

AUDITOR-GENERAL'S REPORT

PERFORMANCE AUDIT

Efficiency of the Office of the Director of Public Prosecutions



The Legislative Assembly
Parliament House
SYDNEY NSW 2000

The Legislative Council
Parliament House
SYDNEY NSW 2000

In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Efficiency of the Office of the Director of Public Prosecutions**.

A handwritten signature in black ink that reads 'Peter Achterstraat'.

Peter Achterstraat
Auditor-General

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Foreword

The Office of the Director of Public Prosecutions (ODPP) prosecutes the most serious criminal cases on behalf of the people of New South Wales.

It is a critical component of the justice system, sitting between the Police who investigate crimes and the courts who adjudicate cases and sentence the guilty.

Its principal role is to assist the court to arrive at the truth and to do justice to the community and the accused according to law and the dictates of fairness.

The ODPP has the independence to make prosecutorial decisions without fear or favour, which is a cornerstone of our justice system.

This independence does not remove the need for it to manage public resources appropriately, to be accountable for its performance and deliver value for money.

This audit examines how well the ODPP can demonstrate its efficiency.

This report highlights the importance of agencies collecting good information on their services and costs. Such information is needed so agencies can not only show how well they are using resources, but so they can systematically examine whether current approaches remain the best.

I hope this report assists the ODPP's improvement efforts, and provides some insights useful to other public sector agencies facing the challenge of achieving and demonstrating value for money.

Peter Achterstraat
Auditor-General

March 2008

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

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- 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)
- Improving information management**
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> <p><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></p> <p><i>* develop indicators of quantity, timeliness, total cost and unit cost for each service by the end of 2007-08</i></p> <p><i>* include these indicators in its planning and internal reporting from the beginning of 2008-09</i></p> <p><i>* select from these a smaller number of 'headline' indicators to use in its reports to Parliament and to the Minister</i></p> <p><i>* start building a data development agenda and report progress alongside its reporting on service performance (page 48)</i></p>	<p>Agreed. As implied in the Report, that is occurring.</p> <p>Agreed. A Results and Services Plan is under preparation for 2008-09 and will be completed in the near future.</p> <p>Agreed. 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>Agreed. This will be done.</p> <p>Agreed. 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>Agreed. This will be done.</p>
2.	<p><i>include in its reporting to the Attorney General and Parliament:</i></p> <p><i>* its improved service and efficiency indicators</i></p> <p><i>* an explanation of why these indicators are important</i></p> <p><i>* advice on what represents good performance</i></p>	<p>Agreed. 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>

Item No.	Recommendation	ODPP Response
	<p><i>* comparisons over time, against benchmarks and to targets</i></p> <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>Agreed. This will be done.</p> <p>Agreed. Work is proceeding on this, subject to available resources and the resolution of technical difficulties.</p> <p>Agreed. This will be addressed as resources permit and information is gathered.</p> <p>Agreed. 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>Agreed.</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>

Item No.	Recommendation	ODPP Response
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><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>Agreed. This will be done.</p> <p>Agreed. 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>Agreed. Present processes will be reviewed and made consistent across the Office. Formal reporting will be introduced.</p> <p>Agreed; 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>Agreed. The existing processes will be enhanced.</p> <p>Agreed; 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&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>Agreed.</p> <p>Agreed. Performance management will be reviewed following finalisation of the current round of wage negotiations between DP&C and the PSA.</p> <p>Agreed. 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>Agreed. 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>Agreed.</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 agreed 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>

Item No.	Recommendation	ODPP Response
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>Agreed. 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>Agreed. To an extent, this is already done - but a greater extent of measurement and costing will be implemented.</p> <p>Agreed. These measures will be implemented as resources permit and technical limitations can be overcome.</p> <p>Agreed.</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</p>

Item No.	Recommendation	ODPP Response
		<p>status similar to or 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>	Agreed. 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>	Agreed. 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>	Agreed. 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, 6th 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, 9th 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.

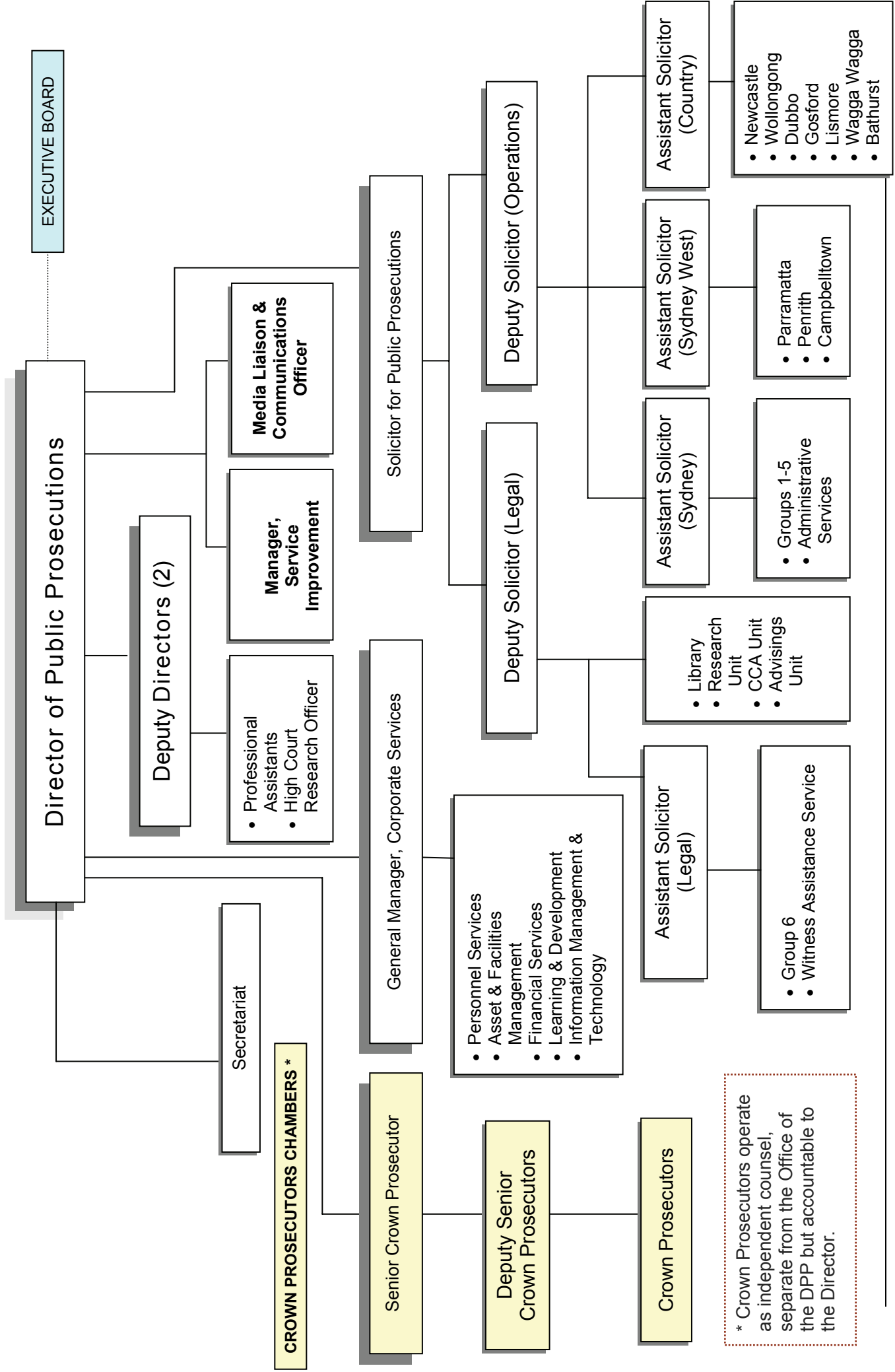
- * page 87, final paragraph in 4.5: The ODPP strongly endorses the observation that "*there does appear to be a strong argument for a review, similar to that recommended by COCOG in 1998, of the overall efficiency of the justice system.*"

- * 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



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

1. Background

1.1 What is the role of the ODPP?

The ODPP conducts matters involving offences under NSW laws in all criminal courts

The Office of the Director of Public Prosecutions (ODPP) was established by the *Director of Public Prosecutions Act 1986* (the Act) and commenced operation on 13 July 1987. Establishing an independent Director of Public Prosecutions was consistent with national and international trends.

The creation of a Director of Public Prosecutions changed the administration of criminal justice in New South Wales. Day to day control of criminal prosecutions for New South Wales offences passed from the Attorney General to the Director of Public Prosecutions (the Director). As a result of the Act there now exists a separate and independent prosecution service.

The ODPP conducts matters involving offences under the laws of New South Wales in all criminal courts in the State and in the High Court. In brief, the ODPP conducts/acts in the following criminal matters:

- trials for indictable offences in the District Court and the Supreme Court
- committal proceedings for indictable offences in the Local Court
- summary hearings in the Local Court in relation to a limited class of matters; for example matters in which a NSW Police officer is a defendant or in which a defendant has been charged with a sexual assault offence against a child
- appeals in the High Court, Supreme Court, Court of Appeal, Court of Criminal Appeal, and in the District Court in relation to summary matters.

NSW ODPP is largest prosecution service in Australia, and well regarded amongst the legal profession

From its inception the ODPP has been the largest prosecution service in Australia.

The ODPP is a highly-regarded player in national and international prosecution circles, often approached for advice and assistance by prosecution services elsewhere. The present Director was President of the International Association of Prosecutors from 1999 to 2005.

The Director is responsible to the Attorney General for the due exercise of his functions. But he has independence in respect to the preparation, institution and conduct of any proceedings.

The ODPP generally prosecutes the more serious offences in the District and Supreme Courts. These are mainly in the areas of drugs, assault, sexual assault (both child and adult), armed robbery, theft, fraud, dangerous driving, manslaughter and murder.

The ODPP does not have investigative functions or capacities, but does advise the NSW Police and other investigative agencies (eg Independent Commission Against Corruption, Police Integrity Commission) on evidence in relation to specific investigations.

The ODPP also provides advice and comment to criminal justice reform agencies (eg the Criminal Law Review Division and the Legislation and Policy Division of the Attorney General's Department) and is represented on many interagency forums.

Principal role of prosecutors is to assist the court to arrive at the truth, without fear or favour

From the ODPP's establishment, prosecutors have had the independence to make prosecutorial decisions without fear or favour, which is a cornerstone of our justice system. Their role is a 'minister of justice' rather than to win-at-all costs. This means that the prosecutor's principal role is to assist the court to arrive at the truth and to do justice to the community and the accused according to law and the dictates of fairness.

The ODPP prosecutors represent the community and not any individual or sectional interest. A prosecutor acts independently, yet in the general public interest at the trial of an accused person.

Most trials are conducted by Crown Prosecutors who are barristers. A small number of solicitors in the ODPP called Trial Advocates also conduct trials in the District Court.

Solicitors generally instruct Crown Prosecutors in trials. Solicitors also conduct advocacy in the Local Court and the District Court. Advocacy in the Local Court includes committal hearings, summary hearings (to a lesser extent) and mentions/callovers. Advocacy in the District Court includes all-grounds appeals, severity appeals, and sentences.

The approximately 90 Crown Prosecutors are statutory officers, appointed by the Governor and responsible to the Director for the due exercise of their functions under the *Crown Prosecutors Act 1986*.

