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**REVIEW OF ISSUES ASSOCIATED WITH THE  
RECRUITMENT AND RETENTION  
OF PROSECUTORS IN THE  
QUEENSLAND ODP**

The following report outlines the issues faced by the ODPP in the attraction and retention of suitably skilled and experienced prosecutors to deliver a high level of prosecution service to Queensland.

The report is in response to a request from the Attorney – General made in January 2008.

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## **Executive Summary**

### **Context of the Review**

The ODPP has for a considerable time experienced difficulty in attracting and retaining suitably experienced and skilled staff to fill prosecutor positions at all levels. The majority of current Prosecutors have commenced in the ODPP as Law Clerks and progressed quickly through the ranks of Legal Officer to that of Crown Prosecutor. Although junior Prosecutors are energetic and dedicated lawyers, they lack the skill and experience required for the role of a Prosecutor. Unfortunately as the ODPP receives little interest from external sources it is necessary to appoint very junior and inexperienced lawyers to fill vacant Prosecutor roles in order to meet an ever increasing demand on prosecution services.

The ODPP Directorate is concerned that the appointments of inexperienced lawyers is eroding the professional base of the Practice and heightening the risk for miscarriage of justice issues. It is compromising the Practice's ability to deliver the best possible prosecution service to the community of Queensland.

This issue was highlighted to the Attorney-General in December 2007 and in January 2008 the ODPP was commissioned to review the current recruitment problem and report back to the Attorney on suitable methods to address the issue. This report is the outcome of that review. The major issues and findings of the review are;

### **Factors contributing to difficulty in attracting suitably qualified Prosecutors**

The review found that there are a number of key issues that adversely impact on the ODPP's ability to attract and retain suitably qualified Prosecutors. These factors include workload, remuneration, lack of judicial appointments, limited career progression and working in the eye of the media and the public.

### **Workload**

The Queensland ODPP receives more matters committed to trial than any other state or territory in Australia. The reason for this is mainly due to the committal process and restricted jurisdiction of the Magistrate's Court in Queensland rather than any perceived higher level of criminal activity in the State.

The Queensland ODPP only has 67 Prosecutors to manage this high number of matters which is relatively low in comparison to other state and territories. On average a Queensland Prosecutor must deal with 79 matters each per year as apposed to the national average of only 27. The Queensland ODPP receives funding that equates to approximately \$5,500 per matter compared to a national average of \$16,000.

This high level of workload prohibits prosecutors and legal officers from dedicating adequate time to the preparation of matters that can lead to rushed and ill prepared decision making.

### **Remuneration**

Queensland Prosecutors are remunerated at one of the lowest levels in Australia. Only Tasmania offers marginally lower salary levels. With a shortage of skilled Prosecutors in Australia, Queensland has little ability to attract and retain the level of staff skills required to deliver a competent and respected prosecution service.

### **Judicial Appointments**

Interstate ODPP are viewed as a natural source for candidates for judicial and magistracy appointments. That appears not to be the case in Queensland. Since the establishment of the Queensland ODPP in 1985 only two serving Prosecutors have been elevated to this level.

### **Limited Career Progression**

Unlike other public service agencies, the ODPP is a very youthful organization. This is reflected in the young age and limited experience of many of the junior prosecutors. The most senior and experienced Prosecutors have an average age of only 45 years. This leads to a situation where promotional prospects are relatively stagnant as senior staff are unlikely to move on through age related retirement for a considerable time period to come. Coupled with lower than market salary levels it is likely that as junior lawyers gain experience and training funded by the ODPP they will see little choice than to seek career opportunities outside the Queensland ODPP.

### **Risks**

A number of risks facing Government including risks to regional Queensland and risks to children have been identified if the current situation in the ODPP is not addressed.

### **Recommendations**

Twelve (12) main recommendations are made to address the current issues. A list outlining those recommendations is contained in the following pages.

## **Recommendations**

### ***Recommendation 1a***

*That the Department of Justice and Attorney – General:*

- a) Commissions a review of the committals process in the Queensland courts with a view to eliminating the committal process and*
- b) Considers increasing the jurisdiction of the Magistrate's Court to enables the Court to deal with less serious offences summarily.*

### ***Recommendation 1b***

*That consideration be given to expanding the role of the ODPP in the committals process statewide with appropriate resourcing being provided.*

### ***Recommendation 2***

*That the ODPP establish and recruit 49 Crown Prosecutors to redefined positions to deal with serious and high profile offence matters.*

### ***Recommendation 3***

*That the ODPP establish and recruit 42 Crown Advocates to positions to deal with less serious offence matters.*

### ***Recommendation 4***

*That the ODPP introduce a "CAR" matter classification system to allocate appropriate matters to Crown Advocates and Crown Prosecutors.*

### ***Recommendation 5***

*That the ODPP introduce a number of Registrar positions to deal with corporate service issues in legal chambers allowing senior legal staff to concentrate on legal matters.*

### ***Recommendation 6***

*That funding be provided to increase the number of legal and corporate services support staff to support an increased number of Prosecutorial staff.*

*Recommendation 7*

*That all Crown Prosecutors in the ODPP be engaged under s70 contracts utilising specifically designed remuneration bands.*

*Recommendation 8*

*That two (2) Deputy Director positions be established, one in Brisbane and one in Far North Queensland remunerated at a Band 5 Crown Prosecutor level.*

*Recommendation 9*

*That Crown Advocates positions be remunerated at Public Service Levels between PO5 and SO1 dependent on skill and competency.*

*Recommendation 10*

*That the ODPP be funded to introduce a regional incentive scheme to attract and retain experienced Crown Prosecutors and Crown Advocates to regional chambers.*

*Recommendation 11*

- a) That Crown Prosecutors and Crown Advocates be considered highly suitable to act in Judicial and Magistracy position when temporary vacancies occur.*
- b) That Crown Prosecutors and Crown Advocates be considered highly suitable and competitive for permanent Judicial and Magistracy appointment.*

*Recommendation 12*

*That the ODPP adopt and is funded for progressional promotional scheme for legal staff based on skills and expertise rather than vacancies.*



## Background

### *Role of the Office of the Director of Public Prosecutions (ODPP)*

The ODPP's vision is to *"create a high performing prosecution service through effective performance of prosecution functions; excellence in service delivery; a contemporary approach to emerging criminal justice and organisational issues and responsiveness"*.

The Office of the Director of Public Prosecutions (ODPP) plays a uniquely important role in the criminal justice system. The ODPP represents the community in the conduct of prosecutions of criminal matters in the superior courts throughout Queensland.

The ODPP appears in the High Court of Australia, Court of Appeal, District and Supreme Courts, Children's Court, Mental Health Court, Mental Health Review Tribunal, District Court Appeals as well as prosecuting committals in Brisbane Magistrates Court, Ipswich and specific categories of matters in Southport. The ODPP also provides information to victims of crime to assist them in their dealings with the criminal justice system.

### *Chambers Structure*

The ODPP legal practice implemented a Chambers' organisational model in 2003. A pilot group, Wakefield Chambers, was established and for the first time Prosecutors, Legal Officers and Legal Support Officers were co-located in a single Chambers. The aim of the Chambers model was to streamline the prosecution process, increase communication and professional development of prosecution and legal staff.

