30 October 2005

The Honourable Linda Lavarch MP
Attorney-General and
Minister for Justice
Parliament House
BRISBANE QLD 4000

Dear Ms Attorney-General

Pursuant to section 16(1) of the *Director of Public Prosecutions Act 1984*, I present to you a report on the operations of the Office of the Director of Public Prosecutions for the financial year of 1 July 2004 to 30 June 2005. This is the nineteenth full-year report furnished regarding the operations of the Office.

Director's guidelines are also included pursuant to the requirement of section 11(2)(b) of the Director of Public Prosecutions Act.

Yours faithfully

L J Clare
DIRECTOR OF PUBLIC PROSECUTIONS

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Director's overview

This past financial year was a year of opportunity and enormous change for us, precipitated by the May 2004 publication of a major review of the operations of the office and its relationships within the Department of Justice and Attorney-General. I am proud of the level of energy and commitment my staff have applied to the challenges of implementing the review recommendations.

Effective implementation of these recommendations would be impossible without the important support of the Minister for Justice and Attorney-General and the Director-General of the Department. I am pleased to acknowledge the valuable support and contribution of the Honorable Rod Welford MP and his successor as Attorney-General and Minister for Justice, the Honorable Linda Lavarch MP, as well as that of Ms Rachel Hunter, the Director-General of the Department.

Perhaps the most significant change for us has been in the reorganisation of the Brisbane office. I have advocated for many years that prosecutions should be prepared by small multilayered teams of prosecutors, legal officers, victim liaison officers and paralegal staff working closely together on each case. This model of preparation permits the early involvement of prosecutors in matters and parallel mentoring of junior staff. It also enables active case management with a focus on the timely and quality resolution of matters. In September 2004 a pilot chamber group, Wakefield Chambers, was established in purpose built accommodation on the 16th floor of the State Law Building in Brisbane.

Following the success of the 'Wakefield' model in demonstrating early improvements in timely presentation of indictments and in providing a more rewarding professional environment, the remainder of the Brisbane office was reorganised into chambers in February 2005. The pace of this reform has meant however that the physical accommodation requirements for the five new chambers to operate at an optimum level have not yet been met.

We now also have approval for much needed accommodation for our chambers in Townsville and Beenleigh. Those moves will coincide with our efforts to enhance the operation systems and the support available to all 8 regional offices.

I expect the positive impact of the chambers reorganisation to become more apparent with the move to appropriate accommodation and the progressive resolution of those cases initiated before the chambers model was implemented. I believe that what we have achieved so far is really only the foundation for what lies ahead. The model provides great opportunity for further refinement over time in management, training and case preparation, as each chambers develops and tests new strategies for more efficient and effective prosecution services. I expect that these changes together with the support of the Courts in listing matters having regard to our new structure, will further improve our services to the Courts and to victims of crime.

The Office is of course a critical part of the criminal justice system. The other criminal justice agencies share with us a corporate responsibility for promoting the safety of the community. I am pleased to acknowledge the considerable support for the office provided through the monitoring committee established to advance the implementation of the review recommendations. This committee was chaired by the Director-General of the Department of Justice and Attorney-General and included the Honorable P De Jersey AC, Chief Justice of Queensland, Her Honour Judge PM Wolfe, Chief Judge of the District Court of Queensland, His Honour Judge M Irwin, Chief Magistrate, Mr R Atkinson, Commissioner of Police, Queensland Police Service, Mr F Rockett, Director-General, Department of Corrective Services and Mr J Hodgins, Chief Executive Officer, Legal Aid Queensland. Her Honour Justice D Mullins was invited to join the Monitoring Committee in April 2005.

Throughout the year much was achieved in co-operation with the Queensland Police Service. In a six-month pilot project, the Brisbane office participated in the Queensland Police Service Prosecution Review Committee to assist in identifying and addressing systemic issues in the investigation and prosecution of sexual offences. We now have a memorandum of understanding with the QPS to further streamline communication between the two agencies in sexual offence prosecutions. In addition senior staff from both organisations meet regularly as a joint Operations Committee.

Other achievements of note in 2004–05 include:

- The establishment of the permanent role of Executive Director to ensure that I am provided with professional management and policy support;
- The development of a performance measurement framework which provides a useful management tool through monthly performance reports;
- Securing budget funding for the development and implementation of a new prosecution case management system;
- The creation of an improved fee structure for the payment of private counsel who are briefed to prosecute matters;
- Securing funding for additional Crown prosecutor positions to assist in the implementation of the regime for the pre-recording of the evidence of affected child witnesses.

Of course all these changes and achievements have been made over and above carrying out the normal business of delivering a skilled and efficient prosecution service to the community of Queensland. All of our prosecutors discharge heavy and complex workloads in the face of enormous pressure. They spend months of the year in circuit towns away from their families and homes so that justice can be done in the State's regional communities. I would like to record my appreciation for the hard work and sacrifices of my staff and for their capacity to recognise and harness the opportunities at the heart of our significant changes.

In particular this year I was able, through the inaugural Director's Service Excellence Awards, to recognise nineteen staff for their contribution to the Office. Individual awards were presented to three staff:

- Jessica Van Hoof, for her outstanding service to victims of crime and for her substantial contribution to the efficient running of the criminal list in the Ipswich District Court.
- Joanna Hughes, for her outstanding contribution to a quality prosecution service through the training, development and supervision of legal officers.
- Martin Skorka, for his innovative development of a submissions tracking system and his outstanding contribution to the business systems initiatives of the ODPP.

A team award was presented to the administrative team of the Brisbane Committals Program, which was recognised for outstanding achievements through hard work, professionalism and a strong collegiate spirit. Members of the team were: Suzanne Phillips, Sonia Muller, Ellie Thomas, Paula Price, Ruth Clark, Sharon Webb, Andrew Smith, Louise Tran, Mardi Walker, Caroline Cavanagh, Nimmy Chaggar, Sarah Klemm, Mary-Anne Burford, Jade Wraight and Teresa Davis.

Many more challenges lie ahead. With the meeting of those challenges will come not only enormous change, but great success.

LJ Clare
DIRECTOR OF PUBLIC PROSECUTIONS

Introduction

In accordance with section 16 of the *Director of Public Prosecutions Act 1984*, the Director of Public Prosecutions (referred to throughout this report as 'the Director') is required to report annually to the Minister responsible for the operations of the Office of the Director of Public Prosecutions (referred to throughout as 'the Office'), and each such report must also be tabled in the Legislative Assembly.

As well as meeting these statutory requirements, this report is designed to inform both the Parliament and the community of the functions performed by the Office of the Director of Public Prosecutions. This report covers the operations of the Office for the period 1 July 2004 to 30 June 2005.

Organisation of the Office

The Office falls within the Criminal Justice program of the Department of Justice and Attorney-General. Its head office is in Brisbane and there are eight regional offices located in the following centres:

- Cairns
- Townsville
- Rockhampton
- Beenleigh
- Ipswich
- Maroochydore
- Southport
- Toowoomba

During 2004–05, the organisational structure of the Office and, in particular, the Brisbane office, underwent significant change as a result of the implementation of the recommendations of the review into the operations of the Office and its interrelationship with the Department of Justice and Attorney-General. The review report was publicly released on 26 May 2004 and contained 35 recommendations aimed at ensuring a high performing prosecution service for the people of Queensland.