The independence of the Crown Prosecutors as Counsel is guaranteed by the *Crown Prosecutors Act 1986* which states in section 5(1) that:

"The functions of a Crown Prosecutor are:

to conduct, and appear as Counsel in, proceedings on behalf of the Director; ... and

to carry out such other functions of Counsel as the Attorney General or Director approves."

While the Director can issue guidelines to the Crown Prosecutors with respect to the prosecution of offences, the Director may not issue guidelines in relation to particular cases. The Crown Prosecutor is therefore in most respects an independent counsel with only one client, namely the Director of Public Prosecutions.

The ODPP advised us that Crown Prosecutors, Deputy Directors and the Director in NSW are practicing barristers. They hold practicing certificates issued by the NSW Bar Association and are subject to the *Legal Profession Act 2004* and the NSW Barristers' Rules.

While they are not required to be barristers, the ODPP tells us they uniformly have elected to be. This has been the situation since the establishment of the office of Crown Prosecutor in the 19th Century. The ODPP says the primary reason is that almost all of the opponents against whom Crown Prosecutors appear in the higher courts are barristers, and to have the Crown represented by a non-barrister would place it at a disadvantage in court, particularly in front of juries.

The Solicitor for Public Prosecutions is the most senior solicitor position in the ODPP. This position holder is also responsible to the Director for the due exercise of his/her functions, and acts as solicitor for the Director in providing advocacy and preparing cases in which advocacy skills are provided by Crown Prosecutors.

The positions of Director, Deputy Directors and the Solicitor for Public Prosecutions are also statutory offices. Solicitors and other staff are employed under the *Public Sector Employment and Management Act 2002*.

Statutory officers appointed before 1 November 2007 were appointed for life. However the *Crown Law Officers Legislation Amendment (Abolition of Life Tenure) Act 2007* assented on 1 November 2007 changes this situation for future appointments. Future Directors of Public Prosecutions will be appointed for a fixed, non-renewable term of ten years. Future Deputy Directors, Solicitors for Public Prosecutions and Crown Prosecutors will be appointed for fixed, renewable terms of seven years. Retirement ages of 72 for the Director and 65 for the others have been set.

1.2 How does the ODPP carry out its work?

Structure and workflow similar to 20 years ago

The ODPP's structure and workflow arrangements are similar today to when it started 20 years ago, although the ODPP has more than doubled in staff numbers.

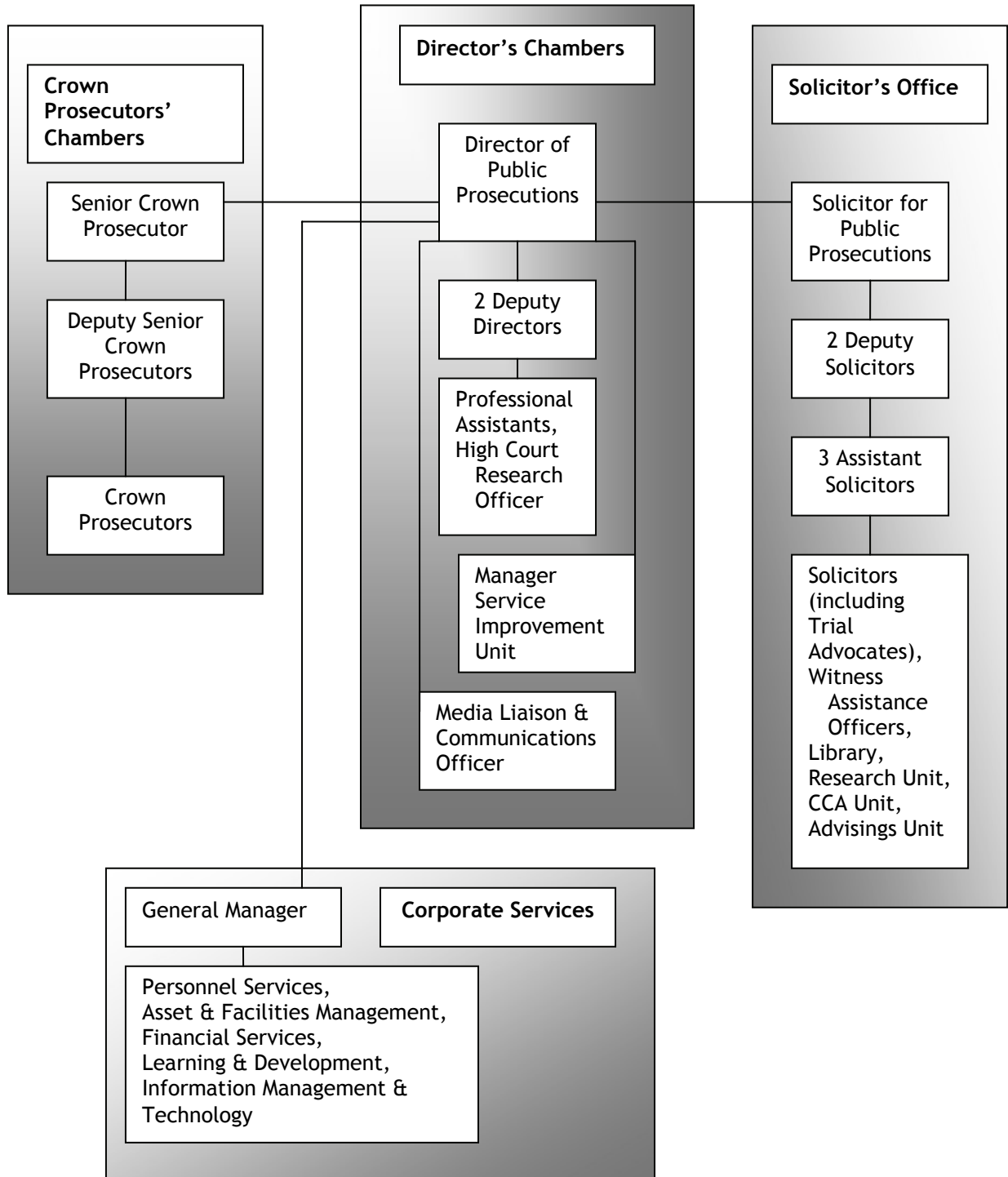
As at September 2007 the ODPP had 628.5 staff (estimated full time staff).

The ODPP is structured across four units or sections.

- the Solicitor's Office, headed by the Solicitor for Public Prosecutions, had 468.6 staff
- the Crown Prosecutors, under the Senior Crown Prosecutor, had 99.1 staff (including administrative support)
- the Director's Chambers (which includes two Deputy Directors and the Service Improvement Unit) had 18.2 staff
- Corporate Services (led by the General Manager, Corporate Services) had 42.6 staff.

Each unit reports to the Director of Public Prosecutions.

Exhibit 1: Organisational structure of the Office of the Director of Public Prosecutions (simplified)



Source: ODPP Annual Report 2006-2007 and Audit Office Research

**More than
doubled in size**

The ODPP has grown considerably since its commencement in 1987, when it had 46 Crown Prosecutors and 227 other staff.

From its establishment, the ODPP has had a regionalised structure to serve criminal courts sitting in city, regional and country areas.

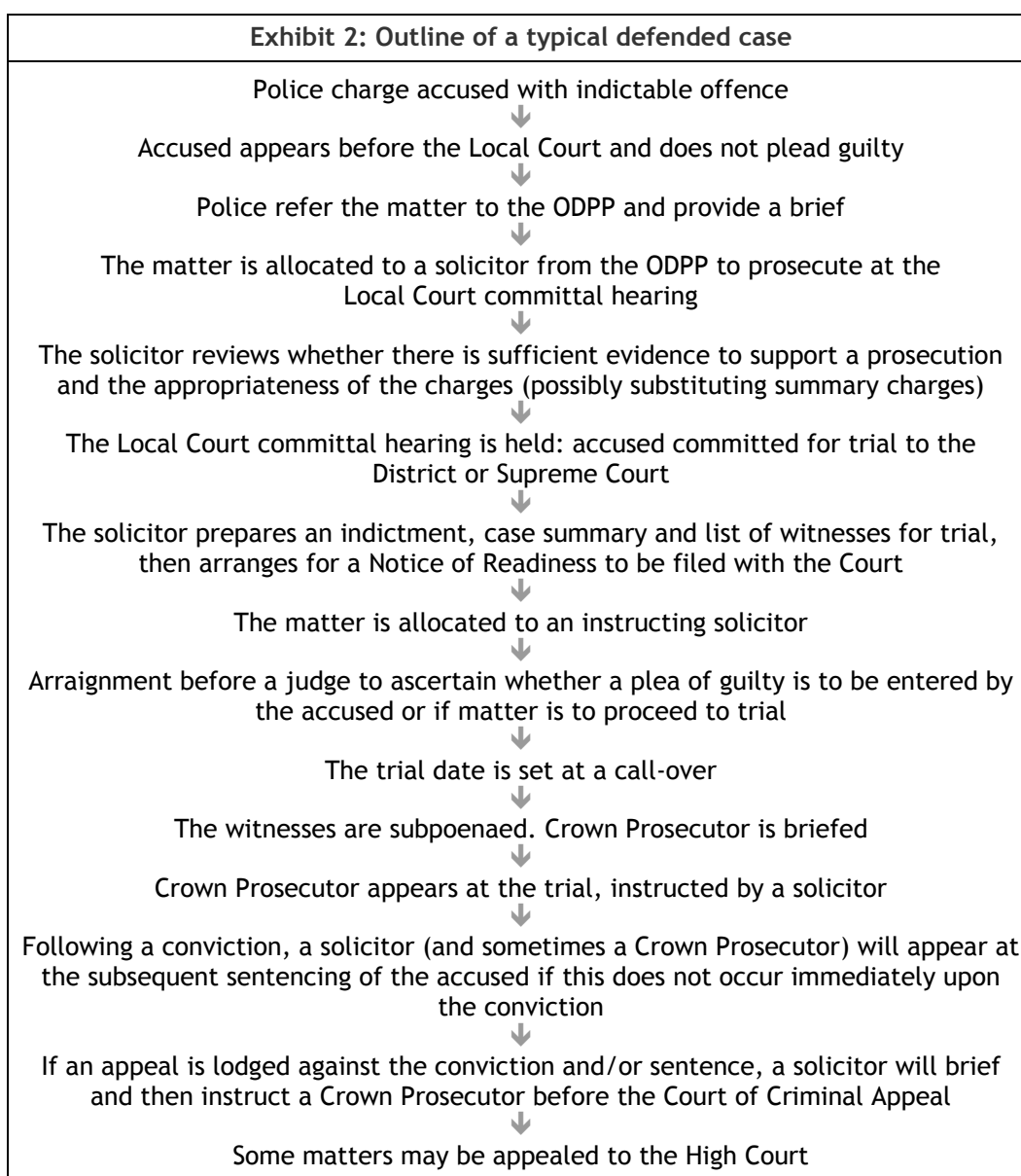
The ODPP has a Head Office located in three buildings in the Sydney CBD. The Director, the two Deputy Directors, and their legal and administrative support staff are based in the Head Office, as are all members of the Corporate Services Division. About 200 solicitors and support staff and about 70 Crown Prosecutors and Trial Advocates are also located at Head Office.

