

## **Case Management by the Office of the Commonwealth Director of Public Prosecutions**

Office of the Commonwealth Director of Public Prosecutions

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Canberra ACT  
30 March 2020

Dear Mr President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Office of the Commonwealth Director of Public Prosecutions. The report is titled *Case Management by the Office of the Commonwealth Director of Public Prosecutions*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website — <http://www.anao.gov.au>.

Yours sincerely



Grant Hehir  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## **AUDITING FOR AUSTRALIA**

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# Audit snapshot

**Auditor-General Report No.28 2019–20**

*Case Management by the Office of the Commonwealth Director of Public Prosecutions*



## Why did we do this audit?

- ▶ CDPP prosecutes diverse Commonwealth law offences, from tax and social security fraud to organised crime and terrorism.
- ▶ Lengthy legal processes adversely affect witnesses and victims and undermine public confidence in the justice system.
- ▶ Efficient and effective Commonwealth prosecution activities increase the likelihood of deterring potential offences against Commonwealth law and regulations.
- ▶ How decisions to prosecute are made influences the efficiency of Commonwealth prosecutions.



## Key facts

- ▶ In 2018–19, 46 Commonwealth and 16 state and territory agencies referred 2,579 briefs of evidence about alleged crimes to CDPP.
- ▶ 49% of referrals required CDPP to assess the brief of evidence and determine whether charges should be laid. Referred crimes have become more complex.
- ▶ CDPP is required to prosecute if there is a reasonable prospect of conviction and it is in the public interest: 82% of assessed matters proceeded to prosecution in 2018–19.



## What did we find?

- ▶ Based on the available data, the efficiency of CDPP's brief assessment is declining. The increasing average cost of outputs, flowing from a reduction in referrals, has not been fully offset by improvements in quality and timeliness.
  - Appropriate governance structures, systems and processes are in place, but there are inefficiencies in brief assessment workflow.
  - The timeliness of brief assessment has improved, but the average number of referrals processed has decreased and the average cost per referral processed has increased.
  - Efficiency data is not sufficiently measured, monitored and publicly reported to inform continuous improvement.



## What did we recommend?

- ▶ The Auditor-General made four recommendations to CDPP. They relate to management reporting; cost monitoring; timeliness targets; and performance reporting.
- ▶ The CDPP agreed with the recommendations.

28%

Decrease in investigative agency referrals over 5 years

78 days

Average time to assess a brief, within a benchmark of 90 days

1,263

Total number of brief assessments completed in 2018–19

# Summary and recommendations

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## Background

1. The Office of the Commonwealth Director of Public Prosecutions (CDPP) was established on 5 March 1984 by the *Director of Public Prosecutions Act 1983*. The CDPP provides a prosecution service for alleged offences against the laws of the Commonwealth. Crimes prosecuted range from tax and social security fraud to money laundering, organised crime, terrorism and espionage. Evidence of an alleged crime is compiled in a brief of evidence and referred to the CDPP by investigative agencies. In 2018–19, 46 Commonwealth and 16 state and territory agencies referred briefs to the CDPP.
2. The day-to-day work of the CDPP includes providing pre-brief advice to agencies, assessing the briefs that they provide, and prosecuting offences in state and territory courts.
3. Of the 2,579 referrals made to the CDPP in 2018–19, 49 per cent were ‘brief assessment’ referrals. In a brief assessment referral, the CDPP reviews the evidence provided by the investigative agency and determines whether charges should be laid. An additional 29 per cent were ‘arrest’ referrals. An arrest referral occurs when an investigative agency with arrest powers — for example, the Australian Federal Police — has already charged the defendant. The balance of referrals includes requests for pre-brief advice, breaches, extradition matters, matters referred post-committal and some appeals. Upon receipt, referrals are classified by the CDPP as complexity one to four, with four representing the most complex matters.
4. The *Prosecution Policy of the Commonwealth* is the overarching policy guiding the CDPP’s prosecution service, including the decision to proceed with a prosecution in ‘brief assessment’ matters or to maintain the charges in ‘arrest’ matters. Once a *prima facie* case has been established, a decision needs to be made by the CDPP as to whether there is a reasonable prospect of conviction. Evidence must be admissible, substantial and reliable. Prosecutors must also consider whether a prosecution would be in the public interest. Of 1,263 brief assessment referrals finalised by the CDPP in 2018–19, a decision to proceed with a prosecution occurred in 82 per cent of referrals.

## Rationale for undertaking the audit

5. The efficiency of the criminal justice system is a matter of public interest. Lengthy court processes can adversely affect witnesses and victims, along with other participants in prosecutions. Efficient and effective Commonwealth prosecution activities increase the likelihood of deterring potential offences against Commonwealth law and regulations, support Commonwealth regulators in enforcing compliance and are essential in maintaining respect for Commonwealth law. How prosecution services are organised; how the decision to prosecute is made; the nature of the relationship between prosecutors and investigative agencies; and the way prosecutors operate within the court system, influence overall efficiency.
6. Undertaking an audit of the case management efficiency of the CDPP also addresses Parliamentary interest. The topic was included in the Joint Committee of Public Accounts and Audit’s list of audit priorities for 2018–19, with a request that the audit include prosecutions by

the CDPP of corporate crimes, with a specific focus on matters referred to the CDPP by the Australian Securities and Investments Commission.

### **Audit objective and criteria**

7. The audit objective is to examine the efficiency of the CDPP's case management. The audit is focused on the pre-brief and brief assessment phases of the CDPP's work and examines the extent to which the CDPP uses its resources efficiently in evaluating referred matters.

8. To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Does the CDPP have arrangements to support the efficient assessment of referred briefs?
- Does existing performance data indicate that the CDPP assesses briefs efficiently?
- Is the CDPP effectively monitoring and reporting on its case management performance?

### **Conclusion**

9. Based on the available data, the efficiency of the CDPP's brief assessment is declining. The increasing average cost of outputs, flowing from a reduction in referrals, has not been fully offset by improvements in quality and timeliness.

10. The CDPP has established key elements to support the efficient assessment of briefs. Governance structures are appropriate and investigative agency engagement largely supports the objective of improving brief quality. Case management systems and digital processes are developing and operational guidelines are extensive. While the average timeframe for the completion of assessments is 78 days, which is consistent with the CDPP's target, there are inefficiencies in the administration of key activities within the assessment workflow. Management reporting does not provide sufficient visibility over key drivers in efficient brief assessment practice.

11. Analysis of available efficiency-related performance data indicates that, in the period 2014–15 to 2018–19, the CDPP's average number of brief assessment referrals processed per prosecutor decreased. The average cost per output (brief assessment and other types of referrals) increased. However, the average time taken to assess briefs markedly improved over the same period, and on average investigative agencies are more satisfied.

12. The CDPP is partly effective in monitoring and reporting on case management performance. Most of the requisite data is collected, but key efficiency drivers and the average cost of outputs are not sufficiently monitored. An 85 per cent within 90 days brief assessment service standard is embedded in practice and monitored, but the target does not drive timeliness across the full spectrum of brief complexity. The annual performance reporting framework provides a partial representation of how well the CDPP is achieving its purpose.

### **Supporting findings**

#### **Arrangements to support the efficient assessment of briefs**

13. The CDPP has an appropriate governance structure. Governance frameworks include clear accountabilities, processes for oversight, delegated decision-making and systems for risk



management. For 2019–20, the CDPP established budgets at the practice group level for key expense items.

14. The CDPP's processes for engagement with investigative agencies largely support the efficient assessment of briefs upon referral. Agency engagement is a core focus of strategic planning and case management practice, and systems and tools have been developed for this purpose. Stakeholder satisfaction with CDPP engagement is improving, on average. In practice, the nature and extent of liaison activities vary between investigative agencies and there is no overarching engagement strategy.

15. The CDPP has systems which can support the efficient assessment of briefs. Case management systems are developing and embed decision-making workflows. Digital practices and associated systems have been established to encourage the submission of e-briefs, which facilitate efficient case management and evidence analysis. A management reporting system enables analysis of brief assessment volumes and statistics.

16. The CDPP's operational policies and procedures are designed to support the efficient assessment of briefs. The CDPP has a large volume of operational guidelines and policies to support brief assessments and prosecutions. The CDPP is rationalising and digitising these materials, and some are embedded in the case management system, caseHQ.

17. The CDPP's operational practices partly support the efficient assessment of briefs. The average timeframe for the completion of assessments is 78 days. Although this is consistent with the CDPP's target of 85 per cent completed within 90 days, there are inefficiencies in relation to the assignment of briefs to branches and work groups; lack of initial triage for early identification of critical deficiencies in evidence that may prevent or delay a timely assessment; inconsistent follow-up with investigative agencies after the issuing of requisitions for additional evidence; and inconsistent records management practices. Management reporting does not allow supervisors to fully monitor and act on deficiencies in brief assessment practice in order to ensure efficiency in these areas.

### **Performance analysis of brief assessment efficiency**

18. Analysis of available performance data indicates that the average cost of a brief assessment has increased, noting that timeliness and stakeholder satisfaction have improved. The volume of brief assessments and other referrals processed by the CDPP decreased in the five years to 2018–19 due to a decline in referrals. Annual agency level expenses are unchanged. The average complexity of matters referred to the CDPP has increased, however, after weighting for complexity there is a decline in the average number of brief assessments referred per prosecutor employed. In the same five-year period, there were efforts to reduce backlog and timeliness in brief assessment improved. Investigative agency feedback reflects higher satisfaction levels.

### **Performance monitoring and reporting**

19. The CDPP routinely collects some efficiency data, but can improve its monitoring and use of this information in order to drive improvement. Data on efficiency drivers, such as brief quality and assessment outcomes, is collected but not monitored. A funding model could calculate average costs, but such analysis is not done. Efficiency benefits such as brief assessment timeliness, backlog and stakeholder satisfaction are monitored. The 85 per cent within 90 days

brief assessment service standard is embedded in brief assessment practice and has effectively driven behaviour for complexity two and three matters, however the usefulness of the service standard is reduced by its inappropriateness for complexity one and four matters, lack of awareness among investigative agencies, and lack of diagnosis of delay.

20. The performance framework established by the CDPP is partly effective. The three annual performance measures are relevant, but there are weaknesses in reliability. The measures provide a partly complete representation of the extent to which the CDPP is achieving its purpose as there are no qualitative, long-term or efficiency measures.

## Recommendations

**Recommendation no.1** The CDPP revise management dashboard reporting to ensure that supervisors can readily access key efficiency-related information, including case officer activities during triage and suspension periods, actions taken to encourage early resolution, and time recording compliance.  
**Paragraph 2.79**

**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

**Recommendation no.2** The CDPP establish a process to utilise existing data to monitor case management efficiency in terms of the average cost involved in processing referrals, including in conducting brief assessments and prosecutions.  
**Paragraph 4.20**

**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

**Recommendation no.3** The CDPP establish appropriate timeliness targets for each brief complexity category, formally communicate these to investigative agencies, and detail the results and methodology in the annual report.  
**Paragraph 4.36**

**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

**Recommendation no.4** The CDPP improve the reliability and completeness of performance criteria presented in its corporate plan and annual performance statements by establishing:  
**Paragraph 4.56**

- (a) a process to provide assurance that prosecutors are adhering to the *Prosecution Policy of the Commonwealth* when assessing briefs and conducting prosecutions;
- (b) a consistent, robust and transparent methodology for the surveying of investigative agency satisfaction; and
- (c) a case management efficiency criterion in the annual performance statement.

**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

## Summary of entity response

21. The Office of the Commonwealth Director of Public Prosecution's summary response to the report is provided below, and its full response is at Appendix 1.

The CDPP is proud of the work undertaken by its staff in the last 5 years in delivering a timely and high quality prosecution service to the Australian community in a rapidly evolving law enforcement and national security landscape.

The CDPP welcomes and agrees with the ANAO's recommendations but does not agree with its finding and conclusion that the efficiency of the CDPP's brief assessment referral practice is declining. The Report's conclusion is based on the CDPP receiving fewer brief assessment referrals than 5 years ago, the CDPP's expenses remaining at a similar level and with similar numbers of prosecutors employed. The Report fails to sufficiently recognise qualitative and quantitative improvements in the CDPP's brief assessment practice. Additionally, the ANAO's analysis does not take into account the number of people actually working on brief assessments, instead using our total workforce numbers for their efficiency calculations. The Report also fails to sufficiently recognise the broader imperatives driving the CDPP's current operations. The CDPP submits that the Report's analysis on this aspect is overly simplistic and regrettably, ultimately unhelpful.

The CDPP responds to the work that is referred to it by 68 federal, state and territory investigative agencies. In the last 5 years the law enforcement world has changed markedly, and the CDPP has changed with it. We are seeing a trend away from large numbers of straightforward brief assessment cases being referred and prosecuted in the lower courts. As recognised by the ANAO, we now have a practice with an increase in more complex serious criminal cases. This counter trend is driving an increase in requests for pre-brief advice, more arrest based referrals and more cases being dealt with on indictment in the higher courts.

We have two main responses to the ANAO Report. Firstly, efficiency has improved in CDPP's brief assessment practice. A comparison of actual prosecutor time spent on brief assessment referrals converted to FTE, indicates a drop in FTE of approximately 30% from 2014-15. A significant backlog of overdue files has been eliminated in that period. The average number of hours expended on assessing briefs of the same complexity has declined or stayed the same. And, the average time taken from receipt of the case to finalising the assessment has halved from 151 days to 78 days, even though these assessments are becoming more complex. Partner agency satisfaction, unsurprisingly, is at a very impressive 87%.

Secondly, with less time needed for brief assessment work, which is only a part of the work of prosecutors, prosecutors and other staff are reallocating effort to where it is needed – an expanding pre-brief advice service, an expanding Witness Assistance Service for our most vulnerable witnesses (often children in child exploitation cases), navigating the complexities of litigating multi-defendant white collar, terrorism and organised crime cases or cases with national security sensitivities, undertaking significant digital transformation and business improvement work and agency training, liaison and law reform. The modern law enforcement landscape has thrown up new priorities, challenges and costs of business for the CDPP, which are not sufficiently recognised, as they were largely outside the scope of the audit.

## Key messages from this audit for all Australian Government entities

22. Below is a summary of key messages that have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### **Performance and impact management**

- Time and cost based efficiency performance measures can help determine if expected efficiency gains from new operating models or systems are being realised.
- Efficiency measures require accurate cost information collected at a sufficiently disaggregated level to allow for meaningful analysis.
- Identifying suitable comparators to assess efficiency against provides entities with an indicator of performance. Comparators can include past performance, organisations with comparable functions or processes, or appropriate targets.
- A service standard can change behaviour and lead to improvements in service provision.

### **Program implementation**

- The integration of policies and workflow tasks into case management systems can increase the effectiveness, efficiency and transparency of case management activities.
- An effective triage function that addresses critical deficiencies early can optimise work allocation and reduce overall delay. This can have efficiency benefits for entities and partners.

## **Audit findings**

# 1. Background

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## Introduction

1.1 The Office of the Commonwealth Director of Public Prosecutions (CDPP) was established on 5 March 1984 by the *Director of Public Prosecutions Act 1983* (DPP Act). It is one of 16 entities that sit within the Attorney-General's portfolio. The CDPP is a non-corporate Commonwealth entity under the *Public Governance, Performance and Accountability Act 2013*.

1.2 The purpose of the CDPP is 'To prosecute crimes against Commonwealth law through an independent prosecution service that is responsive to the priorities of our law enforcement and regulatory partners, and that effectively contributes to the safety of the Australian community and the maintenance of the rule of law.'<sup>1</sup>

## The CDPP's work

1.3 The CDPP prosecutes alleged offences against the laws of the Commonwealth<sup>2</sup> on behalf of the community rather than individual victims.<sup>3</sup>

1.4 Evidence of an alleged Commonwealth crime is compiled in a brief of evidence and referred to the CDPP by investigative agencies. In 2018–19, 46 Commonwealth and 16 state and territory agencies referred briefs to the CDPP. Appendix 2 shows the investigative agencies that referred brief assessment matters to the CDPP from 2014–15 to 2018–19.

1.5 The work of the CDPP includes three core phases.

- Pre-brief advice — prior to receiving a brief of evidence from an investigative agency, the CDPP can offer advice to agencies about choice of charges, the elements of offences, impediments to proving the offence, witnesses, lines of enquiry and public interest considerations.
- Brief assessment — the CDPP assesses the briefs of evidence that investigative agencies refer and decides whether to prosecute. If the investigative agency has already laid charges prior to referring the brief to the CDPP (an arrest referral), the CDPP will consider whether the charge should be maintained. Otherwise, the CDPP conducts an assessment of the brief to determine whether charges should be laid (a brief assessment referral).
- Prosecution — charges are laid by the investigative agency following arrest, or following brief assessment by the CDPP. The CDPP is responsible for carrying out prosecutions of indictable<sup>4</sup> and summary offences. The CDPP will prosecute the matter in the relevant state and territory local, district or supreme court, according to that court's procedures and conventions. The process can include hearings, trials, committals, sentencing and

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1 Office of the Commonwealth Director of Public Prosecutions, *Corporate Plan 2019–23*, CDPP, 2018, p. 2.

2 Commonwealth offences are contained in various Commonwealth Acts, including the *Criminal Code Act 1995*. The CDPP can also prosecute offences against state and territory laws where senior CDPP prosecutors hold authority to do so under the relevant jurisdiction's laws, or where a Commonwealth officer is the informant.

3 The CDPP has policies, procedures and dedicated staff positions for victim support, and refers victims to a Witness Assistance Service.

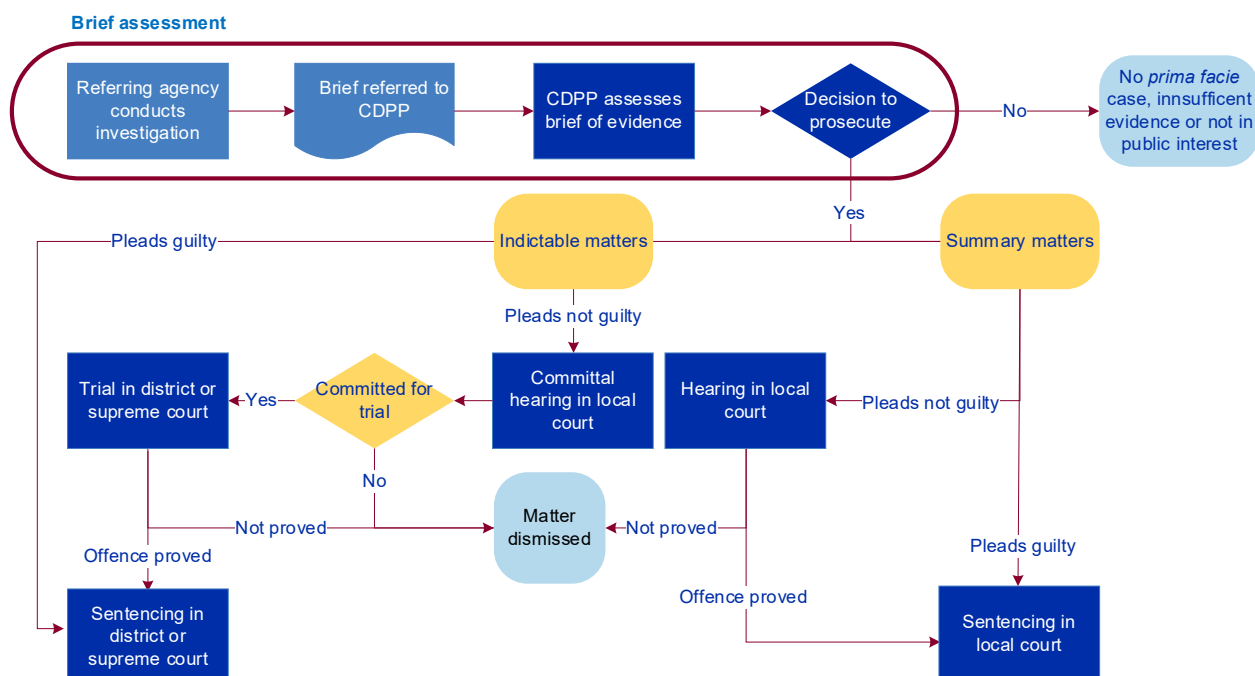
4 An indictable offence is a serious criminal offence that is usually heard in a higher court before a judge and jury. Less serious indictable offences can be, and summary offences are usually, heard in local court.

appeals. Once a prosecution has started, the investigator becomes known as the informant.

1.6 In addition to these activities, the CDPP provides input into wider Australian Government law reform activities and participates in Royal Commissions.

1.7 Figure 1.1 shows the prosecution process for brief assessment referrals, which begins with the referral of a brief of evidence to the CDPP by an investigative agency, and ends with the matter being heard or tried and sentenced, if a decision to proceed with a prosecution is made.

**Figure 1.1: The prosecution process for brief assessment referrals**



Source: ANAO analysis of information from the CDPP's *Steps in the Criminal Prosecution Process*.

1.8 The four initial steps outlined at the top of Figure 1.1 form the pre-brief and brief assessment processes, which are the primary focus of this audit.

1.9 On average, the life cycle<sup>5</sup> of all matters completed in 2018–19 was 579 calendar days.<sup>6</sup> This includes an average of 116 days spent in the brief assessment phase<sup>7</sup>, 245 days spent in the court

5 This excludes any amount of time spent in the pre-brief phase (237 days, on average), which is particularly relevant to large and complex matters. Pre-brief advice can be 'rolling' and can include active and inactive periods. A pre-brief matter involving 'one-off' advice will not be closed until a brief of evidence is provided to the CDPP or the investigative agency advises the CDPP that a brief will not be referred. Therefore, the duration of the pre-brief phase can include long periods of inactivity and suspension.

6 The average life cycle of CDPP matters is skewed by a small number of very lengthy matters. The median life cycle (excluding pre-brief time) of all CDPP matters completed in 2018–19 was 340 days.

7 This figure includes suspensions in the brief assessment phase (refer paragraph 2.72). When periods of suspension are excluded, the average duration of the brief assessment phase in 2018–19 was 78 days, and total life cycle was 562 days.

phase (summary hearings, committal hearing, trial and sentencing) and 167 days spent in other phases (appeal or breach).<sup>8</sup>

1.10 Time spent on pre-brief and brief assessment activities represented 16 per cent of total hours worked by CDDP prosecutors on referrals in 2018–19.<sup>9</sup>

1.11 Table 1.1 summarises the CDDP’s reported outputs over the period 2014–15 to 2018–19.

**Table 1.1: Outputs — Referrals processed, matters dealt with, and prosecutions resulting in a finding of guilt, 2014–15 to 2018–19**

Year	Referrals processed <sup>a</sup>	Matters before the court	Defendants dealt with summarily	Defendants dealt with on indictment	Cases finalised/ dealt with <sup>b</sup>	Prosecutions resulting in a finding of guilt
2014–15	3,600	4,909	1,967	737	2,704	2,156
2015–16	3,252	5,011	2,302	727	3,029	2,403
2016–17	3,147	5,015	2,249	755	3,004	2,249
2017–18	2,700	4,667	1,929	788	2,721	2,187
2018–19	2,579	3,961	1,315	786	2,101	1,691

Note a: Includes arrest, pre-brief, brief assessment and other types of referrals. Processing is defined as a referral being recorded on the CDDP’s case management system.

Note b: The number of cases dealt with is derived from the number of summary, trial and sentence matters closed during the reporting period.

Source: ANAO analysis of information from the CDDP’s annual reports 2014–15 to 2018–19.

1.12 Table 1.1 shows that, in 2018–19, the CDDP reported processing 2,579 referrals, dealing with 3,961 matters before the court, finalising 2,101 cases and obtaining 1,691 convictions. Of the 2,579 referrals processed in 2018–19, 29 per cent were arrest referrals, 49 per cent were brief assessment referrals and 22 per cent were other types of referrals.<sup>10</sup>

## Prosecution Policy of the Commonwealth

1.13 The *Prosecution Policy of the Commonwealth* (Prosecution Policy) is the overarching policy guiding the CDDP’s prosecution service, including whether to proceed with a prosecution. The Prosecution Policy is developed and periodically revised by the CDDP, and tabled in Parliament by the Attorney-General. It was first tabled in 1986, and most recently revised and tabled in August 2019. It has two main purposes.

8 Not every phase applies to every matter, and some phases affect a relatively small number of matters. Therefore, the separate phase average durations will not sum to the total life cycle average duration. A ‘breach’ refers to a failure to abide by a court order.

9 As recorded by prosecutors in the CDDP time recording system, Effort Allocation Tool, for completed matters or phases. The calculation excludes non-finalised matters, unrecorded time or time recorded against activities unrelated to specific referrals (for example, law reform activities).

10 Other types of referrals include pre-brief advice, breaches, matters referred post-committal, appeals where the CDDP did not undertake the original prosecution and extradition matters.



The first is to promote consistency in the making of the various decisions which arise in the institution and conduct of prosecutions. The second is to inform the public of the principles upon which the Office of the Director of Public Prosecutions performs its statutory functions.<sup>11</sup>

1.14 The Prosecution Policy provides tests for the decision to prosecute (refer box). While the basis upon which the decision to prosecute is made must be consistent with the Prosecution Policy, the decision is not ‘a mathematical formula.’ General principles are to be tailored to individual cases.

#### Prosecution tests

**Reasonable prospect of conviction test:** Once a *prima facie* case has been established, a decision needs to be made as to whether there is a reasonable prospect of conviction. If an acquittal is more likely than not, the prosecution should not proceed. Evidence must be admissible, substantial and reliable. Prosecutors are told to evaluate a number of factors when making an assessment under this test, including the quality of witnesses, admissibility of evidence such as confessions, and possible lines of defence.

**Public interest test:** Prosecutors must consider whether a prosecution would be in the public interest. They are required to evaluate a number of factors when making an assessment under this test. These include the seriousness of the offence, the need for deterrence, mitigating or aggravating circumstances, the vulnerability of the alleged offender, community perceptions and sentencing options.

Source: ANAO analysis of *Prosecution Policy of the Commonwealth*.

1.15 Of 1,263 brief assessment referrals finalised by the CDPP in 2018–19, a decision to proceed with a prosecution occurred in 82 per cent of referrals.<sup>12</sup>

### Organisational structure

1.16 The accountable authority for the CDPP is the Commonwealth Director of Public Prosecutions (Director). The Commonwealth Solicitor for Public Prosecutions supports the Director to fulfil her statutory responsibilities and oversees legal practice operations, including preparation and management of cases. The Executive Leadership Group (ELG) is the key advisory group to the Director. The ELG and other key governance groups are examined in detail at paragraphs 2.4 and 2.5.

1.17 The national legal practice is composed of six legal practice groups that are organised around crime types (refer Appendix 3).

1.18 The CDPP’s jurisdiction comprises Australia, its external territories and the Australian Antarctic Territory. The CDPP has offices in Canberra, Sydney, Melbourne, Brisbane, Perth,

11 Office of the Commonwealth Director of Public Prosecutions, *Prosecution Policy of the Commonwealth*, CDPP, 2019, p. ii.

12 Brief assessment matters completed in 2018–19 may have been referred in an earlier financial year. ANAO calculations include all brief assessment matters completed in 2018–19, regardless of outcome. In its 2018–19 Annual Report, the CDPP reports that 85 per cent of brief assessments resulted in a decision to commence prosecution. In making this calculation, the CDPP excludes matters with ‘other’ outcomes; for example, where the investigation was terminated by the investigative agency.

Adelaide, Hobart, Darwin, Cairns and Townsville. It prosecutes crimes against Commonwealth laws in the state and territory courts and in the Federal Court of Australia.

## Resourcing

1.19 Table 1.2 summarises the CDPP's resourcing, staffing levels and expenses over the five years to 2018–19.

**Table 1.2: Inputs — Funding and staffing, 2014–15 to 2018–19**

Year	Appropriations <sup>a</sup> (\$'000)	Revenue from rendering of services <sup>b</sup> (\$'000)	Average staffing level <sup>c</sup>	Prosecution legal costs <sup>d</sup> (\$'000)	Total expenses <sup>e</sup> (\$'000)
2014–15	79,076	5,299	396	14,852	87,099
2015–16	78,299	8,284	365	11,625	85,480
2016–17	77,283	8,510	411	12,047	85,560
2017–18	77,405	7,317	379	13,196	87,647
2018–19	76,482	9,692	371	16,773	93,128

Note a: Departmental appropriations for the year (adjusted for any formal additions and reductions) recognised as revenue from Government when the CDPP gains control of the appropriation, as per the CDPP annual report Statement of Comprehensive Income.

Note b: Revenue from rendering of services to other Commonwealth agencies under 'tied funding' arrangements (refer paragraph 2.14), as per the CDPP annual report Statement of Comprehensive Income.

Note c: Average staffing level as per CDPP annual reports.

Note d: Prosecution legal costs, including external counsel, as per the CDPP annual report Statement of Comprehensive Income supporting note 4B.

Note e: Total expenses, as per the CDPP annual report Statement of Comprehensive Income. Includes legal costs.

Source: ANAO analysis of CDPP information.

