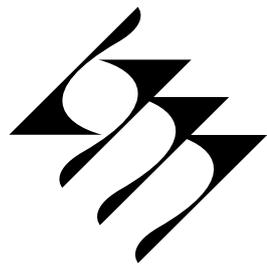


HOW THE CRIMINAL JUSTICE SYSTEM HANDLES ALLEGATIONS OF SEXUAL ABUSE

A REVIEW OF THE IMPLEMENTATION OF THE RECOMMENDATIONS
OF THE *SEEKING JUSTICE* REPORT

MARCH 2008

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

CMC vision:

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

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Dear Sirs

In accordance with section 69 of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes to each of you its report '*How the criminal justice system handles allegations of sexual abuse: a review of the implementation of the recommendations of the Seeking justice report*'. The Commission has adopted the report.

Yours faithfully



ROBERT NEEDHAM
Chairperson

FOREWORD

In September 2002, the high-profile investigation, prosecution and discontinuance of charges against swimming coach Scott Volkens generated widespread public interest in the way the Queensland criminal justice system dealt with sexual offences.

That case resulted in two key matters for the Crime and Misconduct Commission (CMC). The first involved a CMC investigation of the police investigation of the Volkens case and of the subsequent decision of the Queensland Office of the Director of Public Prosecutions to drop the charges. The second required the CMC to conduct a broader inquiry into the handling of sexual offence allegations by the Queensland criminal justice system (specifically the Queensland Police Service and the Office of the Director of Public Prosecutions).

In June 2003, the CMC presented its report — *Seeking justice: an inquiry into the handling of sexual offences by the criminal justice system* — to the Queensland Parliament in accordance with section 69 of the *Crime and Misconduct Act 2001*. That report made 23 recommendations for reform of the criminal justice system, plus a final recommendation that in two years' time the CMC review the implementation of these recommendations. The current report presents the results of that review.

The content of this report is limited to the review of the implementation of the 23 recommendations in the original *Seeking justice* report. It does not attempt to examine other issues relating to the handling of sexual offences by the criminal justice system. As most of the recommendations relate to two key agencies — the Queensland Police Service and the Office of the Director of Public Prosecutions — comments made regarding implementation relate specifically to those agencies' efforts and achievements in the reform process. In addition, the methods used to achieve these reforms, perceptions of the effectiveness of these reforms, and areas in need of further reform are discussed.

This report is provided in response to the CMC's obligation to review the progress that Queensland criminal justice agencies have made towards achieving the reforms advocated in the recommendations presented in the *Seeking justice* report.

Robert Needham
Chairperson

ACKNOWLEDGMENTS

The CMC is very grateful to the agencies and individuals from government and non-government sectors who contributed to this follow-up review. In particular, thanks are due to Inspector Jo-Anne Henderson, Detective Inspector Peter Crawford and Diane Lostroh of the Child Safety and Sexual Crime Group, Queensland Police Service, and to Paul Davey, Office of the Director of Public Prosecutions, for their valuable assistance.

This report was prepared by Dr Angela Carr and Julianne Webster, with assistance from Dr Margot Legosz.

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ABBREVIATIONS

ANCOR	Australian National Child Offender Register
CAFSA	Citizens Against False Sexual Allegations Inc.
CALD	culturally and linguistically diverse
CAP	competency acquisition program
CIB	Criminal Investigation Branch
CMC	Crime and Misconduct Commission
CPIU	Child Protection and Investigation Unit
DPP	Director of Public Prosecutions
ICARE	Interviewing Children and Recording Evidence
JAB	Juvenile Aid Bureau (now known as Child Protection and Investigation Unit)
JAG	Department of Justice and Attorney-General
LAQ	Legal Aid Queensland
MOU	memorandum of understanding
ODPP	Office of the Director of Public Prosecutions
OPM	Operational Procedures Manual (QPS)
PACT	Protect All Children Today
QLRC	Queensland Law Reform Commission
QPS	Queensland Police Service
SARC	Sexual Assault Review Committee
SCAN	Suspected Child Abuse and Neglect
SCIU	Sexual Crimes Investigation Unit
SCOC	State Crime Operations Command
VLO	Victim Liaison Officer
VSS	victim support service

SUMMARY

In June 2003 the CMC completed an inquiry into the handling of sexual offence matters by the Queensland Police Service (QPS) and the Queensland Office of the Director of Public Prosecutions (ODPP). That inquiry resulted in a report entitled *Seeking justice: an inquiry into the handling of sexual offences by the criminal justice system*. The *Seeking justice* report included 24 recommendations, 23 of which advocated changes to various processes relating to the handling of sexual offences by the QPS and the ODPP, as well as legislative considerations. The 24th recommendation was that the CMC review the implementation of the preceding 23 recommendations and report to the Queensland Parliament in two years' time. Due to a delay in the receipt of the QPS/ODPP submission to this review (received by the CMC on 10 April 2006), as well as limitations on the CMC's staff resources, it was impossible to fulfil this obligation within the timeframe specified. Nevertheless, this report completes the remaining requirements to implement that recommendation.

According to key stakeholders consulted for this review,¹ both internal and external to the QPS and the ODPP, good progress has been made in implementing most of the recommendations in the *Seeking justice* report, and in reforming the way in which sexual offences are investigated and prosecuted in Queensland. Excluding the recommendation to review the implementation of the recommendations arising from the *Seeking justice* inquiry, 13 of the *Seeking justice* recommendations had been fully implemented at the time our consultations were completed in early 2007. Most of the remaining recommendations had been at least partially implemented. Only six of the recommendations had either been rejected by the responsible agency or the government, or had failed to be implemented. A full list of the recommendations and their progress appears on pages x–xiii of this report.

It is our view that the QPS, in particular, has made significant inroads into the implementation of reforms to improve the handling of sexual offences by the criminal justice system. However, it is also apparent that the reform process (principally the training of staff) will take some time to be fully embedded throughout the QPS.

Our view, based on the joint QPS/ODPP submission tendered to us and our consultations with the ODPP, is that the ODPP has also made some progress in implementing the *Seeking justice* recommendations. However, the ODPP has experienced a number of other review processes in the last three years, and a number of the reforms made to ODPP processes are likely to have resulted from recommendations arising out of those other reviews. With regard to the *Seeking justice* recommendations, the current review has shown that the ODPP still has work to do in the following areas:

- reinstating regular meetings between senior staff of the ODPP and the QPS to discuss the progression of sexual offence matters
- training all legal staff and victim liaison staff in the nature of sexual offending
- developing and implementing procedures that will ensure that all decision-making processes are supported by relevant documentation

¹ *A cautionary note:* To undertake the review, we invited comment from a range of different agencies involved in the handling of sexual offences in the criminal justice system in Queensland. The report has, where relevant, reflected the views of these agencies. In conducting the review we did not attempt to establish unequivocally whether all the comments made to us were true and accurate; nevertheless we felt it appropriate to demonstrate the diverse opinions that exist about the implementation of the recommendations.

- clarifying procedures relating to the provision of written summaries to the QPS regarding reasons for discontinuance of sexual offence prosecution matters
- promoting consistent practices by ODPP officers regarding the provision of written summaries to QPS officers in relation to discontinuances.

It is also clear that the full implementation of the recommended changes by the QPS and the ODPP will require considerably more time than that which has expired since the *Seeking justice* report was released. Many of the required changes have not yet been fully considered and the implementation of many other changes is at an early stage. Therefore, this report concludes with two recommendations for future action to ensure that both the QPS and the ODPP remain focused on how they handle sexual offences and continue to work together to improve the system.

Recommendations

Recommendation 1

That the Director of Public Prosecutions and Commissioner of Police reconvene the ODPP/QPS Operations Committee to meet regularly and monitor the progress of each agency in implementing the outstanding *Seeking justice* recommendations for a further 18 months after the publication of this review. The ODPP/QPS Operations Committee should particularly focus on the implementation of recommendations that:

- **senior managers of the Queensland Police Service and the Office of the Director of Public Prosecutions schedule and participate in regular meetings to discuss the progress of sexual offence matters under investigation and before the courts**
- **the Office of the Director of Public Prosecutions implement specialist sexual offence training for all legal staff and Victim Liaison Officers**
- **the Queensland Police Service continue to roll out the specialist sexual offence training for officers who work with victims of sexual assault**
- **the Office of the Director of Public Prosecutions and the Queensland Police Service develop procedures to ensure that commitments made in memoranda of understanding, especially by the Office of the Director of Public Prosecutions, are reflected in internal policies, and that there are processes to ensure compliance with these policies (e.g. in relation to Part 2 of Recommendation 13 and Recommendation 15)**

Recommendation 2

That, after 18 months, the ODPP/QPS Operations Committee provide a report documenting the progress made in the intervening period to the Attorney-General and Minister for Justice and the Minister for Police and Corrective Services. A summary of the relevant details from that report should be included in the annual reports of the Office of the Director of Public Prosecutions and the Queensland Police Service.

In November 2007, the Director of Public Prosecutions and the Commissioner of Police were given draft copies of this report. The Commissioner of Police provided additional information, which has been incorporated throughout the final report. The Director of Public Prosecutions, Ms Leanne Clare, accepted the findings and agreed to turn her attention to the remaining *Seeking justice* recommendations in 2008. Ms Clare stated that the ODPP will use the results of this review to 'improve services and communication to victims of sexual assault and the cooperation and communication with other stakeholders in the justice system'.

Implementation of *Seeking justice* recommendations: summary of progress

Recommendation	Status
1 That specialist sexual offence training be required for all officers working for Taskforce Argos, the SCAN (Suspected Child Abuse and Neglect) teams, the Child and Sexual Assault Investigation Unit, the Criminal Investigation Branch and the Juvenile Aid Bureau in Brisbane and in the regions, and for police prosecutors working with sexual offences.	Partially implemented
2 That ICARE (Interviewing Children and Recording Evidence) training be required for all officers working in the specialist child sexual offence squads.	Implemented
3 That the Queensland Police Service convene an interagency/ cross-departmental working party (including representatives from the Office of the Director of Public Prosecutions, the Department of Families* and Queensland Health) to assess desirable improvements to sexual offence course content.	Implemented
4 That the Queensland Police Service's Operational Procedures Manual be rewritten to distinguish clearly between the three decision-making processes relevant to police prosecution: (i) the initial decision to lay charges, (ii) summary prosecutions and (iii) the prosecution of committal hearings for indictable matters.	Rejected; not implemented
5 That the Queensland Police Service review the recruitment, selection and rotation policies of all specialist sexual offence squads, ensuring that adequate supervision and command structures are in place and that career opportunities are provided for officers working in these squads.	Implemented
6 That the Queensland Police Service review succession-planning processes and policies for all sexual offence squads.	Implemented
7 That the Queensland Police Service review the statewide demands made by reported sexual offences on the Service to assess the most appropriate regional response. Given the high rates of reported sexual offences in Far Northern Region, establishment of a specialist sexual offence squad in that region may need to be given priority.	Implemented
8 That it be a requirement for brief checkers and brief managers of the Queensland Police Service to undergo additional relevant legal and sexual offence training, as recommended for police officers working in the specialist sexual offence units.	Implemented
9 That senior managers of the Queensland Police Service and the Office of the Director of Public Prosecutions reinstate regular meetings to discuss the progression of sexual offence matters under investigation and before the courts.	Partially implemented
10 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: <ul style="list-style-type: none"> - 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. 	Partially implemented

(Continued)

* Now the Department of Communities and the Department of Child Safety.

11	That all legal staff and Victim Liaison Officers at the Office of the Director of Public Prosecutions receive training in aspects relevant to sexual offending, such as the nature and extent of abuse, child development, the disclosure and reporting of abuse, interviewing techniques and historic cases.	Not yet implemented
12	That the Office of the Director of Public Prosecutions implement procedures to ensure that all decision-making processes are supported by relevant documentation and completed by the responsible officer.	Implemented
13	(Part 1) That, in collaboration with the Queensland Police Service, the Office of the Director of Public Prosecutions develop written policies for formal communication with police investigators and their supervisors about all sexual offence matters.	Implemented
	(Part 2) The policy should include the provision of a written summary of the reasons for decisions that are made about each case prepared by a senior legal officer of the ODPP.	Not yet implemented
14	(Part 1) That the Office of the Director of Public Prosecutions develop formal policies for communicating with complainants in sexual offence matters.	Implemented
	(Part 2) As part of these formal policies, a senior legal officer of the ODPP should be required to prepare a written summary of the reasons for decisions that are made about the case.	Rejected; not implemented
15	That the Queensland Police Service and the Office of the Director of Public Prosecutions develop and agree to formal protocols that identify who will contact the complainant about the decisions that are made in every sexual offence matter.	Implemented
16	That the Office of the Director of Public Prosecutions develop and enhance written protocols and procedures for communicating with the defence in all sexual offence matters.	Implemented
17	That the Department of Justice and the Attorney-General formally review the role and functions of Victim Liaison Officers employed by the Office of the Director of Public Prosecutions with a view to enhancing the response of the Office to complainants in sexual offence matters.	Implemented
18	That the Office of the Director of Public Prosecutions implement a complaints-handling process. In so doing, consideration should be given to established guidelines such as those developed by the Queensland Ombudsman (2003).	Implemented
19	That the current provisions in the <i>Criminal Law (Sexual Offences) Act 1978</i> (Qld) that restrict the publication of the identity of a person charged with a sexual offence be retained.	Implemented
20	That the definition of a 'prescribed sexual offence' contained in section 3 of the <i>Criminal Law (Sexual Offences) Act 1978</i> (Qld) be deleted and replaced with a new definition modelled on the definition of a 'sexual offence' that appears in section 4 of South Australia's <i>Evidence Act 1929</i> .	Rejected; not implemented
21	That section 10(3)(b) of the <i>Criminal Law (Sexual Offences) Act 1978</i> (Qld) be amended to include a prohibition on naming a person who is under investigation by the police, with the proviso that identifying information about a suspect can be released if it is necessary to ensure the safety of a person or the community and/or to help locate the suspect or the complainant or otherwise assist the investigation.	Rejected; not implemented

<p>22 (Part 1) That the Queensland Police Service amend the references in paragraph 1.10.11(xix) of the Operational Procedures Manual that relate to the name of a defendant being disclosed ‘following an appearance in open court’, so that they are consistent with the various prohibitions on naming a defendant set out in the <i>Criminal Law (Sexual Offences) Act 1978</i> (Qld). Paragraph 1.10.11(xix) should therefore read: ‘Members are not to supply information to the media that identifies a defendant charged with a “prescribed sexual offence” prior to the defendant being committed for trial or sentence’.</p>	<p>Implemented</p>
<p>(Part 2) A similar amendment should also be made to the Queensland Police Media Guidelines.</p>	<p>Partially implemented</p>
<p>23 That there be no change to the current provisions within the <i>Criminal Law (Sexual Offences) Act 1978</i> (Qld) that prohibit the publication of the identity of a person charged with a ‘prescribed sexual offence’ until the person has been committed for trial or sentence.</p>	<p>Implemented</p>
<p>24 That the Crime and Misconduct Commission review the implementation of the Commission’s recommendations arising from the Inquiry into the Handling of Sexual Offence Matters by the Criminal Justice System, and report to Parliament in two years’ time.</p>	<p>Implemented</p>

INTRODUCTION

In June 2003 the CMC released its report *Seeking justice: an inquiry into the handling of sexual offences by the criminal justice system*. That report presented the findings of a public inquiry into the effectiveness of the responses of the Queensland Police Service (QPS) and the Office of the Director of Public Prosecutions (ODPP) to allegations of sexual offences.

BACKGROUND

The *Seeking justice* inquiry was prompted in 2002 by public concern regarding the handling of sexual offence allegations made against a prominent Queensland swimming coach. Specifically, concerns were expressed about the impartiality of the investigation and prosecution processes resulting from these allegations, and about the subsequent discontinuance of charges against the alleged perpetrator. Although a separate investigation undertaken by the CMC concluded that complaints of misconduct made regarding this matter were lacking in evidence, the CMC investigation identified a number of issues regarding the quality of the original QPS investigation. Specifically, it identified issues regarding the discretion, knowledge, training, thoroughness and standard displayed in that investigation. In addition, the CMC investigation questioned the way in which the ODPP treated evidence presented by the QPS and the lawyers representing the accused, the adequacy and effectiveness of the communication between the ODPP and the complainants, and the transparency of the ODPP decision-making process.

The public inquiry that considered, more generally, the handling of sexual offence allegations by the QPS and ODPP, revealed similar concerns. These are outlined below.

Concerns regarding the QPS's handling of sexual offence allegations

In relation to the way in which the QPS handles allegations of sexual offences, the *Seeking justice* inquiry highlighted:

- the limited availability of, and poor access to, specialist sexual offence training by QPS officers working in the specialist sexual offence units
- the restrictive prerequisites for access to certain courses, which may act as barriers to appropriate training opportunities for QPS officers working with sexual offences
- the low participation rates of QPS officers working in specialist squads in the training courses overall
- concerns about the content of QPS training courses
- the need for ongoing or refresher training in the area, given constant changes in legislation, policies and procedures and what is known more generally about sexual offences.