The Practice currently consists of 15 prosecution Chambers and the Confiscations Unit. Seven of the prosecution chambers are located in the State Law Building, Brisbane. The 4 general prosecution Chambers are Wakefield, Sheehy, Sturgess and Haxton. Specialist Chambers are Griffith (major crime), Given (appeals, Children's Court and ex-officio) and the newly established Mental Health Chambers. The Confiscations Unit is a separate non prosecution legal chambers that deals with the confiscations of proceeds of crime.

In addition, the Practice has 8 regional Chambers located in Southport, Beenleigh, Ipswich, Toowoomba, Maroochydore, Rockhampton, Townsville and Cairns. The Practice has recently established a permanent presence in Mackay with an office comprising of a single Prosecutor, Legal Officer and Law Support Officer. Due to the Practice's heavy circuit responsibilities there, the Mackay sub office was opened but as an annexe of the Townsville Chambers.

A senior and experienced Prosecutor leads each Chambers. Those Chambers that service a Supreme Court are lead by a Consultant Crown Prosecutor who is employed under a s70 contract with a remuneration level equivalent to SES2H whose role it is to undertake the most complex cases within the Chambers and provide expert advice and legal

interpretation to more junior prosecutors as well as advice to the Director and Attorney-General.

Below the Consultant Crown Prosecutor is a Principal Crown Prosecutor at the S01 level. The remaining Prosecutors are remunerated at the P06 and P05 level. The Principal Crown Prosecutor (together with the Consultant Crown Prosecutor) is responsible for the management, mentoring, supervision and professional development of the Prosecutors in the Chambers.

Each Chambers also has a Practice Manager at the P05 level. The Practice Manager is the senior legal officer (solicitor) of the Chambers. The Practice Manager's responsibility is to manage the Legal Officers (PO4 / PO3), Victim Liaison Officers (AO3), Legal Support Supervisors (AO3) and Legal Support Officers (AO2) within the Chambers. Together with the Consultant and Principal Crown Prosecutor, the Practice Manager allocates resources within Chambers and supervises, manages, professionally develops the work of junior legal staff.

*(see Attachment 1 for Chambers structure).*

### ***Recent Changes***

Over the past 12 months the Practice has made significant structural changes to enhance its delivery of ever increasing prosecution responsibilities. The changes implemented were aimed at:

- further reinforcing the Chambers' model;
- enhancing leadership and management capability;
- providing career opportunities for skilled staff;
- nurturing all staff by implementing a performance and development framework;
- implementing work practice efficiencies to eliminate waste; and
- ensuring staff were accountable for their actions.

A number of additional senior Prosecutor positions were allocated to regional and Brisbane-based Chambers and have added to the depth of experience within the Practice. Staff at this senior level not only have carriage of complex trials but importantly, act as a mentor and a ready source of expert advice for junior staff.

The structural changes, especially the implementation of more senior positions across the Practice, have been enough to retain a number of experienced staff at the Crown Prosecutor level who might otherwise have resigned because of lack of promotional opportunities. Prior to the introduction of these initiatives the ODPP experienced a high turnover in staff across most levels of positions.

As mentioned above, higher level Prosecutor positions undertake more complex and serious matters. In the past some of those matters were reluctantly briefed to external

barristers because of limited resources at the higher level. The level of experience at the private bar prepared to accept prosecution briefs is also limited and the quality of prosecutions conducted by private barristers can be unsatisfactory. The recent internal promotions have lead to an improved service in prosecutions as they are undertaken in house and a drastic reduction to the costs associated with brief-out counsel.

The salary costs associated with higher level and additional positions were met within the Practice's budget through internal efficiencies that included the following strategies:

- reducing the use of brief out counsel (mentioned above)
- greatly reduced use of 'Agency' staff (at the time of writing, the Practice does not employ any agency staff)
- an internal transcription service that has realised enormous cost savings and more timely Record of Interview transcripts
- scrutinising costs associated with staff circuiting to regional courts
- scrutinising costs and processes associated with the transfer and relocation of staff within the Practice to ensure consistency and that waste is eliminated

### **Initiatives implemented by the ODPP**

Up until late 2006, the ODPP had been experiencing a high staff turnover due to insufficient staff numbers to cope with high workloads; little career advancement opportunities; and limited tenure. In early 2007, the ODPP sought to address these issues by further refining the successful Chambers model within Brisbane and regional Chambers by consolidating the structure through a more consistent allocation of positions. Internal efficiencies and other initiatives enabled the Practice to increase the number of Prosecutors and to introduce a level of S01 Principal Crown Prosecutor positions together with an increase to the number of Consultant Crown Prosecutor positions.

The Practice also sought to improve the culture within the Practice by standardising the numbers of staff within each of the Chambers taking into account variations in workload, work practices and procedures. Each Chambers now provides individuals with consistent goals, training opportunities and career progression opportunities. Emphasis has been placed on standardisation of practice, including adherence to the Director's Guidelines. Communication within the Practice has been dramatically improved through the recent introduction of the video conferencing system utilised on, at least, a weekly basis by Practice Managers and other senior staff for the weekly Practice Managers meeting.

These initiatives have had a major positive impact on morale within the ODPP Practice. In comparison to previous years staff turnover has reduced. Staff actively acknowledge that the Practice management is striving to provide an improved quality of work life and career structure within the limitation of available resources.

The prosecution work that has resulted from additional judicial appointments has been absorbed by the Practice without an additional injection of funding or positions. In the past, a "Judges formula" meant that for every additional Judge, the Practice was automatically allocated an additional Prosecutor, Legal Officer and Legal Support Officer.

Since 2004, 3 additional District Court Judges and 1 additional Court of Appeal Judge have been appointed without any additional resources to the ODPP. The last substantial injection of funding to the Practice was as a result of the Butler Review specifically to establish the Mental Health Chambers. The Mental Health Chambers considers matters for presentation to the Mental Health Court and Mental Health Review Tribunal. This is a specialised area of criminal law within the Practice and 19 positions were funded, including 2 Consultant Crown Prosecutor positions.

### **Current Problem in attracting and retaining suitable staff**

The ODPP experiences difficulty in attracting and retaining suitably experienced and skilled staff to fill prosecutor positions at all levels. When positions are advertised, very few applicants are from outside of the ODPP. Natural candidate pools should include the private bar or interstate jurisdictions but these areas provide very few if any applicants. Those applicants that are received externally to the ODPP generally have very little appropriate experience and skills and are generally deemed unsuitable for appointment. This has led to a situation where positions that have been widely advertised have been filled by internal applicants who may lack the appropriate skills and experience. Such applicants may only just meet the minimum requirements of the position and be appointed, as the alternative is to appoint no one to the position at all. This is never a viable option as it would leave the Practice with insufficient prosecutor resources to meet trial preparations and Court demands.

At the most senior level, recent experience has shown that the offer of salary in both regional and Brisbane chambers under a s70 contract, equivalent to SES 2 high (\$133,965) is insufficient to attract suitable external candidates. Recent examples include the advertising of two Consultant Crown Prosecutor positions, one in Townsville and one in Southport. A number of internal applications were received from staff recently promoted from P06 level to S01 level. A small number of external applicants from the private bar were also received. The experience level of these external applicants however was even less than internal applicants. The selection panel considered that none of the applicants, internal or external were suitably qualified or experienced for such a high level position and to date the positions remain unfilled.

The Practice also took the opportunity to recently advertise nationally in a special "Legal Affairs" issue of the Australian Financial Review on 29 February 2008. The advertisement called for applicants to work as a "lead prosecutor with criminal law experience" in Townsville Chambers. No enquiries were received for further information

regarding the position and only two applications were received from internal staff members who had previously applied for the position but whose competency was assessed by the panel as not yet at the "expert" level.

At the most junior level of P05 Crown Prosecutor, the Directorate is concerned with the level of post admission experience and skills of some staff currently acting in positions. When P05 level Prosecutor positions were advertised in Townsville and Rockhampton, there were no applications received from external candidates. Applications for prosecutor positions are usually received from staff internal to the ODPP who are themselves inexperienced lawyers and have joined the Practice as an A02 Legal Support Officer prior to admittance as a lawyer. Upon admittance, minimal time is spent as a Legal Officer. Due to a requirement to fill Prosecutor positions to manage the large number of matters received for trial, these officers have been appointed to Crown Prosecutor positions before they have acquired an appropriate depth of legal knowledge and without adequate exposure to forensic issues. In Court the conduct of trials requires Crown Prosecutors to act alone without direct supervision.

The Directorate is concerned that the recent premature appointments of inexperienced lawyers is eroding the professional base of the Practice and heightening the risk for miscarriage of justice issues. It is compromising the Practice's ability to deliver the best possible prosecution service to the community of Queensland.

### **Factors Contributing to Difficulty in Attracting Suitably Qualified Prosecutors**

A number of key issues have been found to adversely impact on the ODPP's ability to attract and retain suitably qualified Prosecutors. These factors include workload, remuneration, lack of judicial appointments, limited career progression and working in the eye of the media and the public.

#### ***Workload***

The ODPP is a midstream agency within the criminal justice system with no direct control over the number of matters it receives from investigative agencies such as the Queensland Police and Crime and Misconduct Commission and has no control over the number of Judge weeks listed for Criminal trials. The Practice also no control over the location or timing of trials across the State.

During the 2006/07 financial year, the ODPP prepared 10,245 matters. This comprised committals in the Brisbane, Ipswich and Southport Magistrates Courts and Trials, Sentences and Ex-Officio matters in the Superior Courts. In addition to this the ODPP undertook matters for the Mental Health Court, Mental Health Review Tribunal, Appeals Courts and Confiscations.

The following table provides a breakdown of the type and number of matters received during 2006/07 and the relevant percentage of the total.

*Table 1 Type and number of matters received during 2006/07*

Type of Matter	Number	%
Committals	2,275	22
Trial	5,280	52
Sentence	1,594	16
Ex-officio <sup>1</sup>	1,096	10
Total	10,245	100

The majority of committals are conducted by legal officers within the Brisbane, Ipswich and Southport Chambers. Prosecutors undertake committals for complex and high profile matters and provide advice to legal officers when necessary. Prosecutors undertake the majority of sentences but occasionally, particularly in regional Chambers, legal officers conduct sentences because prosecutors are unavailable due to trial commitments. The small pool of prosecutors available in regional Chambers means a greater reliance falls on legal officers in those areas both in terms of numbers and seriousness of offences. Ex-Officio matters are prepared by legal officers with the sentence normally being conducted by prosecutors.

The ODPP currently employs 67 Crown Prosecutors (including the Director, Deputy Director and 10 Consultant Crown Prosecutors) who, in addition to sentences, finalised the 5,280 matters received for trial, during 2006/07. Australian Bureau of Statistics (ABS) figures for 2006/07 indicated that 5,841 defendants were involved in these proceedings (full report contained at attachment 2). Each of these matters must be considered by a prosecutor to determine whether there is sufficient evidence to proceed to trial or not, to settle the charges and respond to submissions. A small proportion of the trials may be discontinued and many eventuate in a plea however, each matter must be considered by a prosecutor and processed before this outcome can arise.

Only a Crown Prosecutor can sign an indictment therefore an additional substantial proportion of a prosecutor's time is spent instructing, reviewing and ultimately determining the appropriate course of action for a prosecution. It is difficult to quantify exactly how long this process would take for an individual prosecution as a prosecutor must advise on evidentiary requirements, review the brief, negotiate with defence and develop the forensic approach for the prosecution. All of these actions must be undertaken on every file whether or not it results in a trial or plea. The following table

<sup>1</sup> Ex-Officio matters are matters where defence has indicated the accused is willing to plead guilty to an offence and proceed directly to sentence bypassing a committal process.

provides a breakdown of the outcome for matters received during 2006/07 for trial preparation.

*Table 2 Outcome of matters 2006/07*

Type of Matter	Number 2006/07 -- Matters per outcome	% of Total
<b>Trials</b>	801	15
<b>Pleas</b>	4387	83
<b>Discontinued Matters</b>	92	1.7
<b>Total</b>	<b>5280</b>	<b>100</b>

On average, each prosecutor within the Practice dealt with 79 matters during 2006/07 (this figure does not include sentencing and indictment preparation). A significant proportion of these matters resulted in lengthy trials in the superior courts. The following table compares the workload of Queensland prosecutors to the workloads of prosecutors in other States and Territories of Australia. Figures for Queensland are extraordinarily high if regarded from a purely mathematical perspective.

**Table 3 State and Territory comparison of Prosecutor workload 2006/07**

State / Territory	Matters rec'd for Trial	Defendants Finalised <sup>2</sup>	Number of Prosecutors	Matters per Prosecutor	Annual Budget \$ Million	Funding Per Matter \$
Queensland	5280	5841	67	79	28.954	5,483
New South Wales	3327	3141	117	28	94.650	28,449
Victoria	2944	2346	24	31*	40.128	13,630
Western Australia	1650	2582	85	19	26.248	15,907
South Australia	1140	1235	11	35*	13.75	12,061
Tasmania	501	553	18	28	3.24	6,484
Northern Territory	328	346	17	19	7.7	23,475
			National Average	27**		

\* Both Victoria and South Australia DPPs outsource a considerable amount of work to Private Counsel. Figures quoted are benchmarks by each respective DPP practice.

\*\* This figure excludes Queensland Data.

### Committals

As can be seen from the table above, the Queensland ODPP receives the highest number of matters for trial compared to all other State and Territories of Australia, but the least amount of funding per matter. This number of matters may not be a direct reflection of the level of criminal activity in the State or the effectiveness of law enforcement

<sup>2</sup> Data from Australian Bureau of Statistics, Criminal Courts, 4513.0, 2006-07



agencies. The high level of matters committed for trial may be a reflection of the current committal processes in Queensland.

A number of offences that are committed to trial in Queensland are dealt with more efficiently through Magistrates Courts in some other States. They are not committed to trial in the Superior Courts. The Magistrate's Courts in these States have a much broader jurisdiction that enables them to deal with more serious offences summarily. In these states the Magistrate's Court is the final court of disposition for offences that in Queensland are first subject to preliminary proceedings in a Magistrate's Court to commit them to trial in a Superior Court.

New South Wales, for example, with a higher population than Queensland, has fewer matters committed to trial. The NSW DPP utilises Trial Advocates to conduct all committals for indictable offences and to filter out matters in the first instance that due to insufficient evidence, should not proceed to trial. They also identify matters that can be appropriately dealt within the Magistrate's Courts on a summary charge without the necessity of being committed to a superior court.

The Trial Advocates are experienced lawyers who specialise in committals and the prosecution of matters in the Magistrates Courts. Earlier intervention by the interstate DPPs at Magistrate's Court level is considered to be more efficient and a far more effective use of DPP and Court resources.