In addition to its Sydney office the ODPP has regional branch offices at Parramatta, Penrith, Campbelltown (collectively called 'Sydney West'), and at Lismore, Newcastle, Gosford, Wagga Wagga, Dubbo, Bathurst and Wollongong. Each of the ODPP offices has Crown Prosecutors, solicitors and administrative support staff.

Each office conducts prosecutions in the Local, District and Supreme Courts. Solicitors and Crown Prosecutors located in the regional branches routinely conduct prosecutions in circuit courts within their region. On some occasions solicitors and Crown Prosecutors from Head Office also conduct prosecutions in circuit courts in outlying regions.

One or more Witness Assistance Officers (generally social workers or psychologists) are located in each office. The Witness Assistance Service provides support, referral to other support services, assistance and information to civilian prosecution witnesses.

Typically defended cases follow the process set out in exhibit 2.



Note: Not all matters proceed to trial:

- the accused may be discharged in the Local Court
- the accused may, depending on the seriousness of the charge/s, be dealt with summarily in the Local Court
- the accused may plead guilty in the Local Court to the indictable charge/s and, again, depending on their seriousness, be committed for sentence to the District or Supreme Court
- after committal for trial the accused may enter a plea of guilty (at arraignment or at any time up to and including the trial) or
- the Director can, at any stage, discontinue proceedings.

Source: ODPP Annual Report 2006-2007 and Audit Office Research

Sydney prosecutions

In the Sydney Head Office, Crown Prosecutors are located in chambers separate from other legal staff. The chambers are spread across three floors in two buildings (although the buildings are side-by-side).

The Senior Crown Prosecutor and his Professional Assistant allocate trials to Crown Prosecutors and Trial Advocates.

Each case listed for trial is assessed by the Professional Assistant and when necessary, by the Senior Crown Prosecutor, on its merits as to length, complexity, type, involvement of victims etc. Supreme Court matters are allocated first, followed by special interest matters, such as those with high public interest, and long trials (more than 15 days) in the District Court. Then the week by week District Court trials (or short matters) are allocated. These are also prioritised, with child sexual assault matters being allocated first, followed by adult sexual assaults. If no Crown Prosecutor or Trial Advocate is available for a short matter, a private barrister may be briefed to conduct the prosecution.

Crown Prosecutors and Trial Advocates require time to prepare for the trials. This varies according to the complexity of the matters. For example a trial listed for six weeks could require three weeks to prepare. Crown Prosecutors and Trial Advocates generally only have one case at a time in Sydney.

Crown Prosecutors are from time to time allocated to certain types of work (eg appeals, Pre Trial Unit screening, trials) which bring them under one of the Deputy Senior Crown Prosecutors. The location of chambers of any particular Crown Prosecutor remains constant, despite the work s/he may be doing at the time. On any floor there is a mixture of Crown Prosecutors doing all types of work and a mixture of senior and junior prosecutors.

This arrangement means that currently of the 57 Crown Prosecutors in the Sydney chambers, about ten do only Court of Criminal Appeal work, 13 do only Supreme Court trials, four do Pre Trial Unit (PTU) screening and 30 are available for District Court trials. These breakdowns are fluid, and prosecutors available for PTU screening and District Court work are supplemented by Trial Advocates.

Regional prosecutions

The Crown Prosecutors in regional branches are also located in chambers. The ODDP advises this is in accordance with the practice of private barristers throughout New South Wales.

Generally, these chambers are in close proximity to the solicitors. Crown Prosecutors in regional branches are briefed by the Managing Lawyer of each office, and become involved in cases soon after they are received. For example, solicitors prepare Pre-committal Reports shortly after a case is allocated to them, and these are screened by both the Managing Lawyer and a Crown Prosecutor.

1.3 How has the ODPP's operating environment changed?

Many changes over the last 20 years

Since commencing operation twenty years ago, the ODPP's areas of responsibility and the complexity of criminal prosecutions has grown substantially due to changes in the law and government expectations.

An enhanced role in victim and witness support has also been a major change for the ODPP. The rights of victims are being given increased emphasis throughout the criminal justice system.

The ODPP is also involved in taking action to recover the proceeds of crime and advises this role has been extended with recent legislation.

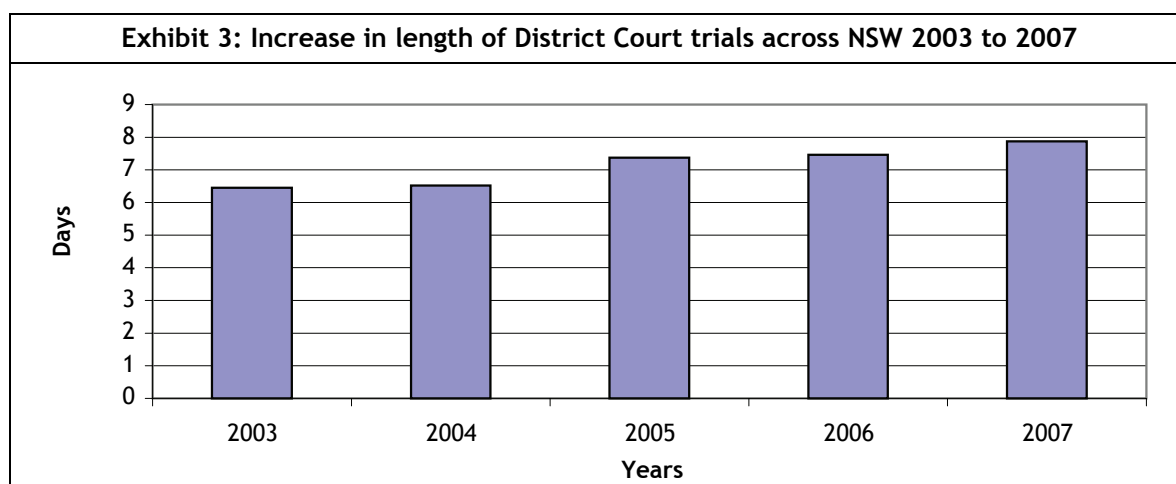
In recent years the criminal law has been subject to continuing reform and consequently legislation affecting the ODPP has grown significantly. In 1999 there were 18 Acts and Regulations that affected the work of the ODPP, and in 2006 there were 48.

Court procedures and legislation relating to the conduct of criminal proceedings are under continual review by government, resulting in significant changes to the conduct of prosecutions and emphasis on adherence to time standards and disclosure of evidence.

The ODPP translates these changes into practice through its widely respected Research Unit. This Unit provides a variety of information services to Crown Prosecutors and solicitors throughout the State. An important focus of the Unit's work is the analysis of case law and legislation which substantially affects the conduct of criminal matters.

As the complexity of the law has increased, the onus on the ODPP to assist the Court in applying the legislation has increased, as has the role of Judges in explaining the law to juries.

The ODPP says the growing complexity of the law is one of the causes for the increase in the average length of District Court trials across the State. Between 2002 and 2006 the average length of District Court trials across the State increased by 25 per cent (from 6 to 7.5 days) and the average length in Sydney rose by about 20 per cent (from 8.3 to 10 days).



Source: District Court of NSW

The District Court also increased the number of weeks it heard matters or 'sat' from 1,627 in 2003 to 1,694 in 2006.

The ODPP advised us that these District Court figures take no account of sentencing proceedings following convictions at trials. This means the statistics for the average length of trials do not include time spent on sentence proceedings following the trial. The ODPP also advised us that sentence proceedings have increased significantly in length in recent years by reason of a combination of:

- legislative amendments
- amendments governing the use of Victim Impact Statements
- case law from the Court of Criminal Appeal and the High Court.

Also, as trial judges move from court to court, it is often necessary for the ODPP staff to move with the trial judge to other venues in the State to conclude proceedings, eg from Newcastle to Sydney. This requires the ODPP to either send the Crown Prosecutor and/or solicitor who conducted the trial to the new location, or seek the leave of the Court to have an alternative Crown Prosecutor or solicitor appear. This may mean that other work is reallocated.

Technological change has also had a significant impact. The NSW Police now provide some evidence electronically, the Courts have adopted videoconferencing, case management is handled through data bases, and most communication is via e-mail.

While technology has without doubt improved efficiency, it has, in some cases, increased work for the ODPP. For example, a decade ago the ODPP would have received an interview transcript from the NSW Police. Now, however, the ODPP receives a videorecording of the whole interview as well as a transcript. Transcripts tend to be much lengthier than was the case ten years ago. They frequently include material that is not specific to the charges, or is not admissible. The ODPP is now responsible for editing both the video and transcript to produce an admissible version for use in trials.

1.4 Where does the ODPP fit in the justice system?

Midstream organisation

The ODPP is a midstream organisation. Its workload and efficiency are affected by the complexity of the legislative environment it works within, the number and type of charges referred by the NSW Police and the listing practices of the courts.

The degree of control the ODPP can exercise over its workload is limited. Resource planning within the ODPP is primarily a reactive process. The courts determine when and where a court will sit. The ODPP must allocate resources to deal with the work that subsequently flows from these decisions. The ODPP can at best try to influence the courts' actions, but ultimately they are outside the ODPP's control.

The ODPP has no control over the quality of briefs received from the NSW Police. But it seeks to influence quality through raising its concerns at interagency forums and providing training to operational Police.

The ODPP has no control over the number of indictable matters referred from the NSW Police. Neither does it have control over the referral of child sexual assault matters in the Local Court, serious indictable offences in the Children's Court (both of which are prosecuted by the ODPP), appeals from the Local Court to the District Court, or applications and reviews of bail in the Supreme Court.

It does exert control over matters referred from the NSW Police which could proceed as either a summary or an indictable offence. Over recent times the ODPP has reduced the number of such matters it takes on.

Legislative changes and judicial decisions also have significant impact on the ODPP. It must inform its staff of new Acts or amendments to existing legislation, and the almost daily issues that arise from judicial decisions. As discussed earlier, as of 2006 there were 48 pieces of legislation relevant to the ODPP's criminal prosecutions.

1.5 What have previous reviews looked at?

Previous reviews of the ODPP

The ODPP has been reviewed a number of times over the past decade. In 1998 the Council on the Cost of Government conducted a review at the request of the Attorney General with the following terms of reference:

- assess the operational efficiency and effectiveness of the Office
- assess the adequacy of systems for resource allocation and monitoring within the Office
- establish benchmarks for comparison with similar organisations within both the public and private sectors
- advise on the current level of resources that are provided to support the operations of the ODPP
- advise on measures to improve the cost effectiveness of the ODPP.

In 2003 a Base Budget Review was conducted, which included members from the ODPP, Attorney General's Department, NSW Premier's Department and NSW Treasury. It was asked to:

- identify workload variations affecting the ODPP since 1999-2000
- identify the current and future staffing requirements to enable the ODPP to carry out its core functions efficiently and effectively
- analyse the changes in management arrangements and other systems and operational improvements adopted by the ODPP since 1998 and the effectiveness of those systems in managing resources.

The Senior Management Structure Review by Kemp Consulting Group in January 2004 was asked by the ODPP to provide the Director with a comprehensive report identifying:

- any changes proposed to the ODPP senior management structure
- the rationale for such changes
- a transition strategy including advice on an implementation plan for any changes.

1.6 How has the ODPP's budget and workload changed?

Like all government agencies, the ODPP is being asked to generate efficiencies and savings.

Since 2000, the ODPP's budget and staffing have increased. These are set out in the exhibit below.