There were also concerns expressed about the expertise of individual police officers. These concerns focused on:

- police officers' communication skills, including concerns about the negative attitudes towards sexual offence victims shown by some police, especially those working in the regions
- questionable interviewing techniques
- the adequacy of interview protocols for special-needs complainants and Indigenous complainants
- the lack of privacy in the interviewing environment
- questionable or inadequate investigation techniques, especially in relation to the gathering of evidence and the use of pretext calls²
- a range of legal matters including: the timeliness of legal advice, application of the prima facie test by police, and police prosecution at committal
- the effectiveness of QPS decision-making during the arrest process
- human resource issues for officers working in the specialist sexual offence squads, such as recruitment and rotation, succession planning and career advancement
- lack of victim support and the need for specialist victim services
- regional variability in service provision.

In line with these concerns, the inquiry also indicated the need for ongoing, quality supervision of QPS officers through both internal and external systems.

Concerns regarding the ODPP's handling of sexual offence allegations

In terms of the way in which the ODPP handled sexual offence allegations, the inquiry focused on the decision-making processes involved in determining whether to continue or discontinue prosecution. Specifically, the inquiry identified:

- the need for the ODPP to develop specialist expertise in sexual offences
- the need for better case-management practices for sexual offences, especially regarding case preparation, continuity of case representation and 'briefing out' practices
- concerns about the transparency of the decision-making process
- the need for better communication strategies: between the ODPP and the QPS, between the ODPP and complainants, and between the QPS and ODPP in communicating with complainants
- the need for greater transparency in the dealings of the ODPP with the defence, including pre-trial and trial disclosures, defence submissions to withdraw, and charge bargaining
- concerns about ODPP resourcing and workloads
- concerns about the ODPP's role in ensuring that victims' rights are respected, including the role of victim liaison officers (VLO) and the need for a complaints-handling process in the ODPP.

Implicit in many of the concerns raised in relation to both the QPS's and the ODPP's handling of sexual offence allegations was a perceived lack of close, ongoing liaison between the two agencies.

2 **Pretext call:** a telephone call, recorded by police, in which a victim confronts the accused with their allegations of abuse.

Other concerns regarding the handling of sexual offence allegations

In addition to concerns about the QPS and the ODPP, the inquiry raised questions about whether the identity of a person charged with a sexual offence should be suppressed and, if so, whether the prohibition on publication of an accused identity provided in *Criminal Law (Sexual Offences) Act 1978* was adequate. Other, more general, issues raised by the inquiry included concerns regarding:

- how the disclosure of sexual abuse occurs, how that information is received and recorded, and the general implications of disclosure within the legal framework
- whether there should be a statute of limitations for the prosecution of sexual offences — i.e. the handling of ‘historic sexual offence’ allegations³
- the general effectiveness of the committal process and, more specifically, whether committal proceedings should be conducted by police prosecutors or the ODPP
- the time taken for matters to progress through the criminal justice system and the potential impact of these delays on the victims and the accused
- the need for more victim support throughout the criminal justice process
- the adequacy of the resources available within the criminal justice system for handling sexual offences.

SEEKING JUSTICE RECOMMENDATIONS

In response to the results of the *Seeking justice* inquiry, the CMC made 24 recommendations (see report summary) aimed at improving the way in which the QPS and the ODPP investigate and prosecute sexual offences. These recommendations were specifically targeted towards:

- improving the collection and dissemination of evidence, including interview material, for the prosecution of sexual offences
- reducing the stress associated with the criminal justice process for victims and the accused
- enhancing the timeliness of the decision-making process to discontinue or continue matters
- enhancing community confidence in the fairness and objectivity of the process
- enhancing court proceedings by having better-prepared police briefs and earlier legal advice.

The purpose of the current report is to review the progress made by the QPS and the ODPP in implementing the recommendations of the *Seeking justice* report. This review and report are also part of the implementation process, specifically relating to Recommendation 24 of the *Seeking justice* report, which is:

That the Crime and Misconduct Commission review the implementation of the Commission’s recommendations arising from the Inquiry into the Handling of Sexual Offence Matters by the Criminal Justice System, and report to Parliament in two years time.

A full evaluation of the extent to which the recommendations have achieved their ultimate aims has not been conducted. To do so would require robust research that measures changes in levels of stress and confidence among victims of sexual abuse and their representatives over time, as well as changes in the timeliness and quality

3 ‘Historic sexual offences’, or historical sexual offences, are offences not reported immediately after the offence takes place, but reported some time later (e.g. an offence against a child that is not reported until the victim becomes an adult).

of police briefs, legal advice, decision-making processes and court proceedings. As not all of the recommendations have yet been implemented, the results of such a study would undoubtedly be misleading and certainly beyond the scope of Recommendation 24.

METHODS

The review of the implementation of the *Seeking justice* recommendations involved the analysis of written submissions and other information provided by government and non-government stakeholders, as well as consultations with key senior representatives from relevant government and non-government agencies. During these consultations other key representatives, including representatives from regional areas, were often identified. Where possible these individuals were contacted and offered the opportunity to provide comments to the review regarding the implementation process.⁴

The review was not conducted as a public inquiry and did not examine any new issues associated with the handling of sexual offences by the criminal justice system. Instead, it focused on the implementation of the recommendations made in the *Seeking justice* report, so far.

To undertake the review, we invited comment from a range of different agencies involved in the handling of sexual offences in the criminal justice system in Queensland (including the Queensland Police Service, the Office of the Director of Public Prosecutions, victim support and advocacy agencies, and Legal Aid Queensland). In response to this invitation, a number of submissions were received; we also consulted widely with representatives of these agencies face to face.

We spoke to senior ranking officers and representatives from each of the agencies. For example, of the QPS officers consulted, five were Inspectors or Detective Inspectors, one was a Detective Senior Sergeant, one was a Sergeant, and one was a plain clothes Senior Constable. In addition, two civilian QPS employees were consulted. One of these was a senior policy officer and one was a staff development officer. All of the QPS staff who were consulted were employed in the Child Protection and Investigation Unit, the Criminal Investigation Branch, or the State Crimes Operations Command Child Safety and Sexual Crimes Group, or were training officers for these specialist units. Due to resource limitations we focused our consultations on officers based in South East Queensland. However, given the concerns raised during the *Seeking justice* inquiry regarding the management of sexual crime investigations and prosecutions in North Queensland, we also included three officers from the Northern and Far Northern QPS regions. In view of the senior rank of the QPS officers consulted during this review, and the ease with which they could be identified if their rank were to be matched with their organisational work units and locations, we refer only to the QPS region of the officers in our discussion.

Of the ODPP officers consulted, two were legal practice managers, one was a principal Crown prosecutor, one was a Crown prosecutor, one was a deputy Crown prosecutor, and one was a senior member of the executive. Again, consultation with the ODPP focused on officers based in South East Queensland, but three of the officers were based in the Northern and Far Northern regions.

⁴ Comments made during consultations with the CMC were made in confidence; therefore every effort has been made to protect the confidentiality of this information, unless permission has been acquired.

Our consultations with LAQ included two senior legal staff. Similarly, our choice of victim support representatives focused on coordinators, directors and presidents of agencies that participated in the original *Seeking justice* inquiry. (These individuals were often accompanied by other operational staff during the consultations.) The vast majority of individuals consulted for this review had also been consulted during the original inquiry.

After receiving some submissions to our review from victim support agencies, we initially consulted representatives of these agencies in October 2005. However, consultations with QPS and ODPP staff (and with LAQ staff) were delayed until after receipt of the QPS and ODPP submission (and consideration of the contents of the submission by an available research officer). The joint QPS/ODPP submission was received by the CMC on 13 April 2006.⁵ By that time the CMC research officer originally assigned to the review (in March 2005) had been assigned to another project. The review was then further delayed until August 2006 when another staff member became available. Consequently, consultations with the QPS, ODPP and LAQ took place between August and November 2006.⁶ Representatives from victim support agencies were then 're-consulted' (between November 2006 and February 2007)⁷ to check whether their views had changed in the intervening 12-month period.

The report has, where relevant, reflected the views of these agencies. In conducting the review we did not attempt to establish unequivocally whether all the comments made to us were true and accurate; nevertheless we felt it appropriate to demonstrate the diverse opinions that exist about the implementation of the recommendations of the *Seeking justice* inquiry. In presenting the different stakeholder groups' views, it is our intention to provide a balance between what has been reported by the agency responsible for implementing the recommendations and the perceptions of other stakeholders involved in the handling of sexual offences in the criminal justice system in Queensland.⁸

5 The QPS disputes this timeline. In their response to the draft report of the review of the *Seeking justice* recommendations (30 November 2007), the QPS argues that 'a joint QPS and ODPP response was forwarded to the CMC in November 2005'. The CMC received the joint response from the Office of the Attorney-General and Minister for Justice together with an introductory letter dated 10 April 2006. This letter states that the 'joint response has been considered and approved by the Honourable Peter Beattie MP, Premier of Queensland'. In its response to the draft report of the *Seeking justice* review, the QPS states that 'before the joint ODPP/QPS response [to the review] was finalised, both agencies [the QPS and ODPP] were involved in presenting an Information Submission and a Policy Submission to Cabinet and a submission to the Cabinet Budget Review Committee'. However, the QPS makes no mention of a review by the Premier of Queensland. We understand that the joint QPS and ODPP response was sent to the Premier during November 2005 and remained there for an extended period of time before being approved and transferred to the Office of the Attorney-General and Minister for Justice for consideration and release.

6 In addition, in September 2006 the CMC provided the ODPP with a list of follow-up questions to their submission to the review. The decision to provide this list was undertaken in response to early consultations demonstrating significant inconsistencies between the views expressed in the submission and the views expressed by individual ODPP staff. In December 2006, the CMC received a written response to these questions from the ODPP. In November 2007, both the ODPP and the QPS were provided with drafts of the final report of the review of the *Seeking justice* recommendations. In response both agencies provided feedback to the CMC. The feedback provided by the QPS included updates to some of the documentation and figures presented and discussed in this review. The contents of the responses provided by the QPS and ODPP are incorporated in the following discussion of the results of this review.

7 This process was further delayed by the unavailability of some victim support representatives and research staff during the December/January period.

8 Appendix A provides a list of the submissions that were provided to the review of the *Seeking justice* recommendations and a list of the stakeholders who were consulted during the review process.

REPORT OUTLINE

Chapter 2 of this report describes progress towards the implementation of the *Seeking justice* recommendations that pertained solely to the activities of the QPS. Specifically, it covers:

- specialist training for QPS officers (Recommendations 1, 2, 3 and 8)
- amendment of the QPS Operational Procedures Manual (OPM) (Recommendation 4)
- review of recruitment, selection, ongoing psychological monitoring, rotation and succession planning of QPS personnel (Recommendations 5 and 6)
- review of statewide policing demands, particularly in the Far Northern Region (Recommendation 7).

Chapter 3 reviews progress towards the implementation of recommendations concerning collaboration and communication between the QPS and the ODPP (Recommendations 9 and 10).

Chapter 4 describes progress towards the implementation of the *Seeking justice* recommendations that pertained solely to the activities of the ODPP. Specifically, it covers:

- training of ODPP staff (Recommendation 11)
- procedures of the ODPP (Recommendations 12, 13, 14, 15, 16 and 18)
- review of the role and functions of the ODPP's victim liaison officers (VLOs) (Recommendation 17).

Finally, Chapter 5 considers progress towards the implementation of the *Seeking justice* recommendations that related to sexual offences legislation, legislation pertaining to the publication of the identity of a person accused of a sexual offence, and associated QPS procedures and guidelines (Recommendations 19, 20, 21, 22 and 23).

Each of these chapters also presents the views of representatives from the ODPP, QPS, Legal Aid Queensland (LAQ) and victim support agencies regarding the impact of any changes made since the publication of *Seeking justice*, as well as these agencies' suggestions for future improvements to the investigation and prosecution of sexual offences.⁹ Furthermore, where recommendations have not been fully implemented, in most cases an explanation from the relevant agency is provided.

Chapter 6 concludes the report with a discussion of the implementation process to date and recommendations for further action.

⁹ During our consultations, representatives of the QPS, the ODPP, LAQ and victim support agencies put forward a number of suggestions for improving the handling of sexual offences by the criminal justice system. It was not the purpose of this review to provide recommendations for further improvements to the way in which the criminal justice system handles sexual offence matters. However, consideration of these suggestions revealed that, in many cases, representatives from different stakeholder groups expressed similar ideas for future development.

RECOMMENDATIONS PERTAINING PRIMARILY TO THE QPS

This chapter documents and discusses the responses received from the QPS, the ODPP, LAQ and various agencies that represent victims of sexual offences in relation to the progress the QPS has made towards achieving the *Seeking justice* recommendations that pertained primarily to QPS business. These responses and the associated discussions are considered under four topics:

- specialist training for QPS officers (Recommendations 1, 2, 3 and 8)
- amendment of the QPS Operational Procedures Manual (Recommendation 4)
- review of recruitment, selection, ongoing psychological monitoring, rotation and succession planning of QPS personnel (Recommendations 5 and 6)
- review of statewide policing demands, particularly in the Far Northern Region (Recommendation 7).

SPECIALIST TRAINING FOR QPS OFFICERS

Recommendations 1, 2, 3 and 8

Recommendations 1, 2, 3 and 8 dealt with the training of police officers and the convening of an interagency/cross-departmental working party aimed at improving training resources. It is important to note, however, that recommendations arising from a subsequent CMC inquiry regarding the government's response to child safety concerns (*Protecting children, 2004*) also impacted on police training and that, as stated in the joint QPS/ODPP submission, collectively 'there is an undeniable nexus between the *Seeking justice* report and the *Protecting children* report regarding the provision of specialist training on sexual offence matters'.

Recommendation 1: That specialist sexual offence training be required for all officers working for Taskforce Argos, the SCAN (Suspected Child Abuse and Neglect) teams, the Child and Sexual Assault Investigation Unit, the Criminal Investigation Branch and the Juvenile Aid Bureau in Brisbane and in the regions, and for police prosecutors working with sexual offences.

Status: Partially implemented

Recommendation 2: That ICARE (Interviewing Children and Recording Evidence) training be required for all officers working in the specialist child sexual offence squads.

Status: Implemented

Recommendation 3: That the Queensland Police Service convene an interagency/ cross-departmental working party (including representatives from the Office of the Director of Public Prosecutions, the Department of Families¹⁰ and Queensland Health) to assess desirable improvements to sexual offence course content.

Status: Implemented

Recommendation 8: That it be a requirement for brief checkers and brief managers of the Queensland Police Service to undergo additional relevant legal and sexual offence training, as recommended for police officers working in the specialist sexual offence units.

Status: Implemented

QPS response

On 27 January 2005 an interagency focus group comprising representatives from a range of government and non-government stakeholder groups (including senior academics with specialist expertise in the area of sexual crimes) was convened for the purpose of revising the existing Sexual Offences and Juvenile Aid training courses to address the issues identified in the *Seeking justice* report. Subsequently, a new QPS training framework was developed.

The new training framework includes both new and revised training courses that have been specifically designed for officers who investigate and prosecute sexual offences. It also provides the opportunity for non-sexual offence specialist officers to increase their skills and knowledge in sexual offence investigation and prosecution.

The training framework includes (1) the Understanding Sexual Crime course, which encompasses several different types of learning processes and (2) Interviewing Children and Recording Evidence (ICARE), Child Protection and Investigation Unit (CPIU)¹¹ and brief checkers training. Each of these is described below.

(1) Understanding Sexual Crime course

Responding to Sexual Crimes On-line Learning Product

This product is compulsory for all QPS officers up to, and including, the rank of Inspector and is available on the QPS intranet. It provides specific advice to officers about sexual assault victims in general, young victims, drink-spiking, date-rape, male partner sexual assault, culturally and linguistically diverse (CALD) victims, disabled victims, sex workers, Indigenous Australian victims and elderly victims. The information provided to officers includes a list of victim support agencies and information links.

Sexual Offences Legislation unit of the Competency Acquisition Program

This unit is delivered through self-directed completion of Competency Acquisition Program (CAP) booklets. CAP units are available to all QPS officers and are undertaken on a voluntary basis. Completion provides a mechanism for individual QPS officers to progress through the QPS pay-points system. The Sexual Offences Legislation CAP Unit includes an overview of sexual assault; the Queensland Government's response to sexual assault; the Criminal Code provisions — offences against morality, rape and sexual offences, and other Criminal Code offences;

10 Now the Department of Communities and the Department of Child Safety.

11 Formerly Juvenile Aid Bureau (JAB).

consent and criminal responsibility; and case law relevant to the preliminary complaint.

Sexual Offences Investigation unit of the Competency Acquisition Program

This CAP unit includes information about the investigation process (including the roles and responsibilities of the first response officer and the designated investigator; sexual offending behaviours, the special needs of victims; specialist cognitive interview techniques to maximise memory retrieval of the subject person etc.) as well as information for the investigator about their own stress management when handling these types of cases.