### **Committals Process in Queensland**

At present, the ODPP has responsibility only for committals at the Central Brisbane Magistrate's Court, Ipswich and Southport (for sexual offences and violence against women and children). The majority of other committals throughout the State are conducted by the Queensland Police Prosecution Service. On occasion the QPS requests the ODPP to conduct other committals on their behalf when the matter is considered to require the expertise of a Crown Prosecutor.

The Queensland process results in the majority of matters presented in the Magistrate's Court for indictable offences being committed to trial in the Higher Courts. Of these, a significant proportion proceed by way of "full hand up" ie without any witness being cross examined and without the Magistrate being asked to examine the strength of the Crown case. Once these matters are received by the ODPP and reviewed by a prosecutor, a proportion (1.7%) are found to contain insufficient evidence to proceed to trial and are subsequently discontinued. A further 83% result in pleas of guilty and proceed to sentence. The remaining 15.3% proceed to trial.<sup>3</sup>

The NSW DPP has fewer matters referred to them for trial but a similar proportion (18.8%) actually proceed to jury trial.

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<sup>3</sup> Refer to Table 4.

Table 4 below outlines the management of matters referred to the Queensland and NSW DPPs during 2006-07. NSW was chosen for comparison as it has the closest number of matters referred to the DPP for trial to that of Queensland.

*Table 4 Management of Matters Qld and NSW*

State	No Matters Referred for Trial	No of Trial conducted	Pleas	Discontinued
Qld	5280	801 (15.3%)	4387 (83%)	92 (1.7%)
NSW	3327	630 (18.8%)	2519 (76%)	178 (5.2%)

#### **Increase in Judge Weeks**

Since 2005 there has been a steady increase in the number of court weeks allocated to crime in the District Court, Supreme Court, Court of Appeal, High Court and Mental Health Court. Overall an additional 55 court weeks have been allocated bringing the total to 1205 Court Weeks during 2007. This is a 6.2% increase in workload for prosecutors over this period. The increase in court weeks has been made possible through the decline in the number of civil trials and the appointment of 3 additional District Court Judges and one additional Court of Appeal Judge. No additional funding was provided to the ODPP to service the appointment of these new judges.

The impact is exacerbated by the tendency of the courts to call on criminal matters to fill gaps in civil sittings. This usually means that serious prosecutions are brought forward with little notice at a time when the allocated prosecutor may be unavailable. A new prosecutor must then prepare the matter at short notice resulting in double handling of some matters.

*Table 5 Court Week 2008*

	2005	2006	2007
High Court & Court of Appeal	30	30	33
Mental Health Court	13	12	12
Supreme Court	195	204	207
District Court	894	898	930
Children's Court of QLD	18	18	23
<i>Totals</i>	<b>1150</b>	<b>1162</b>	<b>1205</b>

### **Administrative Burden**

Within each Chambers the management team comprises of the most senior prosecutor, a practice manager (lawyer) and the legal support supervisor who work together to manage the delivery of prosecution services for that Chambers. The average number of staff in a chambers is 22.

The practice manager's role in particular has a considerable administrative and corporate services element. This level of administrative work is measured at approximately 60% of the role and therefore the time allocated to legal work is greatly reduced.

The practice managers are highly experienced lawyers who are attracted to the role (PO5 level) because of the lack of high-level legal officer positions within the Practice. As a rule lawyers do not possess administrative and corporate services training or experience but are required to undertake corporate services responsibilities for their Chambers with support from corporate service managers in Brisbane. The activities are considered vital to the effective running of each Chambers but it is recognised that it is not the most efficient use of limited legal resources.

For a considerable time, the ODPP has contemplated the introduction of a 'Registrar' position within Chambers but has had insufficient financial resources to implement such a position as it would have been at the expense of legal resources.

### **Remuneration**

A major contributing factor to the Queensland ODPP's inability to attract and retain highly skilled and experienced prosecutors is the salary levels that are offered. Queensland prosecutors are remunerated at one of the lowest levels in Australia. Only Tasmania pays marginally lower than Queensland. There is a shortage of skilled

prosecutors across Australia and Queensland must compete with other states and territories for applicants from this limited pool.

Not only does the Queensland ODPP pay one of the lowest salary levels in the country, the level of work allocated to prosecutors and legal officers far exceeds that which is allocated to comparable positions interstate.

The table below sets out a comparison of salaries paid to prosecutors throughout Australia.

*Table 6 Prosecutor Salary Comparison (salary component only)*

QLD Position	QLD Class Level	TAS	QLD	NT	SA	WA	NSW
SES2 Consultant	SES2	\$108,950	\$133,965	\$162,254	\$215,000	\$254,375	\$262,945
Principal Prosecutor	S01	\$96,137	\$110,120	\$118,586	\$166,000	\$212,461	\$229,125
Senior Prosecutor	P06	\$89,710	\$86,441	\$91,448	N/A	\$171,346	\$210,600
Prosecutor	P05	\$75,860	\$78,020	\$85,602	\$120,798	\$162,847	N/A
Legal Officer	P04	\$51,055	\$69,246	\$78,461	\$91,097	\$96,713	\$101,849
Legal Officer	P03	\$45,624	\$59,564	N/A	\$75,912	\$88,130	\$92,589

Recent examples of the disparity in salaries include:

- a. The Practice recruited a staff member from the NSW ODPP into a PO5 Crown Prosecutor position. The officer had criminal law experience but this did not include trial experience. In NSW the officer was employed as legal officer on a salary of in excess of \$100,000 p.a but commenced as a QLD prosecutor, PO5 level at \$79,000 p.a.. This officer accepted a drop in pay to come to Queensland to gain trial experience. It would have been a number of years before she would have been considered suitable to undertake similar level work in NSW.
- b. Another example includes a prosecutor who has recently been recruited from the Crown Prosecutor Service (CPS) in England. The role of a Crown Prosecutor in the CPS is comparable to a Legal Officer/Police Prosecutor in Queensland in that they only appear in the Magistrate's Court for committals or summary offences and prepare briefs and indictments for brief out Counsel. This officer had no trial experience and will be closely supervised by a senior prosecutor.

- c. The ODPP did attract an experienced and skilled prosecutor from the Sydney office of the Commonwealth DPP in September 2007. This officer was employed with the Commonwealth DPP at the SES level. The officer was employed in Queensland as a Principal Crown Prosecutor at SO1 level (\$110,120). At interview, his experience was assessed as being equivalent to that of a Queensland prosecutor at the PO6 level. At the time he was prepared to take a salary reduction in order to relocate to the Sunshine Coast. Unfortunately, this officer was headhunted back to the Commonwealth DPP within 6 months of joining the Queensland ODPP with a position at Commonwealth SES 3 level. The level of work responsibilities of his new position is equivalent to the SO1 role he left in Queensland. At his exit interview he stated that the only reason he was leaving was financial because the salary on offer in the Queensland ODPP for similar work was *“not even in the ball park of those offered in the Commonwealth”*.

These examples illustrate that although the ODPP can sometimes attract staff from other jurisdictions they are generally junior and view the Queensland ODPP as a “training ground” for their future careers elsewhere at higher salaries.

### *Lack of Judicial Appointments*

A further contributing factor in Queensland is the lack of appointments from the Queensland ODPP to the judiciary or magistracy. Since the inception of the ODPP in 1985, only one serving prosecutor has been elevated to the bench (Kerry O'Brien JDC in 1989 who was appointed as a District Court Judge). There has also been only one serving prosecutor appointed as a magistrate, Mr Peter Smid who was appointed in 2007.