Year ended	Published budget \$'000	% increase	Supplementary funds \$'000	Retained revenue \$'000	Total funds \$'000	Actual expenses \$'000	Number of staff as at 30 June	% staff increase
30/06/00	58,172		2,280	275	60,727	57,838	531	
30/06/01	61,232	5.23	56	403	61,691	60,092	542	2.07
30/06/02	62,436	1.9	2,180	717	65,333	66,214	573	5.71
30/06/03	66,622	6.7	3,735	546	70,903	73,892	583	1.75
30/06/04	72,049	8.14	9,144	357	81,550	78,002	624	6.66
30/06/05	81,898	13.66	2,967	428	85,293	87,168	653	4.64
30/06/06	92,448	12.88	225	642	93,315	93,470	654	0.15
30/06/07	97,728	5.71	37		97,765	95,457	630	-3.67

Source: The ODPP 2007

The 2003 Base Budget Review

The bulk of the increase in the ODPP's budget and staffing occurred following the Base Budget Review Report issued in 2003. The review was undertaken in the context of a 23 per cent increase in the number of new indictable prosecutions received by the ODPP from the NSW Police in the period 1999-2000 and 2001-2002.

The Review identified the minimum resources required for the ODPP to perform its core functions under the existing arrangements, without a reliable costing system. The Review indicated that implementing activity based costing would give the ODPP a better understanding of the costs of matters and the activities which underpin them, and allow a more accurate assessment of the minimum resources required.

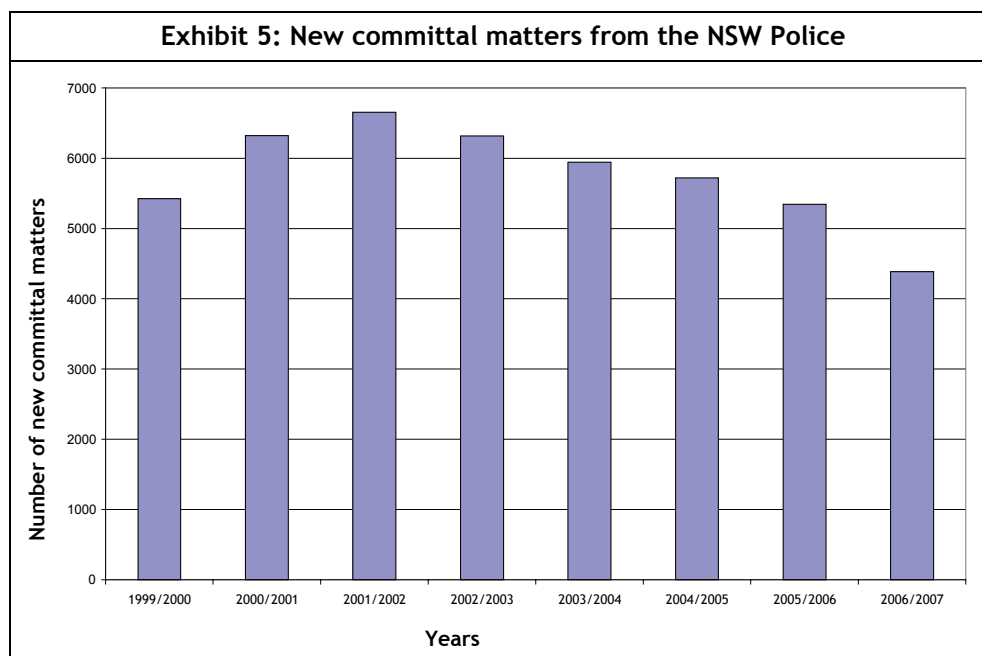
The ODPP advised us that:

- except for the extra funding received following the Base Budget Review, all other funding increases were provided to meet the annual salary increases granted to Crown Employees and Statutory Officers and cost escalations in other operating expenses
- the Base Budget Review resulted in a budget increase of \$8.6 m from the 2003-04 financial year and that by the end of 2007-08 more than half of this will have been taken back by NSW Treasury as efficiency dividends.

It is important to note, however, that while the 2003 Base Budget Review recommended an increase in staffing it said that:

... a reduction in the caseload received by the ODPP and/or the number of criminal sittings to service would reduce the level of additional resources required.

Since the Base Budget Review, the ODPP's caseload has fallen. The graph below shows a general downward trend in committal numbers being received by the ODPP.



Source: The ODPP Annual Reports

Caseload falling

The exhibit above demonstrates that the caseload (as measured in committals from the NSW Police) received by the ODPP has dropped by approximately one-third during the period 2001-2002 to 2006-2007. The ODPP advised us that this has been due to a number of changes during this time including amendments to increase the jurisdiction of the Local Court.

The Base Budget Review also said that staffing should be reviewed when data became available from the activity based costing system.

In evaluating the efficiency of the ODPP it is important to understand the difference between 'caseload' and 'workload'. We agree with the Base Budget Review when it noted that:

The workload resulting from the ODPP caseload depends on issues such as the complexity of the matters; the quality of the Police investigation; the level of co-operation from investigators; the timing of pleas of guilty; victim issues; the prevailing law and procedure; the time standards imposed by the courts; the number and location of court sittings to service as determined by the court; and court listing practices.

In conducting its function as prosecutor, we noted the sound reputation the ODPP has amongst the legal profession for its integrity and effectiveness. The ODPP is independent in its prosecutorial decisions. These decisions are only subject to review through legal forums. However the ODPP is accountable for its use of taxpayer funds to the government and Parliament (on behalf of taxpayers).

2. Can the ODPP demonstrate it is efficient?

At a glance

The key question we wanted to answer was:

Can the ODPP demonstrate it is efficient?

Our assessment:

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.

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 the 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.

2.1 Does the ODPP have relevant and appropriate service indicators?

Our assessment

Over the last year, the ODPP has developed a more relevant, appropriate and comprehensive set of service indicators. It was clear during the audit that the ODPP is committed to developing a good set of indicators. It is starting to embrace 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.

Agencies need service indicators

Services are the 'end products' that an agency, such as the ODPP, delivers to society. Agencies deliver services to achieve the results the government and Parliament seek for the people of NSW.

Agencies should have a balanced range of service indicators that reflect efficiency ie 'how well were resources used?' The key aspects of efficiency include:

- **Quantity - What did we do?**

'What did we do' (or 'busy-ness') indicators are the simplest quantity indicators. They measure how many things were done or what volume of service was delivered. For example, how many court days serviced.

- **Quality - How well did we do it?**

These are indicators that tell you how well your agency's services are delivered and how they are perceived by clients or other stakeholders. Common quality indicators include accuracy or completeness, safety and client satisfaction.

- **Timeliness**

These indicators are concerned with issues of availability of services and timeliness of service delivery. These may include indicators such as turnaround time, average waiting time, meeting time standards, distance/time travelled by clients to receive a service.

- **Cost**

Cost indicators relate to the cost of a service or the amount of staff time used to produce a service, eg the average cost per prosecution, hours spent on reviewing and advising government on legislative proposals.

Overall, good service indicators should be:

- appropriate - useful to stakeholders who are likely to use them
- balanced and complete - cover all significant aspects of service performance
- manageable - able to be measured and reported within an agreed timeframe
- robust - able to withstand organisational change
- comparable - with information provided by other providers of similar services
- integrated into the organisation - part of the ongoing business planning and management processes
- cost effective - balance the benefits and costs of providing the information.

1998 COCOG review

In 1998, the Council on the Cost of Government (COCOG) review of the ODPP found the following deficiencies in the ODPP's performance indicators:

- the main published indicators of the ODPP's performance did not adequately reflect the diversity and scope of its operations
- the indicators focussed on the work involved in preparing for and appearing in trials, but this consumed only about 30 percent of total staffing inputs

- the indicators emphasised the number of matters passing through the ODPP, not the workload (as discussed in Chapter One, a number of factors other than caseload affect workload). The workload per matter had increased over time, and reporting based primarily on caseload did not adequately indicate trends in workload.

COCOG recommended that the ODPP establish systems for the on-going collection, analysis and reporting of data needed by management to address:

- matters affecting the efficiency, cost-effectiveness and productivity of the ODPP, including:
 - the quality of briefs prepared by the NSW Police and the ODPP lawyers;
 - the distribution of workload and the allocation of resources to meet changing workload patterns; and
 - the time spent on individual processes and activities
- the performance of individuals, groups and the ODPP as a whole
- the implications of actions by other stakeholders in the broader criminal justice system.

Following from this COCOG recommendation, in 2002 the ODPP started a project to develop an Organisational Performance Management System incorporating activity based costing of prosecution services. This project, however, suffered from substantial delays.

The ODPP's current service indicators

The following exhibit outlines the service indicators in the 2005-2008 Corporate Plan and in the 2006-07 Annual Report. We consider that these still display deficiencies identified in the 1998 COCOG review.

Exhibit 6: Service indicators in the ODPP's 2005-2008 Corporate Plan and 2006-07 Annual Report		
Service group	Performance indicator	Primary focus
Prosecutions	Percentage of cases where costs were awarded due to the conduct of the prosecution	Quality
	Proportion of matters returning a finding of guilt	Quality
	Proportion of trials listed which were adjourned on the application of the Crown	Quality
	Average number of days between arrest and committal for trial	Timeliness
	Average number of days from arrest to matter disposal	Timeliness
	Cost per matter disposed of	Cost effectiveness
Victim and witness assistance	Level of victim and witness satisfaction	Quality
Contribution to criminal justice system	Number of submissions made on proposed and existing legislation	Quantity
	Percentage of advisings completed in agreed time	Timeliness

Source: The ODPP 2007

These indicators:

- give some basic performance data, although there is room for improvement
- still do not adequately reflect the diversity and scope of its operations
- continue to emphasise the work involved in preparing for and appearing in trials, even though the primary consumer of staff effort is in cases that resolve before trial
- focus on the number of matters passing through the ODPP, rather than the workload.

The situation in the ODPP needs to be put in some context. Developing relevant and appropriate indicators for government activities, such as prosecutions, is complex. For this reason looking at different jurisdictions and learning from others' experience is useful.

The ODPP is making a concerted effort to improve its indicators while reviewing the Corporate Plan. However it could be clearer about:

- NSW Treasury and government expectations of agency performance reporting
- what represents relevant and appropriate indicators and how best to develop them
- the importance of service indicators for external accountability, how they inform government decisions and drive internal operations and improvement.

These are fairly common problems, not limited to the ODPP. Other prosecution services we spoke to are also working on improving their performance measures.

All agencies should define meaningful performance measures and develop performance information to manage services and to report to Government and Parliament.

In June 2006 the Audit Office of NSW released its performance audit on Agency Use of Performance Information which examined ten government programs. Overall the results were mixed. There was some good news but for such a basic and vital issue we concluded that a good deal more needed to be done.

The Auditor-General of Queensland has also recently said in a report on performance information that:

I found a lack of clarity across the sector about what are relevant and appropriate performance measures.

**Benchmarking
prosecution
service
indicators**

Our research into other prosecution services identified various efficiency indicators some of which the ODPP should consider adopting. We also found that a number of services were reviewing and seeking to improve their indicators. The indicators used by the ODPP and a selection of other prosecution services are summarised in the tables at Appendix 2.