Understanding Sexual Crimes training

This training requires face-to-face training for a period of five days. It builds on knowledge gained by participants who have completed the Responding to Sexual Crimes On-line Learning Product and the two CAP units (Sexual Offences Legislation and Sexual Offences Investigation). The objectives of the course are to provide officers with an understanding of the context and dynamics of sexual offences, including the investigator's perspective, the victim's perspective and the suspect's perspective. The Understanding Sexual Crimes training is compulsory for all plain clothes officers from the rank of Constable to Senior Sergeant who perform investigative duties. It is targeted at police officers working in the CPIU, Criminal Investigation Branch (CIB), as well as Suspected Child Abuse and Neglect (SCAN) and State Crime Operations Command (SCOC) staff. The QPS has indicated that approximately 1500 police officers will undertake the workshop in 75 sessions over a three-year period.

(2) ICARE, CPIU and brief checkers training

Brief checkers training

The QPS has reported that all brief checkers and prosecutors will also be trained in the revised CAP and on-line sexual offences training units (available since 1 July 2005) through self-paced learning.

ICARE training

Between August 2003 and February 2004 the ICARE training program was also redesigned. The ICARE interviewing model promotes 'child focused' interviewing encompassing a free narrative approach, that essentially allows the child to talk as much as possible. The QPS submission to the *Seeking justice* review states that the ICARE program is now 'an evidence-based program founded on internationally recognised best practice in forensic interviewing of children and young people' (QPS submission, p. 11). Specific modifications made to the original ICARE program (pp. 11–12) include:

- removal of all elective sessions (all sessions are now compulsory)
- incorporation of material in relation to:
 - interviewing children and young people from an Aboriginal or Torres Strait Islander community (multiple sessions)
 - working with adolescents
 - the child complainant's experience of the criminal justice system
 - links between child abuse and domestic and family violence
 - interviewing children in relation to multiple incidents of abuse as opposed to a single incident
 - interviewing children with a disability or from a non-English speaking background
- incorporation of 25 additional case scenarios used in role-plays

- production of new high-quality trainer and participant manuals
- a new pre-course training package
- reduction in the number of course participants from 40 per course to 20 per course.

The revised ICARE training package also includes specific consideration of the:

- dynamics of child sexual abuse
- causes and effects of child sexual abuse
- prosecution of child sexual abuse cases, emphasising:
 - children's evidence/testimony
 - managing a child's safety and wellbeing after the interview
 - interviewing Indigenous children.

The ICARE training program is available to specialist plain clothes QPS officers working in child protection. In 2003–04, 110 officers from the QPS and the Department of Child Safety received training and 40 received training in 2004–05. It was anticipated that from 2005 to 2006 it would be necessary to deliver 15 ICARE programs per annum. Officers who require refresher ICARE training are eligible to undertake the revised ICARE course.

CPIU training

The training curriculum for the CPIU has been revised to eliminate any overlap with the new sexual offences training courses. The new CPIU workshop comprises a CAP unit (Juvenile Justice), two child protection CAP units (Law and Procedures; Investigations and Issues), the two sexual offence CAP units (Legislation; Investigation) and 80 hours of CPIU workshops. The first workshop was conducted on 3 October 2005 with 25 participants. The rollout of this training is ongoing and the course will be available to all police officers working in the CPIU.

The number of sworn police officers who completed the above courses during 2005–07 is presented in Table 1 (facing page).

Other QPS training initiatives

Along with changes to the training products and processes that were specifically identified in the *Seeking justice* recommendations, the QPS has updated and developed new training in the following related areas:

- Child Protection Reforms: On-line Awareness Training Product (compulsory for all police up to and including the level of Inspector)
- SCAN On-line Learning Product (compulsory for all SCAN representatives, SCOC, JAG and regional domestic violence liaison officers)
- SCAN representative workshop (all SCAN representatives)
- Systems Preview and Disk Acquisition (SPADA) software training (Taskforce Argos, CPIU, CIB)
- Australian National Child Offender Register (ANCOR) on-line training product (available to all police)
- ANCOR 'train-the-trainer' training: Legislation and Database (CPIU, some regional CIB, intelligence officers and regional education and training officers)
- On-Line Covert Engagement Course targeting computer-facilitated crimes against children. (This includes a Task Force Argos on-line team and training being delivered by Task Force Argos to interstate police, the Australian Customs Service and the Australian Federal Police's On-line Child Sexual Exploitation Team.)

Table 1. Number of sworn police officers, by QPS region, who completed training that contained subject matter relating to sexual offences between 1 July 2005 and 30 June 2006

Command/region	Sexual offences legislation (CAP book)	Understanding sexual crimes training	Brief checkers course	Sexual offences investigation (CAP book)	Basic prosecuting (CAP book)	ICARE course	Revised JAB (CPIU) course
Central Region	68	42	37	66	13	38	16
CMC	2	1	–	1	2	1	–
Ethical Standards Command	5	1	1	5	–	–	–
Far Northern Region	101	43	–	103	13	34	18
Human Resource Division	16	4	5	15	6	2	–
Information Management Division	2	–	–	2	–	–	–
Metro North Region	135	91	60	132	20	36	18
Metro South Region	132	84	5	135	21	36	15
North Coast Region	127	47	40	132	29	35	22
Northern Region	86	39	16	77	14	28	13
Operations Support command	12	1	20	12	25	2	–
South Eastern Region	143	85	46	140	29	32	15
Southern Region	142	60	55	137	18	29	13
State Crime Operations Command	299	114	27	297	9	38	6
Total officers	1270	612	312	1254	199	311	136

Note: Data were extracted from QPS Advance system 26 November 2007. Region/command information reflects where officers are currently stationed, not where they were stationed at the time they undertook training.

At the time of its submission to this review, the QPS had conducted ‘train the trainer’ courses for the ANCOR and was developing a policy regarding this training. In their feedback to the draft review of the *Seeking justice* recommendations, the QPS noted (p. 4) that:

The ‘Train the Trainer’ courses are continuing; the policy has been finalised; training has been delivered to every district; and training will be ongoing so that officers moving into CPIUs and CIBs are appropriately trained to undertake responsibilities in this area.

Police perceptions of the training initiatives

In their response to the draft review report, the QPS reported (p. 4) that:

Analysis of ongoing evaluation data captured over the previous two year period [1 July 2005 to 30 June 2007] indicates that over 93 per cent of 945 participants attending the Understanding Sexual Crimes Training rated the training as either ‘somewhat valuable or very valuable’ overall. The assessment of these units includes activities, applied exercises and a unit test. Additionally, direct comments provided by participants over this two year period suggest the significant majority have gained valuable and useful learning and stated a commitment to improved work place practices after completing the training.

During consultations in regional Queensland for this review, QPS officers also stated that, since the publication of *Seeking justice* and the development of the new sexual offences training programs, the proportion of matters that they were able to 'get before the court' had increased. However, they commented that the increase in cases before the courts had put a strain on court resources and, in some areas, had led to longer delays in matters proceeding through prosecution. (An objective assessment of these perceptions was not conducted.)

The Responding to Sexual Crimes On-line Learning Product, Sexual Offences Legislation CAP Unit and the Sexual Offences Investigation CAP Unit have not yet been evaluated. However, some regionally based QPS officers consulted for this review expressed concerns regarding their uptake and utility. For example, during consultation one senior officer from the Far Northern QPS region stated that he was not convinced that the sexual crimes awareness package was being completed by those who most needed to increase their awareness about the nature and dynamics of sexual crime. Rather, he believed that those who chose to complete the CAP units and the on-line learning product tended to be those who were already well versed on these issues. Of course, as pointed out in feedback received from the QPS on 30 November 2007, this statement does not negate the value of refreshing and updating the knowledge of police officers who are already interested in issues associated with the investigation and prosecution of sexual crimes. However, given the problems that the Far Northern region commonly faces in retaining experienced police officers (discussed later in this report), these comments suggest that additional emphasis needs to be placed on increasing the skills and knowledge of officers in that region who are new to these issues.

Some QPS officers commented that, due to recent policy and legislative reforms, police are inundated with training opportunities and simply do not have the time to complete them all. They also queried the self-paced nature of some of the products. Indeed, some officers indicated that police tend to be ambivalent about the content of on-line learning products and may use information gained from other officers' experiences with these products, rather than the products themselves, to pass associated CAP units.

It was suggested that the level of interest in these training opportunities shown by senior police officers could impact on the level of interest among police officers. Indeed, one senior QPS officer (from the Northern Region) commented specifically on the need for a change in the attitude of some CIB officers and the role that leadership could play in facilitating this change. In line with this comment, one of the senior CIB officers consulted for this review commented that he did not think CIB officers actually needed ICARE training. Other police officers lamented the difficulties in balancing policing and training responsibilities in small regional stations, and the need for more ICARE-trained police in these locations. In their response to the draft report, however, the QPS emphasised that most CIB officers in regional locations are ICARE trained.

Senior police officers working in the Northern and Far Northern regions commented on the 'Brisbane-centric' nature of police policy and training in the area of sexual offences investigation and prevention. In turn, it was suggested that regional differences needed to be acknowledged in the training package and that a separate training package ought to be developed specifically for the investigation of allegations of sexual offences in Indigenous communities. In response to this suggestion, the feedback provided by the QPS emphasises (p. 5):

... Officers working in Indigenous communities are required to undertake cultural awareness training as part of the Cultural Appreciation Project which provides culturally appropriate in-service training to members of the QPS.

The comments made by the senior officers consulted for this review appear to suggest, however, that the diversity of Indigenous communities in Queensland means that one such product may not meet the needs of all officers working in all Indigenous communities and, most notably, those working in the highly specialised area of sexual crimes.

Regarding procedural guidelines to prevent untrained police from conducting interviews with child victims of sexual assault (interviews conducted under section 93A of the Queensland *Evidence Act 1977*),¹² the QPS has indicated that the policy (a) provides a list of officers who are recommended to investigate child sexual crime and (b) states that, in the absence of a trained officer being available (such as in a remote or isolated location), it may sometimes be necessary for untrained officers to conduct interviews regarding alleged sexual offences. This policy acknowledges the importance of having trained police officers to conduct interviews with child victims of sexual assault; however, it concedes that this may not be possible in all situations. Specifically, section 7.6.2, 'Responsibility for investigation of child harm', of the Operational Procedures Manual (OPM) states:

Unless valid reasons exist, the responsibility for the investigation of child harm complaints rests with:

- (i) where a CPIU is established in a district, an officer from that unit; or
- (ii) where a CPIU does not exist, an officer from the local CIB; or
- (iii) in the metropolitan area (excluding the areas covered by the Petrie CPIU and Inala CPIU), upon the determination of a detective inspector, Child Safety and Sexual Crime Group.

Furthermore, section 7.9.3, 'Procedures for interviewing a child', of the OPM states:

Where a need arises to interview a child under 16 years or a child who is sixteen or seventeen years who is a special witness in relation to allegations of harm to a child an officer who has completed the ICARE course or any other course approved by the Officer in Charge, Child Safety and Sexual Crime Group, should, where practicable, conduct the interview with the child.

Finally, individual QPS officers consulted for this review emphasised the need for all child protection staff (including staff from the Department of Child Safety) to be ICARE trained. One senior officer (Far Northern Region) also suggested that, in addition to the primarily victim-focused training that currently exists, the QPS should develop training regarding police monitoring of sex offenders in high-risk communities (e.g. how to identify these individuals and minimise risk, and how to assess and monitor offenders — especially Indigenous offenders in remote communities).

In response to this comment, the QPS stated that 'in response to the risk that certain convicted offenders will reoffend, the Service has policies in place and training has been provided with regards to these policies.' These policies were developed as part of the QPS response to the *Child Protection (Offender Reporting) Act 2004*. The QPS acknowledges further policies and training will need to be developed in readiness for the enactment and commencement of the Child

12 A s. 93A statement is the direct evidence of a child or an intellectually impaired person that is recorded by police and presented to court in lieu of the child or intellectually impaired person actually giving that evidence in court. The s. 93A statement is usually presented in the form of a video interview between police and the child or intellectually impaired person, but it can also be in the form of a written statement. The prosecution will tender the s. 93A statement to the court as that witness's evidence in chief; however, that witness may still be cross-examined on the contents of the interview. For a person to be deemed a child under s. 93A they must be:

- under 16 years when the statement was made, or
- 16 years or 17 years old at the time the statement was made and be a special witness at the time of the proceedings (a special witness is defined in s. 21A of the Evidence Act).

Protection (Offender Prohibition Order) Bill 2007. It should be noted, however, that this is outside the scope of the *Seeking justice* recommendations.

While the QPS has clearly developed and implemented policies in relation to sex offenders, the focus of the comment regarding the need for police training in assessing and monitoring offender risk was on Indigenous offenders in remote communities. Currently there are no validated tests specifically designed for assessing the risk of Indigenous sex offenders who live in remote communities. Most common tests of sex offender recidivism perform poorly on this population (Allen & Dawson 2004; McSherry, Keyzer & Freiberg 2006; Mercadoa & Ogloff 2006). We agree, however, that further discussion of this issue is outside the scope of the *Seeking justice* recommendations.

ODPP response

Consultation with representatives of the ODPP from four Queensland regions suggested that there had been some positive changes in the quality of police briefs since the rollout of the new police training framework and, specifically, the revised ICARE training. However, perceptions of the levels of improvement varied considerably throughout the regions. The improvements in police briefs were attributed to improvements in interviewing techniques and therefore the comprehensiveness of evidence collected. Collectively, the ODPP expressed the view that until all officers had completed the training, overall and consistent benefits would not be seen in this area.

Individual ODPP officers expressed concern that ongoing police training emphasise the importance of:

- (1) particularising the details of sexual offences
- (2) carefully balancing the need for repeated or 'interrogative' interviewing of child witnesses with the potential negative effects of these strategies and taking preventative action to avoid the need for the former
- (3) ensuring that all questions asked of witnesses are admissible
- (4) ensuring that cases referred for prosecution are 'robust' and likely to withstand examination in the criminal justice context.

In relation to the last point regarding the need for 'robustness', a senior Brisbane-based ODPP employee made the following comment:

I recently had another juvenile file in relation to which the details of the complaint were internally inconsistent and then inconsistent again with a second interview conducted with the complainant. It appears that the second interview was conducted because the investigating officer (in my view, understandably) did not believe the complainant and wanted to clarify points. The second interview simply made the believability of the complainant's account harder to accept. I have a strong feeling that police took the view that they will simply charge and let the DPP deal with it.

Victim support agency responses

Representatives from agencies working with victims of sexual offences reported that since the publication of the *Seeking justice* report they had observed a number of positive changes in the response of the specialist QPS units working in the sexual crimes area. Many of these changes were attributed to the collaboration between the QPS and other government and non-government agencies during the development of the QPS sexual offences training package. Specifically, it was suggested that this collaboration had resulted in improvements in the relationships between the collaborating agencies, increased referrals by specialist QPS officers to services that provided support to victims of sexual offences and increased QPS commitment to specialist training.

In addition, the knowledge gained through the development and dissemination of the sexual offences training package was said to have had a direct impact on the outcomes of sexual offence investigations completed in the intervening period. Representatives from agencies working with victims of sexual offences reported improvements in the way that police interview and question victims of sexual offences, in their skill in particularising the details of sexual offences, and in the likelihood that sexual offence cases would 'make it through the committals process'. It was also observed that there had been more 'successes in the past few years' and that clients of some victim support agencies were 'happier' with the service that they received from the QPS.

The support from the police is such that some people don't need anything else. They are treated with respect and don't feel like their decisions are dismissed. (Victim support representative, consultation)

Despite these comments, many representatives from agencies working with victims of sexual offences identified the need for further improvement in the communication skills of police working 'at the coal face'. These concerns were particularly directed at non-specialist (uniformed) police units. The *Seeking justice* report did not make any recommendations regarding the training of general duties non-specialist police. However, as noted by representatives from victim support agencies, non-specialist (uniformed) police are often the first point of contact for adult sexual offence victims and survivors of childhood sexual offences, and the quality and responsiveness of this contact could determine whether adult victims and survivors have enough confidence in the criminal justice system to proceed with a sexual offence complaint. These representatives also commented that non-specialist police often failed to provide sexual offence complainants with information explaining the investigation and prosecution process (including information about potential barriers that they may face during this process) or to keep complainants informed of developments and impediments in the investigation and prosecution of their individual allegations.

While it is beyond the scope of this review to consider whether general duties or non-specialist police should be required to undertake specialist sexual offences training (as opposed to the current voluntary arrangement), we believe these comments are noteworthy. However, we recognise that, on top of their regular duties, general duties or non-specialist police are already subject to significant general training requirements. Therefore, requiring them to undertake additional specialist sexual offences training may be a challenging option.

