

## Executive summary

### The focus of our audit

The Office of the Director of Public Prosecutions (ODPP) prosecutes the most serious criminal cases. Its work is complex and demanding and is affected by a range of factors beyond its control.

The ODPP was established in 1987 in recognition of the need for an independent, professional prosecution service.

In the 20 years since it was established, there have been many changes affecting the ODPP. The law is more complicated, the average length of trials is increasing, victim and witness support are now far more prominent and the ODPP has more than doubled in size. The public sector landscape has also changed. Agencies must do more with their resources and taxpayers are demanding better value for money and greater accountability.

The ODPP's independence does not remove the need for it to manage public resources appropriately, to be accountable for its performance and deliver value for money. Not only is the ODPP as a public sector entity obligated to do so, but for it to deliver on its mandate, it must (amongst other things) ensure that it is resourced sufficiently. This requires that it demonstrate that it has used its existing resources well and can make a sound business case for future resourcing. The ODPP must assist stakeholders to determine 'what price justice?'

Future resourcing is determined by Parliament through the Budget process and is based on advice from the Treasurer and the Attorney-General. Those parties require a business case to support their decision-making. Public sector agencies make their business case through their external reporting, such as their Annual Reports and Results and Services Plans (RSPs). That business case includes the agency demonstrating that it is using its resources efficiently.

Over the last decade or so, large private sector law firms have improved their profitability significantly by looking at issues in new ways and finding practical solutions. Although the public sector looks to improve efficiency rather than profit, we see scope for applying the same mindset. Efficiency means best use of resources, keeping in view the objectives of the organisation.

In this audit we examine whether the ODPP can demonstrate how efficient it is and whether it has adopted good management practices. In the course of our audit we noted that the ODPP has developed a sound reputation for its prosecutorial integrity and effectiveness among the legal profession.

### Audit opinion

The ODPP says it is efficient. We acknowledge that the ODPP has many skilful and committed staff who work very hard to achieve good results for the people of NSW.

It could not, however, provide sufficient evidence for us to reach a conclusion on its efficiency. We also identified some significant opportunities for the ODPP to improve its management practices.

Several reviews over the last decade have identified similar deficiencies. To illustrate, despite the need being identified almost a decade ago, and attempts having been made to measure costs, the ODPP still does not have good information on the costs of its services and activities. Such information is essential for both ensuring and demonstrating efficiency. Other legal firms and agencies cost their services and activities as a matter of course.

We also came to the view that changes to how it allocates and processes cases could lead to savings, but the deficiencies in the ODPP's information stopped us testing options for improvement. Such changes have also been suggested by several reviews over the last decade.

The ODPP's reluctance to change its methods without evidence of a better way is understandable, but the lack of evidence results from an apparent incapacity to keep pace with reforms to public sector and legal practice management and accountability.

To break the impasse and help the ODPP catch up, we concluded that the Office needs a very senior, professional manager with a clear mandate to:

- ensure wise spending
- introduce better management and accountability systems
- improve measurement and reporting
- strengthen liaison with NSW Treasury and other agencies through being proactive at identifying issues and bringing together the correct mix of people to resolve them.

It is critical the position reports direct to the Director of Public Prosecutions and that its responsibilities extend across the whole of the ODPP, that is, to Crown Prosecutors and solicitors as well as administrative staff. This will allow the Director and his other senior staff to concentrate on ensuring the quality of its legal work.

The position will introduce a healthy tension between containing costs and ensuring its legal services are of acceptable quality, representing a proxy for the commercial imperative faced by other legal firms.

While it has no control over the quality of the NSW Police briefs and listing practices of the courts, the ODPP tells us these external factors create inefficiencies for the ODPP. Previous reviews have also reported this, but the problem remains and the ODPP cannot quantify the extent of inefficiency. It was outside the scope of this audit to assess whether these inefficiencies were offset by efficiencies elsewhere in the justice system. The government might look at this issue.

## Key findings

**Can the ODPP demonstrate it is efficient?**

The efficiency indicators the ODPP has been using are not yet sufficiently relevant and appropriate. It does not have service or efficiency targets, and does not adequately compare its performance over time or to others. Data management practices are not adequate to ensure that information is valid and reliable. Over the last year, the ODPP has been developing better efficiency indicators. It was clear during the audit that the ODPP is committed to developing a good set of indicators. It is embracing NSW Treasury's results and services approach and is examining indicators used by prosecution services elsewhere. We have made some further suggestions in this area.

Costing services is fundamental to demonstrating efficiency. Costing of legal and other professional services is commonplace. The need for ODPP to obtain information on the cost of its services and activities was identified by the Council on the Cost of Government in 1998, and a project to implement a costing system started in 2002. Despite this, the ODPP still does not have valid, reliable and comprehensive information on the cost of its services.

The ODPP's reporting to the Attorney General and Parliament is not sufficiently transparent about efficiency. Its efforts to improve its indicators should help it report in a more comprehensive and systematic way. At present, there is little narrative to explain why an indicator is important, what represents good performance and factors that may have contributed to poorer or better than expected performance.

The ODPP's case and trial load fell over the five years to 2007. For example, the number of committals the ODPP received from the NSW Police fell by about one-third. Over the same period, its budget increased by more than 40 per cent, and its staff numbers by 10 per cent. The ODPP advised the fall in case and trial load was more than offset by increases in the work required on each matter. It put forward a number of reasons including amendments to the law, changes to legal procedures and practices, and an increase in the number of resource-intensive matters. Without better supporting evidence, we cannot either refute or support this.

**Can the ODPP show its information systems support efficient management?**

The ODPP does not have adequate information on the costs of its services and how staff use their time. This is a significant barrier to good management and efficiency improvement. Such information is needed to better inform its planning, decision-making and cost management. With it, the ODPP could adopt better internal performance indicators, benchmark costs between different groups in the organisation and other agencies, and target cost-reduction efforts.

The ODPP has developed a comprehensive and responsive case management system (CASES), although the ODPP could make better use of it to manage solicitor caseloads and promote consistency across the ODPP.

The ODPP's Research Unit disseminates information to staff on changes to the law and legal procedures efficiently.

**Can the ODPP show its management arrangements and work practices support efficient management?**

The ODPP has a number of systems in place to manage the efficiency of individual solicitors and other employees, although we found that they are not routinely and consistently applied.

Management of Crown Prosecutors is not sufficiently systematic or effective. Even if we accept that the ODPP monitors Crown Prosecutor performance, such monitoring focuses on effectiveness and professional standards rather than value for money. Crown Prosecutors are not employees, but independent statutory officers. Managing them is complex and challenging. A robust and transparent performance review process is needed, as may be a change in the law to enable intervention for unsatisfactory performance.