The ODPP has recognised the opportunity to improve its service indicators. After discussions with the Audit Office and NSW Treasury, and consideration of the indicators used elsewhere, the ODPP prepared a new draft set of performance indicators. These are outlined in the following exhibit.

Exhibit 7: Draft indicators developed by the ODPP - November 2007	
Objective: Just and independent conduct of prosecutions	
Quantity	No. of election referrals registered No. of election referrals completed No. of advisings on sufficiency of evidence and appropriateness of charges registered No. of advisings on sufficiency of evidence and appropriateness of charges completed No. of committals registered No. of committals completed No. of summary prosecutions registered ¹ No of summary prosecutions completed No. of trials registered No. of trials completed ² No. of hung juries and aborted trials No. of sentences registered ³ No. of sentences completed No. of appeals to District Court registered ⁴ No. of appeals to District Court completed No. of Court of Criminal Appeals registered ⁵ No. of Court of Criminal Appeals completed No. of Special Leave applications to High Court registered ⁶ No. of Special Leave applications to High Court completed No. of High Court applications for leave granted No. of High Court applications (by Crown) for leave granted No. of High Court appeals completed No. of matters involving victims ⁷
Cost effectiveness	% of committals finalised in Local Court ⁸ % of cases committed for sentence ⁹ % of cases committed for trial % of trials that proceed ¹⁰

¹ Includes Local Court, Children’s Court and Child Sexual Assault summary prosecutions

² Includes matters committed for trial but disposed of by way of plea or no further proceedings

³ Number of matters committed for sentence to District and Supreme Courts

⁴ Includes conviction, sentence and leniency appeals only

⁵ Refers to conviction, sentence and leniency appeals only

⁶ Applications by prisoner and Crown

⁷ Matters in the following charge categories only: Homicide; Child Sexual Assault, Sexual Assault, Personal Violence matters; Dangerous driving occasioning death or serious injury

⁸ Committals finalised in the Local Court or Children’s Court by way of plea, summary hearing, withdrawal or dismissal

⁹ Matters committed for sentence to the District or Supreme Court

¹⁰ Refers to defended trials in District and Supreme Courts

Quality	<p>% of elections made¹¹</p> <p>% of advisings where charges recommended</p> <p>% of cases committed for trial that are discontinued</p> <p>% of matters that are discontinued due to victim's wish not to proceed or other extraneous circumstances¹²</p> <p>% of completed trials returning a verdict of guilty¹³</p> <p>% of pleas entered after committal for trial</p> <p>% of trial committals returning a finding of guilt¹⁴</p> <p>Victim and witness satisfaction¹⁵</p> <p>% of victim matters where assistance provided by Witness Assistance Service</p> <p>% of matters where costs awarded¹⁶</p> <p>% of DC leniency appeals successful</p> <p>% of prosecution appeals to CCA against sentence successful</p> <p>% of special leave applications (by Crown) successful</p> <p>% of High Court appeals (by Crown) successful</p>
Timeliness	<p>% of Advisings completed within timeframe</p> <p>% of Indictments presented within legislated timeframes</p> <p>% of adjourned trials on Crown application¹⁷</p> <p>Number of days between arrest and committal for trial¹⁸</p> <p>Number of days between committal and trial finalisation¹⁹</p>
Cost	<p>Average cost of matter disposed of²⁰</p> <p>Cost per victim/witness assisted</p>
Improvements to criminal justice system	<p>Representation on interagency committees</p> <p>No. of submissions for law reform</p> <p>Hours of training sessions conducted for external agencies (including travel)</p>
Internal Indicators	<p>% of priority learning needs implemented</p> <p>Learning and development participation rate</p>

Source: The ODPP 2007

¹¹ Table offences taken over for indictable disposal

¹² As a percentage of all matters discontinued

¹³ Refers to trials returning a verdict of guilty to at least one of the counts in the Indictment

¹⁴ Refers to all cases committed to higher courts that result in a finding of guilt and includes pleas

¹⁵ Biennial survey conducted of victims and expert witnesses

¹⁶ % of matters where costs are awarded because of fault on the part of the ODPP

¹⁷ As a percentage of all trials adjourned

¹⁸ This can be affected to a large degree by the timeliness of the preparation of a brief of evidence by police, the passage of the matter through the Court and the conduct of the Defence

¹⁹ This can be affected to a large degree by Court listing practices and resources, and Defence conduct

²⁰ Calculated by the DPP budget divided by the number of committals, summary hearings, trials and appeals completed.

The ODPP draft service indicators are an improvement

The Audit Office reviewed the ODPP's new draft service indicators. We concluded they represented an improvement on the indicators in its 2005-2008 Corporate Plan, Annual Report and Results and Services Plan.

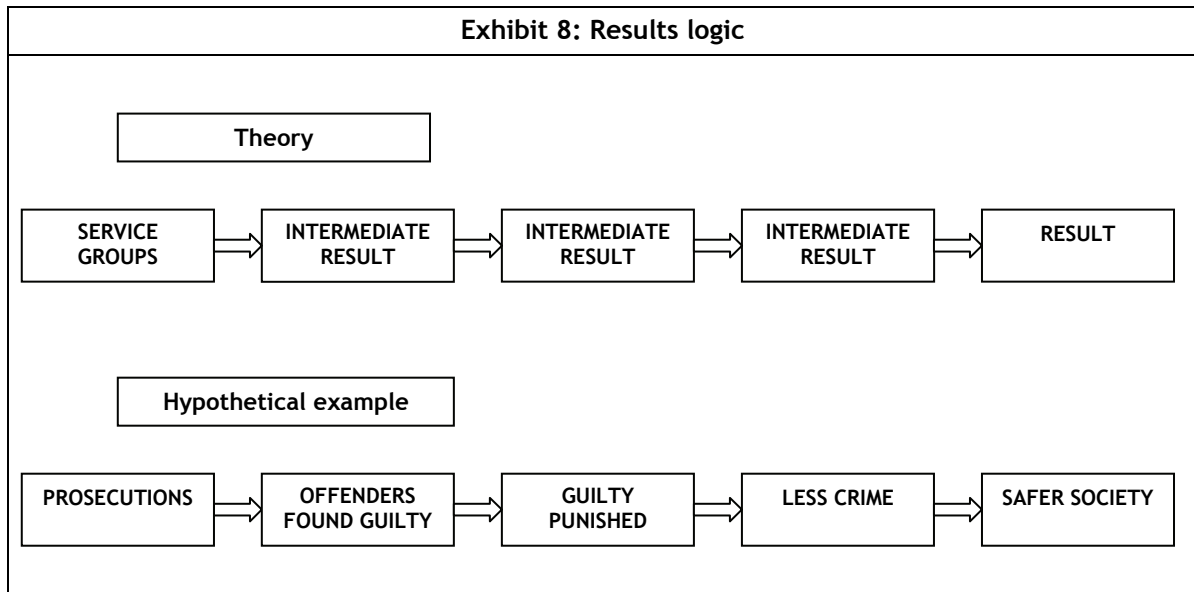
The November 2007 suite of indicators addresses many of the issues raised by COCOG. Some opportunities for further improvement remain. In particular:

- the indicators give a better picture of caseload, but may not adequately indicate trends in workload
- the indicators do not yet quantify the implications of actions by other stakeholders in the broader criminal justice system, such as the quality of briefs prepared by the NSW Police and court listing practices
- prosecution cost indicators should be broken down by type of matter (eg murder, common assault, sexual assault, child sexual assault). To illustrate, a sexual as opposed to a common assault matter is more likely to require intensive victim counselling, more likely to go to trial, and less likely to result in a guilty verdict
- prosecution cost indicators should be broken down by method of disposal ie at committal, summary hearing, trials and appeals
- cost indicators are only available at the organisational level, because the ODPP does not have information on service costs. This is discussed later in this chapter. The ability to allocate costs to services and activities would greatly improve the relevance and appropriateness of the ODPP's efficiency indicators. For example, average cost per prosecutor business day could be measured
- there are no indicators for the confiscation of the proceeds of crime
- the ODPP has yet to identify about a dozen of the most important, relevant and appropriate indicators for external reporting. These are sometimes referred to as 'headline' indicators.

Results Logic

The ODPP's service indicators might also benefit from a more direct application of a 'results planning' approach called 'results logic'. This approach aims to link what an agency does (services) to the impact that it has on society (results). Understanding this link is fundamental to effective service delivery, resource allocation and reporting.

Results logic explains assumptions about how services work. Clear, robust results logic is the foundation of a high-quality set of service indicators. As it 'steps down' through the results hierarchy, an agency will have a greater level of influence over the results. This will be matched by a greater level of accountability.



Source: Audit Office research

Based on research and, using the ‘results logic’ approach, the Audit Office developed a list of indicators set out below that the ODPP may wish to consider.

Exhibit 9: Some further indicators the ODPP should consider		
Source	Type	Indicator
OPP Victoria	quantity	<ul style="list-style-type: none"> number of briefs prepared and hearings attended
	cost effectiveness	<ul style="list-style-type: none"> findings of guilt (guilty pleas and convictions), acquittals and other as a % of case disposals
	quantity	<ul style="list-style-type: none"> judge sitting days in various courts (as an indication of workload impacts within the ODPP)
	quantity	<ul style="list-style-type: none"> number of contested committals
	cost effectiveness	<ul style="list-style-type: none"> prosecutor appearance rates
	cost effectiveness	<ul style="list-style-type: none"> total Counsel appearance costs as a % of total recurrent expenditure
Western Australia	cost effectiveness	<ul style="list-style-type: none"> cost per prosecution
	cost effectiveness	<ul style="list-style-type: none"> proportions of matter finalisations (early guilty pleas, overall conviction rate, etc)
ACT	cost effectiveness	<ul style="list-style-type: none"> average cost per prosecutor business day
United Kingdom	quantity	<ul style="list-style-type: none"> number of assets confiscated and reported
American Prosecutors Research Institute	quality	<ul style="list-style-type: none"> percentage of pleas which are to original charge

Source	Type	Indicator
South Australia	quantity	<ul style="list-style-type: none"> number of clients seen by Witness Assistance Service
Northern Ireland	timeliness	<ul style="list-style-type: none"> timely communication of decision to victim
Variations of performance indicators from other jurisdictions that the ODPP could consider	timeliness	<ul style="list-style-type: none"> % of procedures not meeting court or statutory time limits
	quality	<ul style="list-style-type: none"> number of adjournments at ODPP request
	timeliness	<ul style="list-style-type: none"> % of NSW Police advice requests to ODPP satisfied within a timeframe (eg 28 days)
	timeliness	<ul style="list-style-type: none"> % of ODPP requisitions to NSW Police met within a timeframe (eg 28 days)
	quantity	<ul style="list-style-type: none"> number of trials as a % of total of case disposals
	cost effectiveness	<ul style="list-style-type: none"> return on investment in asset confiscation (value of asset confiscated compared to cost of confiscation activities)

Source: Audit Office research

If additional data collections are required, the ODPP needs to balance the costs involved against the benefits of using the data collected. The Fiscal Policy Institute quoted in the NSW Treasury guidelines on Results and Services Plans, has outlined some principles for doing this:

- identify the indicators for which you currently have data available either in existing internal systems or from external sources
- from this data, select the most important indicators by asking: 'If we had to talk about our program with just one of these indicators, which one would it be?'
- build a data development agenda by asking: 'If we could buy one of the indicators for which we don't have data, which one would it be?'