In line with their concerns about non-specialist QPS units, victim support representatives stated that, in their view, the QPS response to adult victims of sexual abuse and survivors of past sexual abuse had shown less improvement than the QPS response to child victims of sexual offences. Although many victim support representatives indicated that the establishment of a Brisbane-based specialist unit to manage historical allegations of sexual abuse had increased the effectiveness of the QPS response to these types of complaints, it was also their view that very little change had occurred in the police response to historical allegations occurring outside South-East Queensland. Furthermore, it was suggested that in some cases historical complaints did not appear to have been transferred to the new unit. One victim support representative cited the case of a complainant in a historical case who had been waiting more than two years for the QPS to progress her case. In response to this assessment, the QPS stated that:

It should first be noted that police investigative resources are limited and if a choice needs to be made between investigating an allegation that a child has recently been harmed and is currently at risk versus an historical sexual offence complaint, the police will always choose to investigate the matter involving the child who is currently at risk. Second, historical sexual offence

complaints are generally very difficult and complex to investigate. Historical cases are often lengthy investigations and evidence can be difficult to obtain, especially where witnesses have moved to unknown locations, or in some cases are deceased.

LAQ response

While Brisbane-based LAQ staff acknowledged that the training activities implemented for police were designed to improve and maintain skill levels, LAQ staff reported that they continue to encounter instances where police investigations of sexual offences have been less than adequate. One example provided was where investigating police had not recorded (either by video or audio) child complainant statements under section 93A of the *Evidence Act 1977*.

In response to this example, the QPS stated that there are often quite valid reasons why it is not possible to video or audio record a child's statement. A senior QPS officer from the QPS Northern Region, for example, reported 'issues' with the local court facilities that significantly impeded QPS officers' willingness or ability to record children's evidence in that environment. As a result, officers had to use other facilities where child witnesses would be less likely to be exposed to defendants. However, such facilities are not always available and are considered to be less than appropriate. Generally, all the QPS officers we consulted were in favour of always recording children's evidence. At least one of these officers was also in favour of recording the evidence of adult victims of sexual offences.

Other examples of recent 'less than adequate' police investigations (and associated processes) provided by Brisbane LAQ staff included:

- a case where a mother was clearly shown to have 'led' and 'prompted' her child when police were obtaining the child's statement of evidence
- a case where police took photographs of female genitalia that were not related to injuries sustained through sexual assault and sent copies of these to LAQ with the complainant's statement
- cases of police 'overcharging' in sexual offence matters rather than selecting charges consistent with the available evidence
- cases where police officers openly admitted to defence counsel that the complainant's evidence was inconsistent
- occasional cases where police omitted to provide evidence to the defence because it was not considered to be from 'an expert'.

In their response to the draft report of the findings of the *Seeking justice* review, the QPS questioned LAQ's comments. They argued that LAQ had not provided sufficient details regarding either the number or locations of their examples, or the nature of perceived inadequacies in sexual offence investigations. It is our view that the issues are worth raising and that, even if these examples are the product of a few isolated and highly irregular events, they provide a useful reference for ongoing police training in the area of the investigation and prosecution of sexual offences.

In further consultations with LAQ in 2006, Brisbane-based staff conceded that 'slow and steady improvements had been made' as a result of police training. However LAQ staff commented that there are still many inconsistencies, particularly in relation to the types of evidence collected by police in sexual offence matters and the provision of this evidence to LAQ.

AMENDMENT OF QPS OPERATIONAL PROCEDURES MANUAL

Recommendation 4

Recommendation 4 refers to clarifying procedures for police prosecution of accused sexual offenders.

Recommendation 4: That the Queensland Police Service's Operational Procedures Manual be rewritten to distinguish clearly between the three decision-making processes relevant to police prosecution: (i) the initial decision to lay charges, (ii) summary prosecutions and (iii) the prosecution of committal hearings for indictable matters.

Status: Rejected; not implemented

QPS response

The QPS rejected this recommendation, claiming that any changes made to the current processes would have an adverse impact on the workload and resources of the QPS, the ODPP and the courts. It was claimed that 'by directing investigating officers not to consider key factors such as the admissibility of evidence, reliability of evidence, possible defences, competency of witnesses and availability of witnesses', the number of charges and committal hearings for sexual offences would increase significantly, but the rate of successful prosecutions would decrease. Other potential consequences identified included significant delays in the investigation, prosecution and court processes.

The decision by the QPS not to implement this recommendation was supported by the ODPP. A Cabinet submission detailing the decision to reject this recommendation and the reason for this decision were endorsed by Cabinet in February 2005.

Victim support agency response

Recommendation 4 of *Seeking justice* was intended to enhance police decision-making in determining which sexual offence matters should be prosecuted and which matters should be discontinued. Despite rejection of this recommendation by the QPS, representatives from victim support agencies believed that police decision-making practices had changed since the recommendation was made. They indicated that police are now less likely to try to dissuade victims of sexual offences from making complaints and more likely to believe and support them through the criminal justice process. Representatives from victim support agencies viewed this development positively.

LAQ response

LAQ representatives also noted an increased reluctance by police to discontinue sexual offence matters. In its 2005 submission to the CMC, LAQ commented on the timeliness of decision-making in sexual offence matters.

Neither the police nor the ODPP are prepared to make the politically and socially difficult decision to discontinue a prosecution in sexual abuse matters, particularly those involving children — unless there is something very special about the accused ... even though the police or the ODPP realise the deficiencies of a particular case, they are protected from fall-out by letting it run to trial. (LAQ submission to the *Seeking justice* review, p. 2)

Generally, LAQ's perception was that there had been an increased emphasis on the rights of complainants in sexual offence cases since the release of the *Seeking justice* report, and this changed emphasis might be adversely affecting the rights of defendants.

REVIEW OF RECRUITMENT, SELECTION, MONITORING, ROTATION AND SUCCESSION PLANNING OF QPS PERSONNEL

Recommendations 5 and 6

Recommendations 5 and 6 relate to various human resource issues associated with sexual offence squads in the QPS.

Recommendation 5: That the Queensland Police Service review the recruitment, selection and rotation policies of all specialist sexual offence squads, ensuring that adequate supervision and command structures are in place and that career opportunities are provided for officers working in these squads.

Status: Implemented

Recommendation 6: That the Queensland Police Service review succession-planning processes and policies for all sexual offence squads.

Status: Implemented

QPS response

In the joint QPS/ODPP submission to the *Seeking justice* review (p. 15) the QPS states that:

A number of significant changes have been, and are continuing to be, made within the QPS that are contributing to the enhancement of the recruitment, selection, rotation, succession-planning and career opportunities of officers working in the CPIU and specialist sexual offence squads.

In June 2004, the QPS created a new Child Safety Coordination Unit within the Child Safety and Sexual Crimes Group of the QPS. In 2005, psychological testing and monitoring of all officers employed in the unit became mandatory. The psychological assessment policy requires all officers to be subjected to an initial assessment when they join the unit and follow-up assessments every 12 months thereafter.

In December 2005, an independent evaluation by Deakin University found that the psychological assessment policy and its associated processes provided a number of benefits, including:

- a comprehensive evaluation of officers' psychological wellbeing
- increased likelihood of selecting officers who are able to cope with the work
- increased likelihood of identifying individuals experiencing work-related psychological distress and ensuring that appropriate assistance is provided in a timely manner.

The QPS is also in the process of undertaking some initiatives within the Child Safety and Sexual Crime Group to improve the overall wellbeing and productivity of its members. For example, in 2008 personnel within the group will undertake a skills-based, psycho-educational, coping skills training program developed by Queensland University of Technology — Promoting Adult Resilience for Police. Also in 2008, in collaboration with Griffith University and all other Australian

police agencies, the QPS will take the lead in applying to the Australian Research Council for a Linkage Grant to investigate the psychological impact of viewing child exploitation material for officers required to view such material.

Regions are also currently considering the implementation of a range of strategies that have been trialled within the Child Safety and Sexual Crime Group of the State Crime Operations Command.

The QPS no longer has a mandatory rotation policy for officers working in the sexual offences investigation area; however, after three years' service officers are encouraged to relieve in other policing areas. If, at any stage during an officer's tenure with the unit, the officer or a manager believes that the officer is not coping with aspects of the work, police management will work with the officer to provide alternative duties or assist with the officer's relocation.

The QPS also established an additional 100 plain clothes/detective positions throughout the regions between 2004 and 2006. This has significantly improved the career paths available for officers working in the area of sexual offences investigation. The creation of 19 additional positions in SCAN (Suspected Child Abuse and Neglect) teams (11 senior sergeants and 8 sergeants) has provided further opportunities, as well as the bolstering of resources and the creation of senior positions in the CPIU. The QPS notes that, as well as additional police positions, an additional 36 administration officers at AO2 level were established during 2005–06 to support CPIUs and SCAN team representatives.

QPS officers consulted for this review commented favourably on the introduction of the new psychological supervision and testing program, the changes to the staff rotation policy and the enhanced career options provided for staff working in the area of sexual offences. The QPS component of the joint QPS/ODPP submission states that staff interest in the new specialist and senior specialist positions is high, and that 216 applications were received 'for the first round of 28 constable/senior constable CPIU positions, which were advertised on 1 October 2004' (p. 15).

Victim support agency responses

Representatives from agencies that support child victims of sexual offences recognised and commented favourably on the changes to the QPS rotation policies that had resulted from the *Seeking justice* recommendations. They emphasised the importance of being able to call on established contacts within the QPS to help them progress their client's allegations through the criminal justice system. These representatives believed that allowing specialist police to remain in their positions after the initial three-year placement period had reduced the amount of time and energy that victim support agencies needed to invest in forming relationships with new police staff.

A number of representatives from victim support agencies commented that police in specialist sexual offence investigation units are particularly effective because they possess the knowledge, experience and contacts needed to support each other and to support victims of sexual offences. This knowledge and experience, and associated contacts, was perceived to 'take years' to acquire. In turn, victim support representatives stated that retaining specialist police in their positions greatly enhances the capacity of the QPS to meet the needs of victims of sexual offences.

Victim support representatives generally supported the introduction of the new QPS psychological testing and monitoring program for officers involved in the investigation of sexual offences.

REVIEW OF STATEWIDE POLICING DEMANDS, PARTICULARLY IN THE FAR NORTHERN REGION

Recommendation 7

Recommendation 7 deals with reviewing the regional demands made on police resources in responding to reported sexual offences.

Recommendation 7: That the Queensland Police Service review the statewide demands made by reported sexual offences on the Service to assess the most appropriate regional response. Given the high rates of reported sexual offences in Far Northern Region, establishment of a specialist sexual offence squad in that Region may need to be given priority.

Status: Implemented

QPS response

In a review of CPIUs' capacity to respond to sexual offences, the QPS assessed all regions, with the exception of Far Northern Queensland, as satisfactory. Nevertheless, in the joint QPS/ODPP submission to the review of the *Seeking justice* inquiry the QPS states that a further 100 police officers have been allocated to the current CPIUs throughout Queensland to enable them to deliver a timely response to reported sexual offences.¹³

The Far Northern Region has a higher proportion of reported sexual offences than in other regions — 87.1 per 100 000 of population compared to the average rate of 52.2 per 100 000 elsewhere in the state. In response, the QPS allocated 15 of the 100 new CPIU positions established between 2004 and 2006 to the Far Northern Region. Of these, eight were allocated to the Cairns CPIU to support the establishment of the 'sexual offenders squad and provide growth in the child protection area'. The remaining seven new CPIU positions, together with a further 12 District Resources Growth positions were allocated to CPIU and CIB roles in Innisfail, Mareeba, Thursday Island, Weipa, Cooktown and Cairns. An additional Senior Sergeant position has also been created out of district growth funding, and allocated to SCAN.

The introduction of these positions has doubled the strength of the Cairns CPIU and greatly increased the capacity of a number of other CPIU and CIB services in the region. Furthermore, in the joint QPS/ODPP submission to the *Seeking justice* review (p. 20), the QPS state that 'sufficient funding has been allocated for ... increased use of the police air wing, to ensure the regional support functions can be applied when required'.

The QPS also established an Adult Sexual Offences Squad within the Cairns CPIU. According to the feedback from the QPS (p. 10), this unit was intended to:

... investigate historical child sex offences and sexual offences committed upon child and adult special needs victims, for example, intellectually impaired, culturally and linguistically diverse people.

However, the QPS also states that:

Since 2004, the workload of the CPIU has substantially increased and consequently many of the sexual offences that were previously investigated [by this unit] are now overseen by the officer-in-charge of the CPIU. Support is provided by the CPIU, but some investigations are undertaken by local investigators. This applies especially for areas covered [by the] CIBs in Mossman, Cooktown and Weipa.

¹³ As mentioned previously, during 2005–06 an additional 36 administration officers at AO2 level were established to support CPIUs, and 19 SCAN positions have been allocated.

The CIB retains the role of investigating other sexual offences perpetrated against adults.

Consultations with senior police indicated that, although all QPS districts had CPIU services, in some divisions within certain districts CIB officers were still the main providers of services to child victims of sexual offences. These divisions are: Ayr, Biloela, Blackwater, Bowen, Charleville (CPIU officers based in Cunnamulla are sometimes called to assist), Charters Towers, Cloncurry, Cooktown (Cairns CPIU has lead role, CIB assists), Edmonton, Emerald, Gatton, Goondiwindi (CIB covers minor issues, otherwise the Warwick CPIU officer is called in), Moranbah (Mackay CPIU called; CIB do not cover CPIU work), Mossman, Normanton, Palm Island, Sarina (CIB can cover but will call Mackay CPIU for major and historical cases), Stanthorpe (CIB calls Warwick CPIU who decides if CIB will deal with the case), Tully (CIB cover if Innisfail CPIU are not available) and Yeppoon.¹⁴

The QPS officers who were consulted for this review stated that the retention of specialist and ICARE-trained police officers in rural and remote communities was a significant problem, with few staying in these locations for more than two or three years. They commented that the lack of support services in these locations contributed to high levels of police burnout and advocated for increased investment in the provision of such services. In the Far Northern Region, QPS officers commented specifically on the remoteness of some rural communities and the difficulties that police faced in trying to balance the interests of victims of sexual offences with the limited resources available to them.

In feedback to the draft *Seeking justice* review, the QPS confirmed (p. 9) that 'officers do not stay more than two or three years in rural and remote areas'. However, they emphasised that 'CIB officers in these areas are on two-year tenures and high proportions are ICARE trained'.

During consultation, Far Northern QPS officers also stated that although the increased police numbers in their region were welcomed, and had been accompanied by an increased number of complaints of sexual offences, they believed that the corresponding lack of increase in court and child safety resources in the area reduced the positive impact of these changes. They referred to a 'bottleneck' in the court and child safety system. This 'bottleneck' was perceived to be the cause of delays in prosecution and, consequently, in either the withdrawal of allegations by complainants or further offending by the defendant. In turn, QPS officers in Far Northern Queensland advocated further investment in courts and child safety resources in remote communities.

Victim support agency response

Victim support representatives who made submissions to and/or were consulted for the *Seeking justice* review commented on regional and sub-regional differences in the quality and capacity of the QPS response to sexual offences. In particular they expressed concern for the lack of specialist QPS services in rural Queensland and the relative unresponsiveness of police to victims of sexual offences in these areas. In districts where the investigation and prosecution of sexual offences continued to be the domain of the CIB, representatives from these agencies reported that they had noticed very little positive change in the quality of associated processes.

14 In their response to the draft report of the *Seeking justice* review, the QPS stated (p. 9) that:

The QPS would like to stress, where CIBs are identified as providing CPIU services, this should not be interpreted as a negative point ... as CIB officers are highly trained and have considerable investigative expertise to deal with child protection cases.

In one such district alone, a victim support representative was able to cite several examples of CIB investigation practice (and associated processes) that she believed needed improvement. For example:

A client who was raped at night in her home gave details to the police in the morning after the attacker left, advising the officer that the perpetrator was almost his size. The police officer asked, 'Are you sure? I could not fit through there.' (The attacker came through a toilet window, although the client was unaware of this at that point in time). At a time of extreme trauma, this almost caused the client to doubt her own description. When caught, her description was shown to be accurate. However, the officer could have jeopardised his own investigation.

Clients are continually advising [us] that they consider not proceeding with the case because they think the police do not care. I continually tell police that to engage the commitment of a client both in the short and long term, they must tell them in advance what is going to happen, tell them their rights ... this is never done properly ... update them on their case, advise them of possible lengthy delays, let them know when a new officer is handling their case, etc. [They are] not aware of the effects on the victim of seeing the perpetrator or being in close proximity.

Police usually come from the position of not believing a victim (unless she has obvious physical injuries or is older or appears respectable). If a victim is young, drunk, Indigenous, etc. it is more difficult to be heard with empathy ... One client was walking home as her husband had left earlier to take the kids home and she stayed as it was her friend's birthday. She was raped after being confronted by a group of young men, and when reporting was asked by a CIB officer, 'Are you sure you didn't just have sex with someone and now you feel guilty because you are going home to hubby?' ... We then had to work on her healing from the rape and also the attitude by an officer of the law she put her trust in to assist her.

Notably, one of the senior CIB officers consulted for this review commented that there are good reasons for police to experience at least some measure of doubt regarding many sexual assault allegations that are reported to them. He reported that 'of 28 allegations of rape since the beginning of the year, only one has progressed to the Magistrates Court. Others are recorded as unsubstantiated or discontinued in the stats. Most of these are young women alleging they have been drugged then raped but are actually drunk ... CIB has never had a positive drug test yet.'

We note, however, that the original *Seeking justice* inquiry indicated the necessity for investigating officers to wait until the investigation is complete before drawing, or communicating, conclusions about the motives of complainants.