1.20 Table 1.2 shows that, in 2018–19, the CDPP received \$76.5 million in direct appropriation funding from the Australian Government and \$9.7 million from other sources. The CDPP's Average Staffing Level in 2018–19 was 371. The CDPP expended \$93.1 million, including \$16.8 million on prosecution legal expenses, which include external counsel costs (\$13.2 million).<sup>13</sup>

## Legislative framework and ministerial oversight

1.21 The DPP Act sets out the functions and powers of the Director. The Director delegates functions and powers to CDPP staff.

1.22 The DPP Act provides for separation of the investigative and prosecutorial functions in the Commonwealth criminal justice system. The CDPP has no investigative powers and is detached from the operational activities and decisions of investigative agencies. Prosecution decisions about matters referred to the CDPP for assessment are made independently of the investigative agency.

13 External counsel refers to a member of a state or territory bar association who is in private practice. External counsel are engaged where matters are complex, sensitive or high profile or when timeliness targets are at risk because of workload.

1.23 The Attorney-General, as First Law Officer, is responsible for the Commonwealth criminal justice system and is accountable to Parliament for decisions made in the prosecution process. Under the DPP Act, the CDPP operates independently of the Attorney-General, subject to any guidelines or directions which may be given by the Attorney-General.<sup>14</sup> The CDPP provides updates and briefings to the Attorney-General and Attorney-General's Department on an as-needed basis. The CDPP outlines its relationship with the Attorney-General on its website.

## Operational context

1.24 The efficiency of the CDPP's operations is, to some extent, dependent on the actions and behaviours of investigative agencies and state and territory courts, as well as of defendants and their representatives. The CDPP has no control over the number of briefs it receives. There is evidence that court systems have been slow to adopt digital technologies and are still heavily paper-based.<sup>15</sup> The number and location of court sittings as determined by listing practices, affect the process. Defendants can choose if and when to plead guilty.

1.25 The CDPP can influence some of these circumstances. For example, it can sometimes predict and plan for an upsurge in briefs; as in response to the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry. Its liaison, training and pre-brief work with investigative agencies is aimed at improving the quality of briefs. Prosecution practices, such as timely serving of the statement of facts, or early briefing of senior prosecutors with the authority to negotiate, can encourage early guilty pleas.

1.26 Trying and sentencing complex indictable matters will generally be more time-consuming. The CDPP's summary convictions, as a proportion of total convictions, decreased from 89 per cent in 2008–09 to 62 per cent in 2018–19, reflecting a general increase in the complexity of cases.

1.27 Both in Australia and overseas, a number of trends have been identified as placing pressure on the speed and efficiency of prosecution services.

- Prosecution services are noting the impact of technological advances in evidence.<sup>16</sup> This evidence can be vast and time-consuming to process, assess and present in court.<sup>17</sup>

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14 The Attorney-General has power under section 8 of the DPP Act to issue directions or guidelines to the Director. Directions or guidelines must be in writing and tabled in each House of the Parliament, and there must be prior consultation between the Attorney-General and the Director.

15 Productivity Commission, *Access to Justice Arrangements: Productivity Commission Inquiry Report (Volume 1)*, Productivity Commission, Canberra, 2014, pp.573–584.

16 For example, DNA testing, mobile phone logs, forensic analysis, electronically recorded evidence as from CCTV and other cameras.

17 Office of the Auditor General of Ontario, *Ministry of the Attorney General — Criminal Prosecutions (In 2012 Annual Report of the Officer of the Auditor General of Ontario)*, Auditor General of Ontario, 2012, p. 70.

- Criminal justice systems are placing increased emphasis on victims' rights. Victim Impact Statements, referrals to witness assistance services, pre-trial evidence and applications<sup>18</sup> and other specialist attention by prosecutors increases the complexity of prosecutions.<sup>19</sup>
- An increasing proportion of prosecutions involve vulnerable witnesses, such as in domestic and family violence, online child sex offences and human trafficking.<sup>20</sup>
- Some crime types (including child abuse matters, labour exploitation matters, tobacco importations, fraud, and terrorism) are becoming more complex as criminals adjust their activities in response to law enforcement techniques.<sup>21</sup>
- New offences have been created and law enforcement priorities can change.<sup>22</sup>

1.28 There has been less analysis undertaken in relation to any factors facilitating improved speed and efficiency of prosecution services.

## Rationale for undertaking the audit

1.29 The efficiency of the criminal justice system is a matter of public interest. Lengthy court processes can adversely affect witnesses and victims, along with other participants in prosecutions. Efficient and effective Commonwealth prosecution activities increase the likelihood of deterring potential offences against Commonwealth law and regulations, support Commonwealth regulators in enforcing compliance and are essential in maintaining respect for Commonwealth law. How prosecution services are organised; how the decision to prosecute is made; the nature of the relationship between prosecutors and investigative agencies; and the way prosecutors operate within the court system, influence overall efficiency.

1.30 Undertaking an audit of the case management efficiency of the CDPP also addresses Parliamentary interest. The topic was included in the Joint Committee of Public Accounts and Audit's list of audit priorities for 2018–19, with a request that the audit include prosecutions by the CDPP of corporate crimes, with a specific focus on matters referred to the CDPP by the Australian Securities and Investments Commission.

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18 Victorian Law Reform Commission, *The role of victims in pre-trial proceedings* (In *Victims of Crime: Consultation Paper*) [Internet], 2015 [last updated 2019], available from <https://www.lawreform.vic.gov.au/content/7-role-victims-pre-trial-proceedings> [accessed 18 November 2019].

19 Audit Office of New South Wales, *Efficiency of the Office of Director of Public Prosecutions*, Audit Office of New South Wales, 2008, p. 40.

20 The Australian Bureau of Statistics reports that the number of sexual assault victims recorded by police across Australia increased by eight per cent between 2016 and 2017 — with 2017 figures the highest number recorded since the beginning of the time series in 2010.

21 Australian Criminal Intelligence Commission, *Criminal environment: the challenges* [Internet], ACIC, available from <https://www.acic.gov.au/criminal-environment-challenges> [accessed 11 November 2019].

22 Frauds on the National Disability Insurance Agency, family day care fraud and expanded foreign fighter laws as outlined in the *Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014*, are examples of changes in offending against Australian Commonwealth law since 2014.

## Audit approach

### Audit objective, criteria and scope

1.31 The audit objective is to examine the efficiency of the CDPP's case management. The audit examines the extent to which the CDPP uses its resources efficiently in evaluating referred matters.<sup>23</sup> To form a conclusion against the audit objective, the following high-level criteria were adopted:

- Does the CDPP have arrangements to support the efficient assessment of referred briefs?
- Does existing performance data indicate that the CDPP assesses briefs efficiently?
- Is the CDPP effectively monitoring and reporting on its case management performance?

1.32 This audit is focused on the pre-brief and brief assessment phases of the CDPP's work (as outlined in red in Figure 1.1).

### Audit methodology

1.33 This audit applied ANAO's methodology for auditing efficiency. Efficiency is defined as 'the performance principle relating to the minimisation of inputs employed to deliver the intended outputs in terms of quality, quantity and timing.'<sup>24</sup>

1.34 The methodology included identifying relevant inputs and outputs and appropriate performance measures; drawing on data; identifying suitable comparators to benchmark against; and identifying key operational processes that are used to transform inputs into outputs.

1.35 Specific audit procedures undertaken included review of documentation and systems relevant to the CDPP's case management; analysis of data extracted from the CDPP's case management systems; and interviews of CDPP staff and investigative agencies.

1.36 ANAO's findings and conclusions are based in part on available data within CDPP's case management systems. The quality and availability of this performance data influences both the kinds of analyses that can be conducted and the conclusions that can be drawn.

1.37 The audit was conducted in accordance with the ANAO Auditing Standards at a cost to the ANAO of approximately \$519,200.

1.38 The audit team was Christine Chalmers, Judy Jensen, Zoe Pilipczyk, Danielle Page, and Paul Bryant.

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23 The audit does not form a conclusion about the appropriateness of the decision to prosecute in individual matters; examine the efficiency or effectiveness of specific prosecution phases following the decision to prosecute; form a conclusion about the adequacy of the CDPP's resourcing; directly consider the efficiency of support functions such as financial, human resources, information technology and asset, except insofar as they directly impact on the efficiency of case management processes; or attempt to calculate savings that could be achieved through greater efficiency.

24 This definition is provided in the *Standard on Assurance Engagements ASAE 3500 Performance Engagements* issued by the Auditing and Assurance Standards Board and is applied by the ANAO in its audit work.

## 2. Arrangements to support the efficient assessment of briefs

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### Areas examined

This chapter examines whether the Office of the Commonwealth Director of Public Prosecutions (CDPP) has arrangements to support the efficient assessment of referred briefs. This includes an examination of whether the CDPP has appropriate governance arrangements; processes for engaging with investigative agencies; systems; and operational policies, procedures and practices.

### Conclusion

The CDPP has established key elements to support the efficient assessment of briefs. Governance structures are appropriate and investigative agency engagement largely supports the objective of improving brief quality. Case management systems and digital processes are developing and operational guidelines are extensive. While the average timeframe for the completion of assessments is 78 days, which is consistent with the CDPP's target, there are inefficiencies in the administration of key activities within the assessment workflow. Management reporting does not provide sufficient visibility over key drivers in efficient brief assessment practice.

### Areas for improvement

ANAO made one recommendation in relation to supervisor visibility of brief assessment efficiency drivers.

Suggestions for improvement included developing an overarching engagement strategy; accepting arrest referrals via the Digital Referrals Gateway; and providing prompt acknowledgements to investigative agencies.

2.1 In order to examine this criteria, the audit investigated:

- governance arrangements — including frameworks and policies, risk management processes and financial management processes, which are the key structures supporting the CDPP's case management;
- policies and practice in relation to stakeholder engagement — focusing on engagement frameworks, policies and practices for investigative agencies, which are a key influence on CDPP brief assessment efficiency;
- IT systems — including the CDPP's core case management system, caseHQ; its brief submission channel, the Digital Referrals Gateway; litigation databases to support evidence analysis; and practices with respect to digital capability. These systems and practices are major levers for achieving greater case management efficiency; and
- case management operational guidelines and practice — the way in which prosecutors and administrators use systems, and interpret and comply with policy, will affect case management efficiency.

## Does the CDPP have appropriate governance arrangements to support its case management process?

The CDPP has an appropriate governance structure. Governance frameworks include clear accountabilities, processes for oversight, delegated decision-making and systems for risk management. For 2019–20, the CDPP established budgets at the practice group level for key expense items.

### Governance framework and policies

2.2 The CDPP's approach to governance is articulated in a Governance Policy and Framework. The Framework identifies the *Director of Public Prosecutions Act 1983* and the *Prosecution Policy of the Commonwealth* (Prosecution Policy) as fundamental to the prosecution process. Roles and accountabilities are detailed in a Governance Accountability Matrix.

2.3 Following a strategic review in 2013, in June 2014 the CDPP was restructured into specialist legal practice groups supported by a Corporate Services Group (refer Appendix 3). The new structure represented a shift away from a regionally based legal practice to a national practice segmented by crime type.

2.4 The Executive Leadership Group (ELG) comprises the Commonwealth Director of Public Prosecutions (Director) as chair, the Commonwealth Solicitor for Public Prosecutions (CSPP), the Chief Corporate Officer, and five deputy directors who lead the specialist legal practice groups. The ELG's role is to provide advice regarding strategic direction, oversee the business, identify and manage strategic and operational risks, and manage budget and resources. The ELG meets monthly.

2.5 A Project Board meets monthly to provide oversight of projects and reports to the ELG quarterly. Other steering and operational committees are established as required. The supporting committees function in an advisory role to the Director.

2.6 The CSPP's role includes improving the efficiency and effectiveness of legal practice operations and is supported by a Legal Business Improvement (LBI) branch. LBI's activities are aimed at enabling, supporting and modernising the legal practice. A National Business Improvement (NBI) practice group has also been established with the aim of fostering innovation and business improvements across the legal practice, particularly regarding digital capability.

2.7 In most instances, decision-making processes are devolved to the deputy directors, branch heads or prosecution team leaders. Some decisions remain with the Director under statute or under a Decision-Making Matrix (DMM) that was developed to identify and guide the appropriate decision-maker (refer paragraph 2.54); for example, decisions in relation to appeals are made by the Director.

2.8 The Corporate Services Group has responsibility for monitoring and reporting on governance across the CDPP.

2.9 Each practice group develops an annual action plan structured according to the CDPP's strategic themes of: 'providing an efficient and effective prosecution service delivery', 'engaging with partner agencies and stakeholders', and 'investing in our people.'

## Risk management

2.10 The CDPP has a Risk Management Framework (Risk Framework) and Policy to assist the Director to meet the requirements of subsection 16(a) of the *Public Governance, Performance and Accountability Act 2013* and the *Commonwealth Risk Management Policy*. The Director is ultimately accountable for the management of risk.

2.11 The CDPP articulates its risk posture in its Risk Appetite and Tolerance Statement, last reviewed in June 2019, and embeds risk management practices through its practice group action plans. A Risk Management Process Guideline assists staff to assess and manage risk.

2.12 A Strategic Risk Register and Management Plan, and a Corporate Services Risk Register are maintained. The registers cover risk identification, analysis, planning and monthly progress updates. The register includes efficiency-related risks associated with funding, change management, IT strategy and liaison with investigative agencies. For each of the strategic risks identified, there is a control owner who has responsibility for developed treatments to manage the risk. The ELG and Audit Committee have a standing agenda item to review the risk registers.

2.13 Internal audit ties its activities to strategic risks. Internal audit performed a review of CDPP's Risk Framework in February 2019. The audit concluded that CDPP's suite of risk management guidance material is appropriate in the circumstances and aligned to the *Commonwealth Risk Management Policy* and other better practice guidance, but that the CDPP should ensure that guidance materials reflect actual practice, refresh its strategic risks and make functionality improvements to the risk register template. Throughout 2018–19, the ELG conducted risk workshops to identify and refine strategic risks.

## Financial management

2.14 The CDPP's operations are primarily funded through parliamentary appropriations, but the CDPP also receives revenue through transfers of appropriations from other entities to cover the cost of prosecutions for offences under specific legislation. These activities are governed by six memoranda of understanding (MOUs) with Commonwealth investigative agencies<sup>25</sup>, including four signed in 2018 and 2019. In 2018–19, revenue recognised under these 'tied funding' arrangements was \$9.2 million. Tied funding increased from four per cent of all funding in 2014–15 to 11 per cent in 2018–19.

2.15 The Strategic Risk Register states that the CDPP's highest priority risk is 'Inadequate core funding', specifically:

Significant reliance on funding based on terminating and 'tied' budget measures leads to funding uncertainty, 'fiscal cliffs' and seesawing in recruitment, ultimately impacting prosecution outcomes.

2.16 This risk has an 'Extreme' rating, based on a 'Severe' impact and 'Possible' likelihood. Treatment measures focused on contributing to investigative agency new policy proposals with the

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25 Australian Taxation Office MOU Subsidiary Arrangements: Serious Financial Crime Taskforce (2015) and Prosecutions of Goods and Services Tax Matters (2017); the (then) Department of Infrastructure, Regional Development and Cities — Norfolk Island (2018); the (then) Department of Education and Training — Family Day Care payment integrity (2018); National Disability Insurance Agency (2019); and Department of Home Affairs — Illicit Tobacco Taskforce (2019).



aim of obtaining related funding, reducing the level of cross-subsidisation of this work, and ‘improvements to budgeting and forecasting, leading to improved long term decision-making.’

2.17 The CDPP’s budget is managed centrally by its Corporate Services Group. Between 2014–15, when the national practice model was established, and 2018–19, budgets were allocated at the national level only. As a result, the CDPP were unable to track costs at the legal practice group level or below. In 2018–19, practice group budgets for a range of key expense items, such as employee, legal and travel, were proposed, ‘with the aim of improving financial management and decision-making, leading to more informed financial strategies and priority setting.’ In 2019–20, budget management will be undertaken for four business areas — executive, legal practice, corporate, and administrative support. This will improve the CDPP’s ability to analyse costs.

## Do the CDPP’s processes for engagement with investigative agencies support the efficient assessment of briefs upon referral?

The CDPP’s processes for engagement with investigative agencies largely support the efficient assessment of briefs upon referral. Agency engagement is a core focus of strategic planning and case management practice, and systems and tools have been developed for this purpose. Stakeholder satisfaction with CDPP engagement is improving, on average. In practice, the nature and extent of liaison activities vary between investigative agencies and there is no overarching engagement strategy.

### Engagement strategy

2.18 The National Legal Direction<sup>26</sup> (NLD) ‘Prosecution services for partner agencies’ outlines the CDPP’s stakeholder relationship activities. This document notes that ‘Strong relationships between the CDPP and investigative agencies is fundamental to the efficient and effective delivery of prosecution services to agencies and the Australian community.’

2.19 The NLD is supported by a communications strategy; one of three pillars of which is ‘advise to support.’ The CDPP’s Corporate Plan 2019–2023 names ‘effectively engage with partner agencies and stakeholders’ as the second of three strategic themes.

2.20 A key objective of the legal practice group model was to match the way in which investigative agencies were organising themselves and their work, potentially leading to greater ‘responsiveness’ from the CDPP in brief assessment and advice. Objectives included greater consistency of services across regions; services and products being generated out of a practice group and used nationally; and national liaison meetings with investigative agencies.

### Engagement policies, procedures and resources

2.21 Policies and resources that are used to engage with investigative agencies comprise:

- Brief specific activities — pre-brief advice; templates; Partner Agency Portal (Partner Portal); and
- Ongoing liaison structures and processes — MOUs; liaison activities; an investigative agency satisfaction survey and a feedback loop.

<sup>26</sup> Policies developed for the CDPP legal practice — refer paragraph 2.55.

## *Brief specific activities*

### Pre-brief advice

2.22 The rationale for pre-brief advice is to improve the quality of briefs prepared by investigative agencies and, more generally, to improve the prosecution process. Pre-brief services involve liaison with investigative agencies to inform investigators' operational decision-making and evidence gathering, prior to the brief being provided to the CDPP for assessment. Pre-brief advice also aims to improve the operational efficiency of investigative agencies.

### Templates

2.23 A number of templates with the intention of streamlining brief assessment processes have been developed for use by the CDPP and investigative agencies. The CDPP has also worked with a number of agencies to develop tailored electronic brief (e-brief) templates.

### Partner Agency Portal

2.24 An online Partner Portal has been established to give investigative agencies access to various information and resources<sup>27</sup>, including the Digital Referrals Gateway, which has been established for the submission of e-briefs (refer paragraph 2.43). The CDPP has advised ANAO that there are 719 active<sup>28</sup> Partner Portal users from 62 different Commonwealth and state and territory agencies. In 2018, according to a survey of investigative agency representatives conducted by the CDPP, 42 per cent used the Partner Portal, and almost half agreed 'strongly' that 'the information provided through the Partner Portal is of high value to, and used by, my agency.'

## *Ongoing liaison structures and processes*

### Memoranda of Understanding

2.25 Relationships between the CDPP and some agencies are formalised through an MOU. Clarity around practices through MOUs — for example, authority for some agencies to conduct some summary prosecutions themselves — is aimed at minimising duplication of effort and wasted resources.

2.26 The CDPP signed MOUs with 21 agencies between 1992 and 2019, including with some of its largest referrers (refer Appendix 4). However, most investigative agencies do not have an MOU with the CDPP. Only the Australian Taxation Office (ATO) MOU (signed in February 2017) makes reference to specific brief assessment timeliness targets. Some recent MOUs for tied funding — for example, the MOU signed with the Department of Home Affairs in May 2019 — make no provision for timeliness.

### Liaison activities

2.27 Investigative agency liaison activities are strongly emphasised by the CDPP. Potential liaison activities are set out in an NLD 'Prosecution services for partner agencies', and training activities are also outlined in an NLD. Practice group leaders must report to the ELG about their liaison activities each quarter. MOUs with some investigative agencies set out the parameters for liaison. In 2018–19 and 2019–20 practice group action plans, several groups list 'targeted training' with investigative agencies as a key action.

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27 The September 2018 Corporate Quarterly Report suggests that the most frequently used resource on the Partner Portal is the National Offence Guides, followed by the Search Warrant Manuals.

28 Used at least once in the last 12 months.

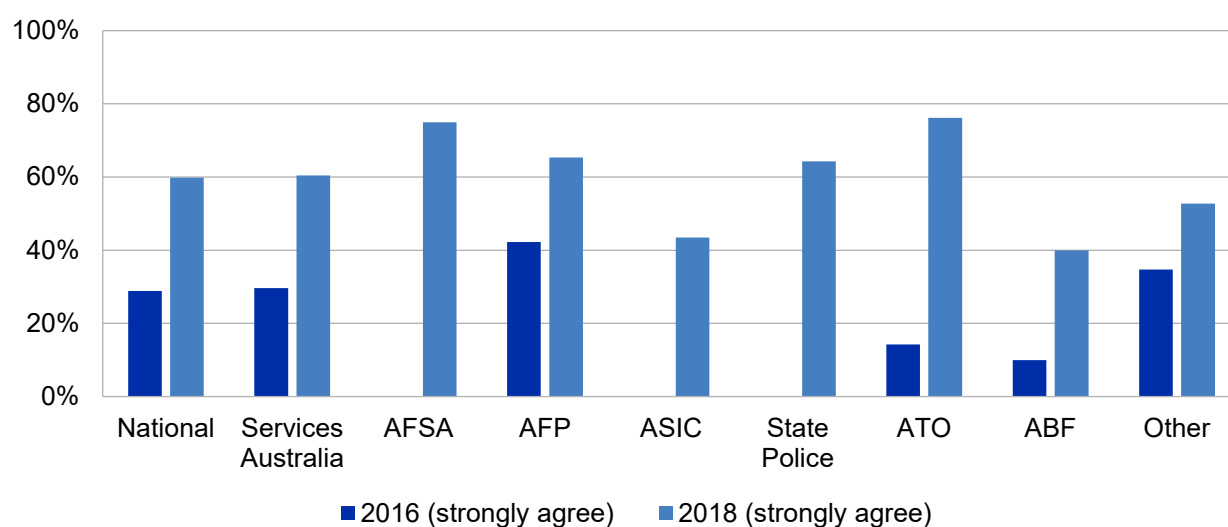
2.28 In practice, arrangements for, and frequency of, liaison differ across practice groups and agencies. Liaison meeting minutes suggest that relatively few liaison meetings are held with the state and territory police, despite police being one of the largest referrers overall. State and territory police referrals are dispersed across different police stations and investigative areas; this complicates liaison due to multiple liaison contact points.

#### Investigative agency satisfaction survey

2.29 Since 2016, a biennial investigative agency satisfaction survey has measured satisfaction with the CDPP. One rating question is used as a performance criterion in the CDPP's annual performance reporting (refer paragraph 4.41). Free text questions give surveyed investigative agencies the opportunity to provide qualitative feedback. The next survey is due in 2020.

2.30 Results from 2016 and 2018 satisfaction surveys indicate that the vast majority of respondents were satisfied (83 per cent in 2016, 87 per cent in 2018) with their level of engagement with the CDPP. Between 2016 and 2018, there was a large increase in respondents 'strongly agreeing' that the CDPP has an effective working relationship with agencies (refer Figure 2.1).

**Figure 2.1: Agreement that the CDPP 'has an effective working relationship with my agency through liaison arrangements' by investigative agency**



Note: AFSA refers to Australian Financial Security Authority. AFP refers to Australian Federal Police. ASIC refers to Australian Securities and Investments Commission. State Police refers to state and territory police. ABF refers to Australian Border Force. Only respondent samples of at least n=5 are shown; 2016 AFSA results are not shown due to insufficient sample size. In 2016, zero per cent of ASIC and State Police respondents strongly agreed.

Source: ANAO analysis of 2016 and 2018 investigative agency satisfaction surveys.

#### Feedback loop

2.31 Feedback to agencies is obtained through prosecution reports, post-trial reports, and case reviews for some significant matters. Some agencies have indicated dissatisfaction with the timeliness of reports.

2.32 Ad hoc initiatives may be developed with agencies that are specifically aimed at increasing efficiency, such as engagement frameworks<sup>29</sup> or ad hoc reports. There are two engagement frameworks in place, with ATO and Comcare. Ad hoc reports are designed to keep agencies informed of on hand matters, but reporting practice varies across agencies. Several major referring agencies have a centralised email drop-box arrangement with the CDPP for 'lessons learnt.' There is evidence that drop-boxes are being used inconsistently.

2.33 The reasons for the CDPP's differing approaches to the establishment of MOUs, composition of MOUs and conduct of liaison activities are unclear. The CDPP should establish an overarching engagement strategy.

## Do the CDPP's systems support the efficient assessment of briefs?

The CDPP has systems which can support the efficient assessment of briefs. Case management systems are developing and embed decision-making workflows. Digital practices and associated systems have been established to encourage the submission of e-briefs, which facilitate efficient case management and evidence analysis. A management reporting system enables analysis of brief assessment volumes and statistics.

2.34 The systems that support the CDPP's assessment of briefs are divided into two categories.

- Case management and monitoring systems — case management systems (caseHQ and its precursor system, the Case Recording Information Management System (CRIMS)); the Effort Allocation Tool (EAT) utilised for time recording; SharePoint<sup>30</sup> utilised for records management; and the PowerBI<sup>31</sup> system used to monitor case management.
- Digital practices and associated systems — the Digital Referrals Gateway used for investigative agencies to refer e-briefs; litigation databases used by prosecutors to support evidence analysis; and digital education and training processes.

### Case management and monitoring systems

2.35 The CDPP launched caseHQ on 29 August 2018, replacing CRIMS, which was deemed no longer fit-for-purpose. caseHQ introduced functionality that improves case management and monitoring processes, including workflow, records management, performance monitoring and governance.

2.36 Many case management workflow and decision tasks are embedded into caseHQ. 'Workflow tasks' guide case officers through the brief assessment and prosecution process. 'Decision tasks' are directed to senior prosecutors to review and approve recommendations made by case officers.

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29 One such initiative was 'Project Blossom' developed jointly by the CDPP and the ATO in 2017. The objective of Project Blossom was to improve the efficiency of tax crime prosecutions through increased strategic interactions and engagement touch points. Timeliness of investigations, brief assessment and court phases were accepted as efficiency indicators.

30 Sharepoint is a document management and storage system.

31 PowerBI is a data visualisation and reporting program.

2.37 The system provides a history of actions taken and documents created for a matter. This has improved internal transparency. caseHQ has the functionality to manage requisitions<sup>32</sup> and investigative agency communications but it is not used in this way currently.

2.38 Mandatory Prosecution Policy Declarations (PPDs) — which aim to provide assurance that the prosecution team have complied with the Prosecution Policy — are automatically added to the decision-maker's workflow. The completion of a PPD in caseHQ is required to progress the matter to the next phase in the prosecution process (refer paragraph 4.45).

2.39 Time spent on specific referrals is recorded as a percentage of a standard working day (seven hours, 21 minutes).<sup>33</sup> EAT — a time recording system in place since 2012 — is now integrated with caseHQ for data entry, improving time recording functionality. caseHQ links all matters that CDPP officers have worked on to EAT.<sup>34</sup> However, caseHQ is not directly or indirectly linked with the CDPP's financial management system, TechnologyOne.<sup>35</sup> This makes it difficult to attribute costs to specific referrals, impeding cost analysis.

2.40 Since the introduction of caseHQ, the CDPP has used SharePoint (a document management system integrated with caseHQ) as its electronic records management system. caseHQ and SharePoint provide national access to files and document version control.

2.41 PowerBI is used to visualise case management data and has partially replaced SQL-generated reports. PowerBI has the functionality to improve the CDPP's case management oversight by providing current information in a user-friendly format. This is examined in more detail at paragraph 2.78.

## Digital practices and associated systems

### *Digital Referrals Gateway*

2.42 An investigative agency brief to the CDPP is composed of two parts: covering<sup>36</sup> and evidentiary material. Working with hard copy evidentiary material requires the CDPP to undertake manual processes. Efficiencies are realised when both covering and evidentiary material are submitted to the CDPP electronically.<sup>37</sup> e-briefs allow the CDPP to use litigation support software to index, sort and analyse evidence.

2.43 The Digital Referrals Gateway (Gateway) was established in 2017–18 for investigative agencies to securely submit and update e-briefs. The Gateway improves efficiency by pre-populating some covering material, and allows for monitoring and faster allocation of briefs received. An automated notification of receipt is sent to the investigative agency. The Gateway is not integrated with caseHQ, which would add further efficiencies, but there are plans to integrate in the future.

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32 Request to the investigative agency for additional evidence or clarification of the brief of evidence.

33 Office of the Commonwealth Director of Public Prosecutions, *Enterprise Agreement 2017–2020*, CDPP, 2017, p. 10.

34 Non-allocated matters worked on appear as a suggested file to record time against in EAT.

35 TechnologyOne is a financial management information system.

36 Covering material includes the letter of referral, facts of the offence, charge sheet, and information about the defendant, the informant, and witnesses.