Our research into practices in prosecution services elsewhere suggests that some changes to how the ODPP allocates and processes matters could lead to savings. These potential changes included:

- adopting in Sydney a workflow model similar to that in place in the ODPP's regional branch offices, dividing up the present chamber into a smaller number of chambers 'paired' with groups of solicitors
- increasing the continuity of staff involvement in matters. At present several solicitors of varying seniority work on a matter consecutively with each reviewing the file before doing their assigned work. This allows staff to do work appropriate to their grade. On the other hand, efficiencies can come from a greater sense of ownership and less duplication. It is persuasive that a number of prosecution services elsewhere are adopting this 'cradle to grave' approach.

The ODPP disagrees, and argues that the current approaches (including the fact that Sydney Crown Prosecutors generally only work on one case at a time) are the most efficient possible at the present resourcing level. Deficiencies in information prevented us properly assessing the above alternatives against current approaches.

The ODPP could not show that it had the right number of prosecutors at the right level to minimise costs while delivering quality services. It was not able to provide an objective, documented rationale for the current number and mix. It does however agree that the \$100,000 annual remuneration gap between Crown Prosecutors and Trial Advocates needs to be bridged.

The ODPP has made efforts to encourage the District Court to alter its listing practices and to encourage the NSW Police to improve brief quality, but says these remain an impediment to its efficiency. To support these efforts, the ODPP should adopt a more systematic approach to capturing and quantifying the impact of the practices of other agencies on its efficiency.

The ODPP has a Board with external members, an executive management committee, an audit committee etc but given current deficiencies in information and management practices there is room to improve how these work.

Unlike some other prosecution offices and commercial legal firms, the ODPP does not have a very senior position with responsibility across the organisation for allocating resources and driving efficiency improvements. The ODPP is prepared to consider such a position. Positions elsewhere are typically very senior, reporting directly to the Chief Executive Officer (in this case the Director). This seniority is likely to be needed to drive reform across all parts of the organisation including Crown Prosecutors, solicitors and administrative staff.

The ODPP does not undertake regular staff satisfaction surveys. We are aware of one survey undertaken in 2004 which revealed a level of dissatisfaction with management practices. Our investigations suggest that there is still considerable dissatisfaction among staff in many sections of the ODPP.

## Recommendations

We recommend that the ODPP:

### Demonstrating efficiency

1. continue to build on recent improvements to its service and efficiency indicators. In so doing the ODPP should:
  - by the end of 2007-08, clearly articulate its services, and how these services contribute to the results it is trying to achieve
  - by the end of 2007-08, develop indicators of quantity, timeliness, total cost and unit cost for each service
  - from the beginning of 2008-09, include these indicators in its planning and internal reporting
  - select from these a smaller number of 'headline' indicators to use in its reports to Parliament and to the Minister
  - start building a data development agenda and report progress alongside its reporting on service performance (page 48)
2. include in its reporting to the Attorney General and Parliament:
  - its improved service and efficiency indicators
  - an explanation of why these indicators are important
  - advice on what represents good performance
  - comparisons over time, against benchmarks and to targets
  - narrative to clearly explain performance (page 51)
3. collect accurate and comprehensive information about the costs of its services and activities and use this to assess its efficiency and cost effectiveness. In so doing the ODPP should:
  - bed down its prosecution service and activity costing methodology and ensure the costing process adopted is able to accurately identify the cost of delivering prosecution services
  - apply appropriate costing methodologies to its other key services such as witness assistance, contribution to an efficient justice system, and advice to government on proposed legislation
  - use service costing information to enhance its reporting (page 53)
4. strengthen its data management practices to provide greater assurance that reported performance information is accurate and complete. In so doing the ODPP should:
  - clearly define and document roles and responsibilities for data collection, processing, monitoring and quality assurance, analysis and reporting for service performance indicators
  - develop and document data quality standards and expectations, and clearly communicate these needs to responsible officers
  - document data definitions and collection methods to ensure consistent measurement and calculation
  - implement suitable data collection, processing and monitoring controls to ensure the accuracy, completeness and reliability of performance data

## Improving information management

- implement appropriate training for staff who are responsible for collection, processing and reporting of performance information
  - consider the development of a data dictionary in the longer term (page 55)
5. use service costing information to improve its service delivery, efficiency and resource allocation. In so doing the ODPP should use service costing information to:
    - inform its planning, decision-making and cost management
    - benchmark costs between different groups in the organisation and other agencies (page 62)
  6. ensure staff keep the case management system (CASES) up to date so managers can use CASES for effective monitoring, reporting and decision making. CASES should be developed as the only repository for pro forma. In so doing the ODPP should:
    - develop a regular, consistent and systematic approach to the review of solicitors' practices by Managing Lawyers
    - review case-specific pro forma that are available on the Integrated Document Management System, ODPP intranet (DPP Net) and CASES and relocate all relevant pro forma to CASES (page 63)

## Improving management practices

7. improve its management of workload and workflow including Crown Prosecutors' workload and efficiency. In so doing the ODPP should:
  - ensure that the systems for performance management in the Solicitor's Office are implemented consistently
  - systematically analyse the workload and efficiency of Crown Prosecutors
  - consider asking the Attorney General to amend the *Crown Prosecutors Act 1986* to give the Director of Public Prosecutions power to suspend and dismiss Crown Prosecutors for serious neglect of duty. This would be subject to appropriate controls to ensure that the process is fair, transparent and affords natural justice (page 71)
8. once the ODPP has better information on the cost of prosecutions, use this to:
  - improve its management arrangements
  - inform a detailed, independent study into the feasibility of creating a number of smaller Crown Prosecutors' chambers in Sydney and 'pairing' these with groups of solicitors (page 75)
9. document the rationale for the relative number of prosecutors and levels of experience required, and examine the risks and potential benefits of reducing the number of Crown Prosecutors and using the funds to create additional Trial Advocate, Senior Trial Advocate or Associate Crown Prosecutor positions (page 79)

10. work towards adopting a 'cradle to grave' approach to case management and systematically set about standardising practices across the Solicitor's Office. In so doing the ODPP should:
  - brief workflow analysts to undertake a detailed study to determine the pros and cons of moving from the current 'division of labour' approach toward greater continuity
  - examine opportunities to identify and implement common practices between offices and groups within the Solicitor's Office (page 81)
11. adopt a more systematic approach to capturing and quantifying the impact of the practices of other agencies on its efficiency, and use the resulting information to support efforts to maximise the efficiency of the justice system. In so doing the ODPP should:
  - develop more systematic approaches to capturing and quantifying the impact on its operations of court listing practices and the quality of NSW Police briefs
  - use this information to support its efforts to reduce the impact of these on its efficiency
  - report the impacts to the Attorney General, NSW Treasury and in its Annual Report (page 86)
12. introduce a position of Executive Director with similar or greater status to the existing Deputy Directors, reporting directly to the Director of Public Prosecutions (page 90)
13. review other positions to rationalise management responsibilities within the new position of Executive Director (page 90)
14. provide better information on costs and services to the Board so it can more effectively monitor efficiency and make realistic and practical improvement recommendations (page 90)
15. appoint an independent Chair to the Audit and Risk Management Committee (page 90)
16. conduct regular surveys of staff satisfaction and implement a systematic process to address staff concerns and improve morale (page 90).