Representatives from agencies involved in supporting victims of sexual offences also argued that the policing of sexual offences in Indigenous communities had remained unchanged since the *Seeking justice* inquiry. They argued that additional resources needed to be invested in building relationships between Indigenous people and police in these areas, and in the provision of services to support Indigenous people through the reporting, investigation and prosecution processes. They also advocated the development of on-call arrangements to facilitate remote access to specialist police units.

CHAPTER SUMMARY

The QPS has both reviewed existing training and developed a number of new training initiatives targeting sexual offences and child protection investigation. This training has been developed in consultation with victim support groups and academics with expertise in the area. The training courses and on-line packages, including CAP books, are comprehensive and provide specialist training to

officers investigating sexual offences. The QPS has dedicated significant resources to effectively roll out sexual offence training throughout the state and is clearly committed to improving the way in which sexual offences are dealt with by the criminal justice system.

The QPS has also been trialling a psychological testing and supervision model for police working in the highly sensitive and specialised area of sexual offences investigation. After the results of the trial evaluation are known, QPS management will consider the appropriateness of a statewide rollout. Attention has also been given to boosting police numbers in the sexual offence investigation areas in Brisbane and throughout the regions, which in turn has helped to make the CPIU a more appealing career path.

The QPS has reviewed the statewide demands on its officers, particularly in relation to the investigation and prosecution of sexual offence matters and child protection matters. All regions except for the Far Northern Region, encompassing the major centre of Cairns, were judged as having satisfactory resources to deal with the number and complexity of sexual offence matters reported. As discussed, the QPS has created the Cairns Sexual Offenders Squad, and substantially boosted staff numbers in the CPIU and CIB across the state.

The QPS rejected the recommendation that changes be made to the Queensland Police Service's Operational Procedures Manual to distinguish clearly between the three decision-making processes relevant to police prosecutions.

Consultation with representatives from agencies involved in supporting victims of sexual offences suggested that, since the publication of the *Seeking justice* report, improvements have occurred in the way that the QPS investigates sexual offences. Specifically, these individuals identified improvements in the interview skills and support provided to victims of sexual offences by specialist police units and task forces and increased numbers of sexual offence matters proceeding beyond committal. They also described improvements in the relationship between members of these units and victim support services, including increased referrals by police to these services. Representatives from victim support agencies attributed many of these improvements to the development and implementation of effective specialist sexual offences training for QPS officers, particularly those working in specialist sexual offences investigation units.

Improvements in the QPS response to sexual offences were not as commonly noted by victim support representatives working in regional Queensland or working with adult victims and survivors of sexual offences as they were by victim support representatives working with children. Representatives from victim support agencies suggested that these differences may be due to the fact that adult victims and victims in regional Queensland are less likely to have access to specialist QPS officers and more likely to have to deal with uniformed, non-specialist QPS officers. The new QPS specialist sexual offences training framework does not provide opportunities for non-specialist QPS officers to participate in intensive, workshop-based training. Instead, the sexual offences training offered to non-specialist officers requires self-directed study and most of it is voluntary. Victim support representatives suggested that it should be mandatory for all police to undertake the same level and intensity of sexual offences training. However, it is recognised that non-specialist police are required to engage in a significant amount of training each year, covering a wide range of offences and legislation, and that this suggestion may not be feasible. We suggest that it may be advisable for the QPS to review the level of participation of non-specialist police in the sexual offences training options available to them, and/or to modify these training options to provide a more intensive and interactive training experience.

Victim support representatives commented favourably on the change in QPS rotation and retention policies for specialist officers.

LAQ staff observed slow but steady improvement in police investigation skills resulting from the training implemented by the QPS since the *Seeking justice* inquiry. However, they suggested that there was still room for significant improvement. In particular, their comments suggest a need for increased training in:

- determining the most appropriate charges for an offence
- when to lay charges (and when not to)
- appropriate communication and disclosure to the defence
- ensuring that the evidence of child witnesses is not influenced by adult caregivers.

LAQ staff also questioned whether increased police willingness to pursue sexual offence allegations was disadvantaging defendants of these allegations.

RECOMMENDATIONS PERTAINING PRIMARILY TO COMMUNICATION BETWEEN THE QPS AND THE ODPP

This chapter documents and discusses the responses received from the QPS, the ODPP, LAQ and various agencies that represent victims of sexual offences in relation to the progress towards achieving the *Seeking justice* recommendations that pertained primarily to communication between the QPS and the ODPP. Specifically, they focus on progress towards the achievement of Recommendations 9 and 10 of the *Seeking justice* report.

IMPROVING COMMUNICATIONS BETWEEN THE QPS AND ODPP

Recommendations 9 and 10

Recommendations 9 and 10 focus on improving the communication between the QPS and the ODPP, including expanding the role of the Prosecution Review Committee.

Recommendation 9: That senior managers of the Queensland Police Service and the Office of the Director of Public Prosecutions reinstate regular meetings to discuss the progression of sexual offence matters under investigation and before the courts.

Status: Partially implemented

ODPP and QPS response

The joint QPS/ODPP submission received by the CMC stated that, since July 2003, senior Brisbane-based QPS and ODPP officers have been meeting every two months to 'ensure effective communication in relation to all matters' (p. 21) and 'to identify problems in the relationship between the QPS and ODPP' (p. 22). These meetings were reported to be facilitated through the QPS/ODPP operations committee. The submission indicated that the QPS/ODPP operations committee does not limit its discussion to sexual offence matters. However, 'issues relating to the investigation and prosecution of sexual offences are a standing item' on the QPS/ODPP operations committee agenda (p. 22).

The joint QPS/ODPP submission also states that in July 2005 the ODPP and the QPS signed a memorandum of understanding (MOU) requiring regional ODPP and QPS officers to develop regional operations committees within 12 months of the MOU being issued.

It was intended that these regional committees would be located in the regional offices at Beenleigh, Cairns, Ipswich, Maroochydore, Rockhampton, Southport and Townsville. However, during follow-up consultations in late 2006, senior ODPP and QPS officers based in a number of these regions stated that they were not aware of the existence of a local operations committee. During the same period, Brisbane-based QPS officers commented that, while the QPS/ODPP operations committee provided an opportunity for QPS and ODPP officers to meet and raise issues regarding 'what is working or not working between the DPP and QPS', no such forum existed in regional Queensland. Instead, regionally based officers

were expected to provide feedback to the Brisbane-based QPS officers for review at the Brisbane-based operations committee. However, in November 2007, the QPS informed the CMC that the Brisbane-based QPS/ODPP operations committee had not met during 2007. They stated that a meeting scheduled for February 2007 had been postponed by the ODPP and, 'despite the QPS approaching the ODPP several times to set a new meeting time, no meetings [had] occurred'.

Consultations undertaken by the CMC suggest that, in the absence of regular QPS/ODPP operations committee meetings, the ODPP and QPS have few other means to formally raise issues associated with the investigation and prosecution of sexual offences. Regionally based QPS officers stated that they maintained good relationships with the ODPP officers in their areas and were able to meet with them as needed. However, these meetings tended to be case-specific and therefore unlikely to influence the policies and procedures of the two agencies.

Recommendation 10: 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.

Status: Partially implemented

ODPP and QPS response

Regarding Recommendation 10, the joint QPS/ODPP submission advised that a report detailing an internal review of the ODPP was released in May 2004, and the review had made some recommendations relevant to Recommendation 10 of the *Seeking justice* report. Specifically, it recommended that the ODPP and the QPS clarify their relationship by working together to develop a brief-preparation guide, and that the ODPP 'take the lead in developing ODPP participation in the QPS Failed Prosecution Committees (referred to in the *Seeking justice* report as the Prosecution Review Committees)' (p. 23).¹⁵

The joint QPS/ODPP submission also stated that the QPS and the ODPP have developed procedures to facilitate ODPP participation in the QPS Prosecution Review Committees. Between January and June 2005 a trial of ODPP participation in the Brisbane Prosecution Review Committee was undertaken. This trial involved the QPS Prosecution Review Committee considering information from the ODPP with respect to all prosecutions of sexual offences where a jury did not return a verdict. As stated in the joint QPS/ODPP submission (p. 23), the ODPP and the QPS agreed that a relevant failed prosecution occurs when:

- (a) a person is charged with a sexual offence by the QPS; and
- (b) the prosecution for the relevant offence is dealt with by the Brisbane office of the ODPP; and

¹⁵ The joint QPS/ODPP submission to the *Seeking justice* review also refers to failed-prosecution committees as prosecution review committees. Therefore, in the remainder of this document, the terms failed-prosecution committees and prosecution review committees are interchangeable.

- (c) a jury does not return a verdict on an offence because:¹⁶
- i the charge or count relating to the offence is discontinued by the ODPP either by offering no evidence in the Magistrates Court, a No True Bill or a Nolle Prosequi; or
 - ii the magistrate finds that there is no prima facie case disclosed with respect to the charge;
 - iii a magistrate returns a not guilty verdict with respect to a charge;
 - iv a court finds there is no case to answer with respect to a charge;
 - v a court instructs a jury to return a directed verdict of not guilty with respect to a charge; or
 - vi a court stays the charge.¹⁷

According to the joint QPS/ODPP submission, the trial of ODPP participation in the Brisbane Prosecution Review Committee demonstrated that ODPP participation in these committees is worthwhile. Therefore, this participation has continued.

In addition, the joint submission reports that the QPS is committed to maintaining a database of the reasons for unsuccessful prosecutions. The QPS intends to provide regular failed-prosecution trend analyses to the ODPP/QPS Operations Committee. This analysis would include discussion of actions and recommendations arising out of the Failed Prosecution Committee's consideration of ODPP information. The ODPP/QPS Operations Committee could then use this information to provide advice to both the Commissioner of Police and the DPP as to the need for additional training for investigating police and/or prosecution staff, or for particular procedural changes that might have the potential to improve the effectiveness of both the QPS and the ODPP in investigating and prosecuting sexual offences. Given the lack of ODPP/QPS Operations Committee meetings since 2006, however, we assume this intention has not been fulfilled.

Management staff of the ODPP who were consulted for the review of the *Seeking justice* recommendations indicated that, since May 2006, regional ODPP officers have been required to provide the ODPP Prosecution Review Committee liaison officer with details of failed prosecutions in their area. The ODPP Prosecution Review Committee liaison officer then prepares monthly reports of these failed prosecutions and sends them to the QPS in electronic format.

Victim support agency response

In line with the original recommendations of the *Seeking justice* report, all victim support representatives were in favour of increased communication and collaboration between agencies involved in investigating, prosecuting and supporting victims of sexual offences. Although victim support representatives were generally unable to comment on whether communication between the QPS and the ODPP had improved since *Seeking justice*, many suspected that the difficulties that their clients encountered in their attempts to gain information from the QPS during the transition of their cases to prosecution were an indication that communication had not improved. Victim support representatives advocated:

- increasing commitment to communication and collaboration between QPS and ODPP staff
- deploying an ODPP officer to the QPS to assist with the preparation of court briefs

16 The submission also notes that 'procedures agreed between the ODPP and the QPS permit the ODPP to refer particular acquittals if a training issue arises that should be brought to the attention of the QPS' (p. 24).

17 This is the definition developed for the Brisbane-based trial. The definition of 'relevant unsuccessful prosecution', which regulates the statewide rollout of the initiative, differs slightly from the trial definition in that it does not focus specifically on the Brisbane office of the ODPP.

- increasing transparency in the decisions made by the ODPP, including increasing written and verbal communication between the ODPP and the QPS regarding these decisions.

LAQ response

In relation to the expansion of the role of the Prosecution Review Committee, the LAQ submission expressed strong support for the general principle of informed review of matters which are unsuccessful, particularly in the higher courts:

There are undoubtedly charges preferred from time to time which should not proceed to committal or trial, on any proper analysis of the evidence. In some cases there will simply be insufficient evidence to justify proceeding, either initially with a charge(s) or to committal or trial. For instance, there may be manifest and significant inconsistencies in the complainant's version, or other evidence which raises a serious doubt as to the guilt of the accused. In such circumstances a prosecution should not be commenced and if it is, as we noted in our 2002 submission, fairness demands that the prosecution be discontinued as soon as possible. (LAQ submission, p. 3)

LAQ staff asserted that the 'reluctance to discontinue all but the most obviously deficient cases suggests that the lessons available from failed prosecutions are not being heeded in current prosecutorial decision-making processes'. They suggested that 'some further measure of accountability needs to be imported into the review process, to ensure that it is producing useful outcomes.'

CHAPTER SUMMARY

The results of the analysis presented in this chapter suggest that communication between the ODPP and the QPS has been strengthened since the publication of the *Seeking justice* report. However, representatives from both organisations acknowledged that there is still room for improvement, particularly in the implementation of reforms throughout the regions. Although ODPP management claim to have expanded the ODPP's role in the QPS Prosecution Review Committee in Brisbane and rolled out the committee structure statewide, none of the ODPP officers in the other four regions consulted were aware of these committees being established in their regions. Rather, monthly reports are prepared by regional ODPP liaison officers and forwarded to the QPS electronically.

The LAQ also questioned the utility of the Brisbane-based Prosecution Review Committee. LAQ staff agreed with the concept of prosecution review committees and their expansion. However, they stated that, in practice, these committees were not particularly effective. In support of this conclusion they cited reluctance by the ODPP to discontinue prosecution of cases that, in LAQ's view, lacked the evidence to proceed.

We believe that it would be advisable for the ODPP to clarify with its regional offices the responsibilities regarding the establishment of regional prosecution review committees and/or their contributions to a central prosecutions review committee located in Brisbane. If the latter is identified as the central coordinating forum, the effectiveness of this committee should be periodically reviewed, particularly in terms of its ability to communicate to ODPP staff and police in all regions any important trends relating to when and why sexual offence prosecutions fail.

The joint submission to this review made by the QPS and the ODPP stated that both agencies have worked together to ensure that formal and informal lines of communication are strengthened and, where investigative deficiencies could have an impact on whether a prosecution can be pursued, the QPS is appropriately

informed so that remedial action can be instigated. From consultations with police in regional areas, it appears that strengthened procedures may exist in Brisbane but in the regions these improvements may exist only where the QPS/ODPP relationship is deemed to be 'good'. The absence of regular meetings in most regions between senior police and senior ODPP staff, and particularly the absence of meetings to discuss sexual offence prosecutions, therefore remain a concern.

The absence of regular informal or formal communications between the QPS and the ODPP was an issue raised in *Seeking justice* that does not appear to have been satisfactorily resolved. We believe that the two agencies should revisit the communication memorandum and include guidance to their respective staff regarding meetings that should be occurring regularly, in order to enhance the handling of sexual offences by the criminal justice system.

RECOMMENDATIONS PERTAINING PRIMARILY TO THE ODPP

This chapter documents and discusses the responses received from the QPS, the ODPP, LAQ and various agencies that represent victims of sexual offences in relation to the progress made by the ODPP towards achieving the *Seeking justice* recommendations that pertained primarily to ODPP business. These responses, and the associated discussions, are divided according to whether they pertained to:

- training of ODPP staff (Recommendation 11)
- procedures of the ODPP (Recommendations 12, 13, 14, 15, 16 and 18)
- a review of the role and functions of the ODPP victim liaison officers (VLO) (Recommendation 17).

TRAINING OF ODPP STAFF

Recommendation 11

Recommendation 11 dealt with the training of ODPP staff at all levels in aspects of sexual offending.

Recommendation 11: That all legal staff and Victim Liaison Officers at the Office of the Director of Public Prosecutions receive training in aspects relevant to sexual offending, such as the nature and extent of abuse, child development, the disclosure and reporting of abuse, interviewing techniques and historic cases.

Status: Not yet implemented

ODPP response

The joint QPS/ODPP submission states that the ODPP endorses staff training in the areas recommended in *Seeking justice*. The submission reports that, since the *Seeking justice* inquiry, and as a result of the 'implications of the *Evidence (Protection of Children) Amendment Act 2003*, the training program Interviewing Children and Young People was delivered in 2003 to all Crown prosecutors, victim liaison officers (VLOs) and 20 of the legal officers located in the Brisbane office of the ODPP' (p. 26). The ODPP reports that in 2004 a follow-up to the Interviewing Children and Young People training program was provided to three Crown prosecutors and 'some practice managers' of the then newly established 'Affected Child Witness' section in Griffith Chambers.¹⁸

¹⁸ The Evidence (Protection of Children) Amendment Act was assented to on 18 September 2003 and came into force on 5 January 2004 (but note that ss. 1 and 2 came into force on 18 September 2003). This Act amended the *Evidence Act 1977* to provide new procedures for dealing with child witnesses and introduced the term 'affected child witness'. The amending provisions are found in Part 2, Division 4A of the Evidence Act, 'Evidence of affected children'. An affected child is defined in s. 21AC and 21AD of the Evidence Act as a child under 16 years or a special witness in s. 21A who is 16 or 17 years of age.

Information about the changes introduced in s. 21AC and 21AD of the Evidence Act under the *Evidence (Protection of Children) Amendment Act 2003* can be found in Appendix B of this report.