37 Methods of submission include electronically (including Gateway or email), internal, in person, post or registered post.

2.44 e-brief Referral Guidelines issued to investigative agencies state that ‘all briefs referred to the CDPP should be in electronic format as an e-brief.’ For some agencies (for example, the ATO), the use of e-briefs is mandatory under service level agreements. However, there is mixed uptake of the Gateway across investigative agencies. The CDPP was unable to provide accurate data on the volume of briefs submitted on paper, as an e-brief via the Gateway or in other electronic form, but has stated that AFP, ABF, state and territory police, and ATO did not use the Gateway in 2018–19, and that less than 20 per cent of ASIC briefs were submitted via the Gateway.

2.45 Several factors contribute to non-use of the Gateway.

- Arrest referrals comprise almost one third of referrals handled by the CDPP; however, the Gateway is not used for arrest referrals. The CDPP indicates that this is because there is typically no brief produced on the day of arrest and arrest matters can involve a large volume of evidentiary material, for which the Gateway is not suitable.
- The Gateway only accepts evidence briefs up to one gigabyte (GB) in size. Most ASIC, AFP, ABF and state and territory police briefs exceed this size. The CDPP states that it plans to increase the upload capacity to four GB in order to increase usage of the Gateway.

2.46 The CDPP should expand the Gateway to arrest matters given there is a strong efficiency rationale for submitting both covering and evidentiary material for all matters via the Gateway.

### *Digital litigation systems*

2.47 The CDPP utilises a suite of internally developed litigation databases to assist with the analysis of large volumes of evidentiary material. Since 2016, the CDPP has made these databases available to prosecutors for higher complexity briefs.

2.48 In 2018–19, CDPP prosecutors used litigation databases for 36 matters.<sup>38</sup> In 26 of these matters, the prosecution team ceased using the database, indicating it was not fit-for-purpose. It is noted that current databases rely on evidence being indexed in an Excel spreadsheet, and that the CDPP uses three types of MS Access databases, which requires staff to understand which option is appropriate for their matter.

2.49 To address some of these issues, the CDPP has commenced procuring a cloud-based digital litigation system that is specifically designed to index and visualise legal evidence and will not require the same level of configuration as previous litigation databases.

2.50 To promote uptake amongst prosecutors of current litigation databases, automated emails are sent to case officers responsible for higher complexity matters, advising them of available digital tools and services.

### *Digital education and training*

2.51 The CDPP’s THINK DIGITAL strategy (launched in November 2017) attempts to build digital capability amongst CDPP staff. The CDPP established a Digital Capability Team in September 2018 to promote digital practice. Over sixty internal training sessions were delivered between November 2018 and June 2019, with up to 800 attendances. The CDPP makes written and video training materials available to staff via its intranet.

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<sup>38</sup> The NBI practice group includes the objective of having 40 complex matters utilising litigation databases in their 2018–19 and 2019–20 action plans.

## Are the CDPP's operational policies and procedures designed to support the efficient assessment of briefs?

The CDPP's operational policies and procedures are designed to support the efficient assessment of briefs. The CDPP has a large volume of operational guidelines and policies to support brief assessments and prosecutions. The CDPP is rationalising and digitising these materials, and some are embedded in the case management system, caseHQ.

2.52 The CDPP uses the Prosecution Policy; a Decision-Making Matrix; National Legal Directions; Practice Group Instructions; National Offence Guides and a recently approved Practice Management Guide to support the brief assessment and case management process.

### *Prosecution Policy*

2.53 The Prosecution Policy is the overarching policy guiding the CDPP's prosecution service. All decisions relating to the prosecution of Commonwealth offences must be made with reference to the Prosecution Policy (refer paragraph 1.13). The prosecution tests include decisions which inherently support efficiency objectives in the assessment of briefs — the 'reasonable prospect of conviction test' aims to prevent resources being allocated to the pursuit of cases that do not have a reasonable prospect of success. The 'public interest test' includes 'the likely length and expense of a trial' as one of the decision factors.

### *Decision-Making Matrix*

2.54 The DMM supports case officers in determining the appropriate decision-maker<sup>39</sup> for key decisions in the brief assessment and prosecution process. The DMM aims to maximise the efficiency of the brief assessment process by delegating decisions to the lowest possible level within the organisation as has been deemed reasonable for that decision. In August 2018, the DMM was embedded into caseHQ.

### *National Legal Directions*

2.55 NLDs are national policies developed for the legal practice. The CDPP has produced over 35 NLDs since 2014 on topics such as witness policies, forensic procedures, sentencing, parliamentary issues and external counsel. These are available to staff via the CDPP's intranet. Four NLDs have particular relevance to case management efficiency.

- 'Complexity ratings', last updated in March 2019, provides guidance on classifying referrals based on a scale from one to four of complexity (refer Appendix 5). Complexity classification is used for specifying decision-making authority in the DMM, determining the necessary frequency of case review, establishing reasonable prosecutor workload, and generating funding estimates for new policy proposals.
- 'Timely prosecutions', published in October 2018, sets out the key activities that facilitate timeliness and identifies the target duration for brief assessment and filing indictments.
- In 'Early Resolution Scheme', published in 2016, the CDPP recognises that early resolution of matters (typically through an early guilty plea) is an efficiency gain for the entire justice

39 The 'Director', the 'CSPP (SES3)', the 'Practice Group Leader (Deputy Director; SES2)', the 'Branch Head (Assistant Director; SES1)', a 'Principal Federal Prosecutor, Prosecution Team Leader or Complex Litigator (EL2)', a 'Senior Federal Prosecutor (EL1)', a 'Federal Prosecutor 1 or 2 (APS4, APS5)', or the 'case officer.'

system by negating the need to go to a contested trial. The NLD lists strategies and specific activities to achieve early resolution. These are also referenced in a new Practice Management Guide. Prosecutors are advised to ‘take active steps to attempt to resolve the matter at every subsequent stage of the prosecution, including right up to the commencement of the summary hearing or trial.’

- A ‘Briefing Counsel Policy’ sets out when, who, the steps involved in and how to brief external counsel, with the aim of maximising value-for-money. A ‘Nomination of Counsel’ system also supports the use of external counsel.

### *Practice Group Instructions*

2.56 Practice Group Instructions (PGIs) are protocols for staff working in a specific practice group. The CDPP has 45 PGIs accessible to staff via the CDPP’s intranet. Some PGIs provide guidance about procedure — for example, filing or evidence-handling. Several PGIs have an implicit or explicit value-for-money or efficiency focus. For the most part, PGIs are concerned with issues of law, such as sentencing and charging. A 617-page Federal Prosecution Manual and a series of Guidelines and Directions Manuals are being phased out and replaced with NLDs and PGIs.

### *National Offence Guides*

2.57 National Offence Guides (NOGs) are used by prosecutors and investigative agencies to settle the elements of an offence and draft charges. NOGs aim to facilitate efficient brief assessment by providing guidance to investigative agencies and CDPP case officers. NOGs are made available to investigative agencies on the Partner Portal. Several investigative agencies responding to the 2018 survey and in interviews conducted by ANAO indicated that NOGs are valued.

### *Practice Management Guide*

2.58 A new Practice Management Guide was approved by the ELG in September 2019. This covers file management, external communications, templates and guides, managing investigative agency relations, early resolution activities, and practice management tools.

## **Are the CDPP’s operational practices supporting the efficient assessment of briefs?**

The CDPP’s operational practices partly support the efficient assessment of briefs. The average timeframe for the completion of assessments is 78 days. Although this is consistent with the CDPP’s target of 85 per cent completed within 90 days, there are inefficiencies in relation to the assignment of briefs to branches and work groups; lack of initial triage for early identification of critical deficiencies in evidence that may prevent or delay a timely assessment; inconsistent follow-up with investigative agencies after the issuing of requisitions for additional evidence; and inconsistent records management practices. Management reporting does not allow supervisors to fully monitor and act on deficiencies in brief assessment practice in order to ensure efficiency in these areas.

2.59 The brief assessment workflow, including timeliness targets, involves four key stages.

- Brief receipt and assignment — once the brief has been referred by the agency, an administrative officer must upload the brief to caseHQ. The officer will then allocate the matter to a branch. The branch head must assign a complexity level and allocate it to a



work group. The Prosecution Team Leader (PTL) will then assign the matter to a case officer. The agency will be notified. These activities are to occur within four days of brief receipt.<sup>40</sup>

- Triage — an initial analysis of the brief is to be done by the case officer with the aim of flagging critical deficiencies in the evidence that may prevent or delay a timely assessment. Should a deficiency be found, the case officer is required to issue a requisition — a request for additional evidence or clarification — to the investigative agency. Triage is to be conducted within 10 days of brief receipt.
- Brief assessment, requisition and recommendation — once the case officer begins the assessment of the brief in full, they may continue to submit requisitions to the agency until the brief of evidence is sufficient to make a recommendation about whether to prosecute. From the moment a requisition is issued until a response is received, the officer should ‘suspend’ the measurement of timelines associated with the matter in caseHQ.<sup>41</sup> The case officer’s recommendation about whether to proceed with the prosecution is to be made within 83 days of brief receipt, excluding suspensions.<sup>42</sup>
- Prosecution Policy Declaration — A PPD should be completed by the decision-maker to indicate that the Prosecution Policy has been complied with. The PPD should be signed within 90 days of receipt of the brief assessment referral, excluding suspensions.

2.60 Figure 2.2 provides an overview of the brief assessment workflow.

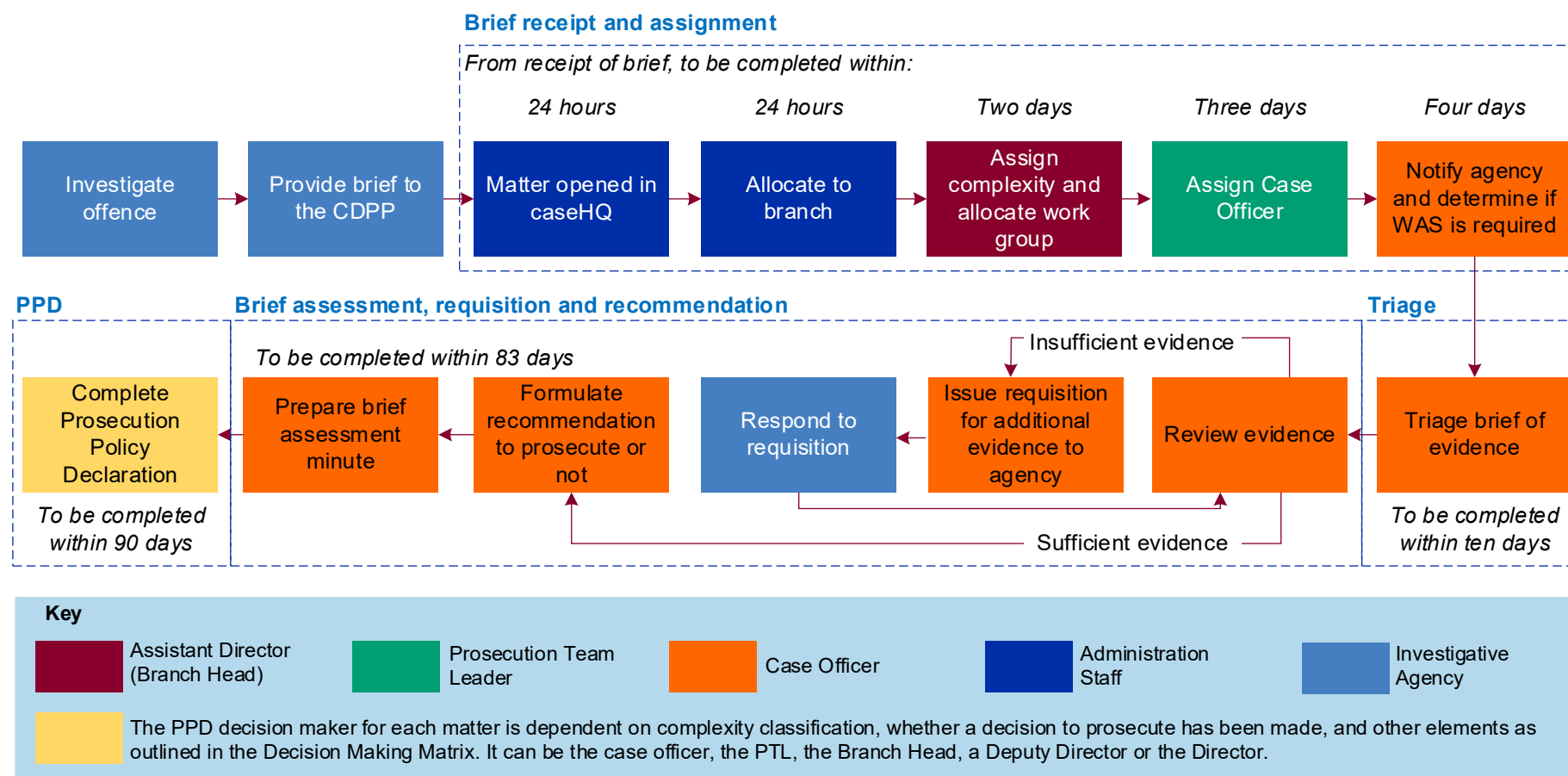
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40 Referrals should also be made to the Witness Assistance Scheme (WAS) at this point (if appropriate). The audit’s examination of brief assessment practices did not include practices related to the WAS.

41 The NLD ‘Timely prosecutions’ distinguishes between ‘minor’ requisitions — which do not warrant a suspension to the file — and requisitions of ‘substance’ — which do. All further references to requisitions in this report refer to requisitions of substance.

42 Depending on the characteristics of the matter and the requirements of the DMM (refer paragraph 2.54), the recommendation of the case officer may be reviewed by the PTL, branch head, a deputy director or the Director. The reviewer is referred to as the ‘decision-maker.’

**Figure 2.2: CDPP brief assessment workflow**



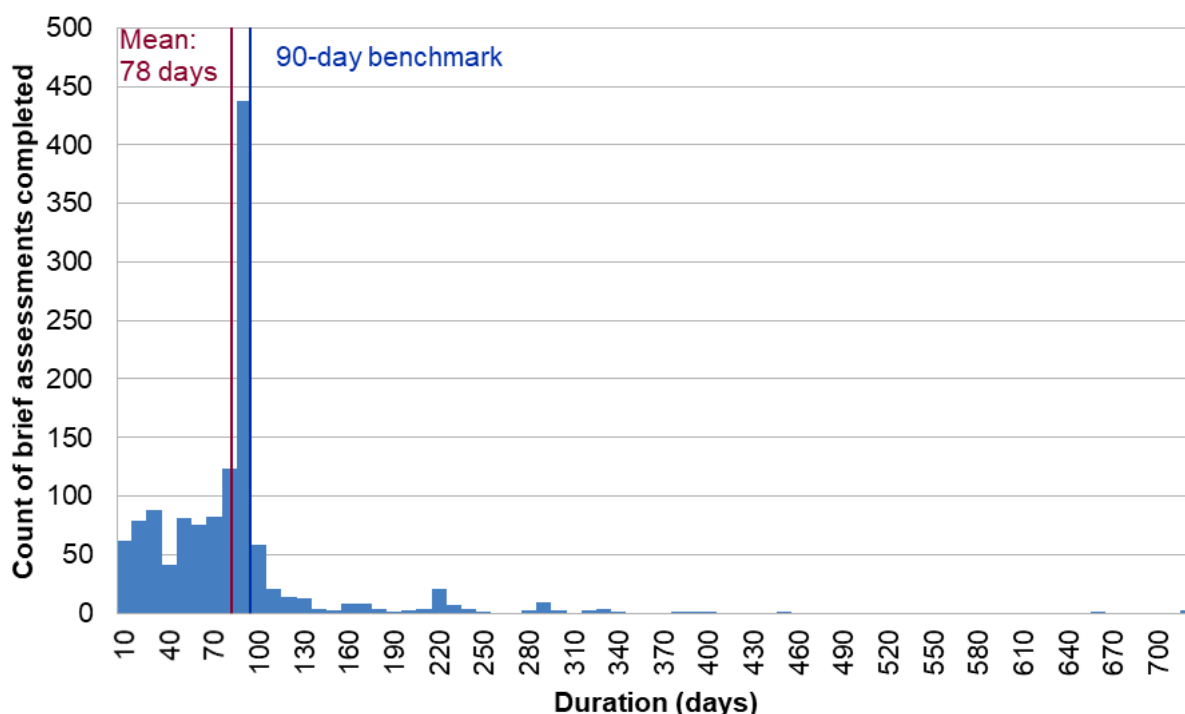
Note: Target timeframes shown exclude any periods of suspension.

Source: ANAO analysis of CDPP information.

2.61 To examine brief assessment in practice, the audit conducted an analysis of timeframe data for all 2018–19 completed brief assessments recorded in caseHQ and CRIMS.<sup>43</sup> A separate analysis focussed on the population of 2018–19 matters in the upper quintile for duration at each complexity level (henceforth referred to as ‘old matters’)<sup>44</sup>, and a qualitative analysis was conducted of a sample of old matters.<sup>45</sup>

2.62 Figure 2.3 shows the distribution of brief assessment duration in days in 2018–19.

**Figure 2.3: Distribution of brief assessment matter duration, 2018–19**



Note: Includes brief assessment matters completed in 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

2.63 While 85 per cent of brief assessments were finalised within 90 days (consistent with the CDP’s target), Figure 2.3 indicates that the average timeframe required was 78 days, with 36 per cent completed within 80 to 90 days. Once commenced, the average time recorded to complete a brief assessment in 2018–19 was 27 hours.<sup>46</sup>

2.64 Table 2.1 shows timeliness results for each of the workflow steps described earlier in Figure 2.2.

43 1,263 matters.

44 290 matters at complexity levels one, two, three, and four.

45 A randomly selected sample of 54 complexity one, two and three old matters were examined for evidence of key brief assessment activities outlined in the NLD ‘Timely prosecutions’, including through examination of electronic and hard copy files and interviews with selected case officers and PTLs.

46 Average hours for completed matters exclude non-recorded time due to non-compliance with EAT, misattribution of hours to a general time code, or time beyond a seven hour and 21 minute day; and corporate time that could be accrued to specific matters. Recorded hours may not be consecutive.

**Table 2.1: Timeliness of brief assessment workflow steps, 2018–19**

Activity <sup>a</sup>	Target	All matters		Old matters	
		Completed within target (%)	Average duration	Completed within target (%)	Average duration
Allocated to branch	24 hours	100	<1 day	100	<1 day
Assigned complexity	2 days	71	4 days	67	6 days
Allocated to work group	2 days	69	3 days	58	4 days
Case officer assigned	3 days	58	6 days	52	8 days
Agency notified	4 days	59 <sup>b</sup>	11 days	48	11 days
Triage duration <sup>c</sup>	10 days	32	32 days	28	47 days
First requisition issued <sup>d</sup>	N/A	N/A	60 days	N/A	78 days
Suspension duration <sup>e</sup>	N/A	N/A	80 days	N/A	91 days

Note a: All analyses, except suspension duration, on caseHQ matters completed in 2018–19.

Note b: Includes only those matters with a completed agency notification in caseHQ.

Note c: The number of days between the start and end of triage, as recorded in caseHQ. Includes only those matters with a reported triage completion date.

Note d: Duration shown is the elapsed time in days between receipt of the brief assessment referral and issuing of the first requisition (request for clarification or additional evidence) to the investigative agency for caseHQ matters.

Note e: Duration shown is the elapsed time between the start and end of a suspension after a requisition is issued. Includes only caseHQ and CRIMS matters where a requisition was issued.

Source: ANAO analysis of caseHQ and CRIMS data.

2.65 Table 2.1 shows that delays occur at early steps in the workflow process — brief assignment, triage and requisitions — although overall duration is within the benchmark of 90 days.

### *Brief receipt and assignment*

2.66 The workflow requires that branch allocation be completed within 24 hours, work group allocation and complexity assignment occur within two days, a case officer be assigned within three days and agency notification be completed within four days of a brief being received.

- Branch allocation — analysis of all caseHQ brief assessment referrals completed in 2018–19 shows that allocation to a branch by an administrative officer almost always occurs within 24 hours of receipt of the brief.
- Assigning complexity — average duration for complexity classification was four days for caseHQ brief assessment referrals completed in 2018–19 (six days among old matters).
- Allocating work group — 69 per cent of completed caseHQ matters were allocated to a work group within two days. On average, this occurs three days after receipt of the brief (four days for old matters). These delays were most significant for ASIC.
- Assigning a case officer — 58 per cent of caseHQ brief assessment referrals completed in 2018–19 were assigned a case officer within three days, with the average timeframe being six days. Delays in allocating a case officer were greater for old matters (eight days).
- Agency notification — for caseHQ matters, the agency notification date was recorded 63 per cent of the time. For matters where the date was recorded, the average length of time between matter receipt and acknowledgement to the agency was 11 days and

old matters had a similar delay. Qualitative analysis of old matters showed inconsistent practices with respect to agency notification.

2.67 The CDPP should ensure that when investigative agencies submit a brief, this is acknowledged in writing within a reasonable timeframe, and that acknowledgements include information about the assigned case officer and the 85 per cent within 90 days service standard.

### *Triage*

2.68 According to the workflow, triage should be completed within 10 days of referral.

- Approximately 80 per cent of caseHQ matters completed in 2018–19 had a triage completion date recorded. Where a date was entered, the average duration between receipt of the brief and completion of first triage was 32 days for all completed caseHQ matters, and 47 days for old matters.
- Qualitative analysis of old matters found limited evidence that case officers were using the triage stage to get verbal briefings from investigative agencies. In a June 2019 ELG communication to staff, workshopping was recommended at the triage stage; however there was no evidence that this is occurring.

### *Brief assessment, requisition and recommendation*

2.69 On average, brief assessment matters were completed within 78 days; 128 days for old matters. Although the benchmark was met, there were lengthy intervals before the first requisition was issued, especially in old matters, and personnel changes often occurred late in the workflow.

#### *Requisitions and suspensions*

2.70 A requisition was issued in 48 per cent of all caseHQ and CRIMS matters completed in 2018–19, and in 53 per cent of old matters.<sup>47</sup>

2.71 The average length of time between brief receipt and the issuance of a requisition for 2018–19 caseHQ matters (where a requisition was issued) was 60 days, and among old matters was 78 days. The average time for the first requisition to be issued in ASIC matters was 102<sup>48</sup> days.

2.72 When requisitions are sent, case officers are authorised to ‘stop the clock’ and suspend the matter. Analysis indicates that the length of a suspension impacts duration, even after excluding the period of suspension itself. This suggests that the longer the period of suspension, the less timely the brief assessment. The average duration of combined suspensions for 2018–19 completed caseHQ and CRIMS brief assessment matters was 80 days (91 days for old matters).<sup>49</sup>

2.73 During suspension periods, case officers are expected to follow up with agencies, however there is no incentive for case officers to speed up agency response, and no method of assuring that follow-up occurs. Qualitative analysis of old matters suggested inconsistent investigative agency follow-up.

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47 For this analysis, it was assumed that where a suspension period was greater than zero, a requisition was issued in the matter.

48 Based on seven caseHQ matters, which was the total population of ASIC matters in the relevant period.

49 Matters where a requisition was issued.

## Transfer and reallocation

2.74 Thirty eight per cent of completed 2018–19 caseHQ brief assessment matters (52 per cent of old matters) had a change in case officer. A change in case officer was associated with a longer duration (70 days on average, compared to 59 days where the case officer remained the same). The CDPP has put in place several strategies to help mitigate disruption caused by case officer change, including litigation plans and team-based working. Transferring matters between offices and officers is considered by the CDPP to be an important strategy in minimising backlog. There was evidence of this occurring in qualitative analysis of old matters, but sometimes not until the 90-day deadline was approaching or had passed.

### *Information management and monitoring*

2.75 Analysis identified general observations in relation to information management, record keeping and workflow monitoring.

2.76 When briefs are reallocated, inefficiencies can occur when new case officers need to familiarise themselves with the brief of evidence, and can be exacerbated where there is poor record keeping by the original officer. Upon the introduction of caseHQ, case officers were instructed to maintain electronic documents in SharePoint rather than on disparate hard drives on the CDPP network. Hard copy documentation is now discouraged, except where required by the courts. The ANAO's qualitative analysis of old matters found inconsistencies across matters and case officers in record keeping, including requests for and responses to requisitions. Further, when correspondence was filed, it was sometimes done so months after the communication occurred.

2.77 Lack of file notes about reasons for delay was evident in qualitative analysis of old matters. In September 2019, the ELG approved a new Practice Management Guide that states the importance of maintaining accurate records of significant internal and external communications.

2.78 Managers, including PTLs, use dashboard reports to stay informed about the status of matters. The 'PTL dashboard' report provides substantial information to assist PTLs and represents a significant improvement on previous management reporting (refer paragraph 2.41). However, factors contributing to longer durations include delays in the assignment of briefs; lack of initial triage; and inconsistent follow-up with investigative agencies. Management reporting does not allow supervisors to fully monitor and act on deficiencies in practice in these areas. Reports also do not show specific actions that case officers are taking to encourage early resolution as outlined in the NLD, 'Early Resolution Scheme', and do not report the team's EAT compliance prominently and clearly. They list but do not draw attention to ageing complexity one matters unless they exceed 90 days.

## Recommendation no.1

2.79 The Office of the Commonwealth Director of Public Prosecutions revise management dashboard reporting to ensure that supervisors can readily access key efficiency-related information, including case officer activities during triage and suspension periods, actions taken to encourage early resolution, and time recording compliance.

**Office of the Commonwealth Director of Public Prosecutions response: Agreed.**

2.80 *In January 2018 the CDPP launched key dashboard reports for its prosecution team leaders. Data was drawn from our then business management system (CRIMS). The reports were a new tool and an important advance for our prosecutors, but they were static and somewhat limited in functionality due to the legacy system we were working with. The implementation of our new business management system (caseHQ) in August 2018, and the subsequent related development in 2019 of targeted dashboard reports, has provided the agency with a new and greatly enhanced reporting capability. The CDPP recognises the further opportunities for enhancement of reporting and has always taken the view that improvement of these reports would be an ongoing process.*

2.81 *The current management dashboard report contains a wealth of critical information to assist front-line supervisors and has proven to be a very useful management tool. For example, it includes information relating to delayed brief assessments, prosecutor file loads, upcoming court commitments, time recording compliance and cases requiring early resolution engagement. The CDPP has already improved the functionality of the dashboards in line with the ANAO's recommendations. Information in relation to file triage has recently been added to the management dashboard. A specific dashboard report for time recording compliance was released to the legal practice in December 2019.*

### 3. Performance analysis of case management efficiency

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#### Areas examined

This chapter examines whether existing performance data indicates that the Office of the Commonwealth Director of Public Prosecutions (CDPP) is assessing briefs efficiently. This includes the development of a framework to define efficiency in the context of the CDPP, and assessment of the CDPP's efficiency through the application of performance data to this framework.

#### Conclusion

Analysis of available efficiency-related performance data indicates that, in the period 2014–15 to 2018–19, the CDPP's average number of brief assessment referrals processed per prosecutor decreased. The average cost per output (brief assessment and other types of referrals) increased. However, the average time taken to assess briefs markedly improved over the same period, and on average investigative agencies are more satisfied.

#### Areas for improvement

ANAO has not raised any recommendations or areas for improvement in the context of this chapter.

3.1 In order to examine this criteria, the audit investigated:

- the number of referrals processed and briefs assessed<sup>50</sup> — these are the CDPP's main outputs;
- staffing levels and CDPP expenses — comparing these inputs to outputs produced by the CDPP provides information about relative efficiency over time; and
- other drivers and benefits of efficiency — this provides a more complete picture of efficiency.

#### Does performance data indicate that the CDPP assesses briefs efficiently?

Analysis of available performance data indicates that the average cost of a brief assessment has increased, noting that timeliness and stakeholder satisfaction have improved. The volume of brief assessments and other referrals processed by the CDPP decreased in the five years to 2018–19 due to a decline in referrals. Annual agency level expenses are unchanged. The average complexity of matters referred to the CDPP has increased, however, after weighting for complexity there is a decline in the average number of brief assessments referred per prosecutor employed. In the same five-year period, there were efforts to reduce backlog and timeliness in brief assessment improved. Investigative agency feedback reflects higher satisfaction levels.

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50 The processing of referrals includes pre-brief, brief assessment and arrest referrals. Brief assessment referrals may or may not proceed to prosecution. Arrest referrals automatically proceed to prosecution, although the CDPP will consider whether to maintain charges.