## Response from the Office of the Director of Public Prosecutions

### Executive summary

- 1 The inquiry conducted by the Auditor-General and this Report resulting from it have been given a narrow focus (as described in the Executive summary of the Report and in Appendix 1).
- 2 The effectiveness of the ODPP has been endorsed and is not in question (page 26). The effectiveness of the ODPP depends upon the achievement of high professional standards in the exercise of its functions and powers and upon the proper application of the resources made available to it.
- 3 The Auditor-General has made no finding that the ODPP is inefficient.
- 4 The Auditor-General has found that there is a greater need to describe, count, measure, analyse, record and report the work of the ODPP to better explain its efficiency and that is accepted.
- 5 There are no adverse findings about the ODPP's capacity to operate within its recurrent and capital budget appropriations over the past ten years. That has been achieved despite the erosion of the gains that resulted from the Base Budget Review in 2003.
- 6 The Auditor-General recognises that the ODPP works in an environment where its operations and workload are significantly affected by the conduct and decisions of other agencies in the criminal justice system over which it has little (if any) influence.
- 7 It is also recognised that the ODPP's areas of responsibility and the complexity of criminal proceedings have grown substantially because of changes to the law and government expectations (page 33).
- 8 It is noted that in 1998 (the Council on the Cost of Government) and again in 2003 (the Base Budget Review) independent reports have recommended increases in funding to the ODPP and that investigation be made of the efficiency of the criminal justice system (and not just one agency), but this has not been carried out.
- 9 Some of the recommendations would require the provision of additional resources to implement and without such extra resources they cannot be implemented. Some would require the overcoming of technical limitations.
- 10 Nevertheless, the ODPP agrees with most of the recommendations and many of them are already being implemented. The balance of those agreed will be implemented as resources, time and expertise permit. The few with which issue is taken will be the subject of further consideration, investigation and discussion.

(signed)

Nicholas Cowdery AM QC  
Director of Public Prosecutions

Dated: 10 March 2008

## Responses to the Recommendations of the Auditor-General's Report

### Recommendations

We recommend that the ODPP:

Item No.	Recommendation	ODPP Response
1.	<p><i>continue to build on recent improvements to its service and efficiency indicators. In so doing ODPP should:</i></p> <ul style="list-style-type: none"> <li><i>* clearly articulate its services, and how these services contribute to the results it is trying to achieve by the end of 2007-08</i></li> <li><i>* develop indicators of quantity, timeliness, total cost and unit cost for each service by the end of 2007-08</i></li> <li><i>* include these indicators in its planning and internal reporting from the beginning of 2008-09</i></li> <li><i>* select from these a smaller number of 'headline' indicators to use in its reports to Parliament and to the Minister</i></li> <li><i>* start building a data development agenda and report progress alongside its reporting on service performance (page 48)</i></li> </ul>	<p><b>Agreed.</b> As implied in the Report, that is occurring.</p> <p><b>Agreed.</b> A Results and Services Plan is under preparation for 2008-09 and will be completed in the near future.</p> <p><b>Agreed.</b> These KPIs are being developed and will be in place by 30 June 2008.</p> <p>However, accurate and meaningful performance measurement is a challenge for many public sector agencies and has remained so for a long time. It is not peculiar to the ODPP. In the report of the then Auditor General (published June 2006) 'Agency Use of Performance Information to Manage Services', it was shown that performance reporting by a number of agencies revealed that <i>'...a good deal needs to be done'</i>. The Commonwealth Auditor General recently launched a book 'Managing Performance: International Comparisons' (Halligan and Bouckaert) which describes the issues involved and highlights the difficulties.</p> <p>This further demonstrates that performance reporting in the public sector and especially in a prosecution agency is extremely challenging.</p> <p><b>Agreed.</b> This will be done.</p> <p><b>Agreed.</b> The only formal report provided by the ODPP to 'Parliament and to the Minister' is the Annual Report. In that Report, the Office has a statutory obligation to report fully on its performance and activities. 'Headline' indicators can be included in the Report.</p> <p><b>Agreed.</b> This will be done.</p>
2.	<p><i>include in its reporting to the Attorney General and Parliament:</i></p> <ul style="list-style-type: none"> <li><i>* its improved service and efficiency indicators</i></li> <li><i>* an explanation of why these indicators are important</i></li> <li><i>* advice on what represents good performance</i></li> </ul>	<p><b>Agreed.</b> It is presumed this refers to the Annual Report. These items will be addressed. The desirability of such measures is conceded; but there are technical difficulties in finding appropriate standards and performance against which to benchmark and the setting of some targets is inappropriate, given the nature of the Office's work and the fact that it is reactive to external work demands.</p> <p>A narrative will be included to explain the context of each indicator.</p>
	<ul style="list-style-type: none"> <li><i>* comparisons over time, against benchmarks and to targets</i></li> </ul>	

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	<p><i>* narrative to clearly explain performance (page 51)</i></p>	
3.	<p><i>collect accurate and comprehensive information about the costs of its services and activities and use this to assess its efficiency and cost effectiveness. In so doing ODPP should:</i></p> <p><i>* bed down its prosecution service and activity costing methodology and ensure the costing process adopted is able to accurately identify the cost of delivering prosecution services</i></p> <p><i>* apply appropriate costing methodologies to its other key services such as victim assistance, contribution to an efficient justice system, and advice to government on proposed legislation</i></p> <p><i>* use service costing information to enhance its reporting (page 53)</i></p>	<p><b>Agreed.</b> This will be done.</p> <p><b>Agreed.</b> Work is proceeding on this, subject to available resources and the resolution of technical difficulties.</p> <p><b>Agreed.</b> This will be addressed as resources permit and information is gathered.</p> <p><b>Agreed.</b> This will be done as the information becomes available.</p>
4.	<p><i>strengthen its data management practices to provide greater assurance that reported performance information is accurate and complete. In so doing it should:</i></p> <p><i>* clearly define and document roles and responsibilities for data collection, processing, monitoring and quality assurance, analysis and reporting for service performance indicators</i></p> <p><i>* develop and document data quality standards and expectations, and clearly communicate these needs to responsible officers</i></p> <p><i>* document data definitions and collection methods to ensure consistent measurement and calculation</i></p> <p><i>* implement suitable data collection, processing and monitoring controls to ensure the accuracy, completeness and reliability of performance data</i></p> <p><i>* implement appropriate training for staff who are responsible for collection, processing and reporting of performance information</i></p> <p><i>* consider the development of a data dictionary in the longer term (page 55)</i></p>	<p><b>Agreed.</b></p> <p>All of this will be addressed (and see response to 6 below); however this process will be resource intensive and is likely to require <u>additional resources</u> to enhance the CASES system, to prepare, collect, process and report data and to train staff to enable these matters to be achieved.</p>
5.	<p><i>use service costing information to improve its service delivery, efficiency and resource allocation. In so doing ODPP should use service costing information to:</i></p>	<p><b>Agreed.</b> This will be done.</p>