Despite these achievements, the joint QPS/ODPP submission provides no evidence or comment regarding the strategic implementation of training that specifically addresses sexual offences, including sexual offences against adults, for all legal staff and VLOs employed by the ODPP. The joint QPS/ODPP submission reports ad hoc training experiences, such as:

- a lunchtime seminar provided by staff from the Brisbane Sexual Assault Service, presumably delivered in Brisbane
- the provision of training at the 2005 ODPP Victim Liaison Officer Conference in techniques for assisting witnesses who were victims of sexual assault
- attendance by two Crown Prosecutors at a 2005 conference that included a Child in the Court System workshop
- attendance by three Crown Prosecutors at a Best Practice for the Courts seminar.

However, none of these experiences were globally targeted at all ODPP staff who are likely to work with victims of sexual offences, most were not compulsory and required participants to self-nominate for participation, and in all cases the nature of the experience and depth of information imparted appear to have been extremely limited. For instance, follow-up consultations with the ODPP indicated that, at the 2005 VLO conference, the guest speaker talked for half an hour about the operations in NSW and the types of procedures employed regarding court preparation for adult and child witnesses in sexual assault proceedings.

In a December 2006 update to the joint QPS/ODPP submission, the ODPP advised us that:

There is no structured training conducted by our office ... A weakness is that training needs are not specific to VLO needs as a prosecution agency and it is not compulsory for staff to attend. This is being reviewed. (ODPP update, December 2006)

During subsequent consultations, at least one ODPP officer advocated that the ODPP should make it a priority to arrange for experts in the field of sexual offences to provide training to legal and victim liaison staff of the ODPP.

QPS response

QPS officers who were consulted for this review were unable to comment on the extent to which the ODPP had been trained in relation to the dynamics of sexual offending. However, they continued to express concern about the interaction between some ODPP officers and victims of sexual offences. They also expressed concern about the impact of court processes on the evidence given by victims of sexual offences.

Victim support agency response

Victim support representatives who made submissions to and/or were consulted for the *Seeking justice* review reported that there were limitations in the skills and knowledge of ODPP officers involved in the prosecution of sexual offence matters.¹⁹

¹⁹ It is important to note that, in questioning representatives from victim support agencies about their experiences with officers of the ODPP, we did not distinguish between employees of the ODPP and private counsel who are briefed by the ODPP on particular matters. It is reasonable to assume that some of the negative ODPP experiences reported by victim support representatives actually involved legal counsel who were not employees of the ODPP and therefore could not have participated in any training offered by the ODPP. However, it is important to note that most victim support representatives referred to multiple experiences of this nature.

Most commonly, the victim support representatives saw limitations in ODPP officers' understanding of issues associated with sexual offending, and/or in their responsiveness to victims of sexual offences. Lack of understanding of these issues was seen as having the potential to have adverse effects on the prosecution outcomes of sexual offence cases.

All of the representatives from victim support agencies believed that the development and implementation of specialist sexual offence training for ODPP officers was a matter that required further attention:

They [the prosecution] are not aware of the effects on the victim of seeing the perpetrator or being in close proximity [to the perpetrator]. (Victim support representative, consultation)

The expertise of prosecutors (QPS/ODPP) in the holistic management of this specialised area of practice (alleged child sexual offence) continues to vary considerably across Queensland. Undoubtedly, the levels of experience and general progression of staff through various roles within each organisation contributes in some way to the varying levels of expertise. PACT considers it vital that education continues to be regularly provided to officers in each organisation in this specialist area. (PACT submission, p. 2)

A lot of things point to the need for training for lawyers. They practise law in a context but they don't always understand that context, they understand the law. (Victim support representative, consultation)

In addition to concerns about the responsiveness of ODPP staff to victims of sexual offences, victim support representatives frequently expressed concern regarding the technical skills and expertise that officers of the ODPP demonstrated during the prosecution of sexual offences. ODPP prosecutions staff were perceived to be often 'outclassed' by their peers on the defence team. Victim support representatives suggested that only senior prosecutors should be employed to prosecute sexual offence matters.

Representatives from agencies involved in supporting victims of sexual offences were concerned that the ODPP was significantly under-resourced (with ODPP staff receiving relatively low levels of pay compared to others in their profession and few opportunities for career advancement, and being subject to an ever-increasing workload) and that this had reduced the capacity of staff to respond appropriately to victims of sexual offences.²⁰ It was their view that these issues contributed to high staff turnover at the junior levels and a lack of senior mentors for those who remained.

Victim support representatives also acknowledged that the ODPP had been through a number of changes in recent years and that these changes may have prevented them from progressing some of the *Seeking justice* recommendations. Also, the ODPP's management practices were not perceived to have changed since the *Seeking justice* inquiry.

The bureaucracy needs to manage for outcomes for victims, not just manage itself. Are people ever told how far they are lagging behind? We spend a lot of time managing people's crises due to a lack of action [by the ODPP] and a lack of concern about their lack of action. There needs to be some acknowledgment of the delay. They need a systematic response ... not just looking at individual cases. It is like they are doing people a favour so people should just be patient. But these people are the victims of sexual offences. They shouldn't have to pay the price for structural problems. [The ODPP] should not be talking to victims about their own under-resourcing. (Victim support representative, consultation)

²⁰ These issues were also identified in a previous CMC report (CMC 2001).

PROCEDURES OF THE ODPP

Recommendations 12, 13, 14, 15, 16 and 18

These six recommendations focus on the need for the ODPP to implement relevant documentation of decision-making processes; develop policies for communicating with police and complainants, and provide a written summary of the reasons for decisions about each case; develop protocols and policies that identify who will communicate with complainants regarding decisions; and implement a complaints-handling process.

Recommendation 12: That the Office of the Director of Public Prosecutions implement procedures to ensure that all decision-making processes are supported by relevant documentation and completed by the responsible officer.

Status: Implemented

ODPP response

Regarding Recommendation 12, the ODPP advised that its prosecution guidelines had been updated with the addition of more detailed procedures regarding record-keeping practices. The new standards are accompanied by a quality audit regime, which involves checks on a proportion of ODPP files (completed matters and discontinuances). These checks are to ascertain whether there has been compliance with the Director of Public Prosecutions' Guidelines (Director of Public Prosecutions Queensland 1985, 2003) — in other words, have the arresting officer and victim been consulted and are reasons for actions clearly recorded? The results of the quality audit are reported at monthly meetings of ODPP practice managers in Brisbane and form the basis of discussions about where improvements can be made.

The audit program discussed in the joint QPS/ODPP submission appears to be in operation only in the Brisbane ODPP. However, one regional ODPP office indicated that, although the audit program was not operating in their office, a peer review system was in place. This system involves each prosecution brief being checked by another legal officer (usually senior).

Victim support agency response

Recommendation 12 of the *Seeking justice* review was intended to facilitate increased transparency and community confidence in the decision-making processes of the ODPP. Despite the ODPP indicating that it had improved its record-keeping and auditing practices in relation to the completion and discontinuance of sexual offence matters, representatives from victim support agencies were not confident that this had led to increased transparency in ODPP decision-making processes from their perspective. Victim support representatives therefore argued for increased accountability of the ODPP decision-making process. They suggested that the ODPP needed to revisit the *Seeking justice* recommendations pertaining to these issues and dedicate increased resources to their achievement, or to alternatives that delivered transparent and accountable results.

Representatives from agencies involved in supporting victims of sexual offences expressed continuing concern about ODPP decisions to discontinue some sexual offence cases. These representatives were particularly concerned with the way the ODPP balances ethical obligations to proceed with allegations of sexual abuse

against the financial considerations of doing so. They believed that in some cases, especially those in which evidence was scarce, too much emphasis was placed on the cost of prosecution. Notably, however, representatives from victim support agencies that had received training from the ODPP were less likely to express concerns about the decision-making practices of the ODPP and more likely to demonstrate an understanding of the legal constraints that affect the decisions made by ODPP officers.

LAQ response

LAQ also expressed ongoing concerns about the decision-making practices of the ODPP. However, their view differed notably from that of the representatives of victim support agencies. LAQ staff believed that, since *Seeking justice* was released, the number of sexual offence matters proceeding to trial had increased. They also believed that ODPP staff had become increasingly reluctant to discontinue sexual offence matters that in LAQ's view, on the basis of the available evidence, should not proceed to trial.

In addition, LAQ staff observed reluctance on the part of magistrates to finalise matters involving sexual offences, despite adequate jurisdiction with regard to sentencing these matters. It was the LAQ's view that this practice was causing considerable delays in the disposition of sexual offence matters.

Recommendation 13: (Part 1) That, in collaboration with the Queensland Police Service, the Office of the Director of Public Prosecutions develop written policies for formal communication with police investigators and their supervisors about all sexual offence matters. (Part 2) The policy should include the provision of a written summary of the reasons for decisions that are made about each case prepared by a senior legal officer of the ODPP.

Status: Part 1 implemented; Part 2 not yet implemented

ODPP and QPS response

The ODPP implemented only the first part of Recommendation 13, the development of a communications protocol between the agencies. This protocol between the QPS and the ODPP was formalised by the Commissioner of Police and the DPP in a memorandum of understanding (MOU) in July 2005.

The memorandum contains a basic framework regarding all communication between the two agencies. This framework can be supplemented by local arrangements that reflect local practices, provided these arrangements are consistent with the prosecution guidelines and QPS operational procedures. The memorandum:

- addresses how advice is to be given to police by the ODPP
- encourages use of electronic communication (e.g. email) by the ODPP and the QPS
- sets out when updates on the progress of a prosecution and significant decisions made about the prosecution should be given
- requires regular contact between management of the ODPP and the QPS
- clarifies how information should be communicated to investigating officers about the discontinuance or substantial reduction of charges.

During consultations, QPS representatives indicated that police officers in relevant areas were granted external email access to facilitate direct communication with ODPP staff. QPS officers consulted in Brisbane believed that the development of

the protocols was a positive step towards improving communication between the QPS and the ODPP. However, they lamented the time taken to negotiate these agreements and commented that, given this delay, they were unable to assess their effectiveness.

The second part of Recommendation 13 recommends that a senior legal officer prepare and provide a written summary, giving the reasons for decisions that are made about each case. In the joint QPS/ODPP submission, the ODPP states that the MOU signed between the QPS and ODPP specifies that:

In all cases where it is reasonably practicable, the ODPP will supply to the investigating officer and their supervisor a copy of the 'Indictment Record form' that records the reasons why the ODPP has discontinued or substantially reduced a charge or prosecution. (Joint QPS/ODPP submission, p. 31)

It is clear from this statement that the provision of such reasons is at the discretion of the ODPP. Furthermore, while the ODPP claims that this information is provided 'in all cases where it is reasonably practicable', police with whom we spoke said that they rarely received written information from the ODPP. Therefore our conclusion must be that this part of the recommendation needs more work for it to be clarified as implemented.

Recommendation 14: (Part 1) That the Office of the Director of Public Prosecutions develop formal policies for communicating with complainants in sexual offence matters. (Part 2) As part of these formal policies, a senior legal officer of the ODPP should be required to prepare a written summary of the reasons for decisions that are made about the case.

Status: Part 1 implemented; Part 2 rejected, not implemented

ODPP response

The prosecution guidelines require that any decision to discontinue a prosecution or substantially amend a charge be documented and clear reasons recorded for the decision. For example, the guidelines state the following:

- During charge negotiations any offer by the defence, the supporting argument and the date it was made should be clearly noted on the file. The decision and the reasons for it should also be recorded and signed (Guideline 14(iv)).
- Decisions to discontinue or to substantially reduce charges and the reasons for discontinuance (including the name of the person consulted) must be recorded (Guideline 17).
- Consultation with the arresting officer when there is serious consideration of discontinuing charges or substantially reducing charges or if a police officer cannot be contacted, attempts to contact that police officer, must be recorded (Guideline 18).
- Consultation with victims of sexual or violent offences where there is serious consideration of discontinuing the prosecution must be recorded (Guideline 19).
- A victim's wishes with respect to a support person and special measures during their evidence must be recorded (Guideline 22).

More detailed procedures reflecting good record-keeping practices have been developed and approved by the Director of Public Prosecutions. These new standards of work practice discuss the quality of file notes and how decisions are to be recorded. Officers are required to:

- record any substantial decision made during the course of a prosecution and the reasons for it

- record the trial review decisions
- record any discussion/agreement with the defence, police or witness
- draw attention to information
- record a service provided (e.g. conferencing with a witness or phone attendances with a victim of crime)
- record when a hearing is adjourned or not finalised
- particularise relevant occurrences at final hearings including any post-hearing actions needed.

The ODPP did not support the second part of Recommendation 14, which would have required the provision of written reasons to complainants about sexual offence matters that were discontinued or reduced prior to going to trial. One of the key reasons that this part of the recommendation was rejected was that ‘when other matters are proceeding, the provision of written reasons could seriously compromise the evidence of the complainant at trial, leaving the complainant vulnerable to allegations that evidence was fabricated to shore up the Crown case or alternatively that the ODPP coached the complainant’. The submission explained that ‘the prosecution guidelines already require the ODPP to provide reasons to a victim for decisions to discontinue charges or a prosecution on request and any other communications in relation to decisions could possibly prejudice prosecution proceedings’ (p. 33).

In the joint QPS/ODPP submission to this review, the ODPP stated that:

Any written explanation to a complainant would need to edit, rephrase and expand on those file notes recording reasons for discontinuance to reflect the need for sensitivity, simplicity and context. Written explanations, in the absence of discussion, may deliver little information or closure for a victim and will inevitably lead to misunderstanding or distress. The reality of investigative processes is that some reasons could be very distressing when recorded in writing. In many sexual offence prosecutions decisions to discontinue are made because objective evidence contradicts some statements of a victim, meaning that no reasonable jury could rely on the uncorroborated evidence of the witness. Honest witnesses can be mistaken particularly when events happened many years ago. Implementation of such strict rules of communication would also place additional resource pressures on the ODPP without achieving a particular benefit for the majority of complainants. (Joint QPS/ODPP submission)

In February 2005, the government endorsed a submission of the ODPP not to implement this recommendation.

The ODPP component of the joint QPS/ODPP submission to the *Seeking justice* review states that ‘the Director [of Public Prosecutions] strongly supports the principle that complainants in cases of sexual offences, like all victims of crime, should be fully informed of all steps of the criminal justice process’ (p. 32). However, it contends that existing ODPP policies are sufficient to ensure that, in most cases, this occurs. Specifically, the joint submission (p. 33) refers to Prosecution Guideline 19 (Director of Public Prosecutions 1985):

Prosecution guideline 19 also requires that reasons must be given to a victim on request except if the DPP considers that reasons in a case would cause unjustifiable harm to a victim, witness or accused or would significantly prejudice the administration of justice.

Feedback received from officers of the ODPP suggests that, if they were to receive a request for written reasons regarding an ODPP decision, they would usually comply with the request. However, all four regional ODPP offices consulted indicated that requests from complainants for written reasons regarding discontinuance are extremely rare.

For example:

I am not aware of such a request ever having been made in my 19 years with the DPP. All complainants are personally advised by my staff before a matter is discontinued. (ODPP officer, consultation)

A request for written reasons would be extremely rare — I have never had one. Complainants and their families are verbally told of the reasons — personally I do this in front of the investigating officer or PACT worker if at all possible. I also invite them to contact us if they want the reasons re-explained or they wish to discuss the matter further. Our VLO is always made aware of the reasons for discontinuance and she is also able to explain the reasons. (ODPP officer, consultation)

Victim support agency response

While some representatives from agencies involved in supporting victims of sexual assault said they believed that the ODPP had made an effort to address the issues identified in the *Seeking justice* inquiry, most believed that it had not. Certainly, none of the victim support representatives were able to identify any changes in the way the ODPP dealt with victims of sexual offences. Furthermore, a number of the victim support representatives suggested that the lack of change in the ODPP had undermined the effectiveness of associated initiatives by the QPS, and had eroded public confidence in the ODPP.²¹ In turn, the willingness of members of the public to make allegations of sexual assault was perceived to have declined since the inquiry. However, this perception is not supported by recent QPS data, which show a large increase in the number of sexual offences reported to police in recent years (Queensland Police Service 2006).

According to victim support representatives, victims of sexual offences rarely understand the distinction between the roles that the QPS and ODPP play in the criminal justice process. Therefore, they believe that many complaints made about the police are the result of actions (or lack of action) on the part of the ODPP. Because victims of sexual offences often have more contact with members of the QPS than with the ODPP, when problems occur victims are said to assume that these problems are the fault of the QPS. Victim support representatives identified a need for victims of sexual offences to be provided with booklets (and other such resources) describing the investigation and prosecution process and detailing the roles and responsibilities of officers of the QPS and the ODPP. They believed these booklets should be made available to and discussed with victims at the time the complaint is made to the QPS. Individual QPS officers were also in favour of such a development.

We note that information describing the investigation and prosecution process and detailing the roles and responsibilities of officers of the QPS and the ODPP is available on the ODPP website (Office of the Director of Public Prosecutions 2007a). The ODPP (together with the QPS and victim support agencies) may need to promote this resource more widely.

