

(i) Notice

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

(ii) Mitigation

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

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

- Where the defence seeks to rely, in mitigation, on reports, references and/or other allegations of substance, the prosecutor must satisfy himself or herself as to whether objection should be made, or challenge mounted, to the same;

- The prosecutor must provide reasonable notice to the defence of any witness or referee required for cross-examination;

- If the prosecutor has been given insufficient notice of the defence material or allegations to properly consider the Crown's position, an adjournment should be sought;

- Whether there has been insufficient notice will depend upon, inter alia:-

    - the seriousness of the offence;

    - the complexity of the new material;

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

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

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

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

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

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

(iv) **Victim Impact Statements**

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

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

(v) **Criminal Histories**

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

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

- a trivial or minor property would not normally justify an interstate search;

- an offence of personal violence by a mature aged person who has lived interstate would suggest a full search should be made.

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

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

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

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

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

(vii) **Transfer of Summary Matters**

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

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

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

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

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

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

For example:-

- an offender has committed stealing or receiving offences and during the period of offending he is apprehended with tainted property;

- in the course of committing indictable drug offences (such as production or supply) the offender has committed simple offences such as possession of a utensil, possession of proceeds.

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

For example:-

- the unlawful use of a motor vehicle or dangerous driving committed whilst driving unlicensed;

- the offender is unlawfully using a motor vehicle to carry tainted property.

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

For example:-

- the unlawful use of a motor vehicle or dangerous driving committed whilst driving unlicensed;

- an indictable assault which also constitutes a breach of a domestic violence order;

- grievous bodily harm and a firearm offence relating to the weapon used to inflict the injury.

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

For example:-

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

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

For example:-

(i)
- the indictable and summary offences were the subject of separate arrests; and
- the accused was remanded in custody on one type of offence and bail was subsequently cancelled on the other offence; and

(ii) the unrelated summary matters number 5 or less and would not normally justify a significant sentence of imprisonment on their own; and

(iii) the period of remand otherwise excluded from a declaration on sentence is greater than 8 weeks.

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

(a) where all offences could be dealt with in the Magistrates Court. This relates to the situation where:-

- the defence have an election under section 552B of the Code in respect of the relevant indictable offence/s; and
- the relevant indictable offence/s could be adequately punished in the Magistrates Court.

(b) for a breach of the Bail Act. Such offences should be dealt with at the first appearance in the Magistrates Court.

Driving Offences

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

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

(viii) **Serial Offending**

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

(ix) **Section 189 Schedules**

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

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

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

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

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

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

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

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

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

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

- the schedule must not contain summary offences.

(x) **Financial Loss**

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

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

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

(xi) **Submissions on Penalty**

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

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

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

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

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

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

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

48. REPORTING OF ADDRESS OF SEXUAL OFFENDERS AGAINST CHILDREN

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

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

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

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

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

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

(c) any expert reports.

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

49. YOUNG SEX OFFENDERS

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

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

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

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

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

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

50. APPEALS AGAINST SENTENCE

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

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

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

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

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

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

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

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

    (i) a material error of fact;

    (ii) a material error of law; or

    (iii) the sentence is manifestly inadequate.

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

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

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

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

51. RE-TRIALS

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

Relevant factors include:-

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

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

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

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

52. DISTRICT COURT APPEALS

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

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

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

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

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

(iv) Costs

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

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

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

(v) Police Appeals

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

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

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

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

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

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

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

53. EXHIBITS

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

54. DISPOSAL OF EXHIBITS

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

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

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

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

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

(a) upon the determination of any appeal; or

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

to:-

(a) the rightful owners; or

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

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

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

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

55. CONVICTION BASED CONFISCATIONS

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

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

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

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

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

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

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

- in the case of a forfeiture order – $1000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57. LISTING PROCEDURES AND APPLICATIONS FOR INVESTIGATION

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

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

- a note to the prosecutor setting out the nature of any application, when it was made and the name of the Judge who heard it; and

- a copy of any warrant or authority, if obtained.

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

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

58. MEDIA

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

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

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

(iv) Staff may confirm:-

- information given in open court; or

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

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

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

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

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

59. RELEASE OF DEPOSITIONS

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

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

60. LEGISLATIVE RESTRICTIONS ON PUBLICATION

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

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

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

(i) Protection for the Accused

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

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

  The protection ends once the person is committed for trial.

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

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

(ii) Protection for the Complainant

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

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

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

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

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

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

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

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

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

61. CONFIDENTIALITY

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

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

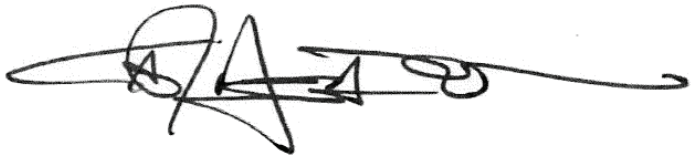
(iii) the duty of full and early disclosure of the prosecution case to the **defence**.

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 2022



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