In September 2004, a pilot chambers group, Wakefield chambers, consisting of 22 officers, was established in the Brisbane office. These chambers brought together prosecutors, legal officers, victim liaison officer and legal support officers in a team to prepare and conduct criminal prosecutions with an emphasis on early quality resolution of matters.

In February 2005, the remainder of the Brisbane office was organised into chambers and there are now six such groups. Four groups are established in the Wakefield configuration and deal with committal and non-committal matters (the other three groups are Sheehy, Sturgess and Haxton chambers). The fifth chamber group (Given chambers) prepares ex-officio and Childrens Court matters. The sixth chamber group (Griffith chambers) incorporates the specialist functions of the ODPP (major crime, appeals, Mental Health Court, bail and affected child witness sections).

Each chamber group is headed by a principal Crown prosecutor who is responsible for legal decision making and mentoring of Crown prosecutors and legal officers. The management of the business of chambers is in the hands of a practice manager who, as well as being an experienced lawyer with a small caseload, supervises the legal and administrative officers in the group.

All regional offices have their own complement of prosecutors, legal officers, legal support officers, victim liaison officers and administrative support staff and are managed by a Legal Practice Manager. The map on page 21 shows their locations, as well as the locations where superior courts sit to hear criminal trials, sentence hearings and related proceedings.

The implementation of the review recommendations also saw the establishment of a new Prosecution Support Services Unit. The unit supports the Director in the provision of prosecution services by providing records, court listings, finance, human resource, and policy planning and performance services.

Contact details for the Office are shown on pages 22–23. The organisational chart for the Office is shown on page 11.

The six chambers established in Brisbane during 2004–05 have each chosen, for their chamber, the name of an eminent legal identity.

Wakefield Chambers

Wakefield Chambers is named after the first Deputy Director of Prosecutions for Queensland, Mr Tom Wakefield. Mr Wakefield was admitted to the bar in February 1969 and received his commission to prosecute in June 1969. Mr Wakefield prosecuted many complex and high profile cases throughout his career. In 1982 he was appointed to the position of Crown Counsel in the Solicitor General's office. Mr Wakefield was appointed the first Deputy Director of Prosecutions for Queensland on 7 October 1985. He remained in that position until December 1990.

Sheehy Chambers

Sheehy Chambers is named after the late Honourable Sir Joseph Aloysius Sheehy. In 1923, at the age of 23, he became Assistant Crown Prosecutor in the Crown Solicitor's Office.

In 1928 he resigned from the public service becoming a Crown prosecutor with the right to private practice. He prosecuted many criminal trials until his appointment to the Supreme Court in 1947 as the Central District Judge. He was appointed Senior Puisne Judge in 1965. Justice Sheehy retired in 1970 after 23 years on the Supreme Court Bench. He passed away in 1971.

Sturgess Chambers

Sturgess Chambers is named after the first Director of Prosecution for Queensland, Mr Des Sturgess QC.

A highly respected member of the criminal bar, Mr Sturgess was recruited to head the newly formed Office of the Director of Prosecutions in 1984 and was also commissioned to provide a report into sexual offending against children.

His report was the forerunner to significant amendments to the Criminal Code and the Evidence Act to assist in the prosecution of child sex offenders. He was a champion for that cause throughout his tenure as Director.

Haxton Chambers

Haxton Chambers is named after Ms Naida Haxton, the first woman to practice at the Bar in Queensland. She received her first junior brief in the Supreme Court in 1967 and her first brief in the High Court in 1969.

As well as maintaining a busy practice, Ms Haxton lectured at the University of Queensland. In 1971, following a move to Sydney, she practised at the New South Wales Bar and continued to lecture. From 1972 to 1981 she was also Editor of the Papua New Guinea Law Reports and in 1981 was appointed Assistant Editor of the New South Wales Law Reports. In 2000, Ms Haxton was appointed Editor of the New South Wales Law Reports.

Given Chambers

Given Chambers is named after former District Court Judge Alan Stewart Given. Judge Given commenced his law degree during World War II but soon deferred his studies so that he could contribute to the war effort, first by working for a construction company engaged in Defence Department contracts and later, when he was of age, by enlisting in the Royal Australian Air Force. He recommenced his studies following his discharge from the air force in October 1945. After a successful 23 year career at the Bar, Judge Given accepted an appointment to the District Court at Brisbane in 1975. Judge Given was known for his hard work and efficiency on the bench and he served as a District Court Judge until his death in 1989.

Griffith Chambers

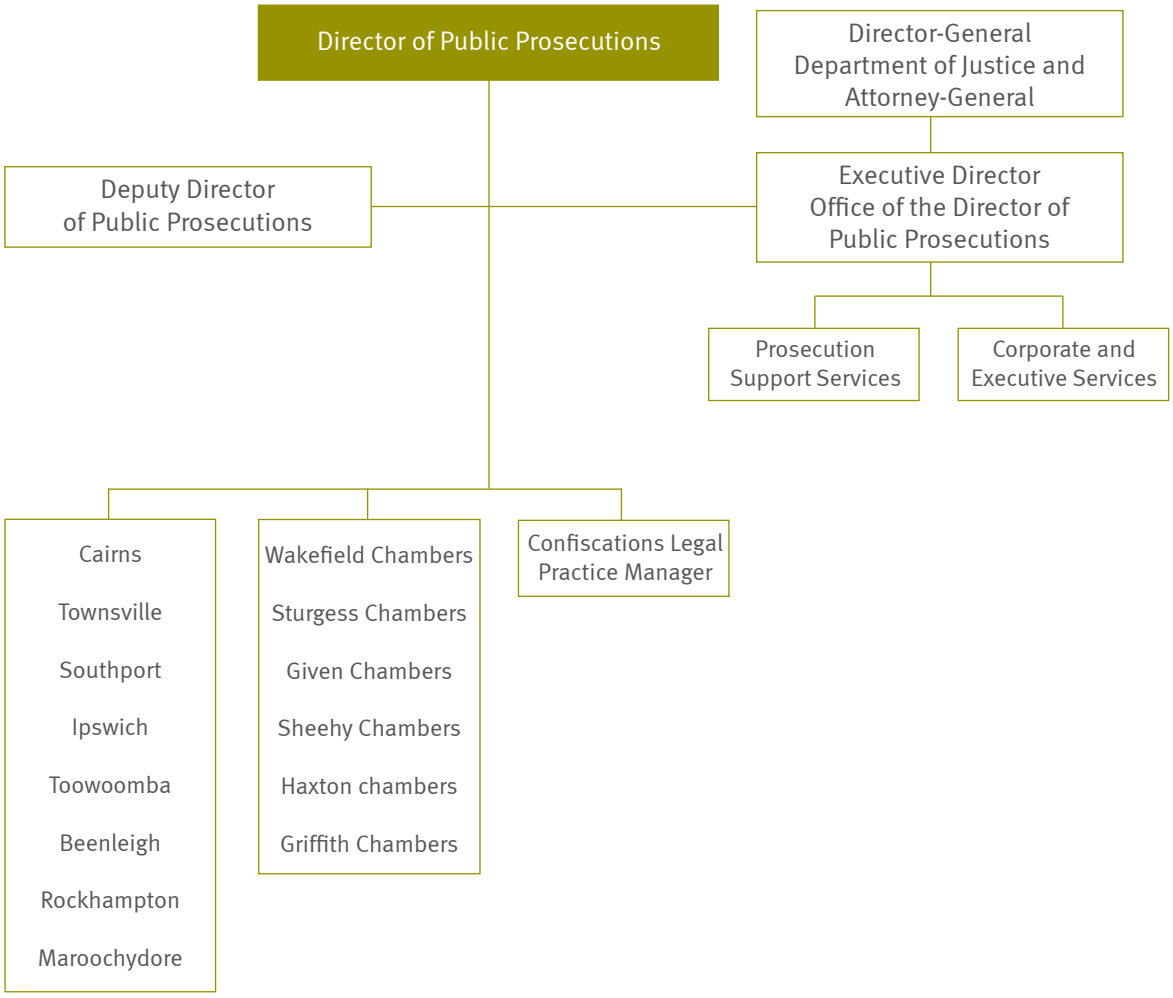
Griffith Chambers is named after Sir Samuel Griffith whose contribution to the criminal law in Queensland is unsurpassed. In 1893 he was appointed Chief Justice of Queensland following a distinguished political career including appointment as the Attorney-General in 1874. He also held the office of Premier of Queensland from 1883 to 1888 and again from 1890 to 1893.

Sir Samuel began work on the Criminal Code in 1896 when he was still the Chief Justice of Queensland. He recognised that the criminal law in Queensland was scattered throughout nearly 250 statutes. Drawing all this law into one Code was a substantial task. Nonetheless, the final draft was completed in August 1897.

Sir Samuel Griffith is also known as one of the 'fathers of federation' having contributed to the drafting of the Australian Constitution. In 1903 he was appointed the first Chief Justice of the High Court of Australia, a position he held until 1919. Sir Samuel Griffith died in 1920.

Organisation of the Office

Organisational chart of the Office of the Director of Public Prosecutions



Prosecution achievements 2004–05

3.1 Introduction

The Office of the Director of Public Prosecutions is responsible for the prosecutions of criminal matters in the Superior courts throughout Queensland.

The ODPP also appears in the High Court, Court of Appeal, Mental Health Review Tribunal, District Court appeals as well as prosecuting committals in Brisbane central Magistrates Court, Ipswich and some matters in Southport.

The ODPP also provides information to victims of crime to assist them in their dealings with the justice system.

3.2 Court work

3.2.1 Superior courts

The Office received 7296 matters for prosecution post committal in the superior courts during the reporting period.

Tables 1, 2A and 2B only report on matters received after committal for trial or sentence or upon request for presentation of an ex-officio indictment. Those tables do not report on the total number of accused or the total number of charges of any specified type received for prosecution in the Superior Courts. A 'matter' may involve multiple accused and/or multiple charges of different types. In such cases a matter will be classified in the tables as one matter classified under the primary offence type.

Table 1: Matters received for prosecution in the Superior Courts

Year	Trial	Sentence	Ex-officio	Total
2004–05	5428	514	1282	7224

Note: This table does not include matters such as bail appearances, breach proceedings, confiscation matters, Childrens Court or Mental Health Court. A dissection of incoming matters processed by the Office is shown in Tables 2A and 2B.

Table 2A: Matters received for prosecution in the superior courts 2004–05 by offence classification

Classification of offence	Bne	Ips	Mdor	Spt	Rok	Tsv	Cns	Tba	Been	Total
Murder	19	1	6	0	2	3	8	1	0	40
Attempted Murder	29	1	7	0	3	5	3	2	0	50
Manslaughter	7	0	1	0	0	3	3	0	0	14
Drugs: possession	136	4	14	4	11	22	28	12	1	232
Drugs: production	134	10	31	1	8	17	17	35	0	253
Drugs: trafficking	67	4	1	2	5	17	8	4	0	108
Drugs: other	162	1	5	0	3	20	5	6	0	202
Rape	54	18	33	24	22	38	34	13	24	260
Robbery: banks/ financial institutions	0	0	0	6	0	0	1	0	0	7
Robbery with violence	95	19	19	41	9	45	24	20	64	336

Classification of offence	Bne	Ips	Mdor	Spt	Rok	Tsv	Cns	Tba	Been	Total
Robbery: other	90	9	8	9	10	12	9	2	5	154
Burglary & allied offences	199	4	80	78	47	120	41	66	103	738
Stealing/receiving	206	19	125	30	20	30	22	18	37	507
Dangerous driving causing death	7	3	8	4	3	8	2	6	5	46
Dangerous driving causing GBH	12	1	4	5	2	8	2	2	9	45
Dangerous Driving circ agg (prev; adv affect)	7	6	4	6	4	5	3	4	6	45
Dangerous driving: simpliciter	47	8	24	10	4	11	4	11	14	133
GBH: simpliciter, intent, unlawful wounding	70	14	26	32	44	115	80	26	28	435
AOBH: simpliciter & others	256	82	140	62	72	155	117	103	63	1050
Assault: common & serious	95	14	51	47	30	34	67	37	16	391
Motor car cases: UUMV, UPMV, UEMV	147	27	39	29	10	14	12	13	33	325
Incest	15	1	2	0	2	3	2	0	2	27
Sexual offences: children (victims)	157	30	60	28	51	56	43	46	40	511
Sexual offences: other (victims)	65	4	14	8	9	12	7	3	1	123
Arson: motor vehicle	5	4	6	2	2	6	1	4	2	32
Arson: other	30	3	9	8	12	10	3	3	10	88
Fraud: less than $5000	126	11	36	14	13	4	7	2	13	226
Fraud: between $5000 and $50 000	29	5	18	22	7	4	8	18	9	120
Fraud: over $50 000	13	2	2	13	3	1	0	1	3	38
Wilful damage	71	14	41	8	9	13	5	12	12	185
Other offences	171	67	77	3	35	77	35	10	28	503
Total	**2521**	**386**	**892**	**496**	**452**	**868**	**601**	**480**	**528**	**7224**

Note:

Bne:	Brisbane	Ips:	Ipswich	Mdor:	Maroochydore
Spt:	Southport	Rok:	Rockhampton	Tsv:	Townsville
Cns:	Cairns	Tba:	Toowoomba	Been:	Beenleigh

GBH:	Grievous bodily harm	AOBH:	Assault Occasioning Bodily Harm
UUMV:	Unlawful use of a motor vehicle	UPMV:	Unlawful possession of a motor vehicle
UEMV:	Unlawful Entry of a motor vehicle		

Table 2B: Matters received for prosecution in the superior courts 2004–05 by centre

Centre	Trial	Sentence	Ex-Officio	Totals
Brisbane	2039	148	334	2521
Ipswich	334	50	2	386
Maroochydore	572	51	269	892
Southport	404	36	56	496
Rockhampton	379	16	57	452
Townsville	599	52	217	868
Cairns	353	149	99	601
Toowoomba	336	6	138	480
Beenleigh	412	6	110	528
Totals	**5428**	**514**	**1282**	**7224**

3.2.2 Committals

There were 3219 matters referred to the committals programs (Brisbane–2388; Ipswich–837) during the 2004–05 reporting period.

Table 3: Committals outcome

Outcome	Brisbane Central Magistrates Court	Ipswich Magistrates Court	Total
Finalised			
Committed for trial	483	295	778
Committed for sentence	201	46	247
Summary trial conviction	9	13	22
Summary trial acquittal	2	0	2
Summary guilty plea	310	185	495
Discharged/withdrawn	615	119	788
Ex-officio	150	49	138
Transfer jurisdiction	26	30	56
Sub total	**1796**	**737**	**2526**
Exit from system			
Returned to police	11	0	11
Warrants	124	85	209
Sub total	**135**	**85**	**220**
Total	**1931**	**822**	**2746**

3.2.3 *Trials and sentence hearings conducted by the Office*

During 2004–05, 1263 trials were conducted by the Office. Table 4 shows the breakdown of figures.

Table 4: Trials recorded

Year	District Court	Supreme Court	Total
2004–05	1144	119	1263

The number of sentence matters heard for this period are shown in Table 5.

Table 5: Sentence hearings recorded

Year	District Court	Supreme Court	Total
2004–05	4079	542	4621

3.2.4 *Appeals conducted by the Office*

3.2.4.1 District Court appeals

During 2004–05, the Office prepared for and appeared in 228 appeals that were determined by the District Court throughout Queensland. Of these appeals, 118 were prepared by the Brisbane Office, and the remaining 110 were prepared by the regional offices.

3.2.4.2 Court of Appeal matters

The Appeals Section is responsible for the preparation and conduct of all criminal and quasi-criminal appeals heard by the Court of Appeal and the High Court. It also assumes the principal role in performing legal research for all prosecutors.

Appeals

During 2004–05, the Appeals Section received a total of 467 criminal appeals. During this same period a total of 442 appeals were finalised. A total of 98 appeals were abandoned prior to hearing. In all cases, the Appeals Section prepared the Crown's case and a Crown Prosecutor appeared on behalf of the Attorney-General of Queensland or the Crown in the Appellate Court.

In the reporting period, the Office defended 80 appeals brought by accused against conviction, and 168 appeals against sentence in the Court of Appeal.

The judgments delivered in the 2004–05 financial year can be broken down as follows:

- appeals against conviction: 22 were allowed and 58 were dismissed.
- appeals against sentence: 61 were allowed, 107 were dismissed.

The Court of Appeal heard and determined 53 applications for leave for an extension of time within which to appeal and leave was granted in 19 matters.

Attorney-General's appeals

The Attorney-General of Queensland may lodge an appeal against a sentence which is considered to be manifestly inadequate or where it is considered that there has been an error in principle by the sentencing judge.

Of the 467 appeal matters lodged, 18 matters had been initiated by the Attorney-General of Queensland. Of the 442 appeals finalised 22 had been initiated by the Attorney-General. The Attorney-General's appeals were upheld in respect of 13 offenders.

In specified circumstances the Attorney-General may refer to the Court of Appeal for its consideration and opinion, a point of law that has arisen at the trial of a person or on a pre-trial application. One such reference was determined by the Court of Appeal during 2004–05. In *R v PV*; ex parte A-G (Qld) [2004] QCA 494 the Court of Appeal considered the first reference brought under s.668A of the Criminal Code by the Attorney-General. The Court of Appeal was asked to determine whether the trial judge, in a pre-trial hearing, had correctly ruled certain evidence as inadmissible, whether correct legal principles had been applied in deciding an application for separate trials and whether the trial judge applied the correct test as to the admissibility of the evidence of each complainant in the case involving the other complainant. The prosecution of PV was adjourned pending the determination of these issues by the Court of Appeal. Following the Court of Appeal decision, in favour of the Crown, the prosecution of PV continued in the District Court and he was convicted, in April 2005, of 4 counts of indecent treatment of a child under 12 and sentenced to a period of imprisonment.

Summary of all appeals

A summary of the Attorney-General's appeals against sentence and appeals against conviction or sentence determined by the Court of Appeal for this financial year is shown in Table 6.

Table 6: Attorney-General's appeals against sentence and appeals against conviction or sentence.

2004–05	By Crown	By accused against conviction	By accused against sentence
Upheld	13	22	61
Dismissed	8	58	107
Other	1	0	0
Total	**22**	**80**	**168**

3.2.4.3 High Court appeals

In the 2004–05 financial year the Appeals Section was involved in the preparation and conduct of 20 matters before the High Court of Australia in its appellate jurisdiction.

3.2.5 Related criminal proceedings:

3.2.5.1 Acquisition of the proceeds of crime

On January 1, 2003 the Criminal Proceeds Confiscation Act 2002 commenced. This Act strengthened the existing criminal confiscation scheme and implemented a civil confiscation scheme.

From 1 July 2004 to 30 June 2005 assets amounting to $8.088 million were restrained under the civil confiscations scheme and assets worth $1.622 million were forfeited.

During the same period $0.959 million was forfeited under the criminal confiscation scheme.

3.2.5.2 Bail applications

In 2004–05, the Bail Section received 342 bail applications. Officers appeared in both the Supreme Court and the Children's Court of Queensland at Brisbane in the 293 applications which proceeded.

3.2.5.3 Breaches of community-based orders and suspended sentences

In 2004–05, there was a total of 481 new breach matters referred to the Office of the Director of Public Prosecutions at Brisbane. This figure does not include show cause hearings for failure to pay restitution and fines or amendments and revocations of community based orders.

3.2.5.4 Children's Court hearings

In 2004–05 the Office received a total of 328 matters committed to the Children's Court of Queensland and 112 matters proceeding by way of ex-officio indictment to sentence.

3.2.5.5 Director's guidelines

During this reporting period the Director amended 3 guidelines issued pursuant to section 11 of the *Director of Public Prosecutions Act 1984*. The amendments related to:

- Guideline 26 (xiii): Ongoing obligation of disclosure: to require that upon receipt of the file a written enquiry 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 of the accused.;
- Guideline 12 Summary Charges: by the replacement of the table outlining possible summary charges to reflect the commencement of the Summary Offences Act 2005 and the repeal of the *Vagrants Gaming and Other Offences Act 1931*.
- Guideline 26 (vi): Sensitive Evidence (disclosure): to insert the phrase 'containing accounts of sexual activity" into the definition of sensitive evidence'.

The complete Director's Guidelines appear at pages 31–77.

3.2.5.6 Indemnities

During the reporting period a total of 29 persons were granted indemnities or use-derivative-use undertakings by the Attorney-General. The Attorney-General, in considering whether indemnities or use-derivative-use undertakings should be given, considers the advice from the Director.

3.2.5.7 Mental Health Court Hearings

In 2004–05, the Office received and processed 205 new matters referred to the Mental Health Court. During the same period 203 matters were determined in the Mental Health Court and 18 applications were withdrawn. The outcome of the matters determined in the Mental Health Court are set out below.

Outcome	Number
Unsound at time of the offence	85
Sound mind and fit for trial	35
Unfit for trial	13
Permanently unfit for trial	16
References struck out	18
Dispute of fact (deemed fit for trial 11,unfit 2)	11
Combined orders	25
Total	**203**

3.2.5.8 Other mental health proceedings

In 2004–05 the Office received for processing 291 references to the Attorney-General from the Director of Mental Health for consideration under s.247 (1) *Mental Health Act 2000*. During this period the office processed 276 such references.

In 2004–05 the Office appeared on behalf of the Attorney-General in 245 hearings before the Mental Health Review Tribunal.

Months	AG appearances
July 2004	22
August 2004	14
September 2004	27
October 2004	25
November 2004	22
December 2004	14
January 2005	20
February 2005	15
March 2005	25
April 2005	20
May 2005	24
June 2005	17
Totals	**245**

3.2.5.9 Prosecutions requiring the Attorney-General's consent

In 2004–05, the Attorney-General's consent to prosecute was granted in 7 cases.

3.2.5.10 Prosecutions requiring the Director's consent

In 2004–05, the Director's consent to prosecute was granted in 114 cases pursuant to section 229B (maintaining a sexual relationship with a child under 16 years) of the Queensland Criminal Code.

Victim liaison services

4.1 Introduction

The Office has been given the primary responsibility for supporting victims under the *Criminal Offence Victims Act 1995*. The Act makes a declaration about the fundamental principles of justice for victims of violent crimes. The Act also requires information about the prosecution of an offender to be provided, on request, to a victim as well as information about the trial process and the victim's role as a prosecution witness. The Director has issued a guideline to all staff and others acting on her behalf to assist in implementing the fundamental principles of justice for victims of violent crime.

4.2 The Victim Liaison Service

The Office employs 16 victim liaison officers throughout the State. Seven of these officers are located in the Brisbane office, there is one officer in each of the eight regional offices and the community outreach worker in the Cairns office brings the total to 16.

These officers provide an information and liaison service to all victims of violent crime. This includes all victims of assaults, grievous bodily harm, unlawful wounding and sexual offences, and the family members of homicide victims.

Victim liaison officers:

- keep the victim informed about the progress of the case through the criminal justice system, informing the victim of all significant occurrences throughout the prosecution of the matter
- attend conferences with the victim and the legal officer or Crown prosecutor prior to the committal hearing or trial
- refer the victim to specialised services—medical, legal or counselling
- identify any special needs the victim may have during the court hearing and arrange appropriate court or other support.

4.3 Contact with victims

During the 2004–05 period, the Office, through its victim liaison officers, provided the following services to victims of crime:

Number of matters carried over from 2003–04	4,454
Number of matters received	6,274
Number of matters finalised	6,361
Number of matters carried over to 2005–06	4,418
Instances of contact with victims	47, 223

Regional offices

5.1 Cairns

The Cairns Office services the Supreme and District Courts in Cairns and the District Court in Innisfail. It also services the periodic sittings of the District Court on Thursday Island, and the sittings of the District Court in Aurukun, Kowanyama and Weipa for the purpose of hearing sentence matters.

Cairns Office disposed of 77 trials and 378 sentences in the courts serviced by it in the last financial year. A further 13 matters were discontinued.

5.2 Townsville

The Townsville Office services the Supreme and District Courts, Mackay Circuit and District Courts, Mount Isa Circuit and District Courts, and the District Courts at Bowen, Charters Towers and Hughenden. It also services sentence circuits to communities in the Gulf district.

Townsville office disposed of 237 trials and 532 sentences in the courts serviced by it in the last financial year. A further 33 matters were discontinued.

5.3 Rockhampton

The Rockhampton Office services the Supreme and District Courts, Longreach Circuit and District Courts and the District Courts at Gladstone, Emerald and Clermont.

Rockhampton office disposed of 49 trials and 315 sentences in the courts serviced by it in the last financial year. A further 23 matters were discontinued.

5.4 Beenleigh

The Beenleigh office disposed of 50 trials and 361 sentences in the courts serviced by it in the last financial year. A further 14 matters were discontinued.

5.5 Ipswich

The Ipswich Office disposed of 107 trials and 317 sentences in the courts serviced by it in the last financial year. A further 5 matters were discontinued.

5.6 Maroochydore

The Maroochydore Office, in addition to serving the immediate Sunshine Coast, is responsible for supplying prosecution services to the circuit centres of Bundaberg, Maryborough, Gympie and Hervey Bay.

Maroochydore Office disposed of 138 trials and 466 sentences in the courts serviced by it in the last financial year. A further 32 matters were discontinued.

5.7 Southport

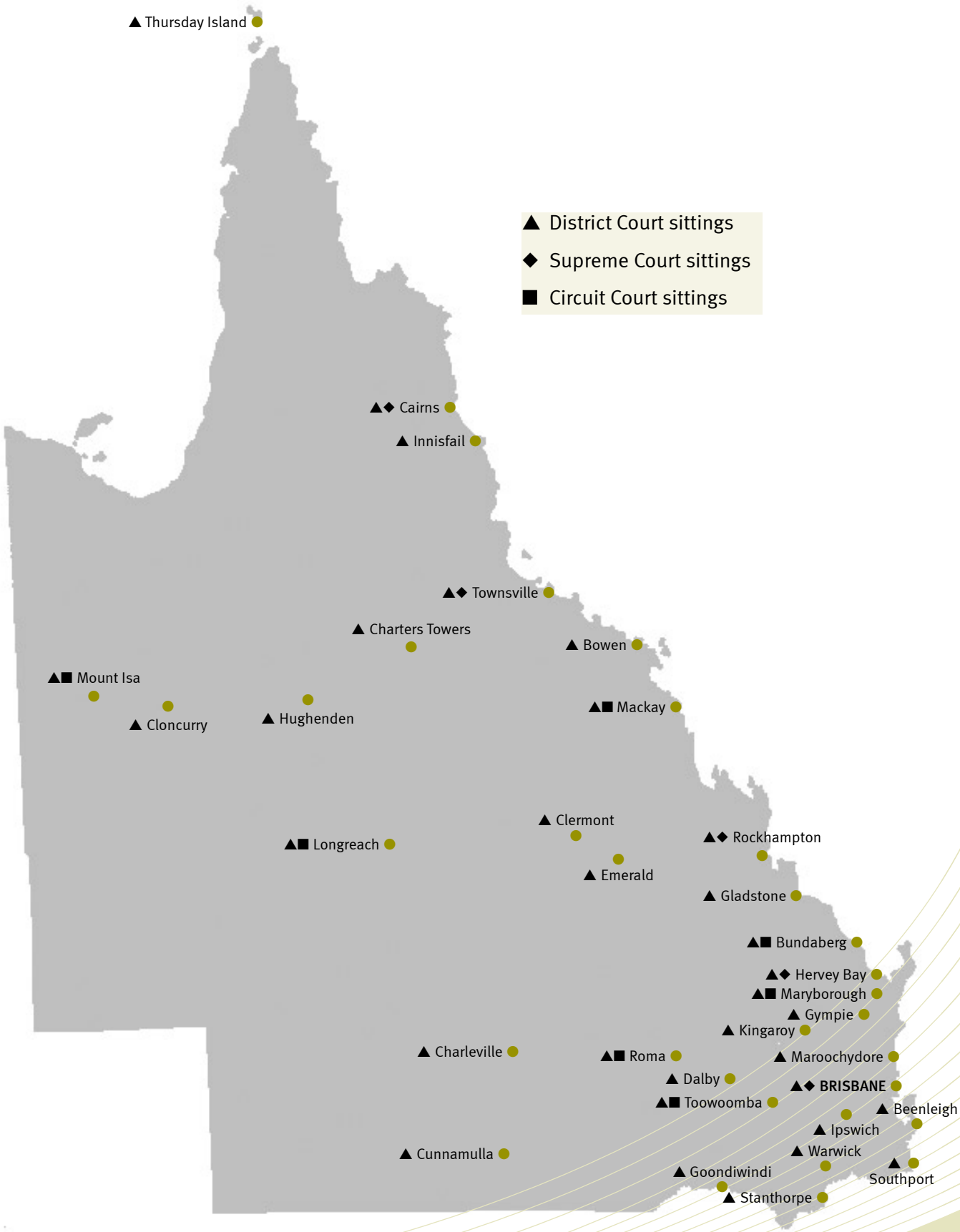
The Southport Office disposed of 51 trials and 320 sentences in the courts serviced by it in the last financial year. A further 36 matters were discontinued. The Southport Office received 78 committals during the 2004–05 reporting period.