Every victim support representative consulted was able to provide several examples of difficulties that their clients had experienced in trying to access information about their case from the ODPP during the preceding two-year period. Some of these representatives even expressed the view that the level of communication between ODPP staff and victims of sexual offences had declined since the *Seeking justice* inquiry. Furthermore, in some instances where communication had occurred between officers of the ODPP and victims of sexual offences, the content of the communication was reported to have been extremely limited.

21 Some victim support representatives also suggested that the lack of changes in the ODPP since the publication of the *Seeking justice* report had undermined public confidence in the effectiveness of the CMC inquiry process.

Several victim support representatives stated that the ODPP was still not informing complainants about discontinuances of prosecution, and this was contributing to preventable levels of anxiety and stress for victims. Poor levels of communication may even have contributed to the view held by some victim support representatives that discontinuances have actually increased since the *Seeking justice* inquiry. However, we note that data obtained from the ODPP in 2007 suggest that the rate of discontinuances post committal has actually decreased since the *Seeking justice* inquiry (from approximately 35% of matters committed to trial between 1994 and 2001 to approximately 14% of matters committed to trial during the 2006–07 financial year).

Victim support representatives advocated further consideration of Part 2 of Recommendation 14 — that the ODPP provide victims of sexual offences with written reasons for decisions made about individual cases. They also emphasised the need for the ODPP to focus increased efforts on the development of strategies to increase communication between ODPP officers and victims of sexual offences.

Recommendation 15: That the Queensland Police Service and the Office of the Director of Public Prosecutions develop and agree to formal protocols that identify who will contact the complainant about the decisions that are made in every sexual offence matter.

Status: Implemented

ODPP and QPS response

With respect to Recommendation 15, the ODPP indicated in the joint QPS/ODPP submission that it has formal policies in place regarding communication with complainants of sexual offence matters. It states that existing prosecution guidelines (18 and 21) require all proposed prosecution discontinuances to be discussed with the complainant so that their views are considered when decisions are made. Also, prosecution guidelines 13(iv) and 16 require documentation recording decisions to discontinue or reduce charges to be placed on the file.

The ODPP also stated in the joint QPS/ODPP submission that, wherever it has the carriage of the prosecution, the ODPP has always assumed responsibility for advising complainants of all decisions relating to the discontinuance of charges or the discontinuance of prosecution. Specifically, the submission states that, 'in accordance with the provisions of the *Criminal Offence Victims Act 1995*, ODPP Victim Liaison Officers advise victims of all significant decisions and events in a case, if the victim requests' (p. 34). In addition, the ODPP stated that 'it is procedure for the ODPP to inform victims of this right to receive detailed information at the commencement of the ODPP's involvement in a prosecution' (p. 34).

The joint QPS/ODPP submission also notes, however, that there may be some cases where the investigating police officer may be better placed to advise the victim of reasons for discontinuances and other significant decisions made by the ODPP. The ODPP cites as an example the situation where the investigating officer has a particular rapport with a victim or a victim is in a remote region. In such cases, the submission states that the ODPP seeks agreement from the QPS officer that the QPS officer will advise the victim of the ODPP's decision. If the QPS officer agrees, the ODPP provides the QPS officer with written reasons for the discontinuance before that officer advises the victim of the decision. These arrangements were formalised in July 2005 in a memorandum of understanding between the ODPP and the QPS.

However, police consulted for this review stated that they were often relied upon to communicate information to complainants on behalf of the ODPP, including information about discontinuance of the prosecution. None of these police recalled ever having received written reasons from the ODPP regarding the discontinuance of the prosecution for the purposes of advising the victim. The ODPP stated that, 'where reasonably practicable', it would provide to the investigating officer and their supervisor a copy of the 'indictment record form', which records the reasons why the ODPP has discontinued or substantially reduced a charge or prosecution. Police said this rarely occurred, and they were often the ones 'chasing' the ODPP for an update regarding the progress and/or outcomes of a prosecution.

The joint QPS/ODPP submission stated that the QPS and the ODPP have worked together to ensure that formal and informal lines of communication between them are strengthened and that, where investigative deficiencies could have an impact on whether a prosecution can be pursued, the QPS is appropriately informed and can instigate remedial action. However, it appears, from consultations with police in regional areas, that strengthened procedures may exist only in Brisbane and in some regions where the QPS/ODPP relationship is deemed to be 'good'. It also seems that good relationships between QPS and ODPP officers are more often the result of individual personalities rather than policies or procedures.

Despite the development of the ODPP policies regarding communication with victims of sexual offences, most police officers who were consulted for this review stated that they believed very little had changed for victims, particularly adult victims. Their main criticism was levelled at the ODPP, specifically for a perceived lack of communication to victims during the prosecution process and an associated lack of victim support. Notably, even police officers who believed that communication between the ODPP and sexual offence complainants had improved since the *Seeking justice* inquiry still considered it to be a relatively ad hoc process and in need of further improvement.

In November 2007, in their response to a draft of this review (p. 14), the QPS suggested that the ODPP needed to increase its efforts to comply with memoranda of understanding that supported better communication between the ODPP and victims of sexual offences (and the QPS).

We agree that the ODPP should take steps to ensure compliance with policies and procedures established in response to the *Seeking justice* recommendations. In particular, we suggest the need for increased training in, and monitoring, of these policies and procedures.

Victim support agency response

The most common criticism levelled by representatives of victim support services against the QPS related to difficulties that their clients experienced when attempting to obtain information about their case from QPS officers, and the failure of QPS officers to contact victims about progress in the investigation and prosecution of their complaints. It was acknowledged that the practicalities of police work, including time away from the office and frequent changes of rosters, contributed to these difficulties. Victim support representatives believed that these issues were further exacerbated by a lack of QPS policies and procedures that support or encourage communication between officers of the QPS (particularly non-specialist officers) and victims of sexual offences. They argued that increased collaboration between the QPS, ODPP and victim support services in developing such policies could go some way towards overcoming these difficulties. However, victim support representatives also acknowledged that at least some of the criticism that complainants level at police could be due to their confusion regarding the roles and responsibilities of officers of the QPS and officers of the ODPP.

In their response to the draft report of the *Seeking justice* review the QPS noted that under section 2.12.1, 'Advice to victims of status of investigation/prosecution' of the OPM, 'investigating officers should regularly provide victims with information on the status of an investigation and subsequent prosecution'. However, the QPS acknowledged that 'ongoing communication with victims is an aspect of police work that can always be improved'.

Representatives from victim support services also advocated the provision of continuous support to adult victims of sexual offences (as well as child victims) throughout the investigation and prosecution processes.

Recommendation 16: That the Office of the Director of Public Prosecutions develop and enhance written protocols and procedures for communicating with the defence in all sexual offence matters.

Status: Implemented

ODPP response

With respect to the implementation of Recommendation 16, the ODPP advised in the joint QPS/ODPP submission that since January 2004 the prosecution guidelines have reflected the procedures for communicating with the defence, as prescribed in the *Evidence (Protection of Children) Amendment Act 2003*. This Act is consistent with the common law and formal disclosure obligations. It has ensured that procedures relating to the supply of prosecution material and communication with defendants and defence representatives are standardised.

As well as the prosecution guidelines, standards for briefs were implemented across the ODPP in December 2004 and provide the protocols and standards required for recording communications with the defence. Of particular note is the introduction of processes requiring that details of all submissions from the defence and the dates of responses by the ODPP are recorded on the 'list card'. In the joint QPS/ODPP submission to the *Seeking justice* review the ODPP claimed that 'the availability of the list card to listing officers means the courts are now more accurately informed of the ODPP's response to particular submissions' (p. 36). In late 2006, the ODPP also advised the CMC that it had commenced discussions with LAQ to clarify the relationship between the two agencies.

LAQ response

LAQ staff did not comment on the changes made by the ODPP to written protocols and procedures for communication between the ODPP and the defence. They did, however, raise issues associated with the rules of evidence and with magistrates' and ODPP staff's application of those rules to sexual offence matters. They perceived that the way in which this legislation was applied could adversely affect communication between the ODPP and the defence. Specifically, in their submission LAQ expressed concern about the 'current practice of the ODPP in classifying all s. 93A video and audiotapes as sensitive evidence under s. 590AF of the Criminal Code' (p. 4). This practice was said to have caused difficulties for defence practitioners seeking to obtain associated records because it required them to obtain a court order before they could do so. LAQ staff claimed that strict adherence to the relevant ODPP guideline causes delays in the committal process because it requires a directions hearing before copies of statements are provided to the defence.

They suggested minor rewording of the Director of Public Prosecutions' guideline 25(vi) from:

Sensitive evidence is that which contains an image of a person which is obscene or indecent or would otherwise violate the person's privacy. It **will** include video taped interviews with complainants of sexual offences, pornography, child computer games, police photographs of naked complainants and autopsy photographs. [Emphasis added]

to:

Sensitive evidence is that which contains an image of a person which is obscene or indecent or would otherwise violate the person's privacy. It **may** include video taped interviews with complainants of sexual offences, pornography, child computer games, police photographs of naked complainants and autopsy photographs. [Emphasis added]

The LAQ believed this rewording would return the legislative intention that each piece of evidence be considered on its merits before it is declared to be sensitive evidence.

LAQ staff expressed concern that the job of the defence was made extremely difficult when the exact nature and details of a complaint, as contained in a section 93A record of interview, was unavailable to defence counsel. Concerns regarding the application of legislation were expressed by LAQ in the context of ensuring that an accused person is properly informed of the allegations made against him or her, and thereby receives a fair trial. LAQ staff asserted that for this to occur it is necessary that maximum disclosure by the prosecution occurs 'in accordance with the legislative intention and subject to appropriate conditions'. LAQ advised in its 2005 submission to the CMC that it had written to the Attorney-General, 'suggesting that s. 590AF of the Criminal Code should be amended so that it expressly provides that a statement which the prosecution intends to adduce under s. 93A is not sensitive evidence' (p. 8).

Recommendation 18: That the Office of the Director of Public Prosecutions implement a complaints-handling process. In so doing, consideration should be given to established guidelines such as those developed by the Queensland Ombudsman (2003).

Status: Implemented

ODPP response

Regarding the implementation of Recommendation 18, the ODPP advised that it has developed a complaints form to assist people who have a grievance as well as new complaints-management procedures. This form is available on the ODPP's website (Office of the Director of Public Prosecutions 2007b). The webpage instructs complainants how to submit a complaint electronically, email the complaint or download the form and send the complaint via facsimile or post.

The complaints-handling protocol for external complaints (e.g. from complainants) involves the complaint being directed to the Legal Practice Manager for a response, which includes discussions with either the Human Resources Manager, the Executive Director, the Deputy DPP or the DPP, whoever is most appropriate. The ODPP reported that it has developed a new tool to monitor the categories of complaints and allow an assessment of the types of complaints received, and whether particular types of complaints are increasing.

Victim support agency response

None of the victim support agencies recalled client contact with the ODPP complaints system. Indeed, despite the information about the ODPP complaints system being very clearly displayed on the ODPP website, victim support agencies were generally unaware of it. This finding suggests there may be a need for increased publicity regarding the ODPP website.

Representatives from agencies working with victims of sexual offences stated that the majority of complaints they hear from complainants in sexual offence matters concern the apparently 'arbitrary' nature of the decisions made by staff of the ODPP. They emphasised that, while victims may receive an official explanation of the reason their case has been dropped, if they do not understand the explanation or dispute the explanation there is little they can do. In turn, they suggested that all complaints regarding the investigation and/or prosecution of sexual offences, whether they pertained to the QPS, the ODPP, the Departments of Health or Education, the courts or any other agency, need to be dealt with in a consistent and systematic manner so that government is better able to respond to the underlying issues that give rise to client dissatisfaction.

REVIEW OF THE ROLE AND FUNCTIONS OF THE ODPP'S VICTIM LIAISON OFFICERS

Recommendation 17

Recommendation 17 responds to concerns raised during the inquiry about lack of services available to support victims of sexual offences throughout the prosecution process.

Recommendation 17: That the Department of Justice and the Attorney-General formally review the role and functions of Victim Liaison Officers employed by the Office of the Director of Public Prosecutions with a view to enhancing the response of the Office to complainants in sexual offence matters.

Status: Implemented

ODPP and QPS response

The joint QPS/ODPP submission stated that the ODPP's victim liaison officers (VLOs) are currently employed at the AO3 administrative level and are not required to have any formal qualifications. Their role is the provision of an information service rather than a support service because (a) the existing funding precludes a more sophisticated service and (b) there have always been concerns that the provision of counselling by ODPP staff had the potential to compromise the perception of independence of the ODPP.

In the joint QPS/ODPP submission the ODPP reports that a formal review of the role of victim liaison officers in the ODPP has been undertaken. This review was conducted by the Department of Justice and Attorney-General (JAG) and recommended that victim liaison officers continue to provide an information service only. It stated that it was outside the current charter of JAG and the ODPP to provide emotional support to victims of crime throughout the court process. The review supported the view that victims of crime, particularly sexual offences, should be provided further support through other forums.

Follow-up consultations with the ODPP in late 2006 confirmed that the recommendation to review the role of ODPP victim liaison officers had been

implemented but had not resulted in any changes to the victim liaison officer role. During these consultations the specific duties of VLOs were described as including the provision of an information-based service via telephone, face-to-face meetings (particularly when assisting complainants to prepare victim impact statements) and assistance to legal officers and prosecutors in phone conferences when required. ODPP staff from the regional offices commented that all matters concerning personal violence are referred to the VLOs and that the VLOs are expected to ensure ongoing communication with the victims of these matters. However, as described in the following comment, it was also acknowledged that VLOs maintained very heavy case loads and were sometimes simply unable to keep victims informed of updates in the prosecution of their complaints:

Generally all matters that come to our office concerning matters of personal violence are allocated to a VLO. The VLO informs the complainant of all important court dates from the time the VLO receives the file. Some problems occur because — sometimes files miss being allocated to a VLO, files are allocated late and some court dates are missed, the current workload on the existing VLOs is too high in many cases (historically the ideal case load was considered to be between 200 and 250 complainants. Current case loads for some VLOs is in the vicinity of 450 matters and 40 bench warrants to monitor). Often VLOs are not replaced when they are on leave ... this results in massive backlogs and complainants are not kept informed in compliance with our COVA [*Criminal Offence Victims Act 1995*] obligations. (ODPP update, December 2006)

In turn, ODPP staff advocated increased funding to employ additional VLOs and, in turn, improve the ODPP response to victims of sexual offences. One ODPP officer also advocated ongoing review of the VLO position.

The Victim Liaison officers do a lot more than just provide information and referral to complainants. There is one VLO in each region ... VLOs are low paid, and are often inexperienced and unqualified. They are the face of justice for the state. [I feel] the role needs to be reviewed. (ODPP officer, consultation)

QPS officers consulted for the *Seeking justice* review continued to express concern that victims of sexual offences were not sufficiently supported during the prosecution process and that, in the absence of anyone else, members of the QPS were often required to take on the role of victim support person.

Both the ODPP and the QPS agreed that external support services for victims, particularly adults, were random and often of poor quality. Regional police indicated that the availability of support services to adult victims of sexual offences were 'patchy' and, due to the high proportion of complainants who subsequently withdraw their complaint, officers had little idea how many actually followed up with referrals to these services. Police commented that due to the lack of victim support services to 'support a victim throughout the court process' they often took on (by default) a pseudo-counselling role. They considered this situation to be unsatisfactory, with some police officers believing that the unavailability of quality support services contributed to many complainants not seeing the court process through.

Many of the QPS and ODPP officers consulted for this review identified the support services provided by PACT (Protect All Children Today) as an ideal model for victim support. Police said that services along similar lines to the PACT model should be available for adults. According to these officers, PACT gets involved in child sexual offence cases from very early in the prosecution process and acts as the key liaison point between the complainant and the QPS and the ODPP. This role is supported by the allocation of a police officer in the Brisbane SCIU as the PACT coordinator. This officer is responsible for regularly liaising with PACT and referring child victims to the support services offered by the organisation.

Notably, however, the services provided by PACT were said to be limited by the fact that they focused on supporting children and young people who are required to give evidence in criminal courts. At least one ODPP representative argued for increased services supporting children prior to their court involvement (e.g. during the investigation process).

I have a lot to do with PACT and am often finding that because committals (in relation to affected child witnesses) are a rarity police are not providing child victims and their families with information relating to support services. By the time the matter comes to this office the victims and families have been provided with no information. An approach then by this office comes as bit of a surprise to them and they are often disheartened by the delay. If they have PACT involvement there is a greater degree of information provided to them. (ODPP representative, consultation)

Victim support agency response

Although one regionally based representative stated that the local ODPP victim liaison officer (VLO) was very helpful and responsive, most support agency representatives indicated that VLOs' level of skill in responding to victims of sexual offences mirrored that of other officers of the ODPP.

Generally, representatives from agencies working with victims of sexual offences agreed with the administrative description of the VLO's role that was provided in the submission made jointly by the QPS and ODPP. However, they disagreed that the ODPP is not in a position to provide support for victims of sexual offences (though they acknowledged the need for additional resources and training to facilitate such support). The former Victim Support Unit (VSU) of the ODPP was cited as an example of how this support could be provided.