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	<p><i>* inform its planning, decision-making and cost management</i></p> <p><i>* benchmark costs between different groups in the organisation and other agencies (page 62)</i></p>	<p><b>Agreed.</b> Internal benchmarking will be pursued and efforts will continue towards benchmarking with other agencies.</p>
6.	<p><i>ensure staff keep CASES up to date so managers can use CASES for effective monitoring, reporting and decision making. CASES should be developed as the only repository for pro forma. In so doing ODPP should:</i></p> <p><i>* develop a regular, consistent and systematic approach to the review of solicitors practices by Managing Lawyers</i></p> <p><i>* review case specific templates that are available on Integrated Document Management System, ODPP intranet (DPP Net) and the case management system (CASES) and relocate all relevant pro forma to CASES.</i></p>	<p><b>Agreed.</b> Present processes will be reviewed and made consistent across the Office. Formal reporting will be introduced.</p> <p><b>Agreed;</b> but <u>additional resources</u> will be required to enhance CASES and to collect and process data and train staff to enable this to be done.</p> <p><b>Agreed.</b> The existing processes will be enhanced.</p> <p><b>Agreed;</b> subject to the observations above.</p> <p>Additionally, on 5 February 2008 it was determined that an officer would transfer from the CCA Unit to IM&amp;T for 6 months commencing 1 March 2008 to undertake this particular task.</p> <p>The maintenance of templates on CASES is a reasonably complex process and will require ongoing support after the initial set-up period of 6 months.</p>
7.	<p><i>improve its management of workload and workflow including Crown Prosecutors' workload and efficiency. In so doing ODPP should:</i></p> <p><i>* ensure that the systems for performance management in the Solicitor's Office are implemented consistently</i></p> <p><i>* systematically analyse the workload and efficiency of Crown Prosecutors</i></p> <p><i>* consider asking the Attorney General to amend the Crown Prosecutors Act 1986 to give the Director of Public Prosecutions power to suspend and dismiss Crown Prosecutors for serious neglect of duty. This would be subject to appropriate controls to ensure that the process is fair, transparent and affords natural justice (page 71)</i></p>	<p><b>Agreed.</b></p> <p><b>Agreed.</b> Performance management will be reviewed following finalisation of the current round of wage negotiations between DP&amp;C and the PSA.</p> <p><b>Agreed.</b> This is being done to an extent and more effective processes will be implemented; but <u>additional resources</u> would have to be provided to enable this to be done.</p> <p><b>Agreed.</b> The Director made a request of this character by letter to the then Attorney General dated 14 August 2006, followed up in communications with the present Attorney General during 2007. No action appears to have been taken at that level.</p>

Item No.	Recommendation	ODPP Response
8.	<i>once the ODPP has better information on the costs of prosecutions, use this to:</i>	
	<p><i>* improve its management arrangements</i></p> <p><i>* inform a detailed, independent study into the feasibility of creating a number of smaller Crown Prosecutors chambers in Sydney and 'pairing' these with groups of solicitors (page 75)</i></p>	<p><b>Agreed.</b></p> <p><u>Additional resources</u> would need to be provided to fund such a feasibility study.</p> <p>In any event, such an arrangement would clearly be inefficient in the context of present listing arrangements in the District Court at Sydney and completely impracticable with the present accommodation limitations in the Sydney office.</p> <p>If the ODPP moves to new, consolidated accommodation as proposed in its recent submission to the Attorney General and Treasury, the creation of a number of Crown Prosecutors' chambers in Sydney would be feasible; but District Court listing arrangements would still make it inefficient to "pair" them with groups of solicitors.</p> <p>Any arrangements of this kind would also need to be in conformity with the rules of the NSW Bar Association.</p> <p>In the meantime, it is already the case that in relation to particular kinds of work (eg homicide, child sexual assault, fraud) there is a form of "pairing" in the sense that particular solicitors and particular Crown Prosecutors (wherever physically located) are identified as the most suitable recipients of such matters and habitually work together.</p>
9.	<i>document the rationale for the relative number of prosecutors and levels of experience required, and examine the risks and potential benefits of reducing the number of Crown Prosecutors and using the funds to create additional Trial Advocate, Senior Trial Advocate or Associate Crown Prosecutor positions (page 79)</i>	<p>A study can be undertaken of Crown representation and of the matching of the difficulty and complexity of trials with the categories of representation at Crown Prosecutor and Trial Advocate levels. Such a survey of the number and type of matters prosecuted at trial would require up to two years of data to support any meaningful analysis and recommendations for the future "mix" of prosecutors. <u>Additional resources</u> would be required to implement this.</p> <p>For some years there has been an insufficient number of Crown Prosecutors to service the matters requiring professional skills at that level and private briefing has been required to supplement their numbers.</p> <p>There are already documented criteria for the assignment of matters to Trial Advocates. The risks and benefits of adopting the suggested course are already well known to practising legal professionals. There would be adverse implications for the community in reducing the skill level of the people's representatives in serious criminal prosecutions, even though in financial terms it may be more "efficient" (ie cheaper).</p> <p>The addition of a grade of prosecutor between Trial Advocate and Crown Prosecutor is <b>agreed</b> in principle and a Position Description is being prepared and evaluated. The study referred to above would assist in determining the number of such positions to be created and their desirable status (ie under the Crown Prosecutors Act or the Public Sector Employment and Management Act).</p>

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10.	<p><i>work towards adopting a ‘cradle to grave’ approach to case management and systematically set about standardising practices across the Solicitor’s Office.</i></p> <p><i>In so doing ODPP should:</i></p> <p><i>* brief workflow analysts to undertake a detailed study to determine the pros and cons of moving from the current ‘division of labour’ approach toward greater continuity</i></p> <p><i>* examine opportunities to identify and implement common practices between offices and groups within the Solicitor’s Office (page 81)</i></p>	<p>These are two separate issues.</p> <p>A ‘cradle to grave’ approach, while desirable for a number of reasons and already sought to be achieved wherever possible in appropriate cases, would require <u>additional resources</u> to enable it to be implemented more widely. It is practically unachievable and indeed would be inefficient across the board.</p> <p>Practices across the Solicitor’s Office are already standard, subject only to minor variations caused by local conditions at regional offices.</p> <p><u>Additional resources</u> would be required to fund any such study.</p> <p><b>Agreed.</b> Common practices are already in effect with only minor differences to take account of local conditions. Regular reviews of Groups and regional offices will place a greater emphasis on identifying best practice and the development of a mechanism for evaluation for Office-wide implementation.</p>
11.	<p><i>adopt a more systematic approach to capturing and quantifying the impact of the practices of other agencies on its efficiency, and use the resulting information to support efforts to maximise the efficiency of the justice system. In so doing ODPP should:</i></p> <p><i>* develop more systematic approaches to capturing and quantifying the impact on its operations of court listing practices and the quality of police briefs</i></p> <p><i>* use this information to support its efforts to reduce the impact of these on its efficiency</i></p> <p><i>* report the impacts to the Attorney General, Treasury and in its Annual Report.</i></p>	<p><b>Agreed.</b> To an extent, this is already done - but a greater extent of measurement and costing will be implemented.</p> <p><b>Agreed.</b> These measures will be implemented as resources permit and technical limitations can be overcome.</p> <p><b>Agreed.</b></p> <p>The public reporting (eg in the Annual Report) of criticism of or deficiencies in the work of other agencies in the criminal justice system requires further consideration.</p>
12.	<p><i>introduce a position of Executive Director with similar or greater status to the existing Deputy Directors, reporting directly to the Director of Public Prosecutions (page 90)</i></p>	<p>This recommendation is not agreed. The ODPP considers that the creation of such a position is not necessary and that any benefits to be gained from such a position can be achieved by further developing the roles and functions of existing structures and positions in the ODPP. Appropriate ODPP officers already ensure wise spending, address on an ongoing basis management and accountability systems and liaise very effectively with Treasury and many other agencies (as reported in the Annual Report).</p> <p>Alternatively, this recommendation is opposed in this form. While it might be beneficial to have a specialist officer appointed to coordinate the additional describing, counting, measuring, analysing, recording and reporting required in implementing other recommendations in the Report, the ODPP does not accept that there is a need for it to be at the level suggested. Giving to such a position status similar to or</p>

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		<p>greater than that of a Deputy Director would adversely impact on the hierarchy of management, responsibility and reporting in the Office and its relationships with other agencies. Additionally, the creation of such a position would require <u>additional resources</u> and support staff and the arrangements to be made to enable it to function would also require <u>additional funding</u>.</p> <p>The description 'Director' should not be included in the title of any such additional officer, whatever level it occupies, because of the potential for confusion of function and responsibility. There is only one Director. When s/he is absent an Acting Director is appointed from the Deputy Directors and it would be anomalous to have an Acting Director equal to or lower in status than an Executive Director.</p> <p>The ODPP suggests that the purposes behind this recommendation could be achieved by considering other options, such as enhancing the role of the Service Improvement Unit. (See further comments below.)</p>
13.	<i>review other positions to rationalise management responsibilities within the new position of Executive Director (page 90)</i>	This is unnecessary.
14.	<i>provide better information on costs and services to the Board so it can more effectively monitor efficiency and make realistic and practical improvement recommendations (page 90)</i>	<b>Agreed.</b> Although no deficiency in the supply of information to the Board has been demonstrated, improved and increased presentation of information to all governance bodies is desirable.
15.	<i>appoint an independent Chair to the Audit and Risk Management Committee (page 90)</i>	<b>Agreed.</b> Proposals for the restructure of the Committee are under discussion with the Attorney General.
16.	<i>conduct regular surveys of staff satisfaction and implement a systematic process to address staff concerns and improve morale (page 90)</i>	<b>Agreed.</b> The methodology for this previously adopted by the ODPP will be reviewed.

In summary, it can be seen that, apart from the matters of additional resources being required to implement some recommendations and some technical difficulties being overcome, issue is taken only with recommendations 8 (dot point 2), 9 (in part), 10 (dot point 1) and 12 (and 13), for the reasons briefly described above and further commented upon below in some cases. Much of what is recommended is already under way and almost all of the rest will be implemented - and all will certainly be addressed - as time, resources and expertise permit. Many recommendations require significant application that is beyond the workload capacity of existing staff and they cannot be implemented unless adequate additional resources are provided.

It is to be noted that in the Report:

- There are no adverse findings about the ODPP's capacity to operate within Treasury requirements over the past ten years.
- It is acknowledged that the ODPP operates in an environment where its areas of responsibility and the complexity of criminal prosecutions have grown substantially due to changes in the law and government expectations (page 33, first paragraph).
- It is recognised that the workload and operations of the ODPP are significantly influenced by the actions and decisions of other participants in the criminal justice system (pages 34 and 81).

Notwithstanding all of that, it is appropriate to address aspects of the background to the Performance Audit to put the Report in context and to introduce further comment upon some of the matters contained in the body of the Report.

## Background to the Performance Audit

On 23 April 2007 the Office of the Director of Public Prosecutions (“ODPP”) provided to the Attorney General (the responsible Minister) for his consideration, documentation including a draft Efficiency Improvement Plan prepared in response to Government demands to reduce the Office’s expenditure and budget and in recognition of the difficulties that would create for its effective operation. It was required that the ODPP reduce its expenditure in 2007-08 by \$1.3 M and by further amounts in subsequent years.

In a letter dated 30 May 2007 to the Attorney General, the Treasurer referred to this documentation as raising “*serious questions as to the financial management within the Office of the Director of Public Prosecutions*”. He stated that, “[a]s such”, he proposed to ask the Auditor-General “*to undertake an audit of the efficiency and effectiveness of financial resources at the Office of the Director of Public Prosecutions*”.

In an undated letter to the Auditor-General sent on 4 June 2007 the Treasurer requested him to “*review... the structure including corporate services, accountability, and the internal controls of the Office of the Director of Public Prosecutions*”. He asked him to consider:

- *“the financial management and budgetary control systems, procedures and practices;*
- *the effectiveness of the workload management agreement with the PSA in achieving efficient service delivery;*
- *the internal KPIs used to assess the performance of Crown Prosecutors and solicitors, and to allocate these legal resources to cases;*
- *benchmark performance of Crown Prosecutors and solicitors with their internal peers, other jurisdictions and the private sector;*
- *the impact of court listing practices on the efficiency of the Office, identifying unproductive work or work that could be scheduled in a more efficient manner if listing practices were changed;*
- *opportunities to out source prosecution and other legal services to other justice agencies and the private sector;*
- *progress made in implementing the Criminal Case Processing Reform, efficiencies achieved to date and the potential for future efficiencies; and*
- *such other matters relevant to the efficient and effective use of financial resources.”*

The Auditor-General developed an Audit Plan dated 17 August 2007 in response to this request. It was headed “*Efficiency of the Office of the Director of Public Prosecutions*” and was expressed to be focused on the efficiency of the Office and not its effectiveness. Two lines of inquiry were identified:

- Can the Office of the Director of Public Prosecutions show how efficient it is?
- Can the Office of the Director of Public Prosecutions show it has adopted good management practices?

In taking those directions (referred to in Appendix 1 to the Report) the Performance Audit passed over many of the issues raised expressly by the Treasurer and the lines of inquiry to which they might have led. No criticism is made of that, the Auditor-General exercising independent statutory powers and, as noted in Appendix 1, having developed his own lines of inquiry into the efficiency of the Office following consultation with the ODPP and other key stakeholders. However, the lines of inquiry followed by the audit and the findings and recommendations of the Report need to be considered in the context of the Treasurer’s concerns and the wide ambit and nature of the information provided by the ODPP to the auditors.

It is important to recognise the narrow focus of the performance audit carried out and therefore also of the recommendations that ensued - looking only at the efficiency of the ODPP. As noted in Appendix 1, the audit did not examine the effectiveness of the ODPP (although that has been conceded), the efficiency of the justice system, the adequacy of the ODPP's budget, police prosecutions or the merits of Government policy objectives.

The inquiry, as the Report demonstrates, has been into describing, counting, measuring, analysing, recording and reporting by the Office. The effectiveness of the Office, without detailed examination, is clearly and specifically endorsed. It should be noted that effectiveness of the standard reported (page 26) cannot be achieved or sustained by inefficiency.

One way of measuring such efficiency in practice and independently (and apparently not specifically addressed by the audit) may be to consider material that demonstrates that collectively the Supreme Court of NSW and the District Court of NSW in their criminal jurisdictions, together with the NSW Court of Criminal Appeal, are the most efficient in Australia (see, for example, Productivity Commission Report on Government Services for 2008: Chapter 7). Those results would not be achievable unless the ODPP, the principal party to litigation in each of those jurisdictions, were effective and (arguably) efficient in the conduct of its professional functions.

The effectiveness and high standing of the ODPP have only been achieved and can only be sustained by close attention to the maintenance of the highest professional standards reasonably achievable in the conduct of a prosecution agency. The Report draws a distinction between professional performance of the ODPP's core functions (effectiveness) and its efficiency: to the extent that it is able to describe, count, measure, analyse, record and report what it does - matters to which, it is conceded, busy legal professionals without adequate administrative support may sometimes pay insufficient attention.

In the Judicial Officers' Bulletin, Volume 13 Number 2 of March 2001, Chief Justice Spigelman AC wrote in an article entitled "Economic Rationalism and the Law":

*"Our system of justice is not the most efficient mode of dispute resolution. Nor is democracy the most efficient mode of government. We have deliberately chosen inefficient ways of decision-making in the law in order to protect rights and freedoms. We have deliberately chosen inefficient ways of governmental decision-making in order to ensure that the governments act with the consent of the governed."*

There is a regrettable but probably necessary tension between the priorities of those who perform professional tasks and those who manage them. Chief Justice Spigelman AC, referring to past statements he had made, referred to this in a speech to the Annual Conference of the Australian Institute of Judicial Administration entitled "Measuring Court Performance" on 16 September 2006. His Honour said, *inter alia*:

*"My central proposition was really quite a simple one, not everything that counts can be counted. Some matters can only be judged - that is to say they can only be assessed in a qualitative way. Most significantly there are major differences between one area of government activity and another in the importance of those matters that are capable of being measured. In some spheres of government decision making the things that can be measured are the important things. In other spheres the things that are important are simply not measurable. The law is at the latter end of the spectrum."*

In the Judicial Officers' Bulletin, Volume 13 Number 7 of August 2001 (published by the NSW Judicial Commission), Chief Justice Gleeson AC in an article entitled "Valuing Courts" addressed the same theme with appropriate variations.

*"The current emphasis on court management is natural and appropriate. The operations of courts involve the expenditure of scarce public resources, and governments are entitled to reasonable assurance that those resources are being applied efficiently and effectively, and are dealt with in a manner that responds to the demands of accountability... Even so, it would be unfortunate if the requirements of management were to take on an exaggerated importance compared to our primary goals... Managers sometimes tend to set standards, including standards of performance, and standards of remuneration, solely by reference to managerial functions and goals. This is reflected in the work of some consultants, who tend to rate, and reward, people according to their managerial responsibilities. A person who administers a large organization is regarded as much more important than a lone decision-maker who has no budget and a small staff, regardless of the skill and responsibility involved in the decision-making. Managers are uncomfortable with activities that cannot be counted. They like judges and magistrates to be sitting in courts; not working in their chambers or, even worse, at home. They know how to measure the use that judicial officers make of their seats, but not of their heads.*

*We are not entitled to complain about people trying to introduce better standards of court management. But we are entitled to insist that people who assess the value of courts do so according to the standards which govern the administration of justice; which are not the same as the standards that apply to the administration of an army, hospital or factory. Managers have a lot to teach us about how to be more effective in the application of the resources we are given. We have a lot to teach them about the demands of justice and the due process of law. The public will benefit if we learn from each other."*

Similar comments could be made about the operations of a prosecution agency.

In the meantime it should be recorded that the financial issues confronting the ODPP and raised early in 2007, indirectly leading to the Performance Audit, remain unresolved. In most regional offices the workload has increased substantially. Staff across the Office are working nights and weekends and carrying caseloads above the agreed 25. Recreation and flex leave are not being taken, despite managerial urging. If a staff member is absent for any reason, there is no possibility of relief. Stress-related problems are increasing.

The *Sydney Morning Herald* editorialised about the state of affairs in NSW on 21 February 2008:

*"Capable bureaucrats do their best in an atmosphere where cost-cutting and bean-counting are the key measures of performance. The rest just keep their heads down."*

## Comments on Some Sections of the Narrative of the Report

### EXECUTIVE SUMMARY

- \* page 2, 6<sup>th</sup> paragraph: *“Over the last decade or so, large private sector law firms have improved their profitability significantly by looking at issues in new ways and finding practical solutions. Although the public sector looks to improve efficiency rather than profit, we see scope for applying the same mindset. Efficiency means best use of resources, keeping in view the objects of the organisation.”*

Comparisons between the ODPP and large private legal firms may not be helpful because of the significant differences that exist between them. The ODPP’s public sector staff are employed under the Public Sector Employment and Management Act, the provisions of the Crown Employees (Public Service Conditions of Employment) Reviewed Award 2006 and, as mentioned elsewhere, the terms of the Workplace Management Agreement of 2004. Crown Prosecutors are employed under the Crown Prosecutors Act. In other words, the industrial environment in which work is undertaken contrasts sharply and in many respects to that of the private sector.

At the suggestion of the auditors, the ODPP Management Committee met with a consultant who has worked with both private and public sector organisations and after discussion with him the ODPP is satisfied that the initiatives adopted in such large private sector law firms have no application to the ODPP. For example and by way of contrast, the ODPP is given a pre-determined, tightly controlled budget and has no scope for divesting itself of unprofitable work. Moreover, its staff “leverage” rate already far exceeds private firm levels.

At page 89 (Exhibit 18) and elsewhere in the Report inaccurate and/or incomplete statements are made about the situation in large private legal firms. Even a superficial analysis of the large firms in Sydney reveals that it is not the case that they have CEOs who are not lawyers and partners. Only some have non-lawyer and non-partner members of governance boards and they are usually described as Chief Financial Officer or Chief Operating Officer. They are usually outnumbered by the lawyer/partners by about 5:1 and do not have the powers and authority described in the Report. It should also be noted that there is a wide gulf between equity partners and employees of large firms and this impacts significantly on the exercise of authority within the firms, resource allocation and the development of business plans.

- \* page 5, final paragraph: *“Our investigations suggest that there is still considerable dissatisfaction among staff in many sections of the ODPP.”*

No particulars of the investigations, the nature of the dissatisfaction, to what it is directed (whether officers, structures, practices, workloads, management, procedures or outside agencies), its extent or the sections or individuals of the ODPP concerned, have been provided in the Report or to the ODPP, so no detailed comment can be made; but this “suggestion” is disputed. The question of staff dissatisfaction was not raised in discussions between the auditors and the Director, Deputy Directors, Solicitor, Deputy Solicitors or the Senior Crown Prosecutor.

- \* The Executive summary (page 2, 9<sup>th</sup> paragraph) concludes that the ODPP has not been able to *“provide sufficient evidence for us to reach a conclusion on its efficiency”*.

This statement may be read in several ways. On the one hand it may mean that the ODPP has not been able to discharge an onus of some kind to show that it is efficient (but that it may still be so). On the other hand, the auditors clearly cannot conclude and have not concluded that the ODPP is inefficient. The statement should therefore be taken at face value - no conclusion can be reached or reported.

## BACKGROUND

- \* page 29: The organisational chart at this page may possibly mislead in that form. A complete chart is attached at the end of this submission.
- \* page 33: There is no mention in changes to the ODPP's operating environment of the Workload Management Agreement made in 2004. Subject to some variation for particular circumstances, solicitors are allocated a maximum of 25 (weighted) active matters at a time and that is a significant limitation on the workload (and caseload) able to be carried at any one time. The ODPP still discharges its obligations, but in so doing some staff accrue excessive flex leave and do not take recreation leave. That situation cannot continue.

## CAN THE ODPP DEMONSTRATE IT IS EFFICIENT?

- \* page 46: Under "Results Logic" it is stated that "*Understanding this link [ie between services and results] is fundamental to effective service delivery, resource allocation and reporting*".

The ODPP agrees that it is fundamental to the reporting of effective service delivery and resource allocation; but it is not fundamental to effective service delivery or resource allocation.

## CAN THE ODPP SHOW ITS INFORMATION SYSTEMS SUPPORT EFFICIENT MANAGEMENT?

No further comment is made on this section.

## CAN THE ODPP SHOW ITS MANAGEMENT ARRANGEMENTS AND WORK PRACTICES SUPPORT EFFICIENT MANAGEMENT?

- \* General Comment

The ODPP has introduced in recent times a number of systems and practices that support efficient management. These include:

- monthly Personnel Management Reports providing information to ensure compliance with policies and legislation, as well as providing a basis for effective workforce planning;
- online task management system providing the facility for staff to lodge service requests electronically, for services associated with IM&T and accommodation or security matters;
- a web-based SUN Financial System, providing real-time access by all cost centres to financial and budgetary information necessary for decision making;
- the Integrated Document Management System (IDMS) for the creation, tracking, archiving and storage of and access to all 'documents' across the entire organization;
- computerised Flex Leave System, eliminating the need for maintaining paper records and for supervisors to manually calculate time records;
- establishment of a Joint Working Party with the Legal Aid Commission to pursue efficiencies in meeting the needs of the two agencies, including opportunities for shared data.

In addition, the Information Management and Technology (IM&T) Branch in 2006 achieved certification for its operations and services in compliance with the requirements of ISO27001 information security standard - the first agency within the NSW criminal justice system to achieve this standard.

- \* page 70 (Crown Prosecutor management): The Report suggests that the Deputy Senior Crown Prosecutor (Country) on a daily basis receives advice from the Crown Prosecutors and Trial Advocates about what they are doing at each court to allow the DSCP (Country) to make “necessary emergency alterations to the Crown Prosecutor roster”.

The Report states that the auditors “are not aware of a similar procedure to inform the Professional Assistant to the Deputy Senior Crown Prosecutor of daily changes to the status of the roster of Crown Prosecutors in Sydney.” The situation in Sydney is that the Professional Assistant to the Senior Crown Prosecutor (a very senior and experienced solicitor) is proactive in ascertaining the status of all matters in the trial list, either running as trials or coming on for trial, as well as the chamber work being performed by Crown Prosecutors. Such information is constantly updated and is obtained from various sources.

- The Crown Prosecutors and/or Trial Advocates briefed.
- Each day the Crown Support Administrative Officers ascertain from the Crown Prosecutors on their floors what matters they are preparing for the following day, whether their trials are continuing and/or whether they have any other court commitments. That information is placed into a list and emailed to the Professional Assistant.
- From daily Court Lists.
- From the District Court Registry.
- From the Solicitor’s Office.

The Professional Assistant needs to be constantly up to date with the commitments of the Crown Prosecutors in Sydney in order to brief matters either for trial or advice and/or to re-brief matters on short notice and/or to respond to any “necessary emergency” that may arise.

The Professional Assistant is also required to be abreast of the Crown Prosecutors’ commitments in Sydney in order to respond to inquiries from the Registry and/or Senior Crown Prosecutor, the Director and his Deputy Directors.

The Professional Assistant is constantly aware of what trials are running, what the estimated lengths are, whether there is any possibility of pleas, whether trials have been separated, whether trials have aborted (and if they are going to run again straight away or will be adjourned), whether matters have been put over to start later in the week or the next week (and the reason why that may be), whether matters are going to be discontinued, whether matters have been stayed and so on.

#### Re-briefing of matters

With regard to the issue of re-briefing of matters (pages 74-75 of the Report): the reasons for the re-briefing of matters are always such that no alternative exists but to re-brief to another Crown Prosecutor. Should the pool of Crown Prosecutors be reduced, the number of matters needing to be re-briefed will increase, rather than decrease.

The Report seems to contemplate that the Crown Prosecutors in Sydney are engaged upon only one matter at a time. At times of difficult and complex trials or appeals that may be the case; but many Crown Prosecutors are working on more than one matter. They may be appearing in one trial but dealing also with other matters which they have to prepare for trial, matters on which they are advising and other professional tasks.

- \* page 72: Exhibit 13: In Queensland the “Crown Prosecutors” are not equivalent to Crown Prosecutors in NSW. Further, the Brisbane office is significantly smaller than the NSW head office in Sydney.