The data development agenda can then be used to improve the ODPP's performance information systems.

Recommendation We recommend that the ODPP 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.

2.2 Does the ODPP's external reporting fairly represent its service performance?

Our assessment

The ODPP's reporting does not adequately address its efficiency. But its efforts to improve its indicators should help it do so in a more comprehensive and systematic way. The ODPP also needs to explain its performance better to the Attorney General and Parliament. Comparison over time, against benchmarks and to targets is very limited at present. There is little narrative to explain factors that may have contributed to poorer or better than expected performance.

Reporting performance information

The reporting of performance information is a cornerstone of parliamentary accountability. It is much more than a compliance exercise. Performance information tells the Parliament and the community what government is planning to do, what it is achieving with taxpayers funds and whether the agency has achieved its targeted results.

The specification of services, the setting of performance targets and the analysis of performance results is also needed to inform the Government when it allocates scarce public sector resources.

Reporting performance information involves bringing together non-financial and financial information. It is more than financial reporting. It also needs to report performance in terms of efficiency.

Performance information should be balanced, addressing the agency's key activities and should report all achievements, whether good or poor.

To fairly represent performance, the ODPP would report to the Minister and Parliament:

- on performance indicators that are relevant and appropriate
- using such indicators consistently over time
- whether the ODPP has achieved its service and performance targets, how performance is tracking over time, and how performance compares to others.

In section 2.1 of this report, we indicated that the performance indicators in the ODPP's 2005-2008 Corporate Plan, its Annual Report and Results and Services Plan (RSP) could be more relevant and appropriate. The ODPP is yet to incorporate their better suite of indicators into their performance reports but has advised us that it plans to do so as soon as practical.

The ODPP has reported consistently on the indicators from its 2005-2008 Corporate Plan in its Annual Report. The suite of indicators in the ODPP's RSP however had some extra indicators. The Audit Office believes that, as a minimum, all indicators in the RSP should be included in the Corporate Plan and the Annual Report.

We found that the ODPP does not have service and performance targets and consider that the 2006-07 Annual Report did not sufficiently show performance over time or how performance compared to other prosecution services.

Exhibit 10: Performance Indicators, in Corporate Plan, Annual Report and RSP			
Indicator	CP	AR	RSP
Percentage of cases where costs were awarded due to the conduct of the prosecution	✓	✓	✓
Proportion of matters returning a finding of guilt	✓	✓	✓
Number of corporate activities or processes implemented or reviewed each year	✓	✓	×
Percentage of advisings completed in agreed time	✓	✓	✓
Proportion of trials listed which were adjourned on the application of the Crown	✓	✓	✓
Average number of days between arrest and committal for trial	✓	✓	✓
Number of days between arrest and matter disposal	✓	✓	✓
Percentage of cases disposed of in Local Court	×	×	✓
Percentage of cases committed for trial	×	×	✓
Percentage of cases committed for sentence	×	×	✓
Percentage of pleas entered at arraignment	×	×	✓
Percentage of pleas entered after listed for trial	×	×	✓
Number of matters discontinued after committed for trial	×	×	✓
Percentage of matters discontinued because of victim's wish not to proceed or give evidence	×	×	✓
Percentage of trials that proceed	×	×	✓
Level of victim and witness satisfaction (by survey)	✓	✓	✓
Level of compliance with statutory reporting requirements	✓	✓	×
Level of compliance with ODPP policies (by audit)	✓	✓	×
Cost per matter disposed of	✓	✓	×
Number of submissions made on proposed and existing legislation	✓	✓	×

CP - Corporate Plan 2005-2008

AR - Annual Report 2006-2007

RSP - Proposed Results and Services Plan 2007-08

Source: The ODPP

Reporting should clearly explain performance	<p>Reports should also provide sufficient information in their narrative to enable a meaningful assessment of the indicators and targets and level of performance achieved. The current narrative in the Annual Report and the RSP do not explain the context, variances and limitations in the data well enough to enable users to readily assess the ODPP's performance.</p> <p>The NSW Audit Office <i>Better Practice Guide to Reporting Performance</i> tabled in November 2000 identified that published performance indicators should:</p> <ul style="list-style-type: none">▪ be both qualitative and quantitative▪ be relevant and appropriate to the program▪ provide evidence of how core functions contribute to the objectives of the agency▪ concentrate on high level indicators so readers are not overloaded with information▪ provide sufficient information for readers to judge if targets, goals and objectives have been achieved. <p>It is also important that indicators meet stakeholder needs.</p>
Recommendation	<p>We recommend that the ODPP include in its reporting to the Attorney General and Parliament:</p> <ul style="list-style-type: none">▪ 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. <p>2.3 Does the ODPP know the cost of its services, and use this to measure and report on efficiency and cost effectiveness?</p>
Our assessment	<p>To measure and validly report on its efficiency, the ODPP needs to cost its services. The importance of the ODPP costing its activities and services was identified in 1998 by the Council on the Cost of Government (COCOG). In 2002, the ODPP started a program to implement a system to cost a representative selection of prosecution activities, but reliable data is still not available. It has not tried to cost its other services, such as advice to government. This means the ODPP does not have accurate information about the costs of providing its services and cannot assess its efficiency and cost effectiveness, nor in turn, demonstrate that to stakeholders.</p>
Costing services	<p>Most general government sector agencies assign costs to responsibility centres. These are functional areas of the agency such as a branch, a division or a business unit.</p> <p>By contrast, a service costing system assigns costs to an organisation's services. Appropriate service costing is critical to effective performance measurement and reporting.</p>

NSW Treasury's Financial Management Framework for the general government sector seeks to improve government service delivery through:

- a budget process that achieves better allocation of resources and value for money (resource allocation)
- better management of the government's asset and resource base (resource management).

The Framework advocates a shift from the traditional focus on the funding provided to agencies towards a focus on how the agency makes use of this funding, ie:

- the activities of agencies, and the impact these have on the community
- how agencies manage service delivery.

Accurate and relevant information on the cost of services is essential to support this shift. The government needs accurate information on the cost of services to determine the best mix of services.

The NSW Treasury recently released a service costing guide which indicated that:

- agencies must include in their RSP the planned cost of each service group (a service group is a number of services grouped together to keep information in the RSP at manageable levels)
- agencies will be required to report to NSW Treasury on the actual costs of service groups compared with Budget
- agencies should use information on service costs for internal management purposes and will provide such information to NSW Treasury if required.

ODPP's costing system

In 2002 the ODPP started a project to cost prosecution services and the activities undertaken to deliver them. A key driver of this project was the 1998 COCOG review recommendation to establish systems for the on-going collection, analysis and reporting of performance information.

The ODPP received capital funding of \$475,000 in 2003-04 to help implement such a costing system. The aim was to implement a system which identified the key prosecution activities and indicators and their associated time and costs. This could then be used to improve the accuracy and reliability of prosecution performance reporting.

The 2003 Base Budget Review found that:

There have been unfortunate delays (in implementing the costing system) due to the need to comply with other government Information Management & Technology requirements, including information management and security and integrated document management.

The Kemp report of January 2004 recommended that the costing project:

... should be fast tracked to enable the ODPP to demonstrate internally and externally the appropriate and effective deployment of resources.

This project was to be completed in 2003-04, but we found in this audit that the costing system had yet to provide sufficient, reliable information. Several system problems were being experienced, although they were being dealt with. Some staff were not using the system when and how they should.

The absence of adequate information on the cost of services impedes assessment of efficiency and cost effectiveness.

Recommendation We recommend that the ODPP 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.

2.4 Is the ODPP's performance information reliable?

Our assessment The ODPP could not demonstrate that it had adequate data management practices to ensure that all reported performance information is accurate and complete.

Performance measurement framework Better practice service performance measurement and reporting requires not only appropriate performance indicators, but:

- a robust service performance measurement framework
- effective systems for collecting, validating and using service performance information.

The ODPP did not demonstrate that it had an adequate framework comprising:

- a formal organised structure for service performance measurement and reporting
- clearly defined roles, responsibilities and accountabilities for service performance measurement and reporting
- well documented data quality standards and expectations which are clearly communicated across the agency
- monitoring and quality assurance procedures for service performance information
- integrated internal and external reporting of service performance information.

Collecting, validating and using data

It also did not demonstrate it had effective systems for collecting, validating and using service performance information with adequate:

- data assurance arrangements for service performance information, including documentation of data sources, collection methods, standards and procedures and data calculations
- costing methodologies established and supported by appropriate assumptions and adequate documentation
- controls over data collection and processing to ensure the accuracy, completeness and reliability of performance information
- processes for the ongoing evaluation of performance information including variance analysis and progress to date against targets.

A data or performance indicator ‘dictionary’ represents better practice in this area.

Exhibit 11: Data or performance indicators dictionary

A performance indicators or ‘data’ dictionary documents the attributes of a performance indicator. It helps stakeholders understand what performance indicators mean, what their limitations are, and how they can be used to achieve performance accountability and improvement. Such a dictionary would:

- establish the context for indicators
- explain why indicators are relevant and appropriate
- define each indicator, and its intended purpose
- explain how the indicator is compiled and the processes to assure data accuracy
- explain how the indicator is to be interpreted, eg by reference to targets
- explain how the indicator is to be reviewed
- allocate responsibilities to senior officers
- outline reporting requirements, eg frequency of reporting, presentation format, explanatory notes
- identify any data risks, eg the limitations of the data, data reliability, potential distortions in use
- cross reference to related indicators or external benchmarks.

Source: Queensland Audit Office Report to Parliament 2007

Recommendation We recommend that the ODPP 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
- 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.

2.5 Can the ODPP's efficiency be judged from its current performance information?

Our assessment Between 2001-2002 and 2006-2007, the ODPP's caseload (as measured in committals from the NSW Police) dropped by about one-third, its budget increased by more than 40 per cent, and its staff numbers increased by 10 per cent. The ODPP was not able to provide adequate evidence to us to support its view that it is efficient despite these statistics. This highlights the need for the ODPP to improve its performance measurement and assessment, and in particular to properly cost its services.

Helping stakeholders understand Without good information on costs and services it is not possible to conclude how efficient the ODPP is. In sections 2.1 to 2.4 we outlined some of the deficiencies in the ODPP's current performance measurement capability. These mean that the ODPP is not able to use performance information to demonstrate its efficiency.

Since the 2003 Base Budget Review, the ODPP's caseload has fallen while its budget and staff numbers have increased. This may lead a casual observer to conclude that efficiency is declining. The reality is, however, less clear.

Caseload is not the same as workload. The work required to prosecute a matter has increased over time. During the audit, the ODPP has advised that factors in this increasing workload include:

- cases are becoming more complex
- trials are lasting longer
- trials are more dependent upon forensic analysis, DNA testing, surveillance and fingerprint evidence; and this causes delays in the preparation of matters
- sentencing has become significantly more complex
- the Court of Criminal Appeal is delivering more judgements that are impacting on the practice of criminal law

- matters are now listed a lot more quickly, with the average time between committal and disposal now about six months whereas just under a decade ago it was around eight months
- the number of days the District Court sat increased by four per cent between 2003 and 2006
- between 2002 and 2006, the average length of District Court trials increased by 25 per cent (compared to a 17 per cent fall in trial numbers)
- there is an increasing proportion of sexual assault and child sexual assault matters.

While we accept these factors affect the workload required to prepare matters, the lack of good evidence-based data and information from the ODPP makes it difficult to draw conclusions as to their impact on efficiency.

Raw data may not give complete picture

We extracted some data for the period 2001 to 2006 from the ODPP's Annual Reports and other publicly available documents such as reports of the various courts.

We considered this data could be indicative of efficiency.

The ODPP advised us that the bare figures were "apt to mislead" and could not be instructive as to efficiency. This is consistent with our views of the deficiencies of current reporting.

The ODPP then provided a narrative to explain the context and meaning of the figures. This is the sort of narrative which would improve the transparency of the ODPP's reporting.

Some examples of the 2001-2006 data we provided to the ODPP are:

1. *The ODPP's annual expenditure increased by \$33.4 million (more than 55 per cent, from \$60.1 to \$93.5 million).*

In response the ODPP advised us that:

- except for the extra funding received following the Base Budget Review, all other funding increases were provided to meet the annual salary increases granted to Crown Employees and Statutory Officers and cost escalations in other operating expenses. Also during this time efficiency dividends required by NSW Treasury offset the benefits from the increased funding mentioned
- salary costs have also increased substantially over the period. The salaries of about 85 per cent of its staff have increased in line with sector-wide increases negotiated by Premier's Department and the Public Service Association. The remaining approximately 15 per cent of staff are statutory appointees, whose remuneration is determined by the Statutory and Other Offices Remuneration Tribunal. Their remuneration has increased by significantly more. The impact on costs is much greater than the above percentages suggest, because while statutory officers make up about 15 per cent in numbers they account for more than 30 per cent of the employee related operating expenses of the ODPP.

2. *High Court matters fell by 50 per cent from 34 to 17.*

In response the ODPP advised us that:

- there have been changes in court procedure which mean that since 2004 the cases proceeding in the High Court have been of genuine substance, requiring a great deal of work and preparation for hearing
- before that time more matters were registered, but many did not proceed. Effectively there has been little change in High Court workload over this period.

3. *Supreme Court matters completed fell by 40 per cent, from 120 to 67.*

In response the ODPP advised us that:

- averaging the number of matters over a period of time gives a more accurate picture of a workload which is not significantly declining.

4. *Appeals in the Court of Criminal Appeal (CCA) fell by 45 per cent, from 786 to 432.*

In response the ODPP advised us that:

- changes in legislation and procedure mean that again only matters that will proceed on their merits form part of recent statistics
- the workload in this area has diminished a little but this is more a reflection of the fact that the Court has now disposed of any backlog in work and appeals are now allocated hearing dates quite quickly once they are filed
- in 2006-07 the ODPP CCA Unit has adjusted to the reduction in work by:
 - reducing the number of CCA Crown Prosecutors
 - having CCA Crown Prosecutors also assist with Advisings Unit work where possible
 - having the CCA Unit solicitors assisting with trial work where possible
 - not filling lawyer vacancies as they arise.

5. *In 2005-06 the average prosecutor undertook 18 trials and spent 1.25 days a week in court.*

In response the ODPP advised us that:

- The calculation that the average Crown Prosecutor spends 1.25 days per week in court does not take into account that there are ten Crown Prosecutors who exclusively do CCA work and 13 Crown Prosecutors who do PTU work. These Crown Prosecutors spend a very small proportion of their time in court; however, their chamber work is still an essential part of the operation of the criminal justice system. In addition, there are generally between three and four Crown Prosecutors on long service leave, sick leave or maternity leave. If one takes into account in the calculations these 16 or 17 Crown Prosecutors, the statistics look quite different.

While this is useful information and important for understanding performance, the absence of service costing also hinders any attempt to pin-point exactly where and why costs are increasing, or to quantify the impact of these known but unreported circumstances.

Providing explanatory information to put performance data in context should be a matter of course for the ODPP. Collecting and reporting data is crucial but as is demonstrated by points 1-5 above, without putting it in context, the ODPP is at risk of having its actual position misunderstood as stakeholders do not have all the necessary evidence to make decisions. Without such narrative the ODPP cannot demonstrate the value for money it may be delivering.

Recommendation At 2.2 we recommend that the ODPP include in its reporting to the Attorney General and Parliament narrative to clearly explain performance. This will help ensure the ODPP's performance information can be better understood. No further specific recommendation is made in this section.

3. Can the ODPP show its information systems support efficient management?

At a glance

The key question we wanted to answer was:

Can the ODPP show its information systems support efficient management?

Our assessment:

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.

3.1 Does the ODPP have adequate management information and costing systems to support efficient management?

Our assessment

The ODPP does not yet 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 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.

Services need to be delivered efficiently

All agency managers are under pressure to achieve efficient delivery of Government services. There is always upward pressure on costs: eg from Public Sector Wage Agreements and decisions of the Statutory and Other Offices Remuneration Tribunal. At the same time, the tax burden on the community needs to be constrained to maintain a competitive economy.

The ODPP, like most agencies, currently employs responsibility-centre based costing systems. These focus on the costs of functional areas such as branches, divisions or business units.

For example the ODPP knows the cost of the Crown Prosecutors' chambers, the Solicitor's Office, Corporate Services Branch etc.

Information on the costs of responsibility-centres is important for planning and control (ensuring that costs remain within budget) purposes. One major cost control mechanism, which the ODPP uses, is to make responsibility-centre managers accountable for the resources under their control.

Responsibility-centre based costing

Responsibility-centre based costing systems do not, however, support some types of decision-making. For example information about the costs of responsibility-centres, or total costs, cannot be used to answer questions such as:

- are services produced efficiently?
- are the benefits from the services provided greater than their cost to produce?
- which services should be provided, given the scarce resources that are available to fund them?
- what are the most appropriate service delivery strategies?
- how do we reduce costs without adversely affecting service delivery?
- how do we increase the quantity or quality of services within current funding levels?
- how can we meet the expected demands on our services in the future?

Service costing

To address these questions, agencies need to know the costs of the services that are being delivered. For example the ODPP need to know the costs of different types of prosecutions, providing advice to government, and participating in justice system reform projects. The causes of cost increases can then be identified and unnecessary activities eliminated; this is cost management rather than merely cost control.

In Chapter 2 we discussed service costing from the perspective of assessing and reporting performance. We found that:

- COCOG in 1998 recommended the ODPP adopt such a system
- the ODPP had been working on such a system since 2002
- the system had yet to produce reliable information on service costs
- the system was limited to prosecutions.

In addition to helping the ODPP better demonstrate its efficiency (as discussed in Chapter 2), service and activity costing would help the ODPP manage better. It would assist the ODPP:

- make resource allocation decisions as part of the strategic and business planning processes
- plan the delivery of its services
- monitor and control service delivery against a plan
- make decisions concerning the nature of service delivery.

For example, service costing allows agencies to move beyond cost control to cost management. Cost management includes mapping the processes involved in service delivery, determining the costs of those processes and understanding what causes those costs to be incurred. This information is used to eliminate wasteful activities.

Service costing also facilitates benchmarking. Benchmarking provides organisations with ways to compare themselves with ‘best practice’ organisations. To benefit from a benchmarking study, however, it is insufficient to know that another organisation can provide a particular service at a lower cost; it is also essential to understand why. The service costing system is the starting point for such analysis. The ODPP does not benchmark its services with others, although it has tried to do so in the past.

Recommendation Building on our recommendation in 2.3 for the ODPP to cost its services and activities, we recommend that the ODPP 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.

3.2 Does the ODPP have a good case management system?

Our assessment The ODPP has developed a comprehensive and responsive case management system, which it uses to manage solicitors caseloads and to promote consistent work practices across the ODPP through its pro forma documents. Our testing revealed that staff do not always keep the system up to date, and some managers do not make full use of its capabilities for monitoring, reporting and analysis of case management. We cannot say how extensive these problems are but they impede the system's usefulness.

Case management system Case management is the process of planning, performing and monitoring the work to be done in prosecuting a matter. Good case management makes these processes more efficient. CASES is the system the ODPP uses to support case management within the Solicitor's Office.

The system works as follows. Generally, when a notification is received from the NSW Police, the Managing Lawyer, who is the senior solicitor with overall management responsibility for that group, does the following:

- reviews the information received
- considers the likely complexity of the matter
- attributes a weighting to it for compliance with the Workload Management Agreement. The workload of solicitors is set out in a Workload Management Agreement negotiated in 2004
- allocates the matter to a legal officer
- has the matter registered and a file created on the CASES data base.

From this point onwards all events in that matter are to be recorded on CASES. Access to the system is available to all the legal staff, although some access may be to 'read only'.

CASES widely used The solicitor responsible for the matter uses CASES to produce court documents, correspondence, provide prompts for approaching deadlines and court dates, and to retain information on each court appearance. CASES contains pro forma which are used by staff to prepare correspondence and documents. If a matter passes from one solicitor to another, the CASES file is transferred to the new solicitor.

We noted that CASES assists information to be obtained about a matter quickly. If, for example, a solicitor was away and information was required quickly to answer a query, the CASES file should have the information available within a few minutes.

CASES has the capacity to deliver a broad range of reports. Managing Lawyers use these to view the practice of each solicitor to understand the state of each matter. Some Managing Lawyers also use CASES to report regularly to Senior Managers on staff workload, but this is not consistent across the ODPP.

Senior Managers use CASES to identify and respond to trends in workload and caseload across the State. For example, if a regional branch is getting busier and the workload of staff is increasing, the Senior Manager can move staff in response. As for caseload, if certain types of prosecutions are becoming more common in a regional branch, resources can be targeted as appropriate.

The ODPP advised that while the quality of essential data on CASES is good, not all reports contain up to date information as there is some inconsistency between solicitors in closing their CASES files promptly.

CASES commenced in the mid 1990's, and has been enhanced several times since then. Access to the system was not available to Crown Prosecutors until mid 2006. The ODPP advises that most of the Crown Prosecutors do not have and do not want access to the CASES system. As barristers, the ODPP says it is not generally appropriate for a Crown Prosecutor to have access to a solicitor's files. The ODPP says it could conceivably mean that Crown Prosecutors would have constructive notice of facts that they do not have meaningful access to, or fully understand. This could have adverse consequences in the course of litigation.

The Integrated Document Management System (IDMS) is a further document storage system used by the ODPP. This system sits over CASES. When saving documents electronically, staff can save them either to CASES or to IDMS direct. IDMS also contains pro forma that solicitors use in the conduct of their matters. Our investigations indicated that IDMS has not been well accepted and is not implemented widely within the ODPP.

The ODPP also has an intranet, called DPP Net, which is available to all staff. This contains a comprehensive set of information relating to the functions and policies of the ODPP. More pro forma are available on DPP Net for staff to use in the conduct of matters. Our investigations indicated that this system is widely used by staff.

Thus there are presently three different systems where staff can access pro forma. This poses a risk to organisational consistency in data storage/access and documents leaving the ODPP.

Recommendations We recommend that the ODPP should 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 the ODPP should:

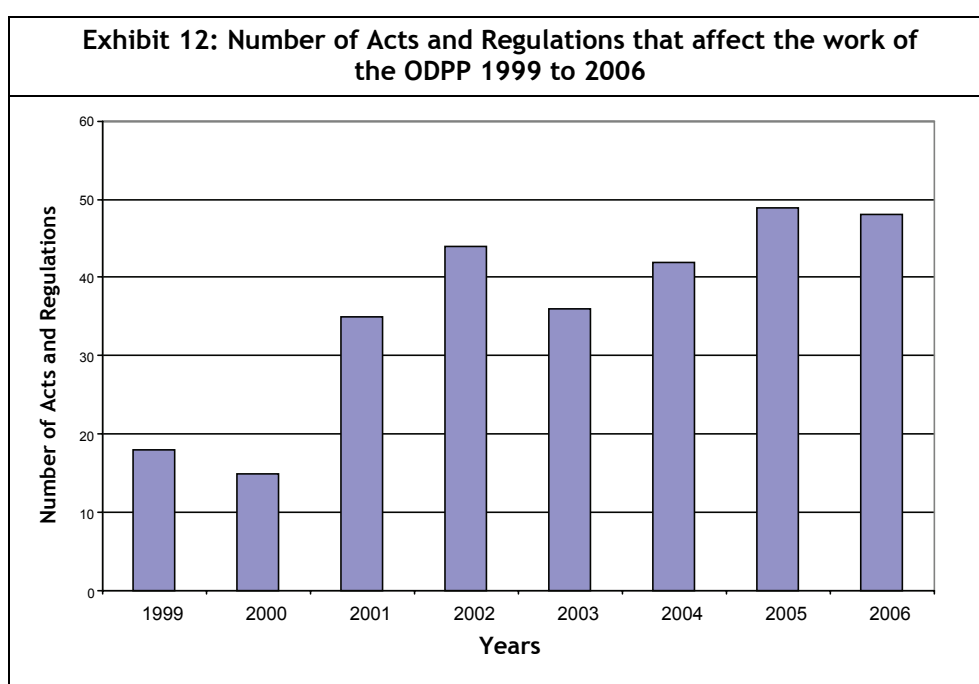
- develop a regular, consistent and systematic approach to the review of solicitors' practices by Managing Lawyers
- review case specific templates that are available on IDMS, DPP Net and CASES and relocate all relevant pro forma to CASES.

3.3 Does the ODPP have an efficient method of keeping staff apprised of legal developments?

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

Changes in criminal law The ODPP handles about 17,000 criminal matters each year under its mandate to conduct indictable criminal proceedings on behalf of the State of New South Wales.

It is essential the legal staff of the ODPP keep pace with developments in criminal law. The pace of change to the criminal law has accelerated in recent years. Exhibit 12 shows the number of Acts and Regulations that affected the work of the ODPP during 1999-2006.



Source: The ODPP 2007

Research Unit analyses and advises on changes to the law To meet this challenge the ODPP has developed a Research Unit, which is highly regarded across the justice sector. An important focus of the Unit's work is the analysis of criminal case law and legislation. Significant cases, Acts and Regulations are summarised by the Unit and this material is published in online form on the DPP Research Unit website. On a day to day basis the Unit also makes available to the ODPP's staff NSW Court of Criminal Appeal judgments together with relevant High Court, NSW Court of Appeal and NSW Supreme Court judgments.

The two major functions of the Unit are to:

- provide legal information services to the ODPP staff that promotes awareness of developments in criminal law and procedure
- provide advice on law and procedure to staff in response to issues that arise during the preparation and conduct of matters.

The Unit sees itself as providing 'operational support', and aims to be responsive, relevant, practical and timely in meeting the needs of lawyers. There are times when the Research Unit's advice may be required within a few days, and others when the advice is required within minutes. The Unit currently deals with between 700-750 queries per year, many of which are undertaken at short notice.

Other initiatives

The work of the Unit is supplemented by daily update e-mails about current decisions in the Court of Criminal Appeal (CCA) produced by two CCA Crown Prosecutors.

The ODPP also has a library that specialises in criminal law. The main function of the library is to support the information and research needs of lawyers, Crown Prosecutors and Witness Assistance Officers. It is located at the ODPP Head Office, and serves all staff through its direct link over DPP Net.

The ODPP Learning & Development Branch provides a range of learning programs for the continuing professional development of Crown Prosecutors and solicitors. This includes Mandatory Continuing Legal Education courses. Barristers and solicitors must satisfy an extensive points system to qualify for annual practising certificates.

The ODPP Learning & Development Branch also coordinates the annual Solicitors Conference and the Regional Solicitors Conference. In addition, a Deputy Senior Crown Prosecutor coordinates, with assistance from other Crown Prosecutors on an ad hoc basis, Continuing Professional Development events for Crown Prosecutors.

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

At a glance

The key question we wanted to answer was:

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

Our assessment:

The ODPP has systems in place to manage the efficiency of individual solicitors and other employees, although we found that they are not routinely and consistently applied. Crown Prosecutors are 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
- increasing the continuity of staff involvement in matters

The ODPP argues that current approaches (including Sydney Crown Prosecutors generally working on one case at a time) are the most efficient possible at the present resourcing level. Deficiencies in information prevented us 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 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 these could work better. 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.

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.

4.1 How well does the ODPP manage the efficiency of individuals?

Our assessment	<p>The ODPP has a number of systems in place to manage the efficiency of individual solicitors and other employees. It needs to ensure that they are routinely and consistently applied.</p> <p>Management of Crown Prosecutors is not sufficiently systematic or effective. This has also been found by past reviews. Crown Prosecutors are not employees, but independent statutory officers. Managing them is complex and challenging. To manage them better, the law may need to be changed to give the Director the power to suspend or discharge Crown Prosecutors not performing satisfactorily. This would need to be accompanied by a robust and transparent performance review process.</p>
Managing employees	<p>The ODPP has a combination of processes to monitor the efficiency of solicitors and other employees including:</p> <ul style="list-style-type: none">▪ file reviews▪ practice reviews▪ workload management reviews▪ CASES analysis▪ supervision of written work. <p>The ODPP says these processes are used for ongoing, objective and systematic monitoring of groups and individual staff. The ODPP has not, however, shown us how it gains assurance that this is working as planned. Also:</p> <ul style="list-style-type: none">▪ evidence from the 2004 Staff Survey, Practice Reviews, and our interviews with staff indicate that these processes may not in fact be routinely and consistently implemented▪ the rigour of such processes also suffers from a lack of information on the time taken by individuals and groups to undertake activities.
Crown Prosecutor management	<p>Crown Prosecutors are not employees. As described in Chapter 1, they are statutory appointees. Although not employees, Crown Prosecutors salaries are paid by government from public funds. Indeed, this cost alone forms some 30 per cent of the ODPP budget.</p> <p>The ODPP is accountable to government for the efficient use of these funds and therefore must have systems in place to ensure Crown Prosecutors efficiently perform their service to the people of New South Wales.</p> <p>The ODPP believes that it constantly and effectively monitors and assesses the performance and workload of Crown Prosecutors. However it did not demonstrate a systematic process for workload or case review.</p> <p>A factor in managing Crown Prosecutor workload is the unpredictability of court processes and managing this to ensure the efficient use of Crown Prosecutor time. For example, a Crown Prosecutor may be allocated a hearing to start on a Monday, but the matter is adjourned. The roster may show that Crown Prosecutor to be unavailable, but that is no longer the situation.</p>

The ODPP tells us that in Sydney when a Crown Prosecutor and/or Trial Advocate is briefed in a trial the details are recorded in CASES and in a paper based Crown Prosecutors diary (CP Diary).

The Professional Assistant to the Senior Crown Prosecutor has responsibility for updating the roster for Crown Prosecutors on CASES. This roster indicates the matter a Crown Prosecutor/Trial Advocate is briefed in and/or is preparing.

The CP diary is also the responsibility of the Professional Assistant to the Senior Crown Prosecutor. It is a tool used to show the availability of Crown Prosecutors/Trial Advocates and Deputy Senior Crown Prosecutors for the purpose of briefing and recording commitments. The CP diary is set up to allow the Professional Assistant to the Senior Crown Prosecutor to see at the one time for each week of the month:

- all trial Crown Prosecutor/Trial Advocate commitments
- all Deputy Senior Crown Prosecutor commitments
- all CCA Crown Prosecutor commitments
- all PTU Crown Prosecutor commitments.

This is not possible to view at the one time on the CASES system.

In addition to the CP diary a “Court Diary Report - by Venue” is generated by the Professional Assistant to the Senior Crown Prosecutor through CASES. This is a hard copy record of those briefed in trials, fitness hearings and other matters for the week.

Therefore, the ODPP keep the following records of the briefing of every trial, fitness hearing or short matter:

- CP diary
- CASES
- Court Diary Report - by venue.

The Deputy Senior Crown Prosecutor (Country) is responsible for the rostering of Crown Prosecutors and Trial Advocates outside Sydney. Each regional branch is required to advise him/her, on a daily basis, what each Crown Prosecutor or Trial Advocate is doing at each of their courts. This is to allow the Deputy Senior Crown Prosecutor (Country) to make necessary emergency alterations to the Crown Prosecutor roster on the basis of the person’s actual court commitment leading up to a given date. This recognises that the roster alone can give a misleading impression of work commitments. Such a procedure, if implemented effectively, should promote better utilisation of Crown Prosecutors and Trial Advocates.

We 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.

A formal, transparent and reportable work allocation and case review system is needed to assure:

- differences between Crown Prosecutors performance are contained within an acceptable range
- accountability for public funds.

Crown Prosecutor assessment

The ODPP advises that the performance of Crown Prosecutors is assessed by all who observe it. It says that most of their work is done in public courts where they are assessed continuously by Judges, Magistrates, their opponents, their instructors, victims and witnesses, police, the media and public. In addition, it says Crown Prosecutor performance is assessed by the Director and Deputy Directors (who act on their reports) and the Senior and Deputy Senior Crown Prosecutors (with whom they confer).

The ODPP says that any errors by Crown Prosecutors can affect the result of a prosecution. This may create an appeal (where the performance is assessed by appellate judges and all involved in that process) or result in a complaint to the Bar Association and/or the Legal Services Commissioner. Appellate Crown Prosecutors also have their written submissions scrutinised and assessed by their instructors, by the Director and Deputy Directors, by their opponents and by the appellate judges. Criticism of their work is made publicly in the adversarial court process.

Even if we accept this, the monitoring described above is focussed on Crown Prosecutor effectiveness and professional standards. It does not focus on value for money. In addition such scrutiny applies only to a portion of their professional duties.

Although the ODPP advised us that Crown Prosecutor workload is recorded in a number of ways, it did not demonstrate that this information was routinely and systematically used to analyse and report to the Board or Management Committee on Crown Prosecutor workload. The position today remains largely as it was in 2003, when the Base Budget Review said:

There appears to be a lack of up to date management practices for monitoring the workload of Crown Prosecutors and, in view of the high proportion of the ODPP's budget allocated to this function, the Review Group considers that there is a need for improved financial accountability, in line with other areas of the ODPP.

We believe there should be a greater emphasis on the management of the Crown Prosecutors, including workload measurement.

The ODPP advised us that the *Crown Prosecutors Act 1986* provides a barrier to effective management of the Crown Prosecutors. Effectively, existing Crown Prosecutors can only be removed from office by the Governor in Council in limited circumstances. There is no scope to suspend or remove a Crown Prosecutor for poor performance. Together with a broad interpretation of prosecutorial independence by some Crown Prosecutors, this has to date hindered effective management of the Crown Prosecutors.

Recommendation

We recommend that the ODPP 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.