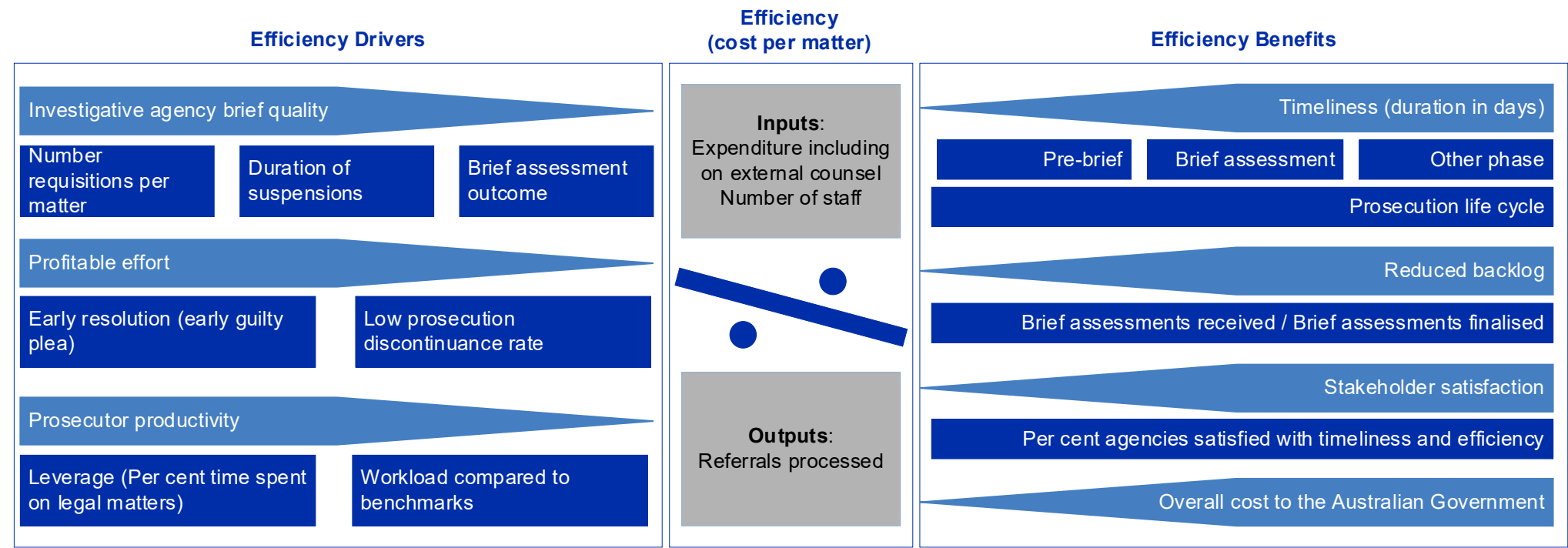
## Defining efficiency for the CDPP

3.2 Efficiency is defined as entities making the most of available resources.<sup>51</sup> This is expressed as the ratio of outputs to inputs (refer paragraph 1.33). Figure 3.1 provides an overview of this framework in the CDPP context, including the drivers and benefits of efficiency in processing referrals.

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51 Australian Government, *Report of the Review of the Measures of Agency Efficiency*, Australian Government, 2011, p.3 and p.17.

**Figure 3.1: CDPP efficiency framework — drivers, inputs and outputs, benefits and associated indicators**



Note: For efficiency drivers and benefits, dark blue boxes show indicators of the concepts presented in light blue boxes.

Source: Developed by ANAO based on CDPP information.

## Efficiency drivers

3.3 A number of drivers contribute to greater resource efficiency in the CDPP.

- Brief quality — the quality of briefs provided by investigative agencies can influence the resources required in the assessment process. Possible indicators of brief quality are the number of requisitions that the CDPP needs to issue to obtain sufficient evidence from investigative agencies to support brief assessment<sup>52</sup>; the duration of suspensions (which occur whilst agencies obtain this evidence); and the extent to which briefs result in decision to prosecute ('prosecution commence' outcome).<sup>53</sup>
- Profitable effort — early resolution of a case drives efficiency by reducing the resources required to achieve a prosecution outcome. Typically, early resolution is achieved by way of a guilty plea. Inefficiencies also result from the late discontinuance of prosecutions.<sup>54</sup>
- Prosecutor productivity — Individual prosecutor productivity may be indicated by 'leverage' (the proportion of time a prosecutor is working directly on a prosecution matter as opposed to administrative or 'other' activities) or caseload compared to benchmarks.

## Inputs and outputs

3.4 The CDPP's resourcing inputs take the form of:

- staffing — federal prosecutors and other staff;
- legal expenses, including external counsel, who are engaged to assist with specific matters in the event of capacity or capability limitations; and
- general expenses — corporate costs, travel, associated overheads, etc.

3.5 The CDPP's outputs take the form of referrals processed — including arrest, pre-brief, brief assessment and other type referrals. In addition to producing these outputs, the CDPP engages in other non-matter specific activities such as law reform, involvement in Royal Commissions and general agency liaison.

## Efficiency benefits

3.6 Greater efficiency may result in a number of benefits.

- Timeliness — indicators of timeliness are the duration in days of the prosecution process and its phases.
- Reduced backlog — backlog occurs where the pace of referrals exceeds the pace of completed matters. A higher ratio indicates a growing backlog and is a potential indicator of inadequate resourcing or decreasing productivity in the brief assessment and prosecution process. When considering the CDPP's efficiency in terms of backlog, the brief

52 In 2018–19, whether or not substantial requisitions were required was strongly associated with brief assessment duration, even after excluding the periods associated with suspensions due to requisitions. Brief assessment duration in terms of the 85 per cent within 90 days target does not include periods of suspension associated with requisitions.

53 For brief assessments resulting in a 'prosecution commence' outcome — the vast majority — assessment duration was 75 days on average in 2018–19. However, for briefs that failed one of the Prosecution Policy tests — no *prima facie* case, no reasonable prospects or not in the public interest — duration was 84 days on average.

54 A discontinuance is a decision not to proceed with an indictment.

assessment phase of the prosecution process is of particular relevance because the CDPP exercises the most control over the efficiency of this phase.

- Stakeholder satisfaction — better efficiency and timeliness contributes to greater investigative agency satisfaction with the CDPP’s prosecution service.
- Lower costs — achieving a given number of prosecutions with the same or fewer resources will result in lower costs to the Australian Government.

### **Application of CDPP performance data to the efficiency framework**

3.7 The following sections assess the CDPP’s efficiency through the application of performance data to the efficiency framework outlined at Figure 3.1.

#### ***Efficiency drivers***

Investigative agency brief quality

3.8 In 2018–19, the CDPP completed 1,263 brief assessment referrals.<sup>55</sup> Data is available from the CDPP’s case management systems for the analysis of investigative agency brief quality (refer paragraphs 4.3–4.6).

- Number of matters requiring requisitions — 48 per cent of finalised assessments in 2018–19 required at least one requisition<sup>56</sup>, compared to 43 per cent in 2017–18, 29 per cent in 2016–17, 31 per cent in 2015–16 and 34 per cent in 2014–15.
- Duration of suspensions — the average duration of suspension periods in 2018–19 was 38 days, which is the same as the average suspension duration in 2014–15.<sup>57</sup>
- Brief assessment outcome — 82 per cent of briefs proceeded to prosecution in 2018–19. This is lower than in 2017–18 (87 per cent), but similar to 2016–17 (81 per cent). In 2018–19, the balance either failed the Prosecution Policy tests (14 per cent; five per cent of which were ‘no *prima facie* case’) or resulted in non-prosecution by the CDPP for other reasons (e.g. investigation terminated or jurisdiction changed). Failure of the Prosecution Policy tests was higher than in 2017–18 (nine per cent).

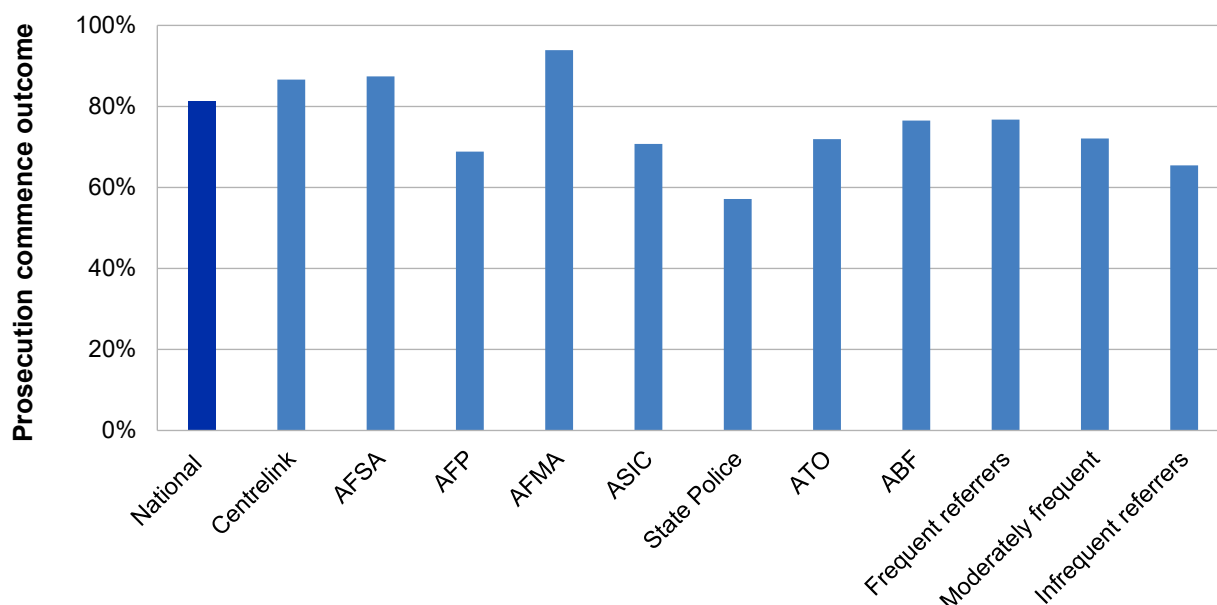
3.9 Figure 3.2 summarises the prosecution commence outcome by investigative agency for the five-year period to 2018–19.

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55 This analysis is based on caseHQ and CRIMS raw case management data and may vary in non-material ways from the numbers reported by the CDPP in annual reports. This is due to the application of different business rules or the extraction of data at a different point in time.

56 A substantial requisition is defined as a requisition resulting in a suspension to the matter. Matters that were suspended for zero (or negative) days are assumed to have had no substantial requisition issued.

57 These averages include zero days suspension. Among matters where a substantial requisition was issued and a matter was suspended for at least one day, the average duration of suspensions in 2018–19 was 80 days, compared to 71 days in 2017–18.

**Figure 3.2: Prosecution commence outcome by investigative agency, 2014–15 to 2018–19**

Note: Includes brief assessment matters completed in the years 2014–15 to 2018–19. Agencies are presented in order of brief assessment referral volume in the years 2015–16 to 2018–19. Centrelink refers to Services Australia — Centrelink, AFSA to Australian Financial Security Authority, AFP to Australian Federal Police, AFMA to Australian Fisheries Management Authority, ASIC to Australian Securities and Investment Commission, State Police to state and territory police, ATO to Australian Taxation Office and ABF to Australian Border Force. 'Frequent referrers' are other entities that each referred more than 85 brief assessment matters in the 2015–19 period and include Great Barrier Marine Park Authority, Department of Agriculture and Water Resources, Services Australia — Medicare, Office of the Registrar of Indigenous Corporations and the Department of Health. 'Moderately frequent' are those entities which individually referred between 20 and 84 brief assessment matters in the 2015–19 period, and include Services Australia, Australian Bureau of Statistics, Department of Foreign Affairs and Trade, Australian Maritime Safety Authority, Civil Aviation Safety Authority, Department of the Environment and Energy, Australian Competition and Consumer Commission, Department of Education and Comcare. 'Infrequent referrers' are all other agencies that referred brief assessment matters to the CDPP.

Source: ANAO analysis of caseHQ and CRIMS data.

3.10 Figure 3.2 shows that 81 per cent of completed brief assessment matters in the period from 2014–15 to 2018–2019 had a 'prosecution commence' outcome, but this varied from 94 per cent for AFMA to 57 per cent for state and territory police.

3.11 On average, 14 per cent of matters failed the Prosecution Policy tests. State and territory police (32 per cent), infrequent referrers (26 per cent), moderately frequent referrers (20 per cent), ASIC (20 per cent), the ATO (20 per cent), ABF (19 per cent) and AFP (19 per cent) were more likely than average to fail the Prosecution Policy tests.<sup>58</sup>

3.12 While recognising that contextual factors such as complexity and novelty of the offence can impact on prosecution commence outcomes, when combined with the increasing volume of requisitions, this data does not provide a clear picture of improvement in investigative agency brief quality for brief assessment matters, despite the CDPP's investment in stakeholder engagement.

<sup>58</sup> Between 2014–15 and 2018–19, there was an increase in the incidence of 'prosecution commence' outcomes for state and territory police, but 'prosecution commence' outcomes decreased for ASIC between the years 2015–16 and 2018–19.

## Profitable effort

3.13 There is limited available data to assess the CDPP's performance in relation to the indicators for profitable effort (refer paragraphs 4.7–4.9).

- Early resolution — although caseHQ has the capacity to capture information about recommended workflow activities to encourage early guilty pleas, as well as the actual timing of guilty pleas, the CDPP does not collect this information and therefore the ANAO was unable to conduct an analysis of early resolution activities and outcomes.
- Prosecution discontinuance — the 2018–19 discontinuance rate<sup>59</sup> was 7.4 per cent of all completed matters that proceeded to a prosecution. This is slightly higher than in 2017–18 (6.8 per cent), but lower than in 2014–15 (8.2 per cent). Discontinuances can occur for legitimate reasons that are beyond the control of the CDPP, including new evidence, witness change of mind, or evolving public interest considerations. However, discontinuances can also occur because of a failure to properly apply the Prosecution Policy at the brief assessment stage or to engage effectively with investigative agencies.

## Prosecutor productivity

3.14 The CDPP does not have reliable, objective leverage or caseload benchmarks and the category 'legal other' is known to be over-used in the Effort Allocation Tool (EAT) (refer paragraph 4.18).<sup>60</sup> The ANAO was therefore unable to conduct a meaningful analysis of prosecutor productivity.

## Inputs and outputs

### Inputs

3.15 In 2018–19, the CDPP had an average staffing level (ASL) of 371 (refer Table 1.2). This is six per cent lower than in 2014–15. In 2018–19, the CDPP employed 276 federal prosecutors<sup>61</sup>, an increase of seven per cent compared to 2014–15. Sixty eight per cent of staff were federal prosecutors in 2018–19, compared to 61 per cent in 2014–15.

3.16 Prosecution legal expenses — mainly on external counsel — were \$16.8 million in 2018–19, a Consumer Price Index (CPI)-adjusted increase of six per cent from 2014–15.

3.17 Total expenses, including staffing, legal, and other expenses, were \$93.1 million in 2018–19. After CPI adjustment, there has been little change<sup>62</sup> in total expenses compared to 2014–15.

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59 The discontinuance rate is calculated as:

$$\text{Discontinuance rate} = \frac{\text{Number of matters discontinued}}{\text{Number of matters with an outcome of convicted, acquitted or discontinued}}$$

60 'Legal other' is used when a CDPP officer works across multiple matters but needs to bundle this work into one effort submission, or might be used to record investigative agency liaison activity. 'Other' is used when the officer has engaged in non-legal professional development or administrative activity.

61 This is not ASL but total individuals, both full and part-time. In 2018–19, the total number of individual staff members was 403.

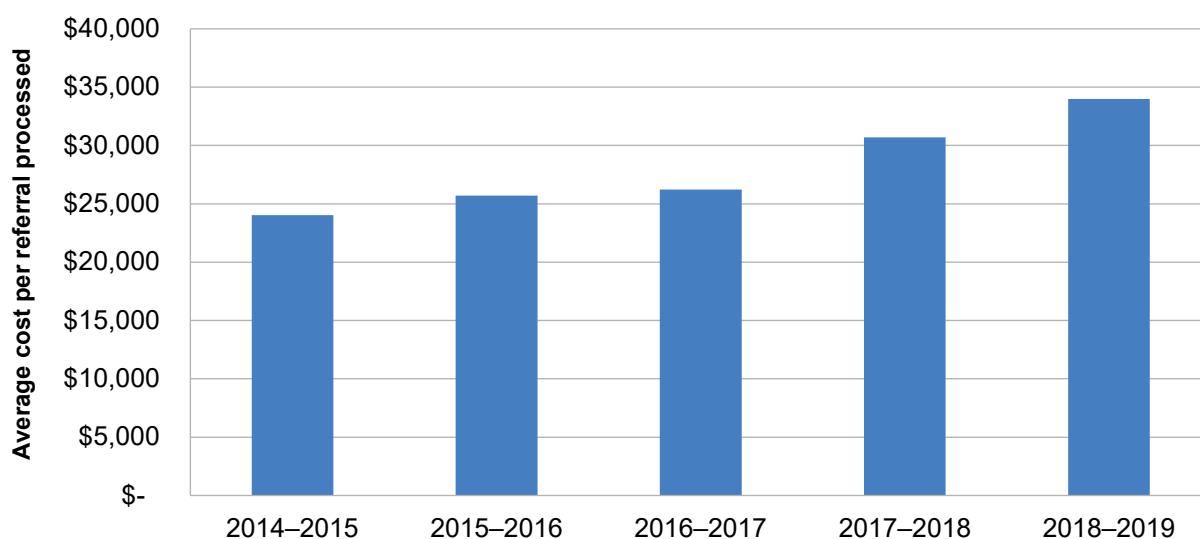
62 A slight decrease in expenses of 0.3 per cent.

## Outputs

3.18 A total of 2,565 referrals<sup>63</sup> were received by the CDPP in 2018–19, comprising 748 arrest referrals and 1,792 pre-brief, brief assessment and other type referrals.<sup>64</sup> Since 2014–15, the number of arrest referrals has increased by seven per cent, but the number of pre-brief, brief assessment and other type referrals has decreased by 39 per cent, resulting in an average decrease of 29 per cent over the five-year period in referrals processed (refer Table 1.1).

3.19 Figure 3.3 shows the ratio of total CDPP expenses to total referrals processed (including arrest, pre-brief, brief assessment and other type referrals) in each year. This analysis is based on matters referred in a given financial year and provides a complete count of all referrals made in the financial years 2014–15 to 2018–19, regardless of when the matters were finalised. Work actually carried out by prosecutors in a given financial year, otherwise known as ‘on hand’ matters, will include some referrals carried over from previous financial years. Some matters worked on in 2014–15 will not be counted in the analysis because they were referred in an earlier year. However, some matters referred in 2018–19 and that are counted in the analysis were not worked on in 2018–19. The average cost per referral processed, including brief assessment and arrest referrals, was \$24,000 in 2014–15 and \$34,000 in 2018–19, a CPI-adjusted increase of 41 per cent.

**Figure 3.3: Ratio of total expenses to total referrals processed (CPI adjusted), 2014–15 to 2018–19**



Note: Includes all matters referred in the years 2014–15 to 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

3.20 The average number of referrals processed (including arrest, pre-brief, brief assessment and other type referrals) per ASL decreased from 9.2 in 2014–15 to 6.9 in 2018–19. The average number of referrals processed per federal prosecutor also decreased — from 14.1 to 9.3. The average number of brief assessment referrals processed per federal prosecutor decreased from 8.5 in 2014–15 to 4.8 in 2018–19.

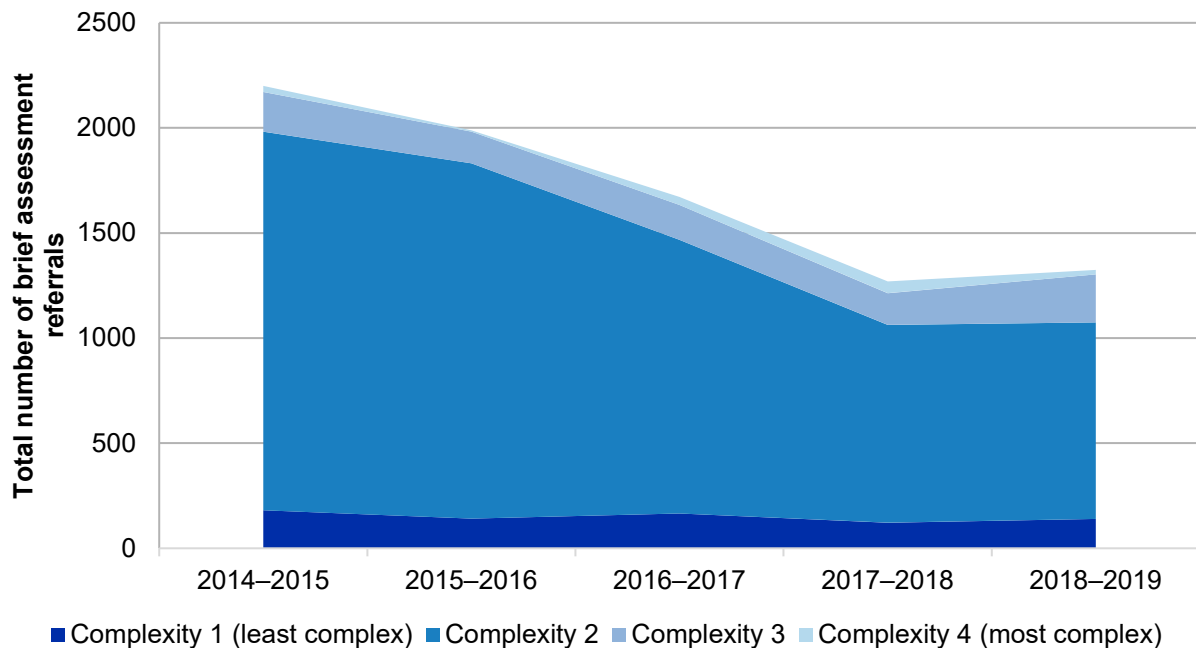
<sup>63</sup> Twenty-five 2018–19 referrals were not classified by type.

<sup>64</sup> This analysis is based on caseHQ and CRIMS raw case management data and may vary in non-material ways from the numbers reported by the CDPP in annual reports; for example, as reported in Table 1.1. This is due to the application of different business rules or the extraction of data at a different point in time.

3.21 The CDPP has noted ‘the continued trend of a decrease in referrals’ but that ‘the increase in complex matters means there has not been a noticeable reduction in workloads.’ The CDPP has also noted that ‘workloads today are very much influenced by past referrals...by what the CDPP received 2, 3 and 4 years ago.’

3.22 Figure 3.4 shows the total volume of brief assessment referrals at each complexity band between 2014–15 and 2018–19. ‘Complexity one’ refers to the least complex matters, while ‘complexity four’ refers to the most complex.

**Figure 3.4: Number of brief assessment referrals by complexity, 2014–15 to 2018–19**



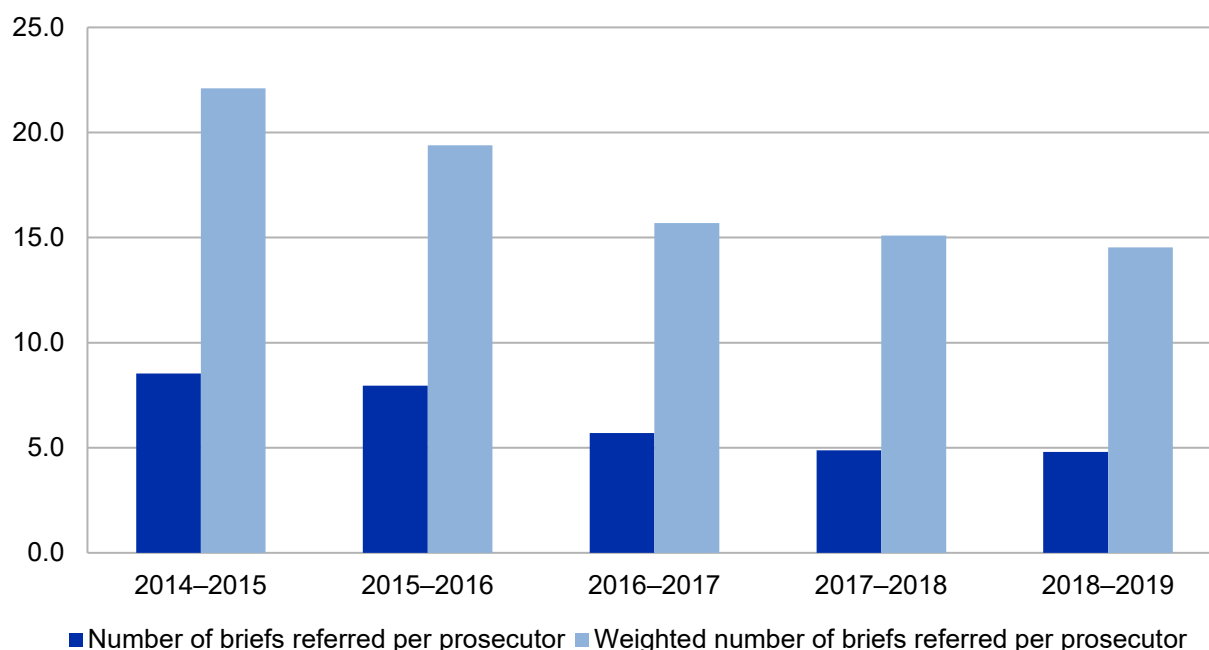
Note: Includes brief assessment matters referred in the years 2014–15 to 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

3.23 Figure 3.4 shows that the proportion of complexity three and four brief assessments referred increased from 10 to 19 per cent of all brief assessment referrals over the five-year period.

3.24 Figure 3.5 seeks to verify the impact that the increasing complexity of cases has had on the number of brief assessment referrals processed per prosecutor by weighting brief assessment referral volume according to complexity classification and average hours expended. Weights are based on average hours expended as recorded through EAT. Complexity one matters are given a weight of one, while complexity two, three and four matters are given weights greater than one according to the amount of recorded time spent on these matters relative to complexity one matters.



**Figure 3.5: Ratio of brief assessment referrals to prosecutors, using unweighted and weighted volumes, 2014–15 to 2018–19**

Note: Includes brief assessment matters referred in the years 2014–15 to 2018–19. Weighted brief assessment referrals uses the volume of brief assessment referrals after weighting for complexity classification. Average hours spent per brief assessment as recorded in EAT were averaged for the five years from 2014–15 to 2018–19 (10 hours — complexity one; 21 hours — complexity two; 70.3 hours — complexity three; 136.7 hours — complexity four). Complexity one matters were given a weight of one. Complexity two matters were given a weight of 2.1 (21 hours / 10 hours). Complexity three matters were given a weight of 7.1 (70.3 hours / 10 hours). Complexity four matters were given a weight of 13.7 (136.7 hours / 10 hours). On this basis, the weighted volume of all referred brief assessment matters was 5,703 in 2014–15 and 4,011 in 2018–19. Weighting does not account for factors that are not measured by CDPP, including variations in complexity within an assigned complexity band.

Source: ANAO analysis of caseHQ and CRIMS data.

3.25 Figure 3.5 indicates that the number of brief assessment referrals per prosecutor has declined over the relevant period, including after matter volume is weighted by hours expended for each complexity classification. Conducting a similar analysis on all referrals processed and completed in 2018–19 (including brief assessment, pre-brief, arrest and other type referrals) also shows that the number of referrals per prosecutor has declined, including after weighting for matter complexity.<sup>65</sup>

3.26 In summary, in the five years to 2018–19, the CDPP's annual expenses were unchanged, but the volume of outputs decreased due to a decline in referrals. The complexity of matters referred to the CDPP increased in absolute and relative terms; however, even after weighting for complexity, there is evidence of a decline in the average number of brief assessments completed per prosecutor.

<sup>65</sup> This analysis does not take into account non-matter-specific activities that prosecutors may be engaged in, such as law reform or general agency liaison work. However, it does address the main outputs of the CDPP — that is, all pre-brief, brief assessment, arrest and other type referrals.

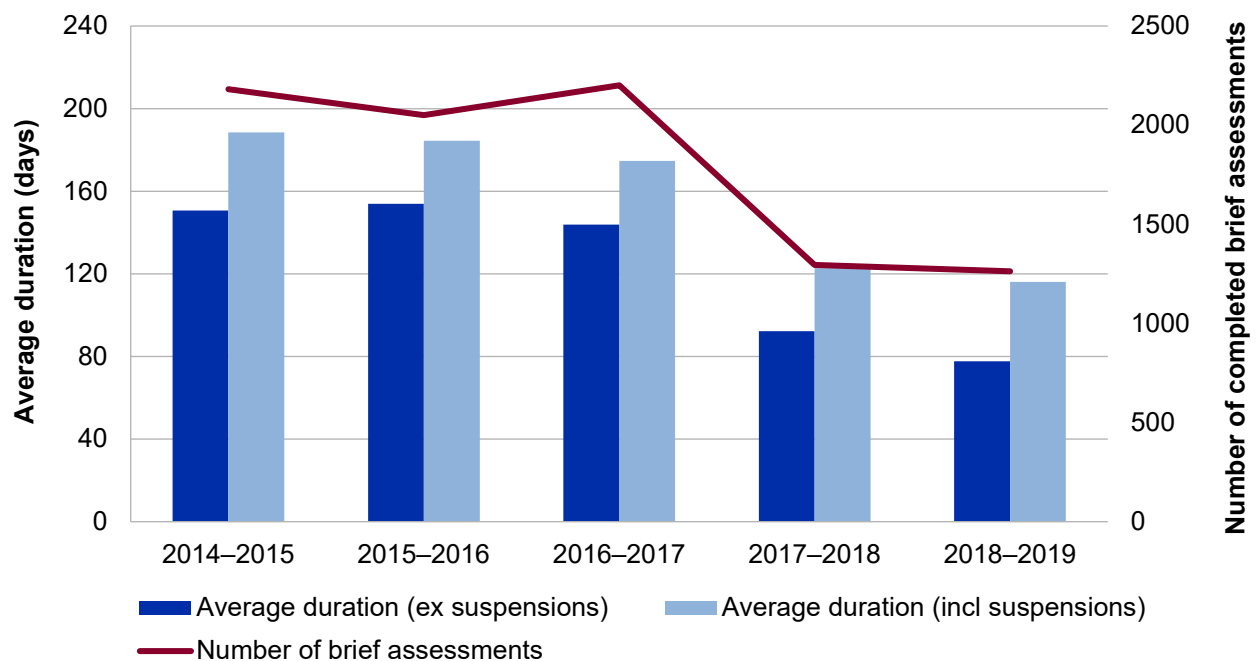
## Efficiency benefits

### Timeliness

3.27 In 2018–19, 85 per cent of all finalised brief assessment matters were assessed in 90 days or less. This met the target set in the CDPP’s 2018–19 Business Plan.