This portrays to prospective ODPP applicants that a career as a Crown Prosecutor in Queensland is likely to exclude judicial appointment. This is not the case in other states and territories.

As can be seen from the following table, interstate prosecutors are viewed as a natural source for judicial appointments.

**Table 7 Serving Prosecutors elevated to the bench since 2004 –  
State Comparison**

State	Judges	Magistrates	Total
New South Wales	7	8*	15
Western Australia	3	3	6
South Australia	8	8	16
ACT	1	2	3
Northern Territory	-	4	4
Victoria	6	-	6
Queensland	-	1	1

\* In NSW normally Legal Officers are elevated to Magistrate positions as they are regarded as being below the level of Crown Prosecutors.

### ***Limited Career Progression***

Career progression for an individual prosecutor in the ODPP is limited by a number of factors including vacancy driven public service recruitment practices and the age profile of the Practice.

### **Vacancy Driven Public Service Recruitment Practices**

Under the current structure of the ODPP limited career progression is available for prosecutors. The ODPP employs prosecutors at the P05, P06, S01 and SES 2 equivalent level, however career progression is limited by the public service practice of vacancy driven recruitment. Even though staff improve their experience and skills, vacancies at higher level are required before staff can advance to higher positions. Recent staff promotions means that at the moment this is not such an issue but it will be problematic in the future unless the Practice adopts competency based progression within position types. Unlike other professions within the Queensland public sector, a criminal law prosecutor can only be employed by the ODPP. A professional Manager or Engineer for example, has options to progress their career by moving across a number of departments within the public service.

### Age Profile of Practice

Unlike other areas of the public sector who are developing strategies to address an ageing workforce, the ODPP is a "youthful" Practice. The ODPP does not foresee many age related retirements within the next 5-10 years. As a consequence, movement within the prosecutor ranks will be limited. ODPP prosecutors will continue to develop their expertise but there will be limited promotional opportunities in the foreseeable future. ODPP foresees that the emerging issue will be the retention of prosecutors at the PO6 and SO1 level due to little opportunity for future promotion for these officers.

Recently, the Practice compiled an age profile of prosecutors and found the following average ages:

*Table 8 Age Profile of ODPP*

Crown Prosecutor level	Average Age
Crown Prosecutor P05	32 yrs (youngest 24yrs)
Senior Crown Prosecutor P06	41 yrs (youngest 37 yrs)
Principal Crown Prosecutor SO1	38 yrs (youngest 31 yrs)
Consultant Crown Prosecutor s70 (SES2)	45 yrs (youngest 40yrs)

Strict public service classification levels with the inability to reward staff financially as their experience and skills as a prosecutor improve, impacts on the ODPP's ability to retain experienced staff. The situation could be addressed through the more widespread introduction of s70 contracts for prosecutors and an additional budget allocation to fund remuneration increases.

The ODPP is currently developing a competency based framework for prosecutors. This framework is in line with similar work currently being undertaken by Queensland Health for its Health Practitioners. The ODPP model is based on the "Lominger Leadership Architect" which is currently being implemented across the Queensland public service.

### *Working in the eye of the media and public*

The work of the ODPP is conducted in the public eye in open court. The function of prosecutions directly affects the lives of individual Queenslanders and the community as

a whole. The decisions made by ODPP prosecutors and legal officers are reported in the media on a daily basis. This level of attention seems much higher in Queensland than in other states. ODPP staff are often named personally. This constant media attention, both positive and negative, produces a level of stress for staff particularly as staff are often young and inexperienced.

It is anticipated that this media attention coupled with low salaries and high workloads will add to retention difficulties in the future.

## **Risks**

### ***Risk to Government***

A fundamental duty of government is the protection of its citizens by providing a fair, equitable and accessible criminal justice system. All elements of the justice system in Queensland play a major role in assisting the government in achieving this responsibility.

In this regard, the Office of the Director of Public Prosecutions plays a uniquely important role in the criminal justice system. The Practice represents the community. The community's expectation is that the guilty be brought to justice and that the innocent not be wrongly convicted.

Without a properly resourced and skilled prosecution service, the ODPP will continue to struggle to meet this obligation.

The number of matters considered by the Practice and Court weeks scheduled has increased dramatically in the last 5 years but funding or resources increases have not kept pace with the increased workload. A growing concern within the Practice has been that more junior and inexperienced staff are allocated work beyond their level of expertise.

Junior and inexperienced prosecutors are expected to carry a heavy caseload (refer to page 9) especially in comparison to their interstate counterparts. Therefore, there is an increased level of risk of mistakes being made because the consideration of matters is, by necessity, rushed. Junior prosecutors are learning as they go and every trial is new ground. Due to the workload of more senior prosecutors, they are often not available to assist inexperienced prosecutors by providing closer professional supervision.



## *Risk to Regional Queensland*

Approximately 50% of ODP's legal staff are located outside of Brisbane in regional locations. The current difficulties being experienced in the recruitment and retention of suitably qualified and experienced staff in Brisbane is compounded in regional areas. This creates a situation where regional Queensland receives an even lower level of prosecution service than Brisbane.

For example, in the recent Aurukun 9 case involving the rape of a young child by nine offenders, a legal officer rather than a prosecutor represented the Crown at sentencing. In Brisbane, a serious sexual offence of that nature would have had a prosecutor attending court.

As there are only 3 prosecutors in the Cairns Chambers dealing with 522 matters received for trial (in the 2006/2007 financial year), the workload precluded a prosecutor being available to circuit to Aurukun for sentencing of this matter.

All regional chambers have a heavy workload. During the 2006/2007 financial year, the 8 regional chambers prepared 3140 matters for trial which represents 60% of the total criminal matters received for trial in Queensland for that year.

**Table 9 Matters received for prosecution in the Superior Courts  
2006-2007 by centre**

Centre	Trial	Sentence	Ex-Officio	Totals
Brisbane	2140	143	265	2548
Ipswich	322	131	46	499
Maroochydore	458	229	154	841
Southport	313	141	74	528
Rockhampton	188	131	71	390
Townsville	612	251	177	1040
Cairns	522	308	122	952
Toowoomba	226	127	119	472
Beenleigh	499	133	68	700
<b>Totals</b>	<b>5280</b>	<b>1594</b>	<b>1096</b>	<b>7970</b>

In addition to trials in regional centres, the 8 regional chambers also have responsibility for 27 additional circuit District and Supreme Courts (see attachment 3).

### *Risk to Children*

The most prevalent crime prosecuted by the ODPP is bodily assault (1893 matters in 06/07). The next most prevalent crime is sexual offences, including sexual assault of children. During the 06/07 financial year a total of 994 matters of sexual offences including rape and incest of children, were received for prosecution. Thirty percent (295) of these offences occurred in the Far North Queensland region. The intimate nature of the allegations and the vulnerability of the victim means that these cases require far more attention than other cases.

**Table 10 Sexual Offence Matters received for prosecution during 2006-2007 by offence classification and region.**

Classification of Offence	Bne	Ips	Mdor	Spt	Rok	Tsv	Cns	Tba	Been	Total
Sexual Offences										
- children (victims)	177	46	73	18	30	79	96	41	26	586
- other (victims)	49	4	13	13	7	15	23	8	12	144
- Rape	64	20	18	6	13	38	40	15	32	246
- Incest	0	1	1	2	1	1	3	0	9	18
<i>Sexual Offences Total</i>	<i>290</i>	<i>71</i>	<i>105</i>	<i>39</i>	<i>51</i>	<i>133</i>	<i>162</i>	<i>64</i>	<i>79</i>	<i>994</i>

The lack of appropriate resources to deal with the prosecution of these matters, particularly in regional areas, exposes the ODPP and the community to rushed decisions and inadequately prepared matters. It also reduces the ODPP's ability to support victims in the manner proposed in the Crime and Misconduct Commission's report on the handling of sexual offences by the criminal justice system "*Seeking Justice*".

## The Way Forward

### *Committals*

To address the current issue of committals and improve the efficient use of ODPP and Court resources, major changes to the current system could be considered. While this is outside the scope of this report, the review and possible elimination of the committals process has been discussed in limited terms. It is considered that there would be considerable merit, resulting in a positive impact on DJAG related resources in further exploration of the committals process within the Queensland jurisdiction by an appropriate review group. The following provides details of initial discussions.

#### **Review and possibly eliminate the committals process**

As almost all matters brought before a Magistrate's Court for committal are ultimately committed to trial in a superior court, the current committals process can be considered inefficient and in many cases the committal process serves no useful function. Matters that currently involve an indictable offence are either unable to be dealt with in the jurisdiction of the Magistrate's Courts or summary jurisdiction is at the election of the accused. There is very strong argument in favour of increasing the jurisdiction of the Magistrate's Court to deal with lower level indictable offences summarily.

A proposal worth considering is the abolition of the committal processes. Whilst this is a dramatic change to the current system and outside the scope of this paper, it can be achieved with appropriate safeguards. For example, after an accused is charged by Police for an indictable offence, the accused would appear before the Magistrate's Court for bail purposes then statutory timelines could apply for the preparation and presentation of the brief to ODPP and defence, with a further time limit on the presentation of the indictment. A further safeguard could be that provision is made for an accused to be able to seek leave to be able to cross examine witnesses in a preliminary hearing in the Magistrate's Court. A similar scheme exists in relation to child witnesses (see s21 AB (iii) and s21 AG of the *Evidence Act 1977 (Qld)*). When the brief and associated evidence is reviewed by the ODPP and if sufficient to proceed to trial, an indictment would be prepared, presented and a trial date set. Alternatively, if insufficient evidence is available or other factors indicate that the prosecution would be unsuccessful, the matter could be discontinued.

This level of consideration in the first instance would lead to a more efficient use of the resources of the ODPP, Magistrate's Courts and Queensland Police Service. It would not increase the current workload of ODPP trial resources and the numbers of matters to be considered for trial would remain the same as the ODPP already undertakes the process of review of the sufficiency of evidence for these type of matters. ODPP resources currently devoted to the committals programme would be redirected into trial review and

preparation. The timelincs associated for a matter from charging to trial would be decreased. The process would not need to wait for a committal stage before ODPP is able to address and consider the indictment.

*Recommendation 1a*

*That the Department of Justice and Attorney – General:*

- c) Commissions a review of the committals process in the Queensland courts with a view to eliminating the committal process and*
- d) Considers increasing the jurisdiction of the Magistrate's Court to enables the Court to deal with less serious offences summarily.*

**Increased ODPP involvement in Committals**

Should it be considered that the committals process be maintained as it presently stands, the process could be made more efficient by an expansion of ODPP involvement statewide. An early involvement in the assessment of sufficiency of evidence by the ODPP will result in an earlier identification of appropriate charges and resolution of the matter.

If this was adopted it would require significant resource reallocation from the Queensland Police prosecution service to the ODPP. This proposal however would require far more resources than recommendation 1a.

*Recommendation 1b*

*That consideration be given to expanding the role of the ODPP in the committals process statewide with appropriate resourcing being provided.*

***Proposed Structure and Systems***

**Workload**

The current workload of Queensland prosecutors is considerably more than that of comparable positions in other States. As mentioned on page 10 the national average for the number of matters for trial referred to a prosecutor per year is 27. In Queensland the

average is 79. To achieve parity with the national average the Queensland ODPP would require a total of 195 Prosecutors. This is clearly an unrealistic and unachievable level of resourcing given the financial limitations within the State and the likely limited candidate pool.

In Australia, a large proportion of matters prosecuted are for a single offender having committed a single offence. Queensland is no different. A review of the types of matters referred to the ODPP for prosecution in the Superior Courts in Queensland during 2006/07 indicates that approximately 60% are of a severity that in other State jurisdictions would be dealt with in the lower courts. This includes matters such as minor assault, minor drug possession, petty theft, motor vehicle crime, minor fraud and lesser property offences. If these matters were managed in the Magistrate's Court jurisdiction the number of matters committed to the Superior Court would be reduced to approximately 2,200. This would bring Queensland prosecution numbers of serious offences more in line with other States and Territories.

### **Number of Crown Prosecutors Required**

Forty nine (49) experienced prosecutors could, with a caseload of approximately 45 matters each, manage this workload more effectively despite it still being well above the national average. In addition to work involved in the preparation of matters for trial, the prosecutors would also be responsible for sentences of serious and high profile offences.

#### ***Recommendation 2***

*That the ODPP establish and recruit 49 Crown Prosecutors to redefined positions to deal with serious and high profile offence matters.*

### **Introduction of the Role of Crown Advocate**

The remaining large proportion of prosecution work (approximately 3,200 matters based on 2006/07 data) will continue to remain the responsibility of the ODPP. It is considered that the introduction of a Crown Advocate role to manage these matters initially in the District Court and ultimately as a result of a wider review of committals processes, in the Magistrate's Court would be a more efficient use of resources. As these matters would be more straight forward to those undertaken by prosecutors and would require less time to prepare and appear in court, it is considered that forty two (42) Crown Advocates could manage this workload based on a case load of 80 matters each. Crown Advocates would also be responsible for sentences of less serious offences. The implementation of this recommendation would see a number of current junior Crown Prosecutors (at PO5 and PO6 level) being redesignated as Crown Advocates.

***Recommendation 3***

*That the ODPP establish and recruit 42 Crown Advocates to positions to deal with less serious offence matters.*

Attachment 4 contains a full list by chambers of staff numbers and levels required.

**Workload Expectations**

The current workload descriptors for level of Prosecutor positions within the Practice together with proposed responsibilities for Prosecutors and Crown Advocates is contained at Attachment 5.

**Introduction of CAR classification system**

To determine the seriousness and complexity of individual matters it is considered that the ODPP should introduce a Complexity And Risk (CAR) classification system that uses business rules to classify individual matters. A similar system is currently operating in Victoria.

The CAR system could operate with a four (4) point scale with level 1 and 2 matters being of lower complexity and risk. Crown Advocates would only be allocated these level of matters. Crown Prosecutors would normally be allocated the more complex and higher risk level 3 and 4 matters but could also undertake lower level matters if they had spare capacity. Matters such as sexual offences with a high risk to the community and government would automatically be classified at least level 3 and therefore would be only allocated to the more experienced Crown Prosecutors.

***Recommendation 4***

*That the ODPP introduce a "CAR" matter classification system to allocate appropriate matters to Crown Advocates and Crown Prosecutors.*

**Introduction of Chamber's Registrars**

The introduction of a limited number of Registrar positions is recommended to assume responsibility for administrative and corporate services functions within legal chambers. This will alleviate the workload of senior legal officers who currently are responsible for corporate services duties on behalf of their Chambers allowing more time for legal work and professional supervision of staff. Registrars will be allocated to nominated regional

Chambers to service a geographic location and it is envisaged that they will have an especially positive impact on those areas.

More specifically, the Registrar would have a day-to-day reporting relationship within their base location but would also have a functional reporting relationship to Brisbane based corporate services managers. The position would manage the administration of the allocated Chambers including; statistical reporting, human resources activities, financial reporting, records management, information technology and other corporate service responsibilities currently performed by senior legal officers.

As mentioned previously, it is envisaged that there would not be a requirement to allocate a Registrar per Chambers. The Registrar would service a logical cluster of Chambers. It is anticipated that the Registrar would be classified at the AO5/6 level but this would be subject to classification evaluation through the JEMS process.

*Recommendation 5*

*That the ODPP introduce a number of Registrar positions to deal with corporate service issues in legal chambers allowing senior legal staff to concentrate on legal matters.*

### **Legal and Corporate Services Support Staff**

To provide support to an increased number of Prosecutorial staff (Crown Prosecutors and Crown Advocates) a modest increase in legal support staff such as Solicitors and Law Clerks along with a small increase in corporate services staff will be required.

*Recommendation 6*

*That funding be provided to increase the number of legal and corporate services support staff to support an increased number of Prosecutorial staff.*

## *Remuneration Levels*

Appropriate remuneration levels are required to attract and retain the level of legal knowledge and experience required to provide a competent and consistent level of prosecutorial service for the Queensland community.

In recognition of the differing levels of legal competence required in the prosecutor roles and Crown Advocate roles a marked distinction in remuneration level should be adopted. To service prosecutions on behalf of the community, prosecutors should have the skills and experience to match those of the defence bar many of whom are Senior Counsel (SC).

### **Prosecutor Remuneration Levels**

It is considered that prosecutor levels should not be based on the public service classification levels but rather the establishment of specific bands for prosecutors, similar to those used for health practitioners in Queensland Health, should be introduced. To provide flexibility in the employment of prosecutors across all locations, it is recommended that all prosecutors be engaged on s 70<sup>4</sup> contracts.

It is recommended that 4 broad bands should be established with the lowest commencing with a remuneration level of \$110,000 and the highest at \$210,000.

Band Level	PAE (years)	Salary Level \$
1	5 - 8	110K - 130K
2	8 - 10	130K - 160K
3	10 - 15	160K - 180K
4	>15	180K - 210K

The introduction of these remuneration levels would still place Queensland Prosecutors below that of Western Australia and New South Wales but above all other states and territories.

### **Mercer Data**

In April 2006, Mercer Human Resource Consulting was commissioned by the previous Executive Director of ODPP to review Consultant Crown Prosecutor remuneration against market value. That report indicated that Mercer proposed Consultant Crown Prosecutor remuneration should be in the range of between \$195,000 and \$215,000 for the ODPP to be competitive in the Queensland market. It is considered that the work of the current Consultant Crown Prosecutor would be that which is undertaken by the new

<sup>4</sup> Section 70 of the *Public Service Act*.



proposed Band 3 Crown Prosecutor level. Band 4 Crown Prosecutors would be limited in number and would work directly for the Director on the most complex matters.

**Proposed Prosecutor Salary Comparison (salary component only)**

Position	TAS	NT	SA	QLD	WA	NSW
Band 4	\$108,950	\$162,254	\$215,000	\$210,000	\$254,375	\$262,945
Band 3	\$96,137	\$118,586	\$166,000	\$180,000	\$212,461	\$229,125
Band 2	\$89,710	\$91,448	N/A	\$160,000	\$171,346	\$210,600
Band 1	\$75,860	\$85,602	\$120,798	\$130,000	\$162,847	N/A

**Recommendation 7**

*That all Crown Prosecutors in the ODPP be engaged under s70 contracts utilising specifically designed remuneration bands.*

**Deputy Director Role and Remuneration Level**

The Deputy Director position should play a significant leadership role in the ODPP Practice directly supporting the Director of Public Prosecutions and providing guidance, management and mentoring advice to prosecutors. The role should also carry a significant case load consisting of the most complex and high profile prosecutions undertaken by the Practice.

Due to the decentralised nature of the Queensland ODPP, it is considered that two (2) Deputy Director roles are required. One based in Brisbane and the other in Far North Queensland (Cairns or Townsville). The Brisbane based Deputy would have responsibility for legal chambers in Brisbane and the south east with the Far North Queensland Deputy being responsible for all chambers from Rockhampton north, including prosecutions in the Cape region.

To attract and retain the best candidates for these essential leadership roles, it is considered that the roles should remain statutory appointments under the *Director of Public Prosecutions Act 1984 (Qld)* and be remunerated at a Band 5 prosecutor level \$220,000 p.a.

**Recommendation 8**

*That two (2) Deputy Director positions be established, one in Brisbane and one in Far North Queensland remunerated at a Band 5 Crown Prosecutor level.*

**Crown Advocate Remuneration Levels**

The skills and experience required for Crown Advocates is significant but not at the level of those required for prosecutors. It is considered that remuneration offered within the Public Service classification levels would be appropriate. The work of Crown Advocates would be at levels between PO5 and SO1 level.

Classification Level	PAE (years)	Remuneration Level \$
PO 5	2 - 3	78K - 83K
PO 6	3 - 5	86K - 91K
SO 1	>5	105K - 110K

**Recommendation 9**

*That Crown Advocates positions be remunerated at Public Service Levels between PO5 and SO1 dependent on skill and competency.*

**Regional Remuneration Packaging**

To address the issue of recruitment and retention of experienced Prosecutors and Crown Advocates to regional chambers it is recommended that separate regional remuneration packages be introduced in a similar manner to those utilised as remote area incentive schemes by Queensland Health and Education Queensland. These packages may include items such as home garaging of a motor vehicles, mobile telephone, membership of professional organisations, professional development, etc. It is estimated that the cost of

implementation of this across all regional chambers would be approximately \$500K per year.

***Recommendation 10***

*That the ODPP be funded to introduce a regional incentive scheme to attract and retain experienced Crown Prosecutors and Crown Advocates to regional chambers.*

***Judicial Appointments***

To address the issue of a lack of Judicial appointments from serving prosecutors in the Queensland ODPP, it is recommended that when short term vacancies exist with judges in the District and Supreme Courts that consideration be given to appointing senior prosecutors to act in these positions.

For short term vacancies in Magistrate positions, junior prosecutors and senior Crown Advocates could be considered highly suitable for acting roles.

In the longer term, ODPP prosecutors and senior Crown Advocates should be considered highly suitable for judicial and magistracy appointments.

***Recommendation 11***

*a) That Crown Prosecutors and Crown Advocates be considered highly suitable to act in Judicial and Magistracy position when temporary vacancies occur.*

*b) That Crown Prosecutors and Crown Advocates be considered highly suitable and competitive for permanent Judicial and Magistracy appointment.*

***Career Progression***

Integral to the proposed changes to existing prosecutor positions and the introduction of Crown Advocates is the establishment of a career path that allows progression within the identified bands ie Prosecutor, Crown Advocate, Solicitor. Therefore as an officer gains expertise within their position type, the opportunity exists for them to be assessed against predetermined benchmarks allowing progression within their band.