5.8 Toowoomba

The staff of the Toowoomba Office divide their time equally between the Supreme and District Courts of Toowoomba and the circuit centres of Charleville, Cunnamulla, Dalby, Goondiwindi, Kingaroy, Roma, Stanthorpe and Warwick.

Toowoomba Office disposed of 72 trials and 360 sentences in the courts serviced by it in the last financial year. A further 14 matters were discontinued.

Location of District Court, Supreme Court and Circuit Court sittings



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Training

Professional development and training

During 2004–05 a program of professional development and training, focused on increasing professional networks and skills, was delivered to the Office by internal and external specialists.

Internal development and training

- Five continuing legal education seminars were delivered by senior prosecutors with approximately 135 staff attending. These seminars were videotaped and sent to regional offices with accompanying material.
- An intensive 'Legal Officer Training' program was delivered to legal officers and legally-qualified paralegal clerks. This program, which continues into 2005–06, covered 14 topics delivered in small group format by Practice Managers. The program included theory-based seminars and practical workshops designed to improve the skills of the Office's legal officers and paralegal clerks.

Table : Training delivered by ODPP officers

Course	No. conducted	No. attending
Continuing legal education seminars by senior prosecutors	5	135
Orientation for new legal officers and paralegal clerks	3	68
Drafting indictments	7	85
Meeting our obligations to victims of crime	4	95
Preparing drug offence cases	2	20
Preparing for pre-trial issues	2	46
Ex officio matters—policy and procedures	4	80
Preparing sex offence cases	2	51
Preparing violent offence cases	1	15
Quality Assurance standards and procedures for file management	2	64
QPS and ODPP failed prosecution committee procedures	2	29
Training for paralegals for work in Chamber groups	6	80

The Office ran an internal conference for 40 of the Crown Prosecutors in December 2004, which included sessions on:

- discussions about current legal issues;
- advanced workshops on onterviewing children and young people; and
- strategic leadership development.

The Office ran an internal conference for 16 of the Victim Liaison Officers in April 2005. Sessions included:

- presentations from a variety of victim support organisations;
- training in working with victims of sexual assault;
- training in utilising resources for assisting victims of crime;
- criminal injury compensation;
- Community Corrections; and
- the Mental Health Court.

External development and training

In addition, a number of external agencies delivered the following programs for the Office:

- indigenous cultural awareness training;
- intensive trial advocacy workshops;
- sexual assault victim support groups;
- cases involving forensic testing;
- cases involving clandestine drug laboratories;
- interviewing children and young people workshops;
- cross-cultural communication; and
- communicating through interpreters.

During 2004–05, the Office also sponsored the attendance of 33 officers at 11 conferences and seminars. In addition, 17 officers attended 3 conferences and seminars at no cost to the Office

Training provided by ODPP

As part of the commitment of the Office to build cooperative partnerships with other agencies in the criminal justice system, Crown prosecutors and practice managers conducted 12 training sessions for external groups during 2004–05.

These groups included the Queensland Police Service, victim support groups, the Crime and Misconduct Commission, and universities. This training involved lectures and discussions on relevant legislation and legal processes, including the evidence of children, fraud offences, the criminal justice system, and the work of the Office.

Glossary of terms

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

appeal (upheld/dismissed) This is the name given to the process by which the correctness of all or part of a court's decision may be tested.

Appeals are made to and determined by a court higher than the court which made the decision appealed against. The judicial hierarchy of courts in Queensland, from highest to lowest is: the High Court of Australia, the Court of Appeal (Queensland), the Supreme Court (Queensland), the District Courts (Queensland) and the Magistrates Courts (Queensland).

Appeals can be against sentence or conviction or both.

If, on appeal, a lower court is found to have made an error, the appeal is upheld and the decision of the lower court is quashed or overturned. In the case of an appeal against sentence, a different sentence will be substituted.

With respect to an appeal against conviction, a new trial can be ordered or a verdict of acquittal entered.

If no error is found or, in some cases, if no substantial miscarriage of justice is perceived, the appeal is dismissed and the decision of the lower court is said to have been affirmed.

appear/appearance When a person physically goes before a court that person is said to appear before the court. When that person's lawyer physically goes before a court on that 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 Once a person has been arrested and charged with an offence, that person must remain in gaol unless that person has legal authority to remain out of gaol. When a person receives such authority that person is said to have been granted bail. Bail may be on the accused's own undertaking to appear or with sureties and subject to conditions.

Circuit Court Circuit Court is the name given to the Supreme Court when it holds hearings elsewhere than Brisbane, Rockhampton or Townsville.

charge Charge is the name given to the formal record of an allegation that an accused 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 to be dealt with according to law.

committal hearing (committed for trial/ committed for sentence hearing) A committal hearing is the name given to the procedure by which a magistrate determines if there is sufficient evidence upon which to order that an accused person stand trial before a judge and jury. If the magistrate determines there is sufficient evidence, then the magistrate orders the accused to stand trial before a court (made up of a judge and jury) which has jurisdiction to try the accused. This will be a District Court or the Supreme Court.

The word 'committal' is used because, when a magistrate makes such an order, the person is said to have been committed for trial.

The word 'hearing' is used because most of the evidence is given by word of mouth (testimony) and the magistrate listens to, that is hears, that evidence.

If at the committal hearing the accused admits to having breached the law as charged, the magistrate will order the accused person to appear before a District Court or the Supreme Court to be punished (sentenced) according to law. Such an accused is said to have been committed for sentence.

committal (hand-up) A hand-up committal relates to a committal hearing at which the legal representative of the accused consents to all of the statements of witnesses being handed up to the magistrate without any of the witnesses then being required to give oral evidence.

complaint and summons When an accused is to stand trial or to be sentenced in a Magistrates Court, the document used to set out the charges is called a 'complaint and a summons'. The document is so called because in the first part, a person, usually a police officer, 'complains' that the accused has committed an offence, and in the second part the-accused is called or summoned to appear before the Court.

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

depositions The evidence heard by the magistrate at a committal hearing is recorded on tape. When a person is committed for trial or committed for sentence, the tape recording of the committal hearing is transcribed onto paper. This transcript, along with any other evidence tendered at the committal hearing, such as photographs, maps and statements, are collectively called 'the depositions'.

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

discontinuance Discontinuance is the name given to the process by which it is decided and formally recorded that an accused is not to be prosecuted further and the criminal proceedings against an accused are to cease. Practically speaking, this means an accused no longer needs bail to remain out of gaol and will not stand trial or be sentenced.

If an indictment has been presented, a written record of the discontinuance is entered as well. This record is called a nolle prosequi, Latin for 'I do not wish to prosecute'.

If the indictment has not been presented, the discontinuance is by way of the filing of what is known as a 'No True Bill' in the Court Registry.

ex-officio indictment This is the name given to an indictment presented to a court without a person being committed for trial or committed for sentence.

indemnity Indemnity is the granting of an assurance that no criminal proceeding will be taken or continued in relation to criminal acts admitted by the person to whom the indemnity is granted in order to obtain the evidence of that person (see also 'Use-Derivative-Use Undertaking').

indictment Indictment is the name given to the document which sets out the offence or offences that an accused is alleged to have committed and in relation to which the accused must stand trial and be sentenced if found guilty.

Indictments are presented to (lodged with) the Supreme Court or a District Court to notify the court of the offence/s with which the accused has been charged and in relation to which the accused must stand trial and be sentenced, if found guilty.

indictable offence If an accused has been charged with an offence and has an initial right to stand trial before a judge and jury, the offence is an indictable offence. This is so, even though the accused or some other person may determine that the accused 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. It is a process to allow the court and the parties to monitor the progress of charges. Usually once a person has been charged, the charges will be I 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 Courts and the Supreme Court are available only between certain dates to hold trials or pass sentence. 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 sittings of the Supreme Court of Queensland at Brisbane commencing 31 January 1997'.

nolle prosequi See discontinuance

offence An offence is any act or omission which is prohibited by the law of Queensland under pain of penalty according to law. Offences may be indictable or summary. Summary offences can be heard and determined in a Magistrates Court only.

Office of the Director 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 in the Office.

plea A plea is the formal response of an accused at trial or sentence to an indictment. At the accused's trial or sentence the indictment is read out to the accused (the accused is 'arraigned') and the accused 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 also includes both 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.

Glossary of terms

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

superior courts. trial (stand trial/ verdict guilty/not guilty/acquittal/ sentence) Superior courts means the District Court and the Supreme Court. This is the name of the hearing where all the evidence which supports the charge against the accused and the evidence advanced by the accused by way of defence is heard by the judge and jury or conviction/discharge/ magistrate. Subsequently, having regard to that evidence only, the- jury or magistrate, decides whether the accused is guilty or not guilty.

If it is determined that the charge is proved beyond reasonable doubt, the magistrate or the jury finds the accused guilty. This is called a verdict of guilty. In the case of a trial by judge and jury, if the court is satisfied that the jury has reached its verdict after proper deliberation and that it is lawful to do so, it will accept the verdict and formally convict the accused and then sentence the accused. In the case of a trial before a magistrate, the magistrate will have considered the same issues as the jury before he or she reaches a guilty verdict and will then proceed to sentence the accused.

If it is determined that the charge has not been proved then the magistrate or the jury finds the accused not guilty. This is called a verdict of not guilty. The judge or magistrate will then record that the accused has been acquitted and the accused is then released or discharged.

use-derivative-use undertaking This is an undertaking given to a potential witness on the understanding that the evidence to be given by the particular witness will not be used against him/her in any criminal proceeding, nor will any evidence discovered as a result of the giving of such evidence be used against him/her (see also 'indemnity').

voir dire Voir dire is the term given to a 'trial within a trial which is conducted in the absence of the jury to enable the trial judge to determine matters of law.

Appendix 1 Director's guidelines

GUIDELINES TO REPLACE ALL PREVIOUS GUIDELINES (14 November 2003)

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.

Director's guidelines

1. Duty to be fair

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

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

2. Fairness to the community

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

3. Expedition

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

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

4. The decision to prosecute

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

It is a two tiered test:

(i) is there sufficient evidence?; and

(ii) does the public interest require a prosecution?

(i) Sufficient evidence

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

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

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

(a) the availability, competence and compellability of witnesses and their likely impression on the Court;

(b) any conflicting statements by a material witness;

(c) the admissibility of evidence, including any alleged confession;

(d) any lines of defence which are plainly open; and

(e) any other factors relevant to the merits of the Crown case.

(ii) Public interest criteria

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

Discretionary factors may include:

(a) the level of seriousness or triviality of the alleged offence, or whether or not it is of a 'technical' nature only;

(b) the existence of any mitigating or aggravating circumstances;

(c) the youth, age, physical or mental health or special infirmity of the alleged offender or a necessary witness;

(d) the alleged offender's antecedents and background, including culture and ability to understand the English language;

(e) the staleness of the alleged offence;

(f) the degree of culpability of the alleged offender in connection with the offence;

(g) whether or not the prosecution would be perceived as counter-productive to the interests of justice;

(h) the availability and efficacy of any alternatives to prosecution;

(i) the prevalence of the alleged offence and the need for deterrence, either personal or general;

(j) whether or not the alleged offence is of minimal public concern;

(k) any entitlement or liability of a victim or other person to criminal compensation, reparation or forfeiture if prosecution action is taken;

(l) the attitude of the victim of the alleged offence to a prosecution;

(m) the likely length and expense of a trial;

(n) whether or not the alleged offender is willing to co-operate in the investigation or prosecution of others, or the extent to which the alleged offender has done so;

(o) the likely outcome in the event of a conviction considering the sentencing options available to the Court;

(p) whether the alleged offender elected to be tried on indictment rather than be dealt with summarily;

(q) whether or not a sentence has already been imposed on the offender which adequately reflects the criminality of the episode;

(r) whether or not the alleged offender has already been sentenced for a series of other offences and what likelihood there is of an additional penalty, having regard to the totality principle;

(s) the necessity to maintain public confidence in the Parliament and the Courts; and

(t) the effect on public order and morale.

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

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

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

(iii) Impartiality

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

(a) race, religion, sex, national origin or political views;

(b) personal feelings of the prosecutor concerning the offender or the victim;

(c) possible political advantage or disadvantage to the government or any political group or party; or

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

5. The decision to prosecute particular cases

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

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

(i) Child offenders

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

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

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

(a) the seriousness of the alleged offence;

(b) the age, apparent maturity and mental capacity of the child (including the need, in the case of children under the age of 14, to prove that they knew that what they were doing was seriously wrong and was deserving of punishment);

(c) the available alternatives to prosecution, and their efficacy;

(d) the sentencing options available to Courts dealing with child offenders if the prosecution was successful;

(e) the child's family circumstances, particularly whether or not the parents appear able and prepared to exercise effective discipline and control over the child;

(f) the child's antecedents, including the circumstances of any previous caution or conference and whether or not a less formal resolution would be inappropriate;

(g) whether a prosecution would be harmful or inappropriate, considering the child's personality, family and other circumstances; and

(h) the interest of the victim.

(ii) Aged or infirm offenders

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

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

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

(iii) Peripheral defendants

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

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

(iv) Sexual offences

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

(v) Sexual offences by children

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

A child should not be prosecuted for:

(a) A sexual offence in which he or she is also the 'complainant', as in the case of unlawful carnal knowledge or indecent dealing. The underage target of such activity cannot be a party to it, no matter how willing he or she is: *R v Malony* [2000] QCA 355.

(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.

6. Capacity of child offenders between 10 and 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) Generally, there should only be one assessment undertaken. A second assessment must not be sought without the written consent of a Legal Practice Manager, the Director or the Deputy Director. Consent will only be given in exceptional circumstances.

(iv) A child witness is not an exhibit. The prosecution should not consent to a private assessment on behalf of the defence.

8. Affected child witnesses

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.

9. 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.

10. 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.

11. Ex-officio sentences

(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
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.

12. 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 that, pursuant to section 552H of the Code, the maximum penalty for indictable offences dealt with summarily is 3 years imprisonment.

Following 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: Section 75 Criminal Code	(a) Assault: Section 335 Code (3 years imprisonment) (b) Public Nuisance: Section 6 *Summary Offences Act 2005* (6 months imprisonment)
Going armed in public to cause fear: Section 69 Code	(a) Assault: Section 335 Code (b) Sections 50, 56, 57 and 58 Weapons Act (c) Possession of implements (to injure person/property): Section 15 Summary Offences Act (I year imprisonment)
Affray: Section 72 Code	Public Nuisance: Section 6 Summary Offences Act (6 months imprisonment)
Threats: Section 359 Code	Public Nuisance: Section 6 Summary Offences Act (6 months imprisonment)
Stalking (simpliciter only): Section 359A Code	Section 85ZE *Crimes Act 1914* (Commonwealth) Improper use of telecommunications device (1 year imprisonment)
Indecent acts: Section 227 Code	Wilful exposure: Section 9 Summary Offences Act (1 year imprisonment)
Dangerous operation (simpliciter only): section 328A Code	Section 83 Traffic Operations Road Management Act (driving without due care and attention)
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 and 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)
Possession of things used in connection with unlawful entry: Section 425 Code	Possession of implements: Section 15 Summary Offences Act (I year imprisonment) Trespass: Section 11 Summary Offences Act (1 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

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. There is no 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 where the maximum penalty is 3 years imprisonment. 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.