3.28 Figure 3.6 shows the average brief assessment duration in the period 2014–15 to 2018–19.

**Figure 3.6: Brief assessment duration and total number of referrals, 2014–15 to 2018–19**

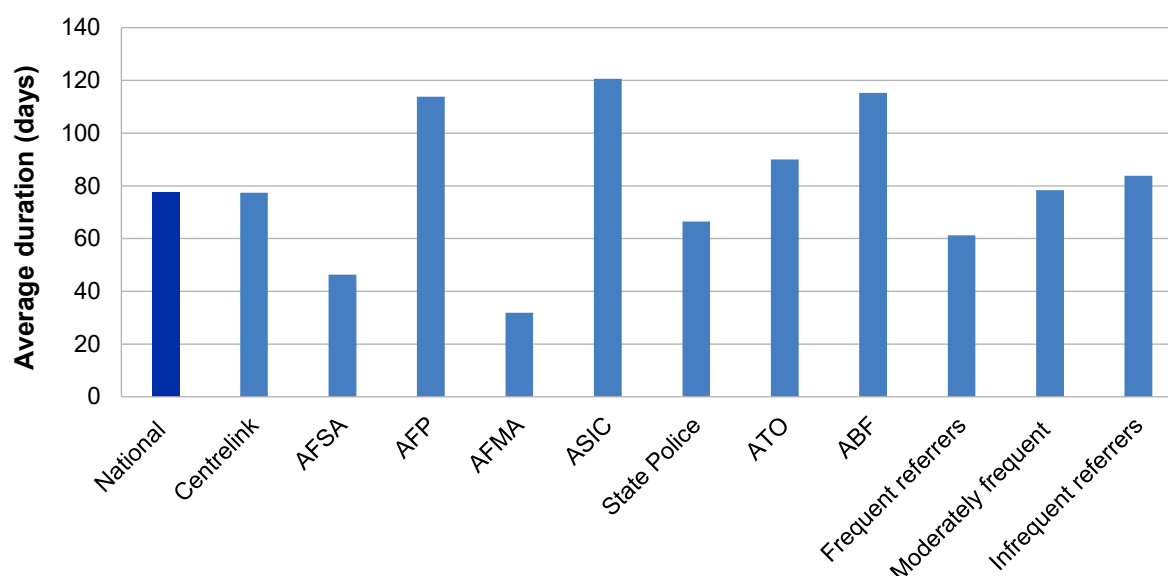


Note: Includes brief assessment matters completed in the years 2014–15 to 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

3.29 Figure 3.6 shows that, between 2014–15 and 2018–19, the average duration of brief assessment including periods of suspension improved from 189 to 116 days, and the average duration excluding suspensions improved from 151 to 78 days.

3.30 Brief assessment timeliness varied by investigative agency, as summarised in Figure 3.7.

**Figure 3.7: Average duration of brief assessment by investigative agency, 2018–19**

Note: Includes brief assessment matters completed in 2018–19. Excludes suspension periods. Agencies are presented in order of brief assessment referral volume in the years 2015–16 to 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

3.31 Among the top referring agencies<sup>66</sup>, AFMA, AFSA, state and territory police and frequent referrers had the shortest average brief assessment durations in 2018–19, all below the national practice average of 78 days. By contrast, ASIC, ABF and the AFP had above average brief assessment durations (121, 115 and 114 days, respectively). Some investigative agencies generally refer matters of higher complexity, which take longer.<sup>67</sup> However, differences persist between agencies even after controlling for complexity. For example, complexity three ASIC matters took 147 days to be assessed in 2018–19 (across 21 matters), compared to a national average of 97 days for complexity three matters (refer Appendix 6).

3.32 In summary, in the five-year period 2018–19, timeliness in brief assessment improved steadily and markedly.

Reduced backlog

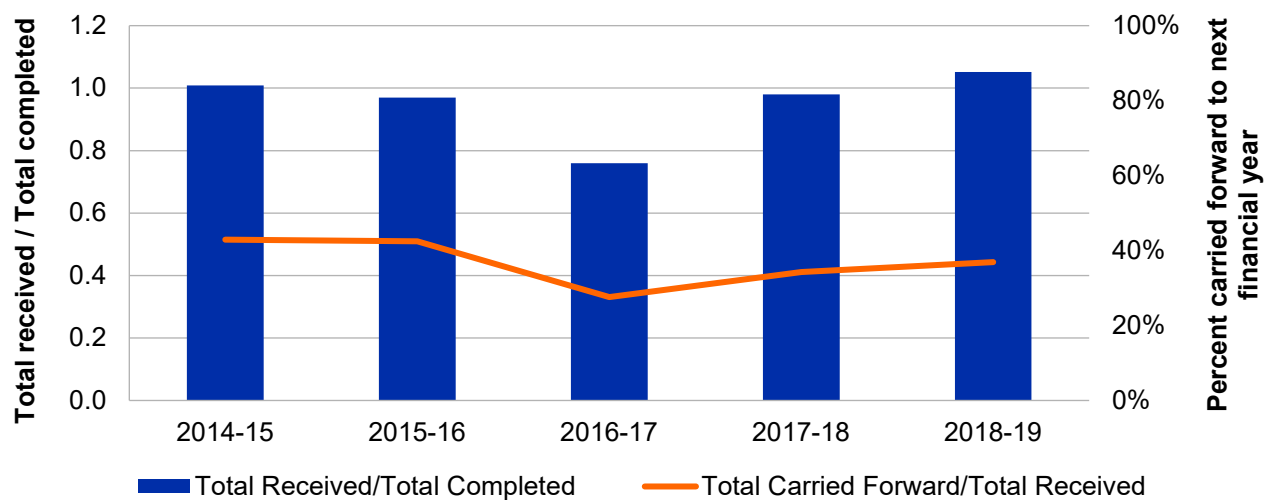
3.33 Figure 3.8 shows the CDP's backlog in brief assessment referrals<sup>68</sup> between 2014–15 and 2018–19.

<sup>66</sup> In the period 2015–2019.

<sup>67</sup> For example, 62 per cent of AFSA matters referred in 2018–19 were complexity one, compared to 11 per cent average across all referrers. Conversely, 63 per cent of ASIC matters referred in 2018–19 were complexity three or four, compared to 19 per cent average across all referrers.

<sup>68</sup> Relative backlog =  $\frac{\text{No. of brief assessment matters received in financial year}}{\text{No. of brief assessment matters finalised in financial year}}$

**Figure 3.8: Brief assessment referral backlog, 2014–15 to 2018–19**



Note: Total received is total number of brief assessment matters referred in that financial year. Total completed is total number of brief assessment referrals completed in that financial year. Total carried forward is total number of brief assessments not completed in the year referred.

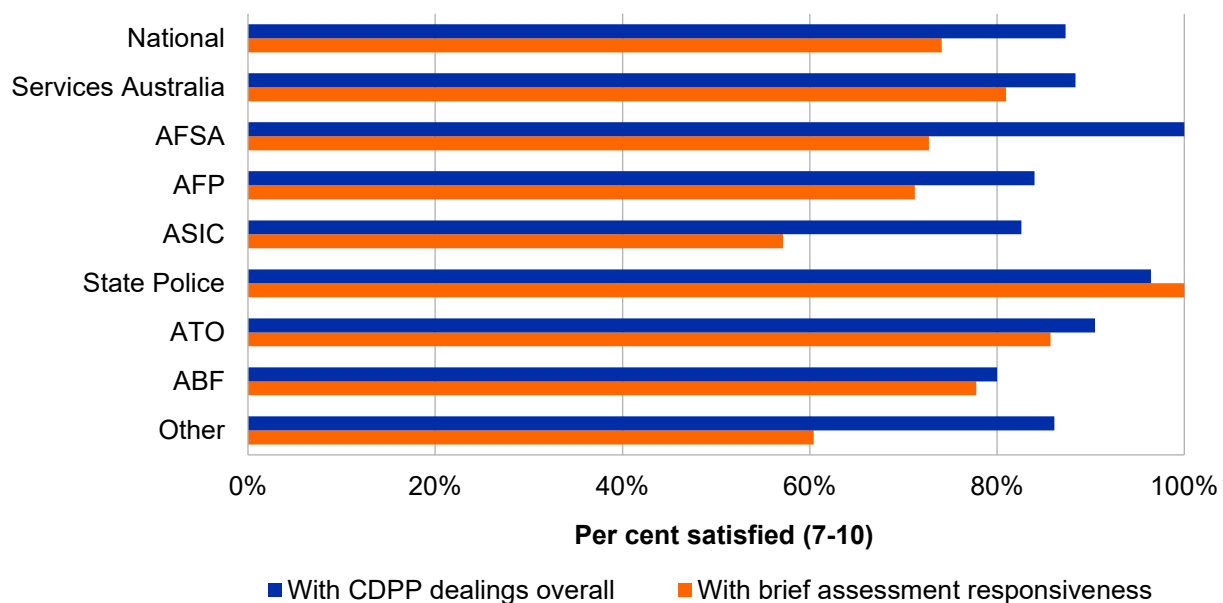
Source: ANAO analysis of caseHQ and CRIMS data.

3.34 Figure 3.8 shows that the average relative backlog in brief assessment referrals across the period 2014–15 to 2018–19 is typically around 1.0; for every brief assessment referral finalised, one referral was received. This backlog was lower than normal at approximately 0.8 in 2016–17.

#### Investigative agency satisfaction

3.35 An investigative agency satisfaction survey is conducted biennially by the CDPP. Figure 3.9 shows respondent satisfaction with the CDPP, both overall and for brief assessment specifically.

**Figure 3.9: Satisfaction (overall and brief assessment) by investigative agency, 2018**



Note: Satisfaction was rated on a 1 (Extremely dissatisfied) to 10 (Extremely satisfied) scale. 'Satisfaction' is defined as a score of 7 to 10, inclusive.

Source: ANAO analysis of 2018 partner agency satisfaction survey.

3.36 In 2018<sup>69</sup>, 87 per cent of respondents were 'satisfied' overall with their dealings with the CDPP and only two per cent were dissatisfied.<sup>70</sup> Seventy four per cent were satisfied with brief assessment, but there was variation by practice group and agency, and, in particular, satisfaction among ASIC respondents was significantly lower than average (57 per cent).

3.37 Satisfaction with the timeliness of information or advice was also high overall (80 per cent satisfied), but there was variation across practice groups and investigative agencies on timeliness satisfaction.<sup>71</sup> Most (75 per cent<sup>72</sup>) respondents agreed that timeliness had improved.

3.38 Respondents to the 2018 survey were asked what the CDPP could do to improve the information provided to investigative agencies. Suggestions referred to more frequent or timely updates on progress; the types of information provided to the agencies by the CDPP<sup>73</sup>; the timeliness of the CDPP's information provision<sup>74</sup>; and brief assessment and case management processes.<sup>75</sup>

3.39 In summary, compared to 2016, 2018 investigative agency feedback reflects higher satisfaction levels.

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69 The most recent survey was conducted between April and May, 2018.

70 'Dissatisfied' is indicated by a score ranging from 0–4, inclusive, out of 10.

71 ASIC satisfaction was lower than average (61 per cent).

72 'Not applicable' responses were removed from the base for this calculation.

73 This included requests for general training, feedback, more national offence guides, templates and learning outcomes from previous matters.

74 Including the timeliness of requisitions, prosecution reports and brief assessment advice.

75 Including the lack of use of short-form briefs for simple matters, the basis for certain brief assessment decisions, and case officer turnover on a single matter.

## 4. Measuring, monitoring and reporting case management performance

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### Areas examined

This chapter examines whether the Office of the Commonwealth Director of Public Prosecutions (CDPP) is effectively monitoring and reporting on its case management performance and whether the CDPP has an appropriate performance reporting framework.

### Conclusion

The CDPP is partly effective in monitoring and reporting on case management performance. Most of the requisite data is collected, but key efficiency drivers and the average cost of outputs are not sufficiently monitored. An 85 per cent within 90 days brief assessment service standard is embedded in practice and monitored, but the target does not drive timeliness across the full spectrum of brief complexity. The annual performance reporting framework provides a partial representation of how well the CDPP is achieving its purpose.

### Areas for improvement

ANAO made three recommendations, which were to monitor the average cost involved in conducting brief assessments and prosecutions; establish brief assessment timeliness targets for each complexity category; and improve the reliability and completeness of performance criteria.

A suggestion for improvement was that the CDPP should consider the establishment of a process of external benchmarking for key performance measures.

4.1 In order to examine this criteria, the audit investigated the extent to which the CDPP:

- measures key efficiency indicators, including inputs, outputs, drivers and benefits;
- monitors and analyses efficiency data, as appropriate analysis and understanding is critical to continuous improvement; and
- reports on both the efficiency and effectiveness of its work in order to achieve public accountability.

### Does the CDPP have systems and processes to effectively monitor and use performance information to improve its case management efficiency?

The CDPP routinely collects some efficiency data, but can improve its monitoring and use of this information in order to drive improvement. Data on efficiency drivers, such as brief quality and assessment outcomes, is collected but not monitored. A funding model could calculate average costs, but such analysis is not done. Efficiency benefits such as brief assessment timeliness, backlog and stakeholder satisfaction are monitored. The 85 per cent within 90 days brief assessment service standard is embedded in brief assessment practice and has effectively driven behaviour for complexity two and three matters, however the usefulness of the service standard is reduced by its inappropriateness for complexity one and four matters, lack of awareness among investigative agencies, and lack of diagnosis of delay.

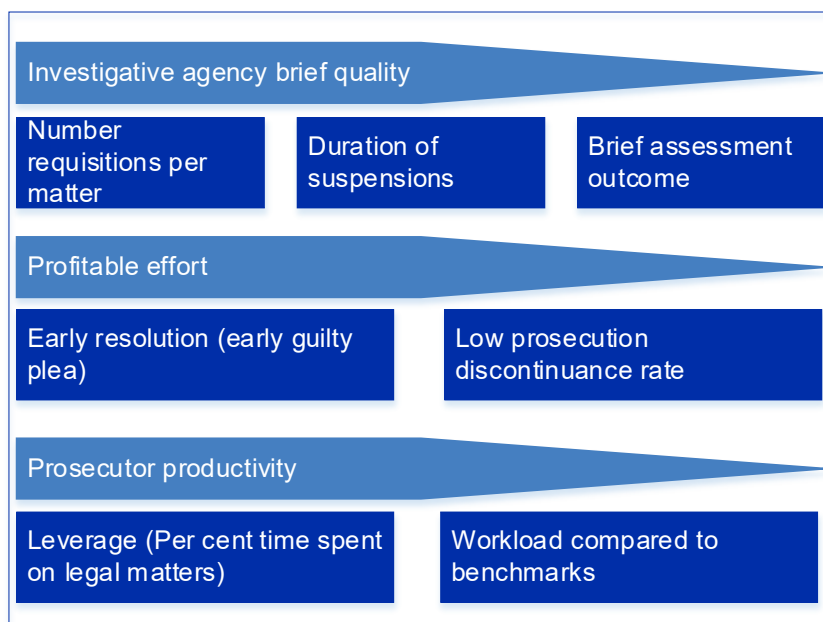
## Efficiency data collection, monitoring and analysis

4.2 The following section details the extent to which the CDPP collects data on, and monitors, the efficiency indicators highlighted in Chapter 3.

### *Efficiency drivers*

4.3 Figure 4.1 shows efficiency drivers, comprising investigative agency brief quality, profitable effort and prosecutor productivity.

**Figure 4.1: Efficiency drivers**



Source: Developed by ANAO based on CDPP information.

#### Investigative agency brief quality

4.4 Indicators of investigative agency brief quality include the number of requisitions that the CDPP must issue to obtain sufficient evidence from investigative agencies to support brief assessment; the duration of suspensions after a requisition is issued; and the extent to which investigative agency briefs result in the commencement of a prosecution.

4.5 Information on the number of matters requiring requisitions and duration of suspensions is collected through case management systems, but the CDPP does not monitor this.<sup>76</sup>

4.6 The CDPP records brief assessment outcomes on CRIMS or caseHQ, its case management systems; this information was publicly reported for the first time in the CDPP's 2018–19 Annual Report. In October 2019, the Commonwealth Solicitor for Public Prosecutions (CSPP) established a process to more systematically analyse the reasons for non-prosecution outcomes and practice group leaders will report findings to the Executive Leadership Group (ELG; refer paragraph 2.4) on an annual basis.

<sup>76</sup> The number of matters requiring substantial requisitions can be derived in caseHQ and CRIMS from whether or not the case officer suspended the brief assessment. The number of requisitions issued in a matter is recorded in caseHQ but not in the precursor case management system, CRIMS.

#### Profitable effort

4.7 Indicators of profitable effort are early resolution of cases and a low discontinuance rate.

4.8 The 'Prosecution Team Leader (PTL) dashboard' report lists which matters require early resolution engagement. Case officers can indicate that early resolution has been considered by marking this as 'completed' in caseHQ. However, specific activities conducted by case officers in relation to obtaining an early resolution (refer paragraph 2.55), and the actual timing of guilty pleas, are not systematically monitored. Supervisors may discuss the opportunities for, and activities in relation to, achieving early resolution in specific matters with case officers during fortnightly meetings. In a Practice Management Guide approved by the ELG in September 2019, case officers are required to file note all conversations with the defence, potentially improving PTLs' ability to monitor early resolution activities.

4.9 The CDPP collects information about prosecution outcomes, including discontinuances (refer paragraph 3.3). Discontinuances are not monitored or formally analysed in relation to external benchmarks. The CDPP reports on conviction rates in its annual report, however this does not take into account discontinued matters. In October 2019, a process was established to systematically analyse the reasons for discontinuance and practice group leaders will report findings to the ELG on an annual basis. This will help identify where the CDPP can improve its practices to minimise the risk of a discontinuance.

#### Prosecutor productivity

4.10 Indicators of prosecutor productivity are caseload compared to benchmarks and leverage (refer paragraph 3.3).

4.11 The ability for the CDPP to quantitatively assess productivity is limited. A 2011 efficiency review of the CDPP recommended that, 'the introduction of time recording should be considered in order to...assess and demonstrate efficiency.' The current time recording system, the Effort Allocation Tool (EAT), does not provide sufficient quality of information to allow for reliable analysis of leverage (refer paragraph 4.18). Moreover, EAT does not account for any work done beyond a standard day of seven hours and 21 minutes.

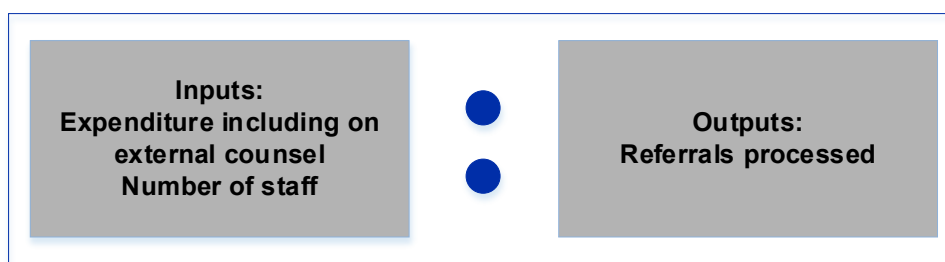
4.12 The CDPP's ability to monitor productivity is also impeded by the lack of clear, accurate and objective caseload benchmarks. The Automated Allocated Assessment (Triple A Tool) suggests a benchmark caseload depending on seniority; this identifies whether an officer's workload is within volume and complexity ranges determined to be appropriate for the national practice. However, the tool is perceived to be rudimentary and has not been updated to include caseHQ matters since the introduction of the new system.

4.13 In summary, the CDPP collects data on key efficiency drivers in relation to brief quality and prosecution outcomes but this is not monitored or analysed, and the CDPP's ability to assess prosecutor productivity is limited.

#### *Inputs and Outputs*

4.14 The CDPP's inputs are staffing and expenditure, and its outputs are referrals processed (refer Figure 4.2).



**Figure 4.2: Inputs and outputs**

Source: Developed by ANAO based on CDPP information.

#### Inputs

4.15 The CDPP measures the use and cost of inputs through the EAT and TechnologyOne systems, and monitors the cost of inputs through ongoing financial reporting to the ELG. Information about legal and travel expenses is reported for the current financial year in the Corporate Quarterly Report. The cost of external counsel is compared to approved expenditure at the matter level through a TechnologyOne report.

#### Outputs

4.16 The CDPP collects output and outcome information<sup>77</sup> through case management systems — caseHQ and CRIMS. The conviction rate is regularly monitored. Detailed public reporting of these outputs and outcomes is undertaken through the ‘prosecution statistics’ section of the annual reports (refer Table 1.1).

4.17 The CDPP does not calculate the ratio of inputs to outputs to arrive at an average cost per brief assessment or referral, or the average number of hours or staff used to achieve a given output.

4.18 A model was developed in 2015–16 to provide a methodology for building and presenting a business case for funding. The model gives the CDPP the requisite tool for calculating the average cost per prosecution, and for analysing costs, but it has not been used for this purpose. Several factors limit the CDPP’s ability to effectively utilise the model in this way.

- Staff compliance with EAT is limited, affecting the quality of input information. The CDPP emphasises the importance of EAT compliance to staff. In August 2019, the ELG agreed to use EAT performance metrics in branch head performance agreements in 2019–20.
- Staff can assign time against a specific matter or against broad categories of ‘legal other’ or ‘other.’ Evidence suggests that ‘legal other’ is overused, in part because of the real or perceived difficulty of assigning work to specific matters in circumstances where multiple matters are handled, such as mention hearings. This leads to systematic under-reporting of time against specific matters. The broad categories of ‘legal other’ and ‘other’ also mean that the model cannot provide accurate costings of non-prosecution services such as input to policy, involvement in Royal Commissions and law reform, stakeholder liaison and general advice.
- The model generates a cost per matter estimate but it does not separate out the cost of specific phases such as pre-brief and brief assessment, limiting its usefulness as a diagnostic tool and as a lever for cost management.

<sup>77</sup> Including the number of referred matters, matters before the court, cases finalised, prosecutions resulting in a conviction and prosecutions resulting in imprisonment.

4.19 In summary, a model has been developed which could be used to analyse cost per referral, however the CDPP is not undertaking such analysis and the quality of time recording data used in the model is impacted by staff non-compliance.

## Recommendation no.2

4.20 The Office of the Commonwealth Director of Public Prosecutions establish a process to utilise existing data to monitor case management efficiency in terms of the average cost involved in processing referrals, including in conducting brief assessments and prosecutions.

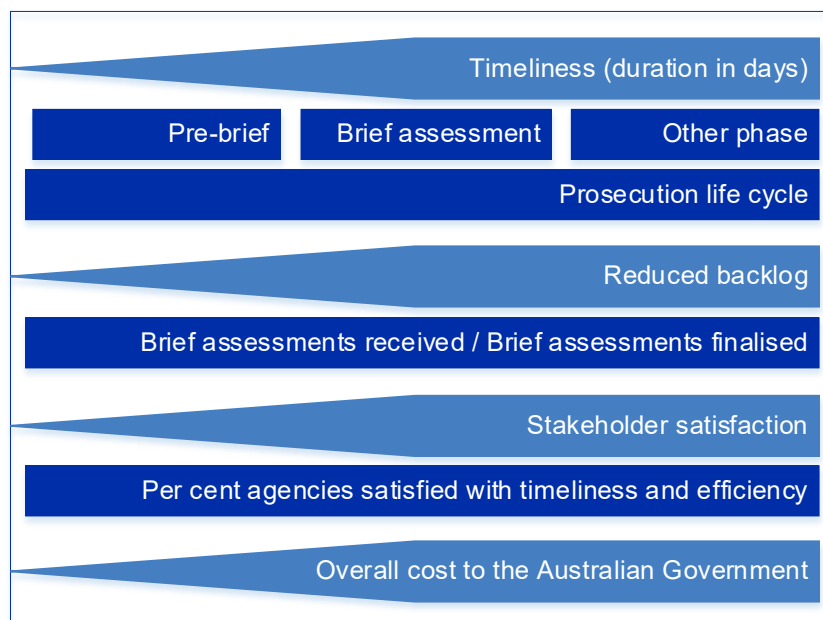
**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

4.21 *Monitoring the average cost involved in conducting brief assessments and prosecutions as part of an overall budgeting measure has the potential to identify trends or systemic issues that can be used to drive efficiencies.*

### Efficiency benefits

4.22 Benefits of greater efficiency include improved timeliness, reduced backlog, stakeholder satisfaction and lower costs to the Australian Government (refer Figure 4.3).

**Figure 4.3: Efficiency benefits**



Source: Developed by ANAO based on CDPP information.

### Timeliness

4.23 Since July 2017, the CDPP timeliness service standard is 85 per cent of brief assessments completed within 90 days.<sup>78</sup> This measure was included in the CDPP's 2017–21 Corporate Plan, communicated to some agencies through formal agreements (engagement frameworks recently established with Comcare and the Australian Taxation Office), discussed at some agency liaison

<sup>78</sup> Prior to that, between September 2016 and June 2017, the benchmark was 120 days.

meetings, and mentioned in correspondence sent to 576 Partner Agency Portal users who subscribe to updates on 16 August 2018.

4.24 Timeliness in brief assessment is regularly monitored by managers through the 'Briefs approaching 90 days dashboard' report. PTLs are given a synopsis of overdue brief assessments in the 'PTL dashboard', and senior management is given similar information in the 'ELG dashboard.' The 'ELG dashboard' shows the brief assessment timeliness metric over time, allowing for comparison to past performance in internal monitoring. It includes practice group leader commentary on overdue brief assessments.

#### Backlog

4.25 As described at paragraph 3.34, backlog occurs where the pace of brief assessment referrals exceeds the pace of completed brief assessments.

4.26 The 'National Liaison dashboard' provides managers with a month-by-month 'heat map' by practice group showing where matters received are outpacing matters completed. The 'ELG dashboard' for senior management also reports the ratio of briefs received to briefs assessed in the financial year to date. These metrics are tracked and compared over time in the 'ELG dashboard.' The results are discussed at monthly ELG meetings.

#### Investigative agency satisfaction

4.27 The CDPP conducts a biennial satisfaction survey among investigative agencies. Overall satisfaction is used as one of three performance measures in annual performance reporting, and some results from the satisfaction survey are shared with staff.

4.28 In summary, efficiency benefits such as brief assessment timeliness, backlog and stakeholder satisfaction are effectively monitored and analysed by the CDPP.

### External benchmarking

4.29 The CDPP does not compare its efficiency to other entities. Although there are many similarities in the functions of the CDPP and the eight Australian state and territory prosecuting authorities (DPPs), the CDPP differs from the DPPs in several ways.

- The CDPP receives briefs from a large number and variety of agencies. By contrast, DPPs receive briefs from a small number of investigative agencies with arrest powers — usually the police.
- Police normally charge persons without involvement of the DPPs, whereas the CDPP commonly assess briefs and recommend charges, particularly in the Commercial, Financial and Corruption; Revenue and Benefits Fraud; and International Assistance and Specialist Agencies practice groups, where investigative agencies do not have arrest powers.
- The CDPP prosecutes both summary and indictable matters. DPPs prosecute indictable matters mainly.

4.30 In other federated states such as Canada, the United States, and the United Kingdom, the jurisdiction, role and independence of federal prosecution services differs from that of the CDPP in fundamental ways; for example, in relation to the structure of their judicial systems, the types of offences prosecuted, and independence from the investigative and political process.

4.31 These differences complicate comparisons of the CDP's efficiency to other jurisdictions. Nonetheless, external benchmark information can provide insight into performance. Appendix 7 shows some possible national and international comparators on key efficiency metrics. While this list is not exhaustive, it demonstrates that external benchmarking may be possible. In addition to its ongoing annual engagement with DPPs and New Zealand's Crown Solicitor, the CDP should explore how other jurisdictions' efficiency results can inform continuous improvement and consider the establishment of external benchmarking for key performance measures.

### **Driving continuous improvement**

4.32 Efficiency goals are clearly established in the CDP's business plan. These goals then flow through to practice group action plans and finally to individual performance agreements. However, none of the three performance criteria established in the CDP's portfolio budget statements (PBS) relate directly to efficiency (refer paragraph 4.41).

4.33 The absence of cost information at the level of individual referrals inhibits the CDP's ability to analyse potential inefficiencies in case management and to use this information for continuous improvement and as a lever for cost management.

4.34 The 85 per cent within 90 days service standard for brief assessment is strongly emphasised by the CDP in internal communications. The service standard drives behaviour for complexity two and three matters and brief assessment has become more timely since its introduction (refer paragraph 3.29). The service standard's contribution to ongoing improvement is limited by several factors.

- The service standard is not yet formalised in memoranda of understanding with agencies<sup>79</sup> and some agencies are unaware of it and therefore may not hold the CDP accountable for it.
- In July 2017, the ELG endorsed a target of 85 per cent of briefs assessed within 90 days, regardless of complexity. While there is evidence that 2018–19 complexity two and three brief assessment durations have been informed by the target, both complexity one and complexity four duration outcomes are largely unrelated to the target (refer Appendix 8). The target does not challenge prosecutors working on complexity one matters. One practice group has a 30-day 'soft target' for complexity one to better align with effort required. The result does not provide transparency for complexity three and four performance. Ninety nine per cent of complexity one and 90 per cent of complexity two matters met the service standard of 90 days, compared to only 65 per cent of complexity three and 31 per cent of complexity four matters. There is no organisational expectation that complexity four matters will meet the target.
- The dates that are used in the calculation (date received and suspension periods) can be changed retrospectively by the case officer, weakening its reliability.

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79 The Memorandum of Understanding with the Australian Taxation Office is the only exception, and this refers to the then standard of 120 days.

4.35 The 2017–18 Annual Report states that 94 per cent of briefs were assessed within 90 days. This figure was based on matters completed in 2017–18 but received from 1 July 2017.<sup>80</sup> This limitation was not clearly disclosed in the Annual Report. Recalculation of the result based on matters completed in 2017–18, regardless of the date of receipt, identifies that the result was 73 per cent.<sup>81</sup> The 2018–19 Annual Report does not provide a specific result. The ANAO has calculated this to be 85 per cent (refer paragraph 3.27).

### Recommendation no.3

4.36 The Office of the Commonwealth Director of Public Prosecutions establish appropriate timeliness targets for each brief complexity category, formally communicate these to investigative agencies, and detail the results and methodology in the annual report.

**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

4.37 *The resources involved in changing and accounting for this from a reporting perspective are likely to be significant and will affect timeframes for implementation. The CDPP has had different brief assessment targets for different complexity categories in the past with mixed success. In July 2017 the target was reduced to 90 days for all categories to achieve simplicity and improved timeliness however, the CDPP agrees with the ANAO that consideration should again be given to having a range of timeframes, and specifically, shorter timeframes for complexity 1 matters and longer timeframes for complexity 4 matters.*

### Does the CDPP have an effective performance framework?

The performance framework established by the CDPP is partly effective. The three annual performance measures are relevant, but there are weaknesses in reliability. The measures provide a partly complete representation of the extent to which the CDPP is achieving its purpose as there are no qualitative, long-term or efficiency measures.

### Performance reporting framework

4.38 The Commonwealth's performance framework consists of the *Public Governance, Performance and Accountability Act 2013* (PGPA Act)<sup>82</sup>, the accompanying *Public Governance, Performance and Accountability Rule 2014* (PGPA Rule) and guidance issued by the Department of Finance (Finance). The performance framework specifies that there should be clear alignment of an entity's funding to its planned outcomes, and that an entity's performance information should provide the Parliament and public with information to assess the entity's progress towards achieving its purpose.

80 The CDPP's rationale for excluding matters received before 1 July 2017 from the calculation was that, prior to this date, a 120-day, rather than a 90-day, timeliness benchmark applied. However, this exclusion had the consequence of removing older matters from the reported calculation and depressing average duration.

81 The calculation excludes days where the file was 'suspended.'

82 Under section 39 of the PGPA Act, each Commonwealth entity's accountable authority must prepare annual performance statements and include them in the entity's annual report. The performance statements comprise the entity's assessment of its performance against planned performance detailed in the PBS and corporate plan.

## The CDPP's purpose, strategic themes and activities

4.39 Three themes have been identified to assist the CDPP to achieve its purpose: '(1) Providing an efficient and effective prosecution service; (2) Engaging with partner agencies and stakeholders; and (3) Investing in our people.'

4.40 The CDPP's 2019–20 Business Plan identifies 'headline deliverables', which represent activities. These are mapped to the three strategic themes. This links the activities, their intended impacts and the CDPP's purpose. An example of a headline deliverable for the first strategic theme is 'Effective allocation, resourcing, monitoring and priority setting for all cases, and early resolution pursued in appropriate cases'; and for the second strategic theme, '...encouraging partner agencies to submit e-briefs.'<sup>83</sup>

## Appropriateness of the performance measures

4.41 The CDPP has a Performance Reporting Framework. Since 2016–17, the CDPP has identified three PBS performance criteria and these are mirrored in its corporate plan. Performance against these criteria, and associated targets, were reported in the CDPP's annual performance statements (refer Appendix 9).

1. *Prosecution Policy of the Commonwealth* (Prosecution Policy) compliance — compliance in addressing the terms of the test for prosecution.
2. Partner agency satisfaction — per cent of investigative agencies surveyed in the biennial survey conducted by an independent research agency who rate themselves as satisfied or very satisfied with CDPP service delivery.
3. Prosecutions resulting in a finding of guilt.

4.42 The quality of the performance criteria is critical to fulfilling transparency. While a minimum standard is not defined in the PGPA Act, Finance has provided guidance to entities on the characteristics of good performance information<sup>84</sup> — relevance<sup>85</sup>, reliability<sup>86</sup> and completeness<sup>87</sup> (refer Appendix 10). The CDPP's performance criteria were assessed against these characteristics.

4.43 Table 4.1 presents the CDPP's performance criteria, targets and results from the annual reports and summarises the results of this assessment.

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83 Office of the Commonwealth Director of Public Prosecutions, *Corporate Plan 2018–22*, CDPP, 2018, p. 2.

84 Department of Finance, *Quick Reference Guide — RMG 131 Developing good performance information*, Finance, 2016.

85 Relevant — clearly indicate who will benefit from the entity's activities and how; address a significant aspect of the entity's purposes via its activities; and provide sufficient information in a clear and concise manner.

86 Reliable — use and disclose information sources and methodologies that are fit-for-purpose (including a basis or baseline for measurement or assessment, for example a target or benchmark); are free from bias.

87 Complete — provide a balanced examination of the overall performance story, and collectively address the entity's purpose.

**Table 4.1: Performance criteria assessment**

Performance criteria	Target	Results	Assessment results		
			Relevant	Reliable	Complete
1. Prosecution Policy compliance	100%	2018–19 100%	Relevant	Partly reliable	Partly complete
		2017–18 100%			
		2016–17 100%			
2. Partner agency satisfaction	90%	2018–19 N/A	Relevant	Partly reliable	
		2017–18 87%			
		2016–17 N/A			
3. Prosecutions resulting in a conviction	90%	2018–19 97%	Relevant	Reliable	
		2017–18 97%			
		2016–17 99%			

Source: ANAO analysis of CDPP information.

### *Prosecution Policy compliance*

4.44 This performance criterion is intended to measure:

Compliance in addressing the terms of the test for prosecution in the *Prosecution Policy of the Commonwealth*, namely existence of a *prima facie* case, reasonable prospects of conviction and that prosecution is required in the public interest, when deciding to commence or continue a prosecution.

4.45 To indicate whether the Prosecution Policy has been complied with by the prosecution team, a Prosecution Policy Declaration (PPD) is completed by the decision-maker. The decision-maker must indicate which parts of the test have been satisfied or not satisfied. They must also reference the type of source material that supports the decision they have reached.

4.46 This criterion is relevant. It indicates the intended impacts of the activity, the beneficiaries can be implied and it addresses a significant aspect of the CDPP's purpose.

4.47 The criterion is assessed as partly reliable. The CDPP generates reports, including PPD exception reports, to calculate PPD compliance rates. However, the methodology is based on self-assessment and there is no separate process of review over compliance with the Prosecution Policy. A February 2019 internal audit of compliance with the Prosecution Policy concluded that, 'the CDPP's reliance on monitoring the completion of PPDs as the primary mechanism to assess the CDPP's compliance with Performance Measure 1...may present a risk to the accuracy and reliability of the CDPP's performance information.'<sup>88</sup> The CDPP agreed with the recommendation to conduct an annual audit of a limited number of matters, to ensure that documentation properly evidences and supports prosecutors' decisions under the Prosecution Policy, and advised that this annual audit will be implemented by 28 February 2020.

<sup>88</sup> The internal audit did not identify any information that suggested that the CDPP had not met the requirements of the Prosecution Policy.

### *Investigative agency satisfaction*

4.48 Biennial investigative agency satisfaction surveys were conducted in 2016 and 2018. In each year, an external contractor was used to conduct and analyse the survey. The 2018 survey involved 284 respondents from approximately 38 entities and used a structured questionnaire that was mainly consistent with the one used in 2016.

4.49 This criterion is relevant as it is understandable and focussed on a key activity — investigative agency engagement. Both investigative agencies and the CDPP benefit if feedback is considered.

4.50 This measure is partly reliable. The target refers to the percentage of investigative agencies that are satisfied with the CDPP's services, but the reported result is based on the percentage of respondents who are satisfied, with multiple surveyed respondents from single entities. The measure is not free from bias, as CDPP staff nominated respondents to receive the survey in both 2016 and 2018<sup>89</sup>, despite some attempt at a more systematic sampling methodology in 2018. There is inadequate information regarding the survey and sampling methodology in the annual report. It is not clear to the reader how the population is defined, what proportion of the investigative agency population was sent a survey or what the response rate was from the population. An annual survey of investigative agencies using a consistent and robust random sampling methodology, and a detailed reported methodology, would improve reliability.

### *Prosecutions resulting in a conviction*

4.51 This criterion is defined in the 2018–19 Annual Report, and is calculated by taking the number of defendants convicted as a percentage of defendants convicted or acquitted. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety. It does include findings of guilt that do not result in a conviction and where the defendant pled guilty.

4.52 In both 2017–18 and 2018–19, the percentage of prosecutions resulting in a finding of guilt was 97 per cent, well above target. The 2017–18 annual performance statement supplementary information included the adjusted figure taking discontinuances into account (89 per cent). The adjusted figure was not included in the 2018–19 performance statement.

4.53 This criterion is relevant as it is focussed on a key element of the CDPP's purpose. The reader is provided with supplementary information to facilitate understanding. The CDPP's rationale for the 90 per cent target is that it is not the CDPP's role to press for a conviction at all costs.

4.54 The criterion is reliable as it is measurable and free from bias. The CDPP generate reports from the case management systems to confirm the results of a prosecution and outlines its approach in the annual report.

### *Completeness assessment*

4.55 The performance criteria are assessed as partly complete. They cover the key elements of the CDPP's purpose. However, all are quantitative measures of effectiveness; there are no qualitative measures and no efficiency criteria. None are focussed on long-term goals.

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89 The CDPP has advised that the rationale for non-random sampling methods was the desire to obtain feedback from investigative agency personnel whose contact details are not currently captured in CDPP databases, and for interviewees to include persons who have had 'deep engagement with the office.'



## Recommendation no.4

4.56 The Office of the Commonwealth Director of Public Prosecutions improve the reliability and completeness of performance criteria presented in its corporate plan and annual performance statements by establishing:

- (a) a process to provide assurance that prosecutors are adhering to the *Prosecution Policy of the Commonwealth* when assessing briefs and conducting prosecutions;
- (b) a consistent, robust and transparent methodology for the surveying of investigative agency satisfaction; and
- (c) a case management efficiency criterion in the annual performance statement.

**Office of the Commonwealth Director of Public Prosecutions response:** *Agreed.*

4.57 *In relation to 4(a) in October 2019 the ELG approved a process for the conduct of an annual review of a limited number of cases to provide assurance that there was a genuine application of the Prosecution Policy of the Commonwealth throughout the lifecycle of selected cases. This assurance process involves documents on the prosecution file being reviewed to ensure they support the Prosecution Policy Declaration that has been recorded. The CDPP completed its annual review of selected files in February 2020.*

4.58 *In relation to 4(b) the CDPP will take steps to improve the consistency, robustness and transparency of the methodology of the investigative agency survey.*

4.59 *In relation to recommendation (c) a case management efficiency criterion will be developed.*

## Assurance of annual performance statements

4.60 The PGPA Rule section 16F requires an accountable authority to certify that an entity's performance statements accurately present their performance for the reporting period. CDPP performance results are provided biannually to the Audit Committee, which also advises on the appropriateness of the performance reporting.

## Business plan

4.61 The CDPP's 2019–20 Business Plan has six performance criteria, three of which are reported in the annual performance statement. The three additional criteria are:

- '70 per cent of defended matters resulting in a finding of guilt'<sup>90</sup>;
- '85 per cent of brief assessments completed within 90 days'; and
- '90 per cent of eligible individual performance agreements in place by 30 September.'

4.62 These measures are focussed on key elements of the strategic themes supporting the CDPP's purpose and are measurable.

<sup>90</sup> This criterion was added for the first time in 2019–20.

## Monitoring of annual performance criteria

4.63 The CDPP has a variety of reporting mechanisms to monitor case management progress against the performance criteria. Progress reports of the three annual performance statement criteria and the 85 per cent within 90 days brief assessment target are provided monthly to the ELG. The results for the three annual performance statement criteria are published in the annual report.

4.64 The ELG periodically reviews the annual performance statement criteria. In November 2018, the ELG reviewed and agreed to enhance Performance Criterion 3 by also reporting the proportion of defended matters resulting in a conviction or finding of guilt (target 70 per cent). This additional performance information was not included in the 2018–19 Annual Report but has been added to the PBS for 2019–20.

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Grant Hehir  
Auditor-General

Canberra ACT  
30 March 2020

## **Appendices**

## Appendix 1 Entity response



**CDPP**  
Australia's Federal Prosecution Service

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of Public Prosecutions

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Your Reference:

Our Reference:

16 March 2020

Mr Grant Hehir  
Auditor-General for Australia  
GPO Box 707  
Canberra ACT 2601

Dear Mr Hehir,

### CDPP comments on proposed report under s. 19 of the Auditor General Act 1997

Thank you for the opportunity to provide comments on the proposed report (the Report) on the case management efficiency of the Office of the Commonwealth Director of Public Prosecutions (CDPP). Enclosed are the following:

- CDPP's Summary Response; and
- Responses to the Recommendations.

2. We have enjoyed working with your hard working audit team from May to October 2019. Our interactions with them have caused us to reflect even more deeply on what we do and how we do it. The CDPP welcomes the ANAO's recommendations and many of the insights made in the report. These will assist the CDPP to continue to improve its delivery of a high quality federal prosecution service. The CDPP accepts each of the recommendations made. Set out below is a detailed response to the Report which comprises a high level overview regarding the Report's findings and conclusions, followed by some detailed observations about each finding.

#### A. Overview

3. The CDPP does not accept one of the conclusions in the report, nor the finding that underpins it: that *the efficiency of CDPP brief assessment is declining* ("the contested conclusion" and "contested finding"). Neither the contested conclusion nor contested finding were in the report preparation papers that were reviewed by the CDPP. We note the original proposed finding regarding brief assessment efficiency was neutral.

4. It is important to understand some terms. "Brief assessment" is a subset of "case management". "Case management" is the management of cases from any point from the first referral, which may or may not involve pre-brief advice, brief assessment (following arrest or not); then if proceedings go to court - through the court appearances including hearings and/or sentence

and any appeals, and may also include a case review. As to the term, “brief assessment referral practice”, that is a subset of a larger “referral” practice which includes not only brief assessment referrals but also referrals for pre-brief advice, arrest matters, breaches, matters referred post committal, and appeals where the CDPP did not undertake the original prosecution and extradition. The term “referral” does not include non-case specific activities, including for instance, requests for assistance on law reform, partner agency liaison and training, or involvement in Royal Commissions.

5. The contested conclusion and finding are based on the observation that in the period 2014-15 to 2018-19, in relation to the brief assessment referral practice, the CDPP received fewer brief assessment referrals from partner agencies than 5 years ago, but annual agency expenses were unchanged. The Report found there was a decline in the average number of brief assessments referred per prosecutor employed.

6. The CDPP makes two key observations about the Report. Firstly, it identified clear “efficiency benefits” over that very same period (including a marked improvement in the timeliness of CDPP’s brief assessment referral service, a reduction in the brief assessment referral backlog and improved investigative agency satisfaction). Those clear efficiency benefits appear to have been given little weight in the formulation of the contested conclusion and contested finding, with the report’s focus being very largely on a “cost to referral” ratio.

7. Secondly, the audit objective was to examine the efficiency of the CDPP’s case management. The stated focus of this audit was the CDPP’s brief assessment referral practice and pre-brief referral service. As noted in the report, time spent on pre-brief and brief assessment referrals represented only 16% of total hours worked by prosecutors on referrals (ie on specific cases) in 2018-19.<sup>1</sup> The CDPP is certainly not critical of the ANAO for largely confining its focus to these particular areas of CDPP’s service delivery, as attempting to review, in depth, the entirety of the CDPP’s case management efficiency would have been a very significant task indeed. But this limited focus does mean that the full range of activities undertaken by CDPP prosecutors has not been the subject of analysis by the ANAO. This in turn brings into question how efficiency can be meaningfully calculated for the brief assessment referral practice, by dividing the number of those referrals by the total number of prosecutors in a given year. The CDPP submits that the Report’s analysis on this aspect is overly simplistic and regrettably, ultimately unhelpful.

8. The CDPP is proud of the work undertaken by its staff in the last 5 years, during which period they have delivered a timely and high quality service to the Australian community in a rapidly evolving law enforcement landscape. By way of general observation, the ANAO’s report encompasses a period of real change for the CDPP as we see a trend away from having a large proportion of lower complexity brief assessment referrals prosecuted in the Magistrates Courts, and a trend towards a practice which has a greater number of higher complexity cases. This ‘counter trend’ is, in turn, driving an increase in referrals for pre-brief advice, more arrest based referrals and more cases being dealt with on indictment in the County/District/Supreme Courts.

9. The CDPP points to the following improvements in its service and clear indicators of efficiency, which the report does not adequately recognise:

- a. the average time taken to assess a brief assessment referral has halved, reducing from an average of 151 days to 78 days;

<sup>1</sup> We note that this calculation does not include the time prosecutors spend on legal work which is non-case specific. As such, the proportion of time spent by prosecutors on brief assessments, when the entirety of the CDPP’s practice is considered, is less than 16%.

- b. a significant backlog of stale brief assessment referrals that had been with the CDPP for more than 120 days has been cleared from the practice (see Attachment A);
- c. our highly valued pre-brief advice service, which assists in the effective investigation of complex matters, has expanded with the receipt of 20% more pre-brief referrals in 2018/19;
- d. our witness assistance service, for our most vulnerable witnesses, has expanded;
- e. CDPP's operating model has been transformed;
- f. significant and vital investment in digital transformation has been undertaken to modernise our practice and to better support our partner agencies;
- g. partner agency satisfaction has improved, requiring significant effort by our prosecutors in stakeholder engagement and management; and
- h. our practice has expanded into two new jurisdictions - Norfolk Island and the Federal Court of Australia.

10. It can further be observed that the contested conclusion and the contested finding fail to adequately recognise a range of relevant practical and contextual factors including:
- a. the increased complexity of the law enforcement operating environment;
  - b. the life cycle of a prosecution, which can be lengthy, and can consume prosecutors' efforts for many years. This is especially so for complexity 4 matters, which have increased by 40% in the last 5 years. Prosecutor workloads today are very much influenced by *past* referrals, and any analysis based simply on *current* referrals will necessarily be deficient;
  - c. the fact that the decline in brief assessment referrals has resulted in a substantial decline in the actual amount of time spent by prosecutors working on brief assessment referrals;
  - d. the significant effort of a numerous prosecutors on a range of non-case specific activities, including law reform, partner agency liaison and training and involvement in Royal Commissions. None of these areas were the subject of any detailed analysis in the report, due to its stated focus;
  - e. the CDPP's digital transformation, which is being driven by prosecutors to ensure that it delivers better business and law enforcement outcomes for the CDPP and its partner agencies in the years ahead. These roles for prosecutors are new and did not exist in 2014-15; and
  - f. the need to recruit and train prosecutors ahead of known influxes of future referrals in order to ensure the expeditious assessment and prosecution of cases. For instance, the CDPP undertook such recruitment activity in 2018-19 as part of its planning for anticipated referrals for 2019-20, arising from the Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry – "the Banking Royal Commission".

## **B. ANAO Findings**

### **1. Finding: Arrangements to support the efficient assessment of briefs**

11. It is pleasing to have the ANAO recognise the strength of our governance processes, the depth of engagement with partner agencies and the extent of the systems, operational policies,

procedures and practices that are currently in place and which are also developing to support more efficient practices for brief assessment referrals in the future.

12. In January 2018, the CDPP launched key dashboard reports for its prosecution team leaders. Data was drawn from our then business management system (CRIMS). The reports were a new tool and an important advance for our front line prosecutors and managers. However, these reports were static and somewhat limited in functionality due to the legacy system we were working with. The implementation of our new business management system (caseHQ) in August 2018, and the subsequent related development in 2019 of targeted dashboard reports, has provided the agency with a new and greatly enhanced reporting capability. We note the current management dashboard report contains a wealth of critical information to assist front-line supervisors and has proven to be a very useful management tool. For example, it includes information relating to delayed brief assessments, prosecutor file loads, upcoming court commitments, time recording compliance and cases requiring early resolution engagement.

13. The CDPP is still in a period of transition from CRIMS to caseHQ. With migration of data due for completion in 2020, the CDPP recognises the further opportunities for enhancement of reporting and will seek to optimise those, including through implementation of recommendation 1. The CDPP has already improved the functionality of the dashboards in line with the ANAO's recommendations. Information in relation to file triage has recently been added to the management dashboard. A specific dashboard report for time recording compliance was released in to the legal practice in December 2019.

## **2. Finding: Performance analysis of brief assessment efficiency**

14. The CDPP does not accept that the available performance data indicates that the efficiency of CDPP's brief assessment referral practice is declining. We make two main points in this regard.

### **Indicators of Efficiency in the CDPP's Brief Assessment Practice**

15. Efficiency has improved in the CDPP's brief assessment practice. Efficiency is defined by the ANAO as '*the performance principle relating to the minimisation of inputs employed to deliver the intended outputs in terms of quality, quantity and timing*'. The efficiency of assessing briefs is multi-factorial including both costs and benefits. We have successfully invested in improving partner satisfaction and in decreasing the time it takes for brief assessment referrals to be completed. These improvements have occurred at a time when we would expect average timelines to be increasing because of the increasing complexity of brief referrals. The CDPP has also maintained 100% compliance with the test under the Prosecution Policy of the Commonwealth ('the Prosecution Policy') and conviction rates have remained high. The ANAO finding regarding efficiency fails to sufficiently take account of these matters.

16. Further and importantly, a significant backlog of stale brief assessment referrals that had been with the CDPP for more than 120 days was cleared from the practice in 2016/17. To drive continued improvement, on 1 July 2017 the CDPP sharpened its internal KPI for brief assessments, moving from 120 days to 90 days<sup>2</sup>. Since the introduction of that target, the CDPP has consistently met its aim of assessing 85% of those referrals within 90 days of receipt<sup>3</sup>. Whilst we welcome the report's recognition that timeliness in this area has improved 'steadily and markedly' from an

<sup>2</sup> This applied to any brief assessment referral received from 1 July 2017

<sup>3</sup> This excludes time for when the file is suspended due to the agency answering requisitions

average of period of assessment of 151 days to 78 days, the finding regarding efficiency fails to take account of these matters.

17. Finally, the amount of prosecutor time to conduct brief assessments has decreased, demonstrating the ANAO's performance principle relating to the 'minimisation of inputs'. The finding regarding efficiency fails to take account of the proportion of CDPP prosecutor time that is now *actually* being spent on brief assessment referrals. The majority of CDPP prosecutors have a practice comprising a variety of activities, ranging from assessment/analysis of briefs (both brief assessment referrals and arrest referrals), the provision of advice, conducting and appearing in litigation and potentially engaging in investigator training and liaison, and in some instances, extensive *ad hoc* work on Royal Commissions. It is important to note that in 2018/19, we had fewer prosecutors working on brief assessment referrals, commensurate with the lower volume of that type of referral. Whilst the ANAO has compared *total* prosecutor numbers to brief assessment referrals, a comparison of actual prosecutor time spent on brief assessment referrals, converted to FTE<sup>4</sup>, indicates a drop in FTE of approximately 30% from 2014-15<sup>5</sup>. In the same period, there has been an increase in the complexity of matters assessed by prosecutors, a point recognised by the Report. The data also indicates that the average number of hours expended on assessing a brief, for each complexity rating, has declined or stayed the same. And, of course, prosecutors are completing these cases in a much more timely fashion, on average, within 78 days of receipt, as compared to 151 days. These are very pleasing outcomes, particularly when one considers the shift in the complexity of the CDPP's practice over that five year period. These results, in combination, clearly demonstrate that CDPP's efficiency has not declined in this area.

#### Scope of the Audit versus Breadth of CDPP and Prosecutor Activities

18. The audit was focussed on a subset of case management, being the pre-brief and brief assessment referral phases of the CDPP's work. The CDPP welcomed the focus on these areas, as much of what happens once a matter is in court is beyond the CDPP's control, being heavily influenced by the approach and attitude of defendants and the workload and efficiency of the various courts in which we conduct our matters.

19. As set about above, the ANAO's analysis fails to take into account the number of people actually working on brief assessments, instead, it uses our total workforce numbers for the efficiency calculations. One of the reasons overall prosecutor numbers and CDPP expenses have stayed the same as 5 years ago, and not decreased, is because prosecutors are spending more time on other aspects of the CDPP's business, both in traditional legal areas (such as court work) but also in emerging areas. In recent years the CDPP has directly responded to where its services have been needed. That has meant doing less of some things and more of others. It has also meant changing the way we have traditionally undertaken some activities. The last 5 years has seen more change for the CDPP than the previous 30 years combined, in terms of our operating model, operating environment and rapid digital transformation. Many of these business improvements achieved in that 5 year period have directly led to increased partner agency satisfaction and case management efficiencies. We think it is important to understand the broad sweep of the CDPP's work, and the range of activities our staff have been engaged in, in order to ensure the Report is properly contextualised. Those matters are dealt with under the following topics: National Practice Group Model, Changing Law Enforcement Operating Environment and Digital Transformation.

##### 1. National practice group model

<sup>4</sup> Where FTE comprises 200 days a year per prosecutor

<sup>5</sup> This is sourced from our timesheet data as entered in the Effort Allocation Tool (EAT)



20. In June 2014 the CDPP moved to a new operating model, consisting of 6 nationally organised and run practice groups based on compatible crime types. This changed the agency from a regional model with largely autonomous offices in each State and Territory. The aim was to ensure quicker decision making, better sharing of expertise, greater national consistency in decision making under the Prosecution Policy, greater agility within the agency to move both work, and staff, and the provision of a better service to partner agencies. This change process was a significant one for the CDPP. It took time and effort to implement and embed and it was undertaken without additional funding.

21. From 2017-18 the CDPP adopted a more team based approach to its litigation, with complexity 3 and 4 cases being undertaken by small teams of CDPP lawyers, rather than by just one prosecutor. Teaming has enabled prosecutor capability to be developed, enabled risk (including staff wellbeing)<sup>6</sup> to be better managed, and ensured more continuity of CDPP case officers – something which is highly valued by investigators.

## 2. Changing law enforcement operating environment

22. The law enforcement environment has been dynamic and presented new challenges for the CDPP which have influenced the time and effort taken to assess and litigate cases. In particular, the CDPP points to the following matters:

- More complex referrals – The ANAO has identified that, based on CDPP’s four complexity ratings<sup>7</sup>, referrals are becoming more complex, and it has made some adjustments in its analysis to factor in the increases in complexity. The ANAO recognises the growth in complexity 3 and 4 cases and the decline in complexity 1 cases. Complexity 4 cases are highly impactful on the CDPP’s practice. In practical terms, such cases can tie up teams of prosecutors, full-time, for years. These cases typically are in our terrorism, organised crime or large scale white collar fraud cases, where there may be large numbers of defendants, many of whom are well resourced. The majority are arrest referrals, not brief assessment referrals. Given the size, scope, complexity and profile of these matters, even a small increase in such referrals significantly impacts the CDPP’s resources. The decline in overall referrals is more than offset by the increasing complexity and resource intensive nature of a number of these referrals received during the relevant period. Whilst the report indicates some weighting for this increased complexity, we are uncertain as to the methodology used.

The report’s analysis does not factor in accruals for cases that span multiple years (ie the proportioning of cash and effort across multiple budgets). It is important to note that well over 50% of case effort in any given year is allocated to cases that were referred more than 12 months prior. This is the reason why the CDPP maintains that prosecutor workloads today are very much influenced by *past* referrals, and any analysis based simply on *current* referrals will necessarily reveal only part of the story. Analysis of matters indicates that, on average, 80% of complexity 1 cases are closed within 1 year of referral, taking around 18 months for complexity 2 matters, 3 years for complexity 3 matters and 5 years for complexity 4 matters. Therefore, measuring CDPP’s efficiency in a single financial year does not take into consideration the multi-year nature of the work we undertake, an issue which is even more significant when the complexity of the work is increasing over time.

<sup>6</sup> The nature of the CDPP’s work is that staff may be exposed to traumatic material, through prosecutions involving child exploitation work and counter-terrorism work, risking vicarious trauma to our staff. The general rigours of litigation can also lead to burn out. Teaming is an important mechanism for mitigating the “key person risk”.

<sup>7</sup> With complexity 1 being the least complex and complexity 4 the most complex

The increased complexity of referrals is also linked to a number of factors, including the creation of new offences as well as changing law enforcement priorities. This can mean new challenges and additional time and effort for the CDPP and agencies during the life cycle of the matter. Espionage and foreign interference, criminal cartels, frauds on the National Disability Insurance Agency, large-scale family day care fraud and expanded foreign fighter laws are all examples of the how the landscape has rapidly changed since 2014.

In addition, the growing volume of electronic material being seized by agencies is currently impacting all prosecution agencies, and this is noted in the Report. Analysis, assessment, presentation and disclosure of material ("disclosure material") to defence requires time and careful management. Just to be clear, disclosure material is relevant material held by the investigative or other relevant agencies which is not part of the brief of evidence referred to the CDPP for assessment. Much of this disclosure work is done post-charge, which was a part of the life cycle of the prosecution not analysed in any depth in the Report.

The Report's analysis regarding complexity has some further limitations, in a number of respects. Firstly, the CDPP complexity bandwidths are very wide and whilst a shift between complexity ratings will be recorded in the CDPP's business systems, a shift within complexity ratings is not able to be recorded. An increase in the complexity and effort required for a matter can and does occur without a change in the complexity rating being justified. Cases may notionally be viewed as moving within complexity bands, for example, from a low end complexity 2 case to a high end complexity 2 case.

A good example of this is the referrals we see from Services Australia (Centrelink). It is a major source of referrals for the CDPP in the brief assessment referral practice. During the relevant period, Centrelink has changed its case mix and is referring far less straightforward/routine work, such as income data matching cases, to the CDPP. Centrelink referrals are now larger and more complicated. Offending is carried out digitally and there are new types and methods of offending, such as online redirected payments with Centrelink customers themselves being victims. Perpetrators are moving across government programs and benefits, requiring agencies to work together and with the CDPP to address alleged frauds. Learning how to prepare and prosecute these matters takes time and effort for prosecutors and investigators. Whilst some of those referrals might appropriately be rated at a higher complexity than the data matching/income type cases of the past, others will simply be viewed as being at the higher end of a particular complexity band.

In our child exploitation practice, we are seeing more cases which have large numbers of victims. Once again, whilst this will mean additional time and effort in prosecuting the cases, the increase in the number of victims will not necessarily result in a higher complexity rating.

As noted by the Report, the growing complexity of the work means that the CDPP is dealing with more defendants on indictment<sup>8</sup>. As a general proposition, a complexity 2 indictable case will require greater prosecutor effort than a complexity 2 summary matter over the life of the matter.

Growing complexity has also driven demand for pre-brief advice from agencies. The referrals for this service have increased in absolute terms over the last 5 years, with the CDPP receiving 20% more pre-brief advice referrals in 2018/19. This is a critically important

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<sup>8</sup> 786 defendants in 2018/19 when compared with 737 in 2014/15

service, provided in more complex or sensitive matters, such as terrorism, organised crime and white collar crime. These pre-brief services, which are much valued by our partner agencies, aim to improve the quality of an anticipated brief, assist an agency in determining whether it is worthwhile to expend further precious resources on a matter and deliver better outcomes across the criminal justice system. For example, quality pre-brief advice may well result in no referral of a brief of evidence at all, with valuable investigative, prosecution and criminal justice system resources thereby being diverted from hopeless cases.

And one further matter linked with increasing complexity relates to the changing nature of the CDPP's court work. CDPP prosecutors attended court more frequently in 2018-19 than 2014-15 and, more particularly, they attended court less often in the lower courts (for summary 'mention' work), and more often in the higher courts for trial work. This is consistent with the shift in the nature and complexity of the legal practice and it is a logical one, given the CDPP is undertaking more arrest work and more indictable work. This trend in CDPP court work has not been recognised in the Report.

- Investigative Agencies – The CDPP deals with a very diverse range of agencies. The difficulty of partnering with 62 agencies should not be underestimated, and is in stark contrast to the position of State and Territory prosecution offices. The report recognised that the CDPP is receiving increased referrals from State and Territory police forces. This uptick from State and Territory agencies is partly related to the AFP shifting its focus in the drug area to higher end drug work, often in the organised crime environment.

Investigators unfamiliar with federal offences, including State and Territory police, understandably require additional CDPP support for their matters and more requisitions are likely. That does not mean an increase in the complexity rating, but it can mean extra effort on the part of prosecutors is required throughout the lifecycle of the prosecution, including in training and liaison. Our agency liaison and training role is multi-faceted and is changing. For example, in the last 3 years CDPP has increased its participation in agency Taskforce activity as part of a more strategic and whole of government approach to law enforcement<sup>9</sup>.

- Non-specific case activities/non-referral activity – Training, liaison and taskforce participation are all important non-case specific activities/non-referral activities undertaken by prosecutors. There are many others. By way of example, the CDPP has had increased participation and impacts from Royal Commissions in recent years. Since 2016, the CDPP has needed to invest resources (both prosecutors and administrative staff) in responding to the activities and recommendations of various Royal Commissions, including the 2016 Royal Commission into Institutional Responses to Child Abuse.<sup>10</sup> The CDPP's ongoing assistance and participation in the Victorian Royal Commission into the Management of Police Informants (relating to "Lawyer X" - Nicola Gobbo) was required throughout 2019. Our involvement has continued in 2020, both directly and indirectly, including through the re-enlivening of finalised prosecutions by way of appeal and petitions for mercy. For almost 2 years, during 2017 – 2019, the CDPP was involved in the preceding

<sup>9</sup> The CDPP is now a member of the Serious and Financial Crime Taskforce, DHS Integrity Taskforce, Illicit Tobacco Taskforce, NDIS Fraud Taskforce, Black Economy Standing Taskforce Steering Committee and the Family Day Care Payment IDC

<sup>10</sup> As a result of the Royal Commission and an increased focus by police on victim based crime, CDPP has expanded its Witness Assistance Service (from 1.5 FTE to 3.8 FTE) and seen an increased demand for the service. In 2014/15 there were 181 new witnesses /victims in 34 new matters as compared to 376 new witnesses/victims in 91 new matters in 2018/19

litigation in the Court of Appeal and High Court in pressing for disclosure of Ms Gobbo's involvement and identity, as well as other complex related proceedings. Whilst all of this work has been and continues to be resource intensive for the agency, the CDPP's involvement in these various proceedings is foundational to ensuring the integrity of the criminal justice system in Victoria. Much of this work is either non-case specific or is not counted as a new 'referral'.

A further example of activity by our prosecutors which is not 'brief referral' based, relates to law reform. Such activity will usually precede the enactment of new offences. This inevitably draws in resources from the CDPP, often at the request of the Attorney General's Department or the Department of Home Affairs, at short notice, to ensure the practical impacts are considered.

The Report does recognise the important work done by the CDPP in these areas. We are very pleased that during 2020-21, we will have a much improved capacity to report on and account for the time spent on non-case specific activities as a part of our continued utilisation of caseHQ functionality.

- *Additional jurisdictions* – The CDPP prosecutes primarily in State and Territory courts, but also in various external territories such as Christmas Island and the Cocos Islands. In August 2017, the CDPP commenced providing a prosecution service to Norfolk Island, which involves a complicated mix of federal laws, continued Norfolk Island laws and NSW laws. The planning, preparation and liaison involved in prosecuting in a new jurisdiction is significant. Prosecutors now regularly travel long distances to prosecute on this remote island and are prosecuting many offences for the first time, most of which are not typical Commonwealth offences.

In 2009 the Federal Court of Australia was provided with criminal jurisdiction for cartel offences. In the last two years, the CDPP has commenced its first cartel matters, and the first cartel trial is listed for 2020.

### 3. Digital Transformation

23. Since 2016 the CDPP has undertaken significant digital modernisation. It has been critical to do so, not just to comply with Government policy but to meet the challenges of delivering a high quality prosecution service into the future, particularly given the large data sets we are seeing.

24. Our overarching vision is to have an end-to-end process of agencies submitting e-briefs (rather than paper briefs) using a set of uniform guidelines with electronic lodgement via a Gateway. CaseHQ, with its inbuilt workflows, will assist prosecutors better manage the matter whilst digital litigation specialists will guide prosecutors to utilise the most appropriate software for analysis of briefs and to assist with delivery of e-trials. Trying to bring with us on this journey the myriad of agencies with whom we deal, as well as defence practitioners, prison authorities and courts, continues to be a very challenging task. However, we are making very good progress. The sophisticated software required for analysis of our data sets is a new cost of business for the CDPP, and not one that was present in 2014.

25. Whilst the report touches on these various digital transformation projects it does not take account of the fact that successful delivery of each of these innovative projects has required, and

continues to require, prosecutors who can take their legal skills and knowledge of the prosecution environment and combine those with their digital skills. We have placed prosecutors into multidisciplinary teams in our National Business Improvement group<sup>11</sup>. We see these roles as critical to making the CDPP ready for the future. The analysis in the report assumes these prosecutors are undertaking traditional prosecution work, and in particular, brief assessment work. These prosecutors are not. They are part of a new breed of lawyer that we will be seeking to attract into the agency. Much of this work has been funded through CDPP's existing budget with the only additional funding received having been for caseHQ. That particular funding will cease in 2019-20, with the CDPP required to fund ongoing operational costs within our existing budget.

### **3. Finding: Performance monitoring and reporting**

26. The CDPP routinely collects and monitors a host of key data that drives efficiency, as outlined in the section above. Our move to an ambitious 90 day brief assessment target has driven a change in behaviour for the majority of our brief assessment referrals, but we are ready to take the next step to ensure we continue to improve this service standard<sup>12</sup>, and welcome ANAO's recommendation 3.

27. The CDPP has continued to review its performance reporting framework to ensure that it matures. In November 2018, the CDPP decided to enhance performance measure 3 which will, from 2019-2020, include a measure for the conviction rate of defended matters. Defended matters such as trials are costly to the community, and the CDPP recognised the need to ensure that its performance in this particular part of its practice is publicly available<sup>13</sup>. In addition, prior to the ANAO's audit, the CDPP had decided to enhance the reliability of performance measure 1 by conducting random sampling of prosecution files to ensure compliance with the Prosecution Policy test. The CDPP completed its first annual review of selected files in February 2020. This action directly complements recommendation 4(a).

<sup>11</sup> NBI was established in May 2016

<sup>12</sup> The effect of which will be to have a shorter time frame for complexity 1 files and a longer time frame for complexity 4 cases.

<sup>13</sup> Noting that the CDPP has been internally monitoring the conviction rate for trials for some years

28. We hope the matters we have raised are of assistance to you and to other persons who read this Report.

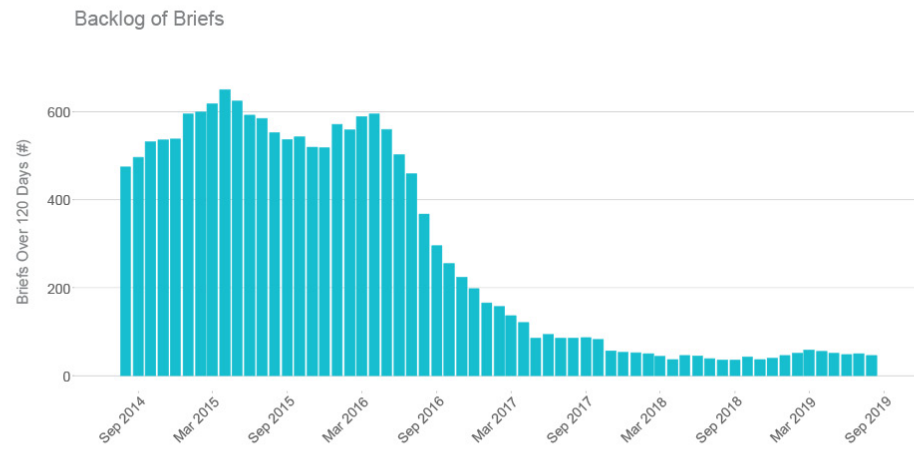
Yours sincerely,

A handwritten signature in dark ink, appearing to read 'S. McNaughton', written in a cursive style.

Sarah McNaughton SC  
Director of Public Prosecutions

*Encls.*

Attachment A



## Appendix 2 Investigative agencies referring brief assessment matters

**Table A.1: Number of brief assessment referrals by investigative agency, 2014–15 to 2018–19**

	Brief assessment referrals
Services Australia — Centrelink	4,402
Australian Financial Security Authority	634
Australian Federal Police	531
Australian Taxation Office	318
Australian Border Force	309
Australian Fisheries Management Authority	288
Australian Securities and Investments Commission	281
State and territory police	272
Great Barrier Reef Marine Park Authority	195
Services Australia — Medicare	165
Department of Agriculture	158
Department of Health	139
Office of the Registrar of Indigenous Corporations	107
Department of Foreign Affairs and Trade	66
Civil Aviation Safety Authority	49
Services Australia	46
Australian Maritime Safety Authority	43
Department of the Environment and Energy	42
Australian Bureau of Statistics	41
Other (<40 referrals in 2014–19)	371
<b>Total</b>	<b>8,457</b>

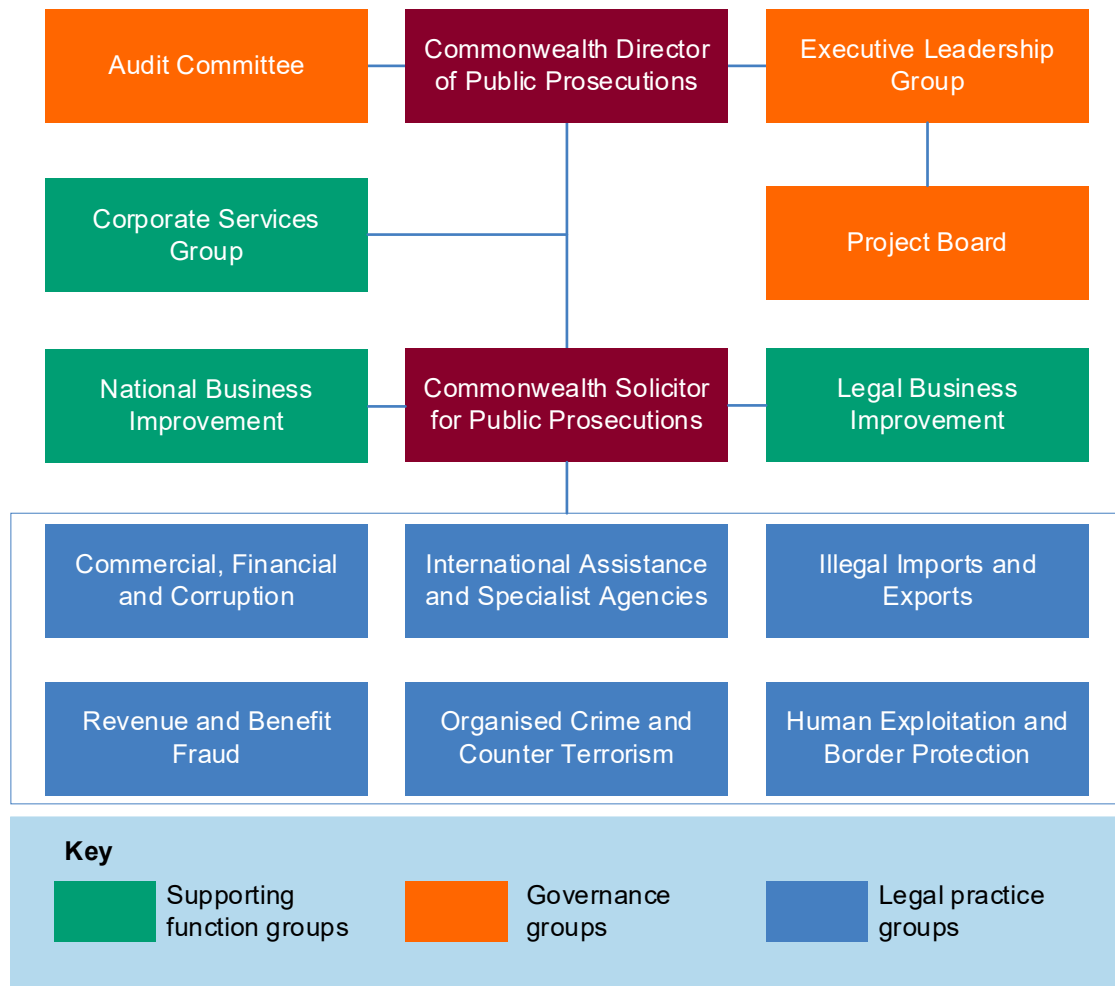
Note: Includes brief assessment matters referred in the years 2014–15 to 2018–19.

Source: ANAO analysis of CRIMS and caseHQ data.



## Appendix 3 The CDP's organisational and governance structure

**Figure A.1: Overview of organisational and governance structure**



Source: ANAO analysis of CDPP information.

Legal practice groups are operational divisions that are organised around crime types.

- **Commercial, Financial and Corruption (CFC)** — prosecutes Australian Securities and Investments Commission (ASIC) offences and regulatory matters; referrals from the Serious Financial Crime Taskforce; complex and large scale tax fraud; money-laundering; overseas bribery and other major corruption cases; and Australian Competition and Consumer Commission enforcement powers offences.
- **Revenue and Benefit Fraud (RBF)** — prosecutes tax fraud and tax compliance offences; social security fraud; medifraud; National Disability Insurance Scheme fraud; all other frauds against the Commonwealth government; counterfeit currency; identity fraud; child support offences; and postal offences. Its primary referring agencies are Services Australia (including Centrelink, Medicare and Child Support), Department of Health, Australian Taxation Office, Comcare, Department of Social Services, Department of Veterans' Affairs, Australian Federal Police (AFP) and the state and territory police.

- International Assistance and Specialist Agencies (IASA) — the International Assistance practice area is responsible for extradition and mutual assistance. The Specialist Agencies practice area prosecutes crimes referred by agencies that are low volume referrers, as well as being the primary practice area for referrals from the Australian Fisheries Management Authority (AFMA) and the Australian Financial Security Authority (AFSA). Crimes prosecuted by IASA are often compliance-focused.
- Organised Crime and Counter Terrorism (OCCT) — responsible for prosecuting large scale and cross border organised crime; terrorism; foreign incursions and recruitment; war crimes; sanctions offences; espionage; secrecy and unauthorised disclosure offences which concern national security; and treason. Its main referring agencies are the AFP, Australian Criminal Intelligence Commission, state and territory police and joint agency organised taskforces.
- Illegal Imports and Exports (IIE) — prosecutes drug importation offences; drug crime-related money laundering; firearms importation; tobacco importation; quarantine offences; wildlife import and export offences; and other import and export offences. Its main referring agencies are the AFP, Australian Border Force, Australian Trade and Investment Commission, Department of Agriculture, state and territory police and Australian Transaction Reports and Analysis Centre.
- Human Exploitation and Border Protection (HEBP) — concerned with people smuggling; child grooming and procuring online; child abuse and child pornography material offences by carriage service; human trafficking; sexual offences against children outside Australia; passport, visa and other migration offences; immigration detention offences; and telecommunications offences. Its main referring agencies are the Department of Home Affairs, AFP, Department of Foreign Affairs and Trade, and state and territory police.

## Appendix 4 MOUs between the CDPP and investigative agencies 1992–2019

Year of signing	Investigative agency
1992	Retirement Benefits Office
1997	Attorney-General's Department
1998	Department of Veterans' Affairs
2005	Department of Defence
	Department of Immigration and Citizenship
2006	Australian Securities and Investments Commission
2007	Director of Military Prosecutions
2012	Comcare
2013	Australian Customs and Border Protection Service
	Australian Electoral Commission
	Australian Federal Police
2014	Australian Federal Police (Proceeds of Crime Act)
	Australian Competition and Consumer Commission
2015	Australian Taxation Office (Serious Financial Crime Taskforce)
2016	Department of Foreign Affairs and Trade
	Civil Aviation Safety Authority
2017	Australian Taxation Office (Goods and Services Tax)
	Department of the Environment and Energy
2018	Department of Education and Training (Family Day Care)
	Department of Infrastructure, Regional Development and Cities (Norfolk Island)
	Office of the Registrar of Indigenous Corporations
2019	Department of Home Affairs (Illicit Tobacco Taskforce)
	Department of Human Services
	National Disability Insurance Agency (National Disability Insurance Scheme)

Source: ANAO analysis of CDPP documentation.

## Appendix 5 Complexity ratings

Complexity rating	Characteristics	Typical investigative agencies	Case management
1. Routine prosecution	Minor crimes Matters involving admissions and/or a strong prosecution case	Centrelink, ATO, DIBP <sup>91</sup> , Australia Post, ORIC	Undertaken by junior staff
2. More difficult prosecution	More serious code offences Circumstantial evidence Without admissions Search warrant involvement Moderate number of witnesses Substantial documentation	Centrelink, AFP, Great Barrier Reef Marine Park, ASIC, Australia Post, TGA, Departments of the Environment, Health, Industry, Employment and Education, ACC <sup>92</sup> , ACLEI, ACCC	Undertaken by junior staff
3. Very difficult prosecution	More complex code prosecutions Extensive fraud over many years Multiple identities and identity fraud Circumstantial evidence or difficulties in evidence Official corruption Counter terrorism Large amounts of money Asset matters Complex evidence Extensive material obtained by search warrant Prosecutions aimed at principals or organisers	Centrelink, AFP, ACC, ACLEI, ACCC, Australia Post	Undertaken by experienced staff
4. Extremely difficult prosecution	Overseas evidence Huge volumes of material Complex factual and legal issues Large amounts of money Foreign bribery	AFP, ACC	Undertaken by experienced staff

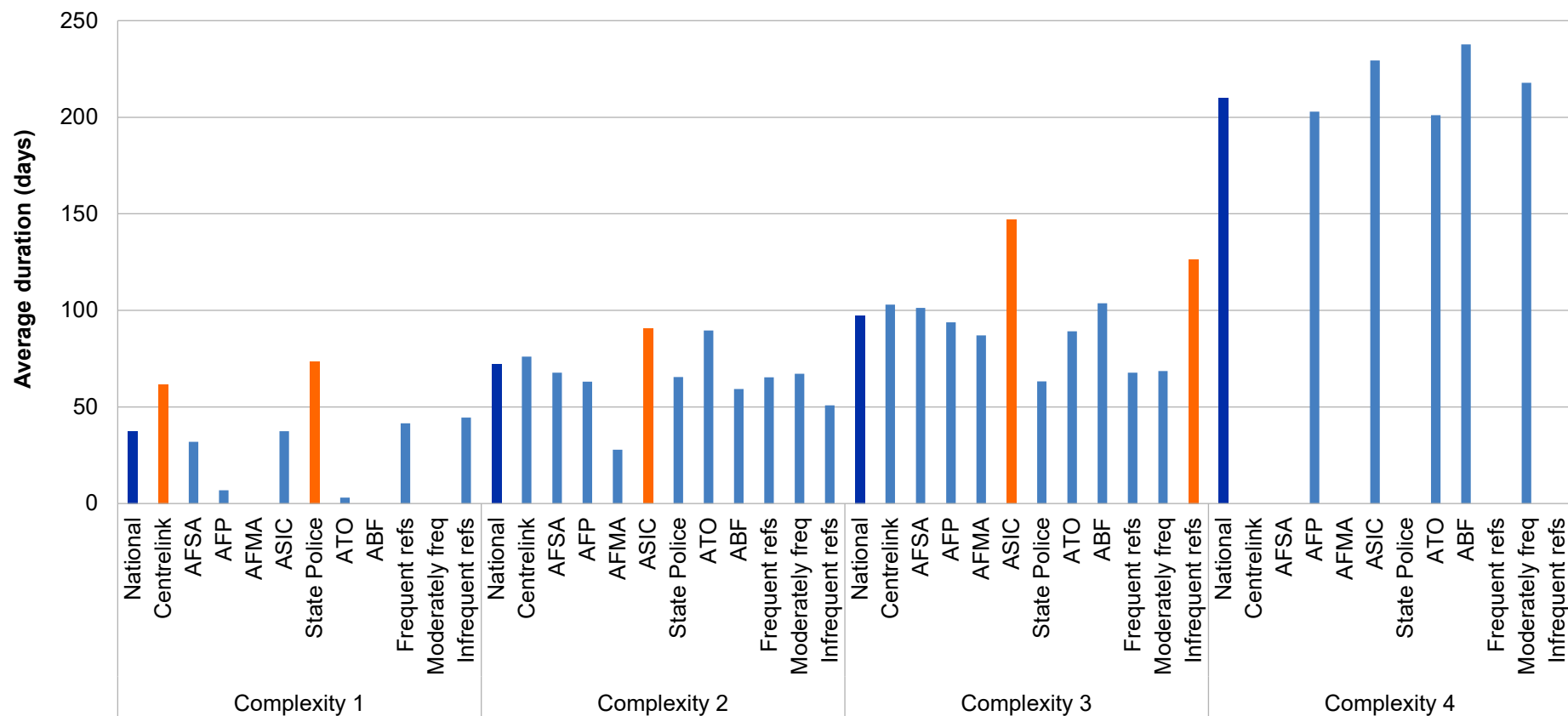
Source: ANAO analysis of Commonwealth Director of Public Prosecutions, *National Legal Direction — Complexity ratings*, CDP, 2019.