The progressional scheme would be an effective retention strategy for staff in light of the age profile of the Practice and the inevitable loss of experienced staff seeking advancement within the current vacancy driven environment.

Progressional arrangements would be developed as a result of internal consultation and advice from Mercer

*Recommendation 12*

*That the ODPP adopt and is funded for progressional promotional scheme for legal staff based on skills and expertise rather than vacancies.*

## Financial Implications

The cost of full implementation of the proposed recommendations would be approximately an additional \$17,802,700 p.a. above current appropriation funding. This would bring the annual recurrent funding for the ODPP to in the region of \$47.8 million per year. This level of funding is still well below that of comparative States and would equate to a funding level of only \$9,053 per matter committed to trial. Attachment 6 contains full details of costings for the proposed recommendations.

It is interesting to note that the funding allocation for Legal Aid Queensland (LAQ) from both Commonwealth and State sources is \$101.3 Million.<sup>5</sup> It is recognised that LAQ does not solely provide services to its clients in criminal matters however LAQ has confirmed that 74% (\$41 Million) of State funding and a further \$3.5 million of Commonwealth funding (a total of \$44.5 Million) relates to defence of clients in criminal matters. LAQ does not appear in all criminal trials as representation of clients is based on means tests and other suitability criteria. The ODPP on the other hand appears in all criminal trials, sentences and some committals.

The current funding model gives the impression that funding for criminal matters in Queensland favours the accused rather than the victim or the community as a whole.

## Staged implementation

To manage the proposed changes in an effective manner it is considered that a staged implementation approach should be taken. It would be impossible for the ODPP to recruit, accommodate and support the proposed increase in staff in a single financial year. It is also recognised that within the current Commonwealth GST funding cycle the State does not have the financial resources available to increase funding to the ODPP to this level in a single financial year given the competing pressures on financial resources from areas such as health and education.

It is therefore proposed that the funding increase should be sought over a three (3) year period with the implementation of the recommendations being phased over this period. This would require an increase to base funding of approximately \$5.9 million each financial year as outlined in the following table.

2008/09	2009/10	2010/11
\$35.9 Million	\$41.7 Million	\$47.8 Million

<sup>5</sup> Legal Aid Queensland Annual Report 2006-07 page 8.

### Implementation Options/Timeline

Stage	Time Line	Actions
1	Jan 09- Jul 09	<ul style="list-style-type: none"> <li>• Introduce Crown Advocate positions and re designate junior Crown Prosecutors as Crown Advocates.</li> <li>• Recruit 7 additional Crown Advocates.</li> <li>• Implement Band 3 and Band 2 Prosecutor positions and recruit.</li> <li>• Implement Regional Salary Packages.</li> <li>• Recruit for 1/3 Solicitor and Clerk positions.</li> </ul>
2	Jul 09 – Jun 10	<ul style="list-style-type: none"> <li>• Recruit further 7 Crown Advocates.</li> <li>• Recruit further 1/3 Solicitor and Clerk positions.</li> <li>• Recruit increased Corporate Services Staff.</li> <li>• Recruit 4 Band 4 prosecutor positions.</li> </ul>
3	Jul 10 – Jun 11	<ul style="list-style-type: none"> <li>• Establish and recruit 2 Deputy Director positions, one in Brisbane and one in Townsville/Cairns.</li> <li>• Introduce Registrar positions and recruit.</li> <li>• Recruit final 7 Crown Advocate Positions.</li> <li>• Recruit final 1/3 Solicitor and Clerk positions.</li> </ul>

Should the recommendations contained in this review be approved a detailed implementation plan will be developed.

# Australian Bureau of Statistics

45130DO001 Criminal Courts, Australia, 2006-07

Released at 11:30 am (Canberra time) Fri 25 Jan 2008

Table 11 HIGHER COURTS DEFENDANTS FINALISED, Selected characteristics by states and territ

State/territory and year	Defendants finalised	Males	Females	Aged 20-24 years	Acquitted
	no.	%	%	%	%
<b>NSW</b>					
2001-02	3,654	89.8	10.1	24.0	10.4
2002-03	3,204	90.2	9.8	22.8	8.0
2003-04	3,456	90.8	9.2	24.4	7.2
2004-05	3,356	91.2	8.8	22.2	8.5
2005-06	3,371	90.4	9.6	22.2	7.7
2006-07	3,141	90.3	9.7	21.8	6.2
<b>VIC.</b>					
2001-02	1,993	86.9	12.9	22.2	7.1
2002-03	2,078	87.3	12.2	20.1	7.4
2003-04	2,548	87.5	11.8	19.7	7.2
2004-05	2,425	87.0	12.1	17.8	9.1
2005-06	2,303	87.8	11.6	19.3	9.0
2006-07	2,346	88.8	10.7	20.4	7.5
<b>QLD</b>					
2001-02	7,230	85.7	14.3	19.9	3.8
2002-03	6,630	85.1	14.8	22.6	3.7
2003-04	6,863	83.4	16.6	22.6	3.8
2004-05	6,546	85.4	14.6	21.1	4.7
2005-06	6,155	84.3	15.6	21.6	3.8
2006-07	5,841	85.5	14.4	21.0	3.7
<b>SA</b>					
2001-02	1,131	85.8	13.5	19.8	5.4
2002-03	821	88.7	11.3	19.7	6.0
2003-04	869	88.4	11.6	18.8	7.4
2004-05	941	88.4	11.6	18.5	7.1
2005-06	989	86.9	13.1	19.8	9.0
2006-07	1,235	89.1	10.9	21.1	8.7
<b>WA</b>					
2001-02	3,070	88.8	11.2	26.8	7.8
2002-03	2,885	88.9	11.1	26.1	7.3
2003-04	2,667	87.3	12.7	26.2	8.4
2004-05	2,695	89.2	10.8	22.3	11.3
2005-06	2,510	91.5	8.5	22.3	14.8
2006-07	2,582	84.7	12.2	22.8	12.8
<b>TAS.</b>					
2001-02	486	88.1	11.9	30.0	6.0
2002-03	605	86.6	13.4	30.7	6.3
2003-04	537	88.8	11.2	25.1	7.6
2004-05	526	87.6	12.4	26.2	8.0
2005-06	536	85.8	14.2	22.8	9.0
2006-07	553	90.1	9.9	21.3	7.2
<b>NT</b>					

2001-02	262	90.1	9.9	18.3	3.8
2002-03	256	90.6	9.4	18.0	9.0
2003-04	256	92.6	7.4	23.4	8.2
2004-05	331	94.0	6.0	20.5	7.9
2005-06	326	88.3	11.7	15.6	7.4
2006-07	346	91.3	8.7	16.5	4.6

ACT

2001-02	171	84.8	15.2	21.6	9.9
2002-03	164	89.6	10.4	26.2	9.1
2003-04	119	84.0	18.0	24.4	10.1
2004-05	144	84.0	16.0	22.2	15.3
2005-06	166	89.8	10.2	26.5	12.7
2006-07	147	87.1	12.9	20.4	8.2

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2001-02	17,997	87.3	12.6	22.4	6.4
2002-03	16,643	87.4	12.5	23.1	5.9
2003-04	17,315	86.7	13.2	23.0	6.1
2004-05	16,964	87.8	12.1	21.1	7.5
2005-06	16,358	87.5	12.4	21.4	7.6
2006-07	16,191	87.4	12.0	21.3	6.8