Amended the seventh day of April, 2005.

13. 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.

14. 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.

15. 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.

16. 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?

17. 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) Once a determination has been made to discontinue a prosecution, the decision will not be reversed unless:

- significant fresh evidence has been produced that was not previously available for consideration or the decision was obtained by fraud; and
- in all the circumstances, it is in the interests of justice that the matter be reviewed.

18. 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.

19. 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 22).

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.

20. 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.

21. 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.

22. Victims

This guideline applies to a victim as defined in section 5 of the *Criminal Offence Victims Act 1995* (COVA). This is a person who has suffered harm either:

(a) as a direct result of an unlawful act of violence; or

(b) as an immediate family member, or dependant, of the direct victim.

An unlawful act of violence includes sexual offences, stalking and breaches of domestic violence laws.

(i) General guidelines for dealing with victims

The ODPP has the following obligations to victims:

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

(b) To treat a victim in a way that is responsive to his or her age, gender, ethnic, cultural and linguistic background or disability or other special need;

(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. 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. 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 12 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) 11 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;
- how to apply for compensation for injury, loss or damage. If it would assist, the victim should be advised of the existence of the Legal Aid Compensation Unit as well was of the following provisions: COVA—part 3 relating to the scheme for compensation for injury, death and expenses relating to indictable offences; *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:
- the indictment charges and the details of the place and date of the hearing of the charges;
- the reasons for any decision not to proceed with the charge or to substantially amend the charge or to accept a plea to a substantially lesser charge;
- the details of any bail conditions and any application for variation of any condition that may affect the victim's safety or welfare;
- the outcome of any proceedings, including appeal;
- whether the defendant has absconded before trial or sentence; and
- the nature of any sentence imposed on the offender.

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 43(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 14 of COVA, 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 43).

(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 17 and 18).
- 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.

23 Advice to police

(i) Appropriate references

Police may request advice about the sufficiency of evidence or the appropriateness of charging only when:

(a) the Deputy Commissioner considers that the evidence is sufficient and a charge is appropriate, but the evidence, circumstances or legal issues are such that there is a reasonable prospect that the ODPP may take a different view or exercise a discretion not to prosecute; or

(b) the Deputy Commissioner makes an arrangement with the Deputy Director that is within the spirit of these guidelines.

(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) Credibility issues

Where the main issue is the credibility of the complainant or another main witness, the papers are to include an assessment of the credibility of that person. Generally the ODPP will not interview witnesses for the purpose of giving advice as to the sufficiency of evidence or the appropriateness of charges.

(iv) Nature of ODPP advice

Whether police follow the advice as to the sufficiency of evidence or the appropriateness of charges is a matter for them. It is also a matter for police whether they wish to inform any person of the terms of the advice given to them by the ODPP. The DPP generally will not disclose to persons outside the ODPP that police have sought advice and will not disclose in any case the terms of any advice provided.

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.

(v) Source of advice

Advice on the following issues must be finalised by the Directorate:

(a) homicide or dangerous driving causing death;

(b) the Director's consent where it is required for the commencement of proceedings (eg. maintaining an unlawful sexual relationship, secret commissions);

(c) the commencement of a prosecution where the Attorney-General's consent is required (eg. conspiracy, extortion with a circumstance of aggravation);

(d) sensitive matters including allegations of serious misconduct by any public official or the prosecution of a police officer;

(e) proposed international extradition; and

(f) proposed immunity from prosecution.

All other cases may be referred to and finalised by a Legal Practice Manager or Principal Crown Prosecutor.

24. 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.

25. 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.

26. 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.

(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 36).

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.

Amended the sixteenth day of May 2005.

27. Teacher Registration Board and Commission for Children and Young People

The *Education (Teacher Registration) Act 1988* imposes a duty upon prosecuting agencies to advise the Teacher Registration Board 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 137 of the *Commission for Children and Young People Act 2000* imposes a similar duty where the person charged is a member of the Commission's staff.

- 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.

Notice must be sent within 7 days of the specific prosecution event:

EVENT (re: Indictable Offence)	NOTICE
Committed for trial	Form 1 Notice required under section 44B(2)
Convicted or acquitted	Form 2 Notice required under section 44B(3) or (4)
Mis-trial, nolle prosequi, no true bill	Form 3 Notice required under section 44B(4)
Successful appeal (against conviction or sentence)	Form 4 Advice to Board of Teacher Registration or Commission

28. 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.

29. 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.

30. 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.

31. 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.

32. 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. This 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, to obtain other evidence), but may also be an indemnity (complete protection for nominated offences). Protection in either form will be dependent upon the witness giving truthful evidence. Any application to the Attorney-General should be through the Director or Deputy Director. It is a last resort only to be pursued when the interests of justice require it.

It can only be considered in respect of completed criminal conduct. It does not operate to cover future conduct.

The witness's statement must exist in some form before an application for an undertaking is made.

The application should summarise:

(i) the witness's attitude to testifying without immunity;

(ii) the existing prosecution case against the accused (without immunity for the witness);

(iii) the evidence which the witness is capable of giving (including the significance of that evidence and independent support for its reliability);

(iv) the involvement and culpability of the proposed witness; and

(v) 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 (what is the quality of the evidence admissible against the witness, and what is the likely sentence).

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. Interpreters

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

39. 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.

40. Argument

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

41. 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.

42. 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.

43. 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 as soon as possible after a plea of guilty has been indicated.

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 ACrimR 125 at 132; *Morgan* (1993) 70 ACrimR 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 COVA 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.

44. 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.

45. 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 Families. 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 Families 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.

46. 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.

47. 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.

48. 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
- *Vagrants Gaming and Other Offences Act 1931*
- *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.

49. 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.

50. 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.

Without a specific order, Court staff must retain all exhibits.

(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.

51. 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 44).

(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.

52. 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.

53. 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.

54. 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.

55. 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 Freedom of 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 Freedom of 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.

56. 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.

57. 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 COVA 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.

Dated this eighteenth day of November 2003.

L J CLARE
DIRECTOR OF PUBLIC PROSECUTIONS

GUIDELINE AMENDED ON 16 May, 2005

Appendix 2 Budget and expenditure

Budget category	Adjusted annual budget for the year 1 July 2004 to 30 June 2005	Actual expenditure financial year engind 30 June 2005
Base expenditure	$25 677 066.76	$26 415 267.75
Departmental allocations	$241 000.00	$241 000.00
Treasury special allocations (Civil confiscations area)	$514 000.00	$524 000.00
Total	$26 432 066.76	$27 180 267.75

Appendix 3 Staffing levels/establishment

The following table shows the staffing level of the Office of the Director of Public Prosecutions as at 30 June 2005.

Table 9: Staffing level

Director	1
Deputy Director	1
Executive Director	1
Crown Prosecutors (including practice managers	49.8
Legal Officers	73.4
Legal Support	90.8
Administration	45.6
Victim Liaison Service	16
Total	**278.6**