VLOs are more like administrators. They don't refer clients on [to us]. [In contrast] the Victim Support Unit that used to be in the ODPP did it excellently. (Victim support representative, consultation)

In line with the QPS staff who were consulted for this review, representatives from victim support agencies also expressed concern about the level of support provided to victims of sexual offences during the criminal justice process. Despite the ODPP's acknowledgment of the need for external victim support services and their apparent willingness to assist victims of sexual offences to access these services, most victim support representatives stated that they had received very few, if any, referrals from the ODPP.

Victim support representatives advocated 'bringing back' victim support workers at the ODPP. They believed that the return of this role would facilitate better service to sexual offence complainants and increased liaison and collaboration with victim support services. Alternatively, they suggested the provision of permanent court support services for victims of sexual offences.

CHAPTER SUMMARY

The joint QPS/ODPP submission to the review of the *Seeking justice* recommendations suggests that the ODPP has made some progress towards implementing the recommendations of the inquiry. For example, the ODPP has updated its guidelines for decision-making, enhanced its record-keeping practices and introduced a quality audit process that aims to help ensure compliance with these procedures. It has also developed a new form and written protocols for processing and monitoring complaints, a protocol for formal communication with police officers about all sexual assault matters, and procedures for dealings with complainants. Furthermore, the ODPP guidelines for communicating with the defence have been amended to reflect the procedures prescribed in the *Evidence (Protection of Children) Amendment Act 2003*, and staff of the ODPP are now

required to record details of all submissions from defence and the date of response by the ODPP on the 'list card'.²²

However, the ODPP has failed to implement a number of the other recommendations of the *Seeking justice* inquiry. Perhaps most notably, the ODPP has not developed and implemented a training program for legal officers and VLOs as per Recommendation 11. Two ad hoc training and information sessions occurred within 18 months, but neither was compulsory or specifically tailored to meet the training needs of either legal officers or VLOs at the ODPP. Similarly, although a number of staff participated in a training program in 2003 and 2004 that aimed to improve their skills in interviewing children and young people, this program did not specifically address issues associated with sexual offending, such as the nature and extent of abuse, child development, the disclosure and reporting of abuse and historic cases (as per Recommendation 11). We note, therefore, the ongoing need for the development and provision of training to increase the awareness of sexual offence issues among staff (e.g. prosecutors and VLOs) of the ODPP.

The ODPP has also decided not to accept the recommendation that senior prosecutors provide complainants with written summaries of the reasons for decisions made about their cases. The ODPP maintained that the provision of written reasons for decisions about sexual offence cases might compromise evidence of the complainant at trial, leaving a complainant vulnerable to allegations of having fabricated evidence or having been coached by the ODPP.

The ODPP did not explicitly accept or reject the requirement in the second part of Recommendation 13 — that ODPP officers provide QPS officers with a written summary of the reasons for decisions that are made in every sexual offence matter. Rather, the ODPP stated that they would provide QPS officers with a written summary where reasonably practicable.

Finally, although a review of the role of VLOs at the ODPP was undertaken, as recommended in *Seeking justice*, its outcome was a determination that the VLO position descriptions should remain unchanged. We were informed that the key reasons for this decision were that VLOs were not employed at a sufficiently high level to provide anything other than an information service, and that changing the nature of the VLO's role to that of a victim support service might be seen to compromise the perception of the independence of the ODPP.

Consultation with representatives from the QPS, LAQ and victim support agencies suggested that, although the changes made by the ODPP were considered important, their extent and impact were not sufficient to change many of the negative perceptions arising from the perceived injustices that led to the *Seeking justice* inquiry. Most of the changes made by the ODPP involved the development of policies, protocols and procedural guidelines. Comments made by external stakeholders, however, questioned the degree to which the contents of these documents are actually applied by individual ODPP officers.

Few of the representatives of agencies working with victims of sexual offences were able to identify improvements in the ODPP's management of sexual offence cases since the publication of the *Seeking justice* report. Those who did see improvements acknowledged the involvement of the ODPP in the working party for the QPS sexual offences training course and the benefits associated with the ODPP's involvement in providing training to victim support agencies. However, these comments were tempered by conflicting accounts of the extent to which the behaviour of staff involved in the prosecution of sexual offences had changed.

²² This Act is also consistent with the common law and formal disclosure obligations.

Although some ODPP staff members were considered 'good to deal with', others were perceived to be 'completely unsupportive'. In turn, positive experiences with ODPP staff tended to be attributed to the personalities of those involved rather than to the training, policies or procedures of the organisation that employed them. Although individual differences will always play a role in the service provided, it was suggested that better training for ODPP staff and more consistently applied policies and procedures would reduce the potential for these differences to adversely affect the experiences of sexual offence victims.

Victim support representatives indicated that many complaints they received from victims of sexual offences still related to decisions by the ODPP to discontinue the prosecution of their allegations. In such cases, complainants often approached the victim support agency for assistance in obtaining information about their case from officers of the ODPP. Victim support representatives suggest, therefore, that there has been little change in the level of communication between officers of the ODPP and victims of sexual offences.

Victim support representatives also expressed the view that the level of communication between police and the ODPP had actually declined since the *Seeking justice* inquiry and that, anecdotally at least, rates of discontinuance had increased. Data obtained from the ODPP contradict this view, however, and suggest that since the *Seeking justice* inquiry the proportion of sexual offence matters that are discontinued post-committal has reduced by more than half.

Representatives from the QPS continued to express concern about the general lack of support for victims of sexual offences in the criminal justice system, and the perceived expectations of the ODPP that QPS officers provide victim support and take responsibility for ongoing contact with witnesses in sexual offence matters. In the joint QPS/ODPP submission the ODPP indicated that it has formal policies in place for communication with victims of sexual offence matters, and that its prosecution guidelines require all proposed prosecution discontinuances to be discussed with complainants so that their views are considered when making decisions. However, several police officers argued that there may be some inconsistencies in how often and how well these procedures are adhered to. Most police with whom we discussed this issue claimed that they are usually the ones having to communicate with complainants about prosecution processes and court appearances. Representatives from victim support agencies endorsed these perceptions.

The current review also highlighted some potential discrepancies between policy and practice in the interactions between ODPP staff and QPS officers. Although the ODPP claims to have developed a written protocol for formal communication with police officers about all sexual assault matters, QPS staff commented that they were often left 'chasing' the ODPP for an update regarding the progress and/or outcomes of a prosecution.

In summary, there appear to be some significant discrepancies between the perceptions of ODPP staff and other stakeholders about the impact of the changes made by the ODPP since the *Seeking justice* inquiry. We acknowledge that some of the changes (especially those relating to the documentation of various ODPP processes, responsibilities and obligations) are relatively recent and may take time to show effect. It is vital, however, that these changes translate into actual practice and that the ODPP clearly communicates the nature of the changes it has made, both within the ODPP and to the QPS and other stakeholders. In particular, the QPS and the ODPP need to reach agreement (as per Recommendation 15) regarding each agency's responsibilities for communicating with complainants and witnesses in sexual offence prosecutions, and the ODPP needs to comply with its responsibilities as set out in MOUs signed with the QPS.

LEGISLATIVE REFORM AND QPS PROCEDURES AND GUIDELINES

This chapter documents and discusses the responses received from the QPS, ODPP, LAQ and various agencies that represent victims of sexual offences in relation to the progress of the *Seeking justice* recommendations that pertained to sexual offences legislation, legislation regarding the publication of the identity of a person accused of a sexual offence, and associated QPS procedures and guidelines. Specifically, the focus in this chapter is on progress towards the achievement of Recommendations 19, 20, 21, 22 and 23 of the *Seeking justice* report.

PROGRESS TOWARDS ACHIEVEMENT OF RECOMMENDATIONS 19–23

Recommendations 19, 20, 21, 22 and 23

Recommendations 19, 21, 22 and 23 dealt with issues associated with the publication of the identity of a person charged with a sexual offence, and Recommendation 20 advocated changing the definition of ‘a prescribed sexual offence’ in the *Criminal Law (Sexual Offences) Act 1987*.

Recommendation 19: That the current provisions in the *Criminal Law (Sexual Offences) Act 1978 (Qld)* that restrict the publication of the identity of a person charged with a sexual offence be retained.

Status: Implemented

Recommendation 20: That the definition of a ‘prescribed sexual offence’ contained in section 3 of the *Criminal Law (Sexual Offences) Act 1978 (Qld)* be deleted and replaced with a new definition modelled on the definition of a ‘sexual offence’ that appears in section 4 of South Australia’s *Evidence Act 1929*.

Status: Rejected; not implemented

Recommendation 21: That section 10(3)(b) of the *Criminal Law (Sexual Offences) Act 1978 (Qld)* be amended to include a prohibition on naming a person who is under investigation by the police, with the proviso that identifying information about a suspect can be released if it is necessary to ensure the safety of a person or the community and/or to help locate the suspect or the complainant or otherwise assist the investigation.

Status: Rejected; not implemented

Recommendation 22: (Part 1) That the Queensland Police Service amend the references in paragraph 1.10.11(xix) of the Operational Procedures Manual that relate to the name of a defendant being disclosed ‘following an appearance in open court’, so that they are consistent with the various prohibitions on naming a defendant set out in the *Criminal Law (Sexual Offences) Act 1978 (Qld)*. Paragraph 1.10.11(xix) should therefore read: ‘Members are not to supply information to the media that identifies a defendant charged with a “prescribed sexual offence” prior to the defendant being committed for trial or sentence’. (Part 2) A similar amendment should also be made to the Queensland Police Media Guidelines.

Status: Part 1 implemented; Part 2 partially implemented

Recommendation 23: That there be no change to the current provisions within the *Criminal Law (Sexual Offences) Act 1978 (Qld)* that prohibit the publication of the identity of a person charged with a ‘prescribed sexual offence’ until the person has been committed for trial or sentence.

Status: Implemented

ODPP and QPS response

In a letter dated April 2006, the Queensland Attorney-General advised the CMC that Cabinet had supported Recommendations 19 and 23 but had rejected Recommendations 20 and 21. No explanation of Cabinet’s decisions was offered.

Regarding Recommendation 22, the joint QPS/ODPP submission to the CMC advised that relevant amendments to section 1.10.11(xix) of the QPS Operational Procedures Manual had been made and were published on 16 July 2004. The QPS Media Guidelines were being revised to reflect the change.

The QPS response to the draft report of the *Seeking justice* review (p. 14) further advised that:

The booklet called *Media guidelines for employees of the Queensland Police Service* was withdrawn from publication by the QPS Media and Public Affairs Branch in 2006. The revision of these guidelines continues and as a contingency, the Media and Public Affairs Branch is now a capable 24/7 unit that renders immediate specific media advice to police.

CHAPTER SUMMARY

The Queensland Cabinet accepted all recommendations that did not advocate change to legislation regarding the publication of the identity of a person charged with a sexual offence. In addition, the QPS accepted and, at the time of writing, had partially implemented the recommendation to amend the QPS Operational Procedures Manual and the Police Media Guidelines to ensure consistency with prohibitions on naming a defendant set out in the *Criminal Law (Sexual Offences) Act 1978*.

The Cabinet rejected recommendations to change the definition of ‘a prescribed sexual offence’ in the *Criminal Law (Sexual Offences) Act 1987* and to amend section 10(3)(b) of the *Criminal Law (Sexual Offences) Act 1978* to include a prohibition on naming a person who is under investigation by the police.

CONCLUSION

The results of this review show that significant progress has been made by the QPS in implementing the recommendations arising from the *Seeking justice* inquiry (CMC 2003). Most notably, the QPS has actively engaged with stakeholders from other government and non-government agencies to facilitate the improvement, further development and rollout of courses about the nature of sexual offences and their investigation and prosecution. Consequently, the QPS is now well on the way to providing specialist sexual offence training for all specialist officers working in the area of sexual offences (and most officers working in child protection are ICARE trained) and relevant CAP units have been developed for non-specialist officers. In addition, changes have been made to the recruitment, selection and rotation policies of the specialist sexual offence squads, the structure of these squads has been improved to provide increased career opportunities for specialist officers, and policies and protocols have been put in place to enhance communication and collaboration between the QPS and the ODPP. The QPS has also amended its Operational Procedures Manual to ensure consistency with the prohibitions on naming a defendant, as set out in the *Criminal Law (Sexual Offences) Act 1978*, and has taken steps towards clarifying this amendment in the Queensland Police Media Guidelines. In turn, representatives from agencies involved in supporting victims of sexual offences report enhanced relationships with the QPS and improved services by the QPS specialist squads to victims of sexual offences. LAQ also note improvements in the quality of the investigations undertaken by members of the QPS, albeit to a lesser extent.

We note, however, that the perceptions of some external stakeholders are that there has been significantly less change in the investigation and prosecution practices of non-specialist (uniformed) QPS officers, especially in non-metropolitan regions where these officers are the only ones available to handle sexual offence allegations. Furthermore, allegations of adult sexual offences or historical offences are often handled by non-specialist QPS officers and, again, this was seen to be problematic for the victims involved. It is possible that the relative lack of perceived changes in the practices of non-specialist police is due to many of these officers delaying or deciding against completion of the sexual offences CAP units, and/or delays in the rollout of the sexual offences training courses. Some external stakeholders to the review suggested that, like specialist (plain clothes) officers, non-specialist (uniformed) officers should be required to complete sexual offences training. In view of the other training demands placed on these officers, however, this requirement may not be realistic.

The ODPP, too, has implemented a number of the recommendations of the *Seeking justice* report. In addition to being party to the development of policies and protocols to enhance communication and collaboration with the QPS, the ODPP has developed policies and procedures to ensure consistent, detailed documentation of decisions regarding sexual offence matters, developed protocols and procedures for communicating with the defence in sexual offence matters, implemented a complaints-handling process, and reviewed the role and functions of the ODPP victim liaison officers (VLOs). In contrast to the perceived positive outcomes of the QPS changes, however, external stakeholders (including the QPS,

victim support representatives and LAQ) have observed few practical outcomes resulting from the changes implemented by the ODPP.

We acknowledge that the ODPP has undergone several internal reviews since the *Seeking justice* report was published and that the organisation has, therefore, been in a relatively constant state of change in recent years. Therefore it is possible that some of the changes reported by the ODPP have only occurred recently and, consequently, their impact may not yet have been noticed by external stakeholders. At the same time, many of the recommendations advocated by the other reviews were consistent with those advocated by *Seeking justice* and the changes made as a result of those reviews are likely to have a collective and positive impact on the expected outcomes of the *Seeking justice* recommendations.

We note, however, that the ODPP has not yet taken up the recommendation that all ODPP officers and VLOs receive training in aspects relevant to sexual offending, such as the nature and extent of abuse, child development, the disclosure and reporting of abuse, interviewing techniques and issues relating to historical cases. This delay may explain some of the inadequacies that external stakeholders perceive in the ODPP's service delivery. Certainly, stakeholders from the QPS, the ODPP and victim support agencies emphasised the need for such training to occur.

In addition to recommendations that officers of the ODPP and non-specialist police receive additional training in aspects relevant to sexual offending, the stakeholders consulted for this review made a number of other recommendations for ongoing development within the criminal justice system. Of particular note, representatives from all stakeholder groups suggested that alternatives to the criminal justice process should be considered for sexual offence cases. Representatives from at least two stakeholder groups also advocated the development of increased victim support resources, including the employment of victim support workers, employment of additional VLOs, provision of an adult version of the PACT model, and increased collaboration between the QPS, the ODPP and victim support agencies. Similarly, representatives of a number of stakeholder groups advocated increased collaboration between the ODPP and the QPS, increased communication between the ODPP and victims of sexual offences and better defined, more specialised court processes.

While it is not the purpose of this review to provide recommendations for further improvement of the criminal justice system, many of the suggestions received during this review are consistent with, or build upon, the recommendations made in the *Seeking justice* report. In turn, they highlight the need for continuing investment of time, energy and resources in the implementation of the *Seeking justice* recommendations and continuing review of the impact of these recommendations. They also suggest the need for the various stakeholder groups to engage proactively in discussions regarding the feasibility of some of these options.

From our perspective, the results of the review of the implementation of the *Seeking justice* recommendations highlight the need for the ODPP and the QPS to reach agreement (as per Recommendation 14) about the responsibilities for communicating with complainants and witnesses in sexual offence prosecutions and to clearly communicate these responsibilities. The conflicting nature of some responses received from individuals in these two agencies indicates that there is a need for protocols to be reviewed, guidelines amended (if necessary) and staff to be trained regarding their obligations and responsibilities.

In addition, we view as an issue of some priority the development and provision of training specifically designed to increase the awareness of sexual offence issues among the staff of the ODPP. We also identified a need for the ODPP to clarify within its regional offices who is responsible for the establishment of regional

prosecution review committees and/or for contributions to a central Brisbane-based prosecution review committee. If the latter is to be a central coordinating forum, the effectiveness of this committee should be periodically reviewed, particularly in terms of its ability to communicate to all regions — ODPP and police — any important trends and reasons why some sexual offence prosecutions are failing.

Finally, to enhance the handling of sexual offences by the criminal justice system, it would seