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QPS AND ODPP FAILED SEXUAL OFFENCE PROSECUTIONS WORKING PARTY

TERMS OF REFERENCE

PURPOSE

The Crime and Misconduct Commission (CMC) June 2003 report '*Seeking Justice: An Inquiry into how sexual offences are handled by the Queensland Criminal Justice System*' recommended that:

The Queensland Police Service work closely with the Office of the Director of Public Prosecutions to expand the role of the Prosecution Review Committee. The role should include a review of:

- all sexual offence matters that fail at committal (whether it be the responsibility of the police or the ODPP at that stage)
- all sexual offence matters that are discontinued by the ODPP
- all sexual offence matters that fail before the higher courts (including the Court of Appeal)
- the role of the investigating/arresting officer in the matters
- the role of the police prosecutor in the matters (recommendation 10).

The CMC report recommended utilising the QPS Prosecution Review Committee network to address this recommendation. A review by the QPS and ODPP Seeking Justice Committee has determined that this approach is not achieving the intent of the recommendation and that a more effective process is required.

RESPONSIBILITIES

The QPS and ODPP Failed Sexual Offence Prosecutions Working Party (the Working Party) has the following responsibilities:

- to gather information about failed sexual offence prosecutions
- to meet on a monthly basis to discuss failed sexual offence prosecutions
- to identify systemic issues that need to be addressed by the QPS and/or the ODPP
- to provide the QPS and ODPP Seeking Justice Committee ('Seeking Justice Committee') with a written report every 12 months that contains:
 - an analysis of all failed sexual offence prosecutions for that period; and
 - recommendations for changes to prevent future failed prosecutions (if appropriate) and to enhance service delivery in both the QPS and the ODPP; and
- to provide the Seeking Justice Committee with brief statistical reports every 3 months.

WHAT IS A FAILED SEXUAL OFFENCE PROSECUTION?

A failed sexual offence prosecution means:

a person is charged with a sexual offence by the QPS; and:

- i. the charge or count relating to the offence is discontinued by the QPS or the ODPP either by offering no evidence in the Magistrates Court, a no true Bill or a nolle prosequi

- ii. the Magistrates Court finds that there is no prima facie case disclosed with respect to the charge
- iii. a Magistrate or Judge returns a not guilty verdict with respect to the charge
- iv. a Court finds there is no case to answer
- v. a Court instructs the jury to return a directed verdict of not guilty with respect to the charge
- vi. a Court stays the charge and the Judge makes some adverse comments about the quality of the police investigation and/or prosecution; or
- vii. a Court of Appeal quashes the charge and the Court of Appeal makes some adverse comments about the quality of the police investigation and/or prosecution.

A matter is not a failed sexual offence prosecution if:

- (a) the prosecution is discontinued because of the death of the accused, complainant or vital witness
- (b) the prosecution is discontinued because of a finding of the Mental Health Court that the accused is of unsound mind or permanently unfit for trial unless the Judge makes some adverse comments about the quality of the police investigation and/or prosecution
- (c) a jury acquits the defendant or is unable to decide upon a verdict unless the Judge makes some adverse comments about the quality of the police investigation and/or prosecution
- (d) a charge or indictment is amended without altering the substance of the criminal allegations unless the ODPP considers that a training issue should be brought to the attention of the QPS
- (e) an alternative charge or indictment is substituted that substantially covers the elements of the previous charge or indictment unless the ODPP considers that the amendment raises a training issue for the QPS
- (f) the prosecution is discontinued following a successful mediation; or
- (g) a plea of guilty is accepted to some charges and other charges are discontinued and/or a plea of guilty is accepted to amended or substituted charges.

'Sexual offence' means an offence defined in the Criminal Code (Qld), section 208, 209, 210, 213, 215, 216, 217, 218, 218A, 219, 221, 222, 227, 227A, 228, 228A, 228B, 228C, 228D, 229B, 323A, 323B, 363A or chapter 32.

MEMBERSHIP

The membership of the Working Party will comprise:

- Inspector, Child Safety Coordination Unit, Child Safety and Sexual Crime Group (CSSCG), State Crime Operations Command (SCOC), QPS (Chair)
- officer(s) from the Child Safety Coordination Unit, CSSCG, SCOC, QPS
- Investigator(s), CSSCG, SCOC, QPS
- officer(s) from the Learning and Development Unit, Legal Services Branch, Operations Support Command, QPS; and
- Principal Crown Prosecutor(s), ODPP.

Other officers may be asked to attend at the request of a member.

GOVERNANCE

The Working Party will report on outcomes of its meetings to:

- Detective Superintendent, CSSCG, SCOC, QPS

- Superintendent, Legal Services Branch, State Crime Operations Command, QPS;
and
- Assistant Director(s), ODPP.

MEETING FREQUENCY

The Working Party will meet on a monthly basis.

REVIEW OF TERMS OF REFERENCE

These terms of reference are to be reviewed within 12 months of being approved.