91 Now the Department of Home Affairs / Australian Border Force.

92 Now ACIC.

## Appendix 6 Duration of brief assessment phase by investigative agency

**Figure A.2: Average duration of brief assessment by investigative agency, controlling for matter complexity, 2018–19**



Note: Includes brief assessment matters completed in 2018–19. Some results are based on a very small number of matters. Orange highlights represent durations that exceed the national average for that complexity band by more than 25 per cent. Agencies are presented in order of brief assessment referral volume in the years 2015–16 to 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

## Appendix 7 International and national external benchmarks

**Table A.2: International benchmarks**

		Canada <sup>a</sup> 2017–18	England <sup>b</sup> 2018–19	Ireland <sup>d</sup> 2017	Northern Ireland <sup>e</sup> 2018–19	Scotland <sup>f</sup> 2018–19	New Zealand <sup>g</sup> 2017–18	Australia <sup>h</sup> 2017–18
Resource efficiency		Cases received: 36,873  Funding: CA\$184.5m  Staff: 1040	Cases received: 494, 811  Funding: £528m  Staff (ASL): 5,684  NIAO <sup>c</sup> (2018) — England and Wales prosecution costs: £10 per head	Cases received: 13,666  Funding: €40.9m  Staff: 195  External counsel: 40% of total expenditure	Cases received: 43,298  Funding: £36.1m  Staff: 478 FTE  External counsel: 11.1% of Crown Court cases  Decisions issued: 50,336  NIAO (2018) — Northern Ireland prosecution costs: £17 per head	Cases received: 170,575	Funding: NZ\$71m  Staff: 172 FTE (legal staff: 60%; legal support: 21%)  Prosecutions completed: 5209	
	Brief quality			Decision not to prosecute: 39%	Failed prosecution test: 31%			

		Canada <sup>a</sup> 2017–18	England <sup>b</sup> 2018–19	Ireland <sup>d</sup> 2017	Northern Ireland <sup>e</sup> 2018–19	Scotland <sup>f</sup> 2018–19	New Zealand <sup>g</sup> 2017–18	Australia <sup>h</sup> 2017–18
Efficiency driver	Profitable effort	Guilty pleas: 25,332	<p>Unsuccessful outcomes owing to witness issues (target: 27.5%; achieved: 25.9%)</p> <p>Proportion of guilty pleas at first hearing in Crown Court cases (target: &gt;41%; achieved 39.9%)</p> <p>Prosecutions withdrawn: 9.9%</p> <p>NAO (2016) — In 2014–15, the CPS spent £21.5 million on preparing cases that were not heard in court. Further, 18.2% of police charging decisions were incorrect; 38.4% of cases were not reviewed before reaching court</p>					ABS (2017–18) — 22% (2,693) of federal cases were withdrawn by the prosecution
	Individual productivity	<p>Spent a total of 1,202,719 hours working on prosecution files during the year. PPSC prosecutors and paralegals spent an additional 238,468 hours providing legal advice to investigative agencies</p> <p>High complexity cases: 290,222 Hours</p> <p>Medium Complexity: 597,522 Hours</p> <p>Low complexity: 314,760 Hours</p>					<p>Hours of public prosecution service provided: 216,999</p> <p>Average hours worked per disposed case: Crown appeals 49 hours; Accused appeals 28 hours</p>	

		Canada <sup>a</sup> 2017–18	England <sup>b</sup> 2018–19	Ireland <sup>d</sup> 2017	Northern Ireland <sup>e</sup> 2018–19	Scotland <sup>f</sup> 2018–19	New Zealand <sup>g</sup> 2017–18	Australia <sup>h</sup> 2017–18
Efficiency benefit	Timeliness	<p>Numerous cases at risk of exceeding the Jordan guidelines have been expedited through the use of direct indictments</p> <p><i>R v. Jordan</i> used to determine whether an accused was tried within a reasonable time — 18 months between the charges and the trial in a provincial court without preliminary inquiry, or 30 months in other cases</p>	<p>More timely charging decisions (target: &lt;23.1 days; achieved: 25.9 days)</p> <p>NAO (2016) — £44 million additional costs due to the increasing length of Crown Court trials</p>	<p>66% of cases decision made within 4 weeks (49% decided within 2 weeks)</p>	<p>Prosecution decisions: 2018–19 was 49.3% in 100 days and 70.8% in 180 days</p> <p>NIAO (2018) — Brief assessment equivalent take 178 days on average for PPS to assess, compared to 92 days when charges have been laid. Average number of days taken from the date a crime is reported to police until the completion of the related trial in the Crown Court in 2015–16: 515 . 12% of Crown Court cases took over 1000 days to complete between 2011–12 and 2015–16</p>	<p>77% (81% in 2014–15) of decisions made within 4 weeks</p>		<p>ABS (2017–19) court phase (federal defendants): 114.1 days (National average for defendants finalised in the Magistrates court)</p>
	Backlog	<p>In 2017–18, 29,025 files carried over from previous years</p>	<p>NAO (2016) — 34% increase in the backlog of cases in the Crown Court since between March 2013 and September 2015</p>					<p>AIC Fraud Report (2016–17): AFP new cases: increased 110%, CDPP new cases: increased 6.9%</p>
	Stakeholder satisfaction				<p>Annual Survey — 73% of those who had heard of the PPS were very or fairly confident regarding the fairness and impartiality of the Service; 67% of respondents were very or fairly confident that the PPS is effective at prosecuting people accused of committing a crime</p>		<p>Annual Survey — Overall survey rating 93% (2017: 95%), 96% (2017: 97%) rated services as good to excellent</p>	



	Canada <sup>a</sup> 2017–18	England <sup>b</sup> 2018–19	Ireland <sup>d</sup> 2017	Northern Ireland <sup>e</sup> 2018–19	Scotland <sup>f</sup> 2018–19	New Zealand <sup>g</sup> 2017–18	Australia <sup>h</sup> 2017–18
<b>Effectiveness</b>		Conviction rate: 83.7%	Conviction rate: 94%	Conviction rate: 84.4%		73% appeals concluded in favour of the Crown	

Note a: Public Prosecution Service of Canada, Annual Report 2017–18, PPSC, Canada, 2018.

Note b: Crown Prosecution Service, Annual Report and Accounts 2018–19, CPS, England, 2019.  
National Audit Office, Efficiency in the criminal justice system, NAO, England, 2016.

Note c: Northern Ireland Audit Office, Speeding up justice: avoidable delay in the criminal justice system, NIAO, Northern Ireland, 2018.

Note d: Office of the Director of Public Prosecutions, Annual Report 2017, ODPP, Ireland, 2018.

Note e: Public Prosecution Service, Annual Report and Accounts 2018–19, PPS, Northern Ireland, 2019.

Northern Ireland Audit Office, Speeding up justice: avoidable delay in the criminal justice system, NIAO, Northern Ireland, 2018.

Note f: Crown Office and Procurator Fiscal Service, Statistics [Internet], COPFS, Scotland, 2019, available from <https://www.copfs.gov.uk/publications/statistics> [accessed 18 November 2019].

Note g: Crown Law Office, Annual Report 2017–18, New Zealand Government, New Zealand, 2018.

Note h: Australian Bureau of Statistics, 4515.0 — Federal Defendants, Australia, 2017–18 [Internet], ABS, Australian Capital Territory, 2018, available from <https://www.abs.gov.au/ausstats/abs@.nsf/mf/4515.0> [accessed 18 November 2019].

Source: ANAO analysis of information available in the public domain.

**Table A.3: National benchmarks**

		ACT <sup>a</sup> 2017–18	NSW <sup>b</sup> 2017–18	NT <sup>c</sup> 2017–18	Queensland <sup>d</sup> 2017–18	SA <sup>e</sup> 2017–18	Tasmania <sup>f</sup> 2017–18	Victoria <sup>g</sup> 2017–18	WA <sup>h</sup> 2017–18
Resource efficiency		Staff: 84.5 FTE (prosecutors: 76%; legal support staff: 33%)  Cases finalised: 5,004  Total cost of prosecutions: \$14.9m	Staff: 766 FTE (solicitors: 55%; legal support staff: 31%)	Cases received: 9,686  Staff: 89 FTE (legal staff: 52%)	Charge referrals received: 50,490  Funding: \$45.78m  Staff: 392 FTE (legal officer: 27%; legal support: 38%)	Cases received: 2,025  External counsel: \$888,126 (120 matters)	Funding: \$8.6m  Persons presented to Supreme Court: 485  Summary prosecutions: 141	New briefs for high courts: 2,995  Staff: 338 FTE (legal practice: 81%)  General advice given: 5,574	Cases received: 2,826 committals  Funding: \$45.1m  Staff: 221.8 FTE  External counsel: \$1,985,286 (317 court appearances, \$6263 per brief)  Cost per Prosecution (target: \$15,000, achieved: \$14,171)
Efficiency driver	Brief quality					Briefs returned to Police: 209 (7.86%)			

		ACT <sup>a</sup> 2017–18	NSW <sup>b</sup> 2017–18	NT <sup>c</sup> 2017–18	Queensland <sup>d</sup> 2017–18	SA <sup>e</sup> 2017–18	Tasmania <sup>f</sup> 2017–18	Victoria <sup>g</sup> 2017–18	WA <sup>h</sup> 2017–18
	Profitable effort	<p>Plea of guilty after committal for trial: 76</p> <p>Plea of guilty on day of, or within a week of the trial: 16</p>	<p>4.7% withdrawn rate</p> <p>Matters resolved in early resolution: 66.3%</p> <p>L&amp;D for Early Appropriate Guilty Plea; 67 sessions, 981 attendees, 5476 hours</p> <p>‘Special callovers’ saved a total of 805 court days</p> <p>NSW Criminal Courts — charges withdrawn by prosecution (2014: 6%; 2015–2017: 5%; 2018: 4%)</p> <p>Guilty pleas after proceeding to sentence (2014–17: 61%, 2018: 62%)</p> <p>NSW Law Reform Commission (2013) — 82% guilty plea, with 61% on day of trial</p>		<p>Plea of guilty on the morning of the trial: 18%</p> <p>Early resolution: 76.5% of all finalised matters</p>	<p>Late guilty plea — Adelaide: 269 (48.37%), Circuit: 27 (38.02%)</p> <p>Partners in Performance (PIP; 2016) — 13% of finalised matters were potentially wasted (e.g. avoidable nolle, withdrawn)</p>	<p>Discharged cases: 30%</p> <p>Pleas of guilty: 49%</p>	<p>80.4% guilty pleas, of this, 79.4% achieved by committal</p> <p>1% of trials adjourned on application of the Crown</p> <p>Discontinuance per Crown Prosecutor: 17</p>	<p>247 (45.9%) trials did not proceed due to a plea of guilty by the accused either prior to, or on the day of trial</p> <p>Discontinued cases: 13%</p>
	Individual productivity					<p>PIP (2016) — Solicitor activity breakdown: 13% admin, 73% legal work and 13% getting assistance (most leveraged solicitor)</p>		<p>Advice given per Crown Prosecutor: 298</p> <p>Days in court per prosecutor: 93</p> <p>Indictments per prosecutor: 105</p>	

		ACT <sup>a</sup> 2017–18	NSW <sup>b</sup> 2017–18	NT <sup>c</sup> 2017–18	Queensland <sup>d</sup> 2017–18	SA <sup>e</sup> 2017–18	Tasmania <sup>f</sup> 2017–18	Victoria <sup>g</sup> 2017–18	WA <sup>h</sup> 2017–18
Efficiency benefit	Timeliness	46 trials prosecuted in the Supreme Court occupied 249 days of court time	The average length of trials: Supreme court (Sydney): 26.5 days Supreme Court (Regional): 12.7 days  District court (Sydney): 11.3 days		71.9% of indicted matters were signed within four months of committal	PIP (2016) — average number of days from brief receipt to resolution: 173 (range: 142–331)		The average time to complete a prosecution was 15.5 months, down from a five-year average of 19.9 months	In 2017–18 the average duration of trials: Supreme Court — 6.1 days; District Court — 4.2 days  Early Advice to Court on Charges: Indictment filed within three months of committal (Achieved 68.3; 85%)
	Backlog		District Court Registrations: 1,783. Completion: 1,627 (5-year average)  Local court Registrations: 5,864 Completion: 5,621 (5-year average)  Local court committal: received: 6,007 Completed: 5,833 (2017–18 only)  Local court summary matters: Received: 495 Completed: 495 (2017–18 only)			Briefs received: 2,025 Briefs finalised: 2,606 Current briefs: 1,645  PIP (2016) — 2013–14 (received: 2,693, finalised: 2,750, end of year balance: 1,882), 2014–15 (received: 2,977, finalised: 2,736, end of year balance: 2,090)			Perth Magistrate court — Received: 1,602 Completed: 483 Stirling Gardens Magistrate — Received: 320 Completed: 59
	Stakeholder satisfaction				Survey for victims and their families (N=52) — 86% strongly agreed that ODPP staff treated them with courtesy, compassion, respect and dignity				

	ACT <sup>a</sup> 2017–18	NSW <sup>b</sup> 2017–18	NT <sup>c</sup> 2017–18	Queensland <sup>d</sup> 2017–18	SA <sup>e</sup> 2017–18	Tasmania <sup>f</sup> 2017–18	Victoria <sup>g</sup> 2017–18	WA <sup>h</sup> 2017–18
<b>Effectiveness</b>		Conviction rate: 87.7% (findings of guilt)	Findings of guilt: 94% in Supreme Court and 97% in Local Court.	Conviction rate: 91.8%	Conviction rate — Adelaide: 64.16% Circuit: 54.12% Conviction rate (proceeded trials) — Adelaide: 46.01% Circuit: 50%	Conviction rate: 65%	Conviction rate: 91.8%	Conviction rate: 70.1% (target is 50%)

Note a: Director of Public Prosecutions, Annual Report 2017–18, DPP, Australian Capital Territory, 2018.

Note b: Office of the Director of Public Prosecutions, Annual Report 2017–18, ODPP NSW, New South Wales, 2018.

Note c: Director of Public Prosecutions Northern Territory, Annual Report 2017–18, DPP NT, Northern Territory, 2018.

Note d: Office of the Director of Public Prosecutions, Annual Report 2017–18, ODPP, Queensland, 2018.

Note e: Director of Public Prosecutions, 2017–18 Annual Report, DPP SA, South Australia, 2018.

Partners in Performance, ODPP Independent Review — Findings and Recommendations, PIP, South Australia, 2016.

Note f: Office of the Director of Public Prosecutions, Annual Report 2017–18, ODPP, Tasmania, 2018.

Note g: Director of Public Prosecutions and Office of Public Prosecutions, Annual Report 2017–18, DPP/OPP, Victoria, 2018.

Note h: Office of the Director of Public Prosecutions for the state of Western Australia, 2017–18 Annual Report, ODPP WA, Western Australia, 2018.

Source: ANAO analysis of information available in the public domain

## Appendix 8 Duration distribution of brief assessment matters

Figure A.3: Complexity one brief assessment duration, 2018–19

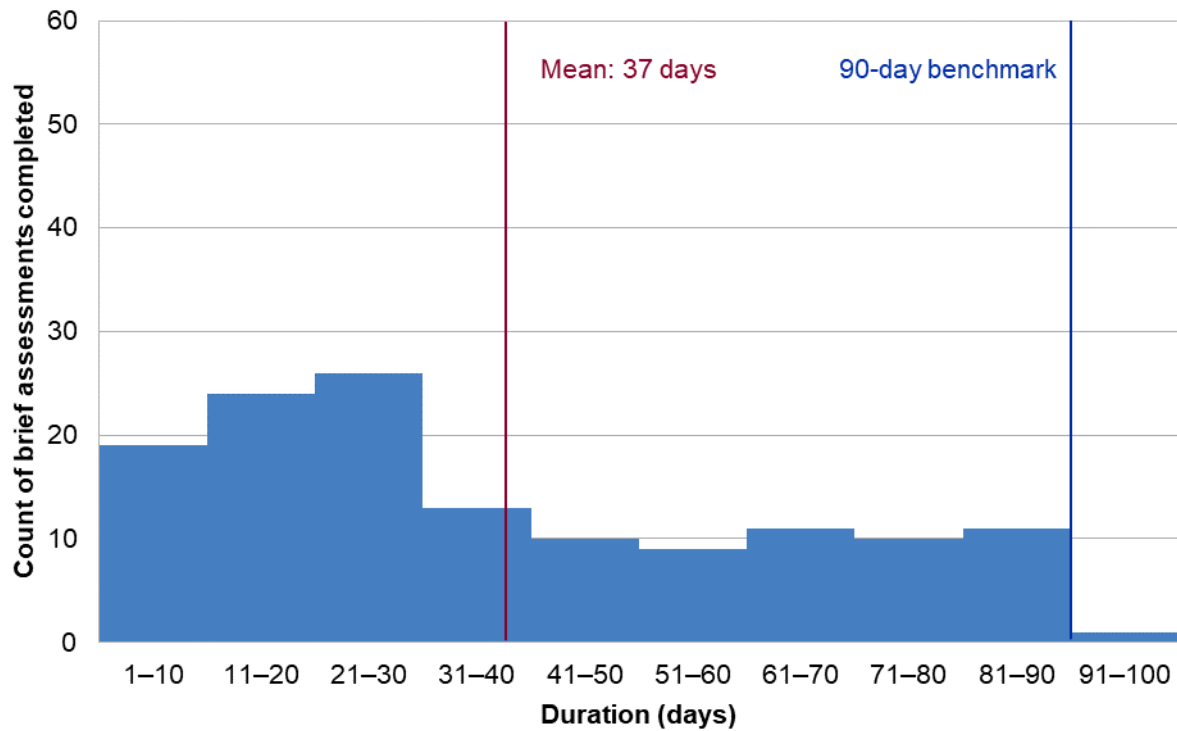
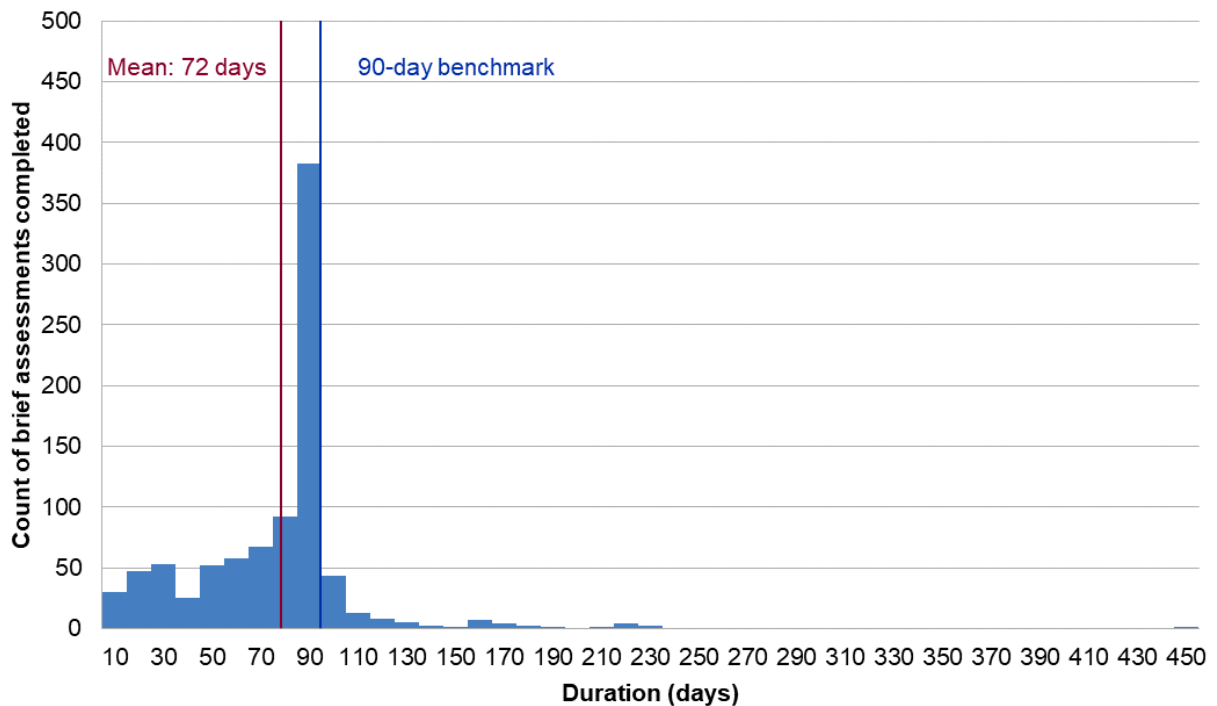
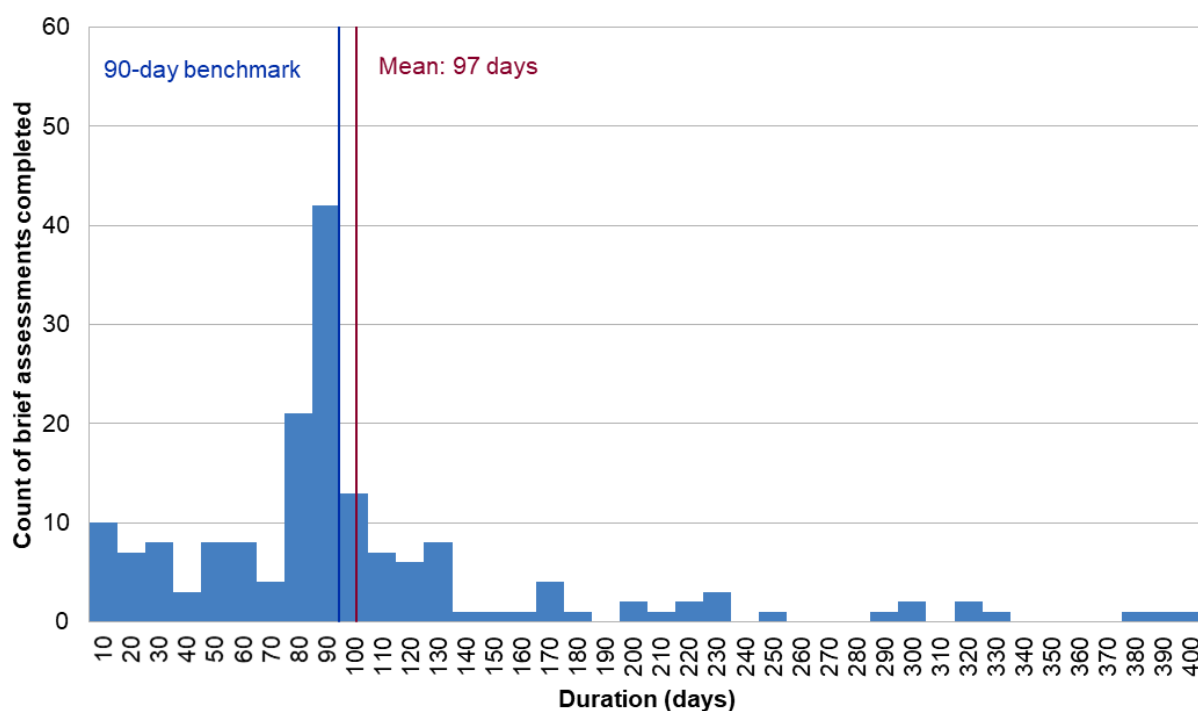
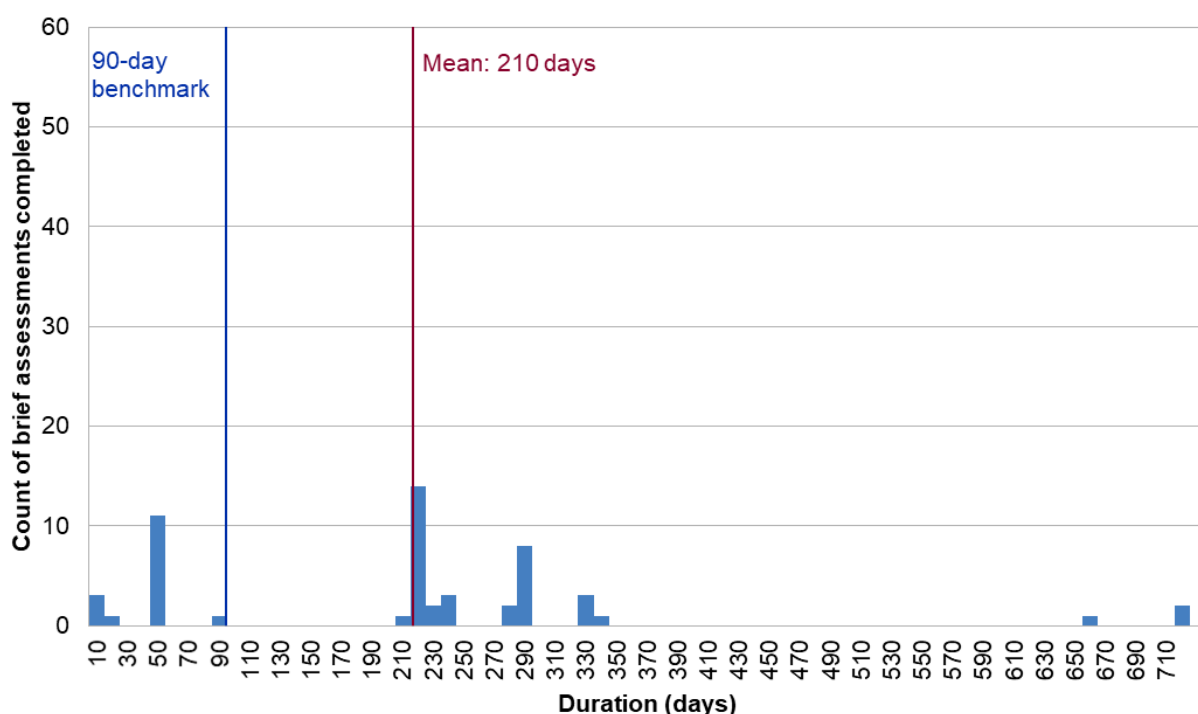


Figure A.4: Complexity two brief assessment duration, 2018–19



**Figure A.5: Complexity three brief assessment duration, 2018–19****Figure A.6: Complexity four brief assessment duration, 2018–19**

Note: Includes brief assessment matters completed in 2018–19.

Source: ANAO analysis of caseHQ and CRIMS data.

## Appendix 9     2019–20 Portfolio Budget Statement performance criteria

The CDPP's performance criteria in the 2019–20 Portfolio Budget Statement (PBS) were:

1. Prosecution policy compliance — compliance in addressing the terms of the test for prosecution in the *Prosecution Policy of the Commonwealth*, namely existence of a *prima facie* case, reasonable prospects of conviction and that prosecution is required in the public interest, when deciding to commence or continue a prosecution. (Target: 100 per cent compliance with the *Prosecution Policy of the Commonwealth*)
2. Partner Agency Satisfaction — quantitative and qualitative evidence is gathered about partner agency satisfaction with CDPP timeliness, relevance to partner agency business responsiveness and level of communication via biennial survey. (Target: 90 per cent partner agency satisfaction)
3. Prosecutions resulting in a finding of guilt:
  - (a) Total matters: The finding of guilt rate is calculated by taking the total number of defendants found guilty as a percentage of the total number of defendants found guilty or acquitted. The calculation covers both defended matters and matters where the defendant has pleaded guilty. The calculation does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before the court. (Target: 90 per cent of prosecutions resulting in a finding of guilt).
  - (b) Defended matters: The finding of guilt rate is calculated by taking the total number of defendants found guilty in defended matters as a percentage of the total number of defendants found guilty or acquitted in defended matters. A defended matter is a trial on indictment or a summary hearing/summary trial. It does not include defendants where the CDPP discontinued the prosecution against them in its entirety or where a prosecution has commenced and the defendant failed to appear before the court. (Target: 70 per cent of defended matters resulting in a finding of guilt).

Criterion 3(b) is a new criterion in 2019–20 and will be reported for the first time in the 2019–20 Annual Report.



## Appendix 10 Characteristics of appropriate performance information

1. To undertake an assessment against the Department of Finance's *Quick Reference Guide — RMG 131 Developing good performance information*, ANAO has applied the following audit criteria. This criteria has been applied for audits of performance information since Auditor-General Report No. 58 2016–17 *Implementation of the Annual Performance Statements Requirements 2015–16*. The assessment characteristics and explanations have been updated over time to reflect ANAO's methodology development.

2. In applying the 'relevant' criterion, ANAO assessed whether the entity's performance measures under review:

- clearly indicated who benefited and how they benefited from the entity's activities;
- were focused on a significant aspect/s of the entity's purpose/s, via the activity/ies, and the attribution of the entity's activities to it is clear; and
- were understandable, that is, it provided sufficient information in a clear and concise manner.

3. In applying the 'reliable' criterion, ANAO assessed whether each of the selected entities' performance measures under review were accompanied by sufficient information to be:

- measurable, that is, it used and disclosed information sources and methodologies (including a basis or baseline for measurement or assessment, for example a target or benchmark) that were fit-for-purpose; and
- free from bias, allowing for clear interpretation and an objective basis for assessment of the results.

4. In assessing the selected entities' performance criteria for completeness, ANAO considered whether the performance criteria present a basis for a collective and balanced assessment of the entity against its purpose. In particular, ANAO considered whether the selected entities' performance criteria:

- collectively address the entity's purpose through the activities identified in the corporate plan (collective);
- provide a basis for assessment of the efficiency and effectiveness of the entity in fulfilling its purpose either directly or through the use of proxies (balanced);
- rely on a mixture of quantitative and qualitative measurement bases (balanced); and
- assess a mixture of short, medium and long-term objectives (balanced).

5. The scale used to rate the performance measures:

- displayed all of the characteristics of the criterion (Yes);
- displayed most of the characteristics of the criterion (Mostly);
- displayed in part the characteristics of the criterion (Partly); and
- did not display the characteristics of the criterion (No).

**Table A.4: Criteria for the assessment of the appropriateness of performance information**

Finance guidance	Assessment characteristics		Explanation
<b>Relevant</b>	<b>Individual assessment</b>	Benefit <i>The performance criterion clearly indicates who will benefit and how they will benefit from the entity's activities.</i>	The performance criterion should explain who will benefit from the activity and how the recipient benefitted.
		Focus <i>The performance criterion should address a significant aspect/s of the purpose, via the activities.</i>	The performance criterion should assist significantly in informing whether the purpose is being achieved, and the attribution of the entity's activities to it is clear.
		Understandable <i>The performance criterion should provide sufficient information in a clear and concise manner.</i>	The performance criterion should be stated in plain English and signal the impacts of activities to inform users.
<b>Reliable</b>	<b>Individual assessment</b>	Measurable <i>The performance criterion should use and disclose information sources and methodologies that are fit for purpose.</i>	The performance criterion should be capable of being measured to demonstrate the progress of fulfilling the purpose. This includes documenting a basis or baseline for measurement or assessment, for example a target or benchmark.
		Free from Bias <i>The performance criterion should be free from bias and where possible, benchmarked against similar activities.</i>	The performance criterion should allow for clear interpretation of results and provide an objective basis for assessment.
<b>Complete</b>	<b>Overall assessment</b>	Balanced <i>The performance criteria should provide a balanced examination of the overall performance story.</i>	The performance criteria should reflect a balance of measurement types (effectiveness and efficiency), bases (quantitative and qualitative) and timeframes (short, medium and long term).
		Collective <i>The performance criteria should collectively address the purpose.</i>	The performance criteria should demonstrate the extent of achievement against the purpose through the activities identified in the corporate plan.

Source: Auditor-General Report No. 17 2018–19 *Implementation of the Annual Performance Statements Requirements 2017–18*.