Similar comments apply to South Australia.

In Western Australia the reported developments were only made possible by a huge increase in the Office's budget.

The desirability of "front-end loading" has been foremost in the priorities of the ODPP since its creation. The Standing Committee of Attorneys General accepted the "Best Practice Model" for the conduct of prosecutions, settled by an inter-jurisdictional committee about a decade ago and the ODPP has sought to continue to implement its recommendations. An example of present attempts to have matters effectively addressed earlier is the Criminal Case Conferencing initiative.

"Cradle to grave case management" would not effectively (or efficiently) extend to Court of Criminal Appeal or High Court matters and could not be employed elsewhere on any broad scale without some increase in the ODPP's budget. In a limited form it occurs already in appropriate cases and every effort is made to carry it out. With a different mix of levels of Lawyers (at some additional cost) it could be expanded.

- \* page 78: middle of the page: It is stated: "*ODPP has not demonstrated how it assesses compliance with these guidelines, or whether they are reviewed.*"

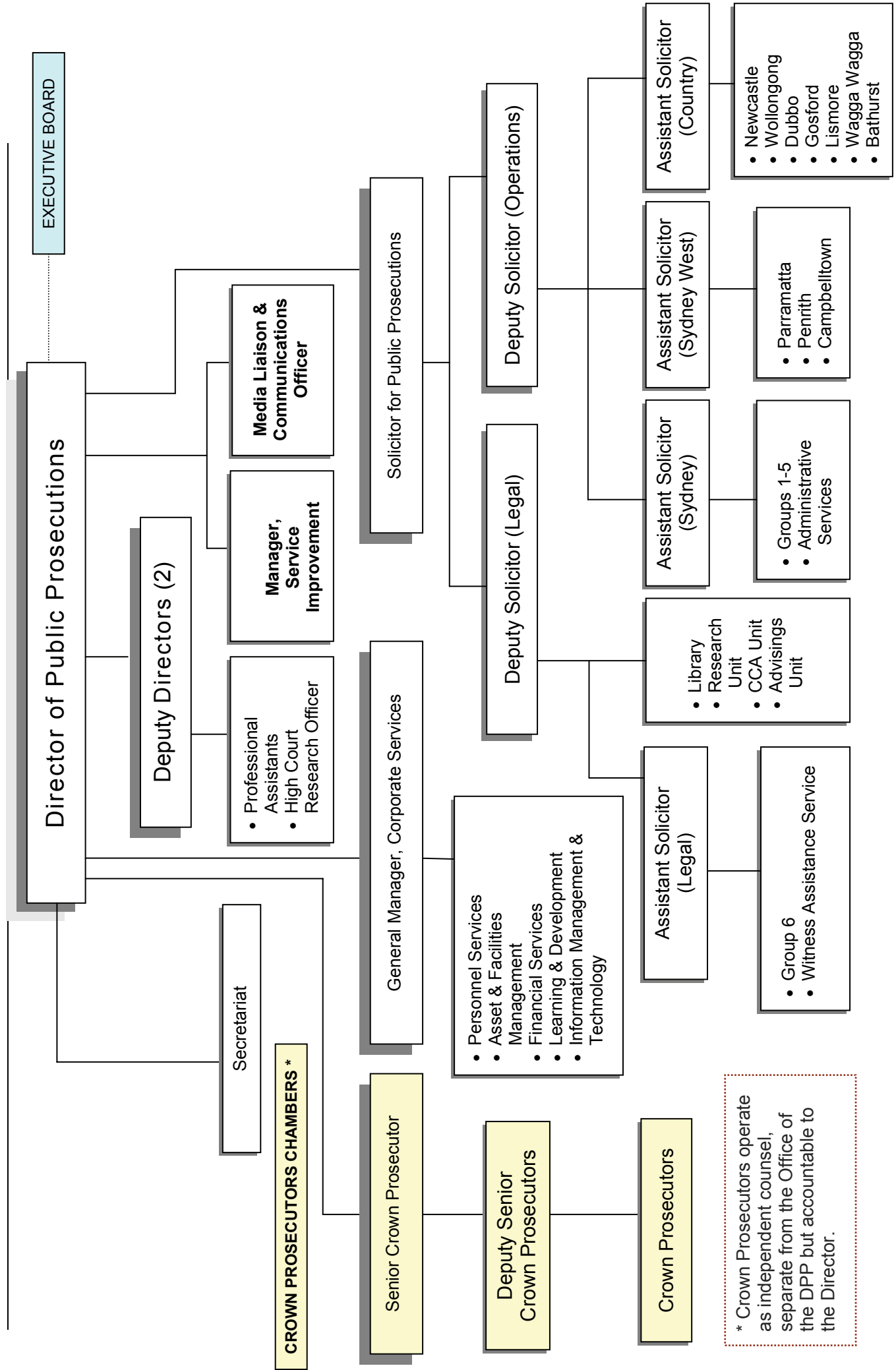
The ODPP disagrees. As the auditors were informed, the Senior Crown Prosecutor and his Professional Assistant regularly review the allocation of trials between Crown Prosecutors and Trial Advocates in the city. From time to time they reverse a decision which has been taken in the PTU. A similar process is carried out, as required, by the Deputy Senior Crown Prosecutor (Country) and the Deputy Senior Crown Prosecutor (Sydney West). It is therefore incorrect to say that there is no ongoing review of compliance in this area.

- \* page 87, final paragraph in 4.5: The ODPP strongly endorses the observation that "*there does appear to be a strong argument for a review, similar to that recommended by COCOG in 1998, of the overall efficiency of the justice system.*"

- \* page 90: The ODPP (as noted above) does not support the appointment of an Executive Director (or similar position). The further observations are made that:
  - it is not necessary or appropriate to have such a position;
  - it has not been demonstrated that there is any deficiency in the management of the ODPP - such criticism as is made is directed towards matters culminating in reporting operational data by the ODPP;
  - there would need to be a large increase in resources to establish, support and maintain such a position;
  - moves of this kind have been tried elsewhere in different systems and circumstances that have not been fully or properly described in the Report and it has been found that they have not added value to the operations of the agency (except where an agency operates on a very much larger scale, such as the Crown Prosecution Service of England and Wales); and
  - the ODPP (as noted above) is suggesting and is examining other options to achieve the required objectives and purposes.

It should also be noted that if such a position already existed in the ODPP, consistently with the Government's policy on the Reduction of Non-Frontline Positions, it would be the first (and possibly the only) position to be removed under that policy. That could certainly be done without affecting key frontline essential services provided by the ODPP.

**ORGANISATIONAL STRUCTURE OF THE  
OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS & CROWN PROSECUTORS CHAMBERS**  
*Performance audit reports and related publications*



\* Crown Prosecutors operate as independent counsel, separate from the Office of the DPP but accountable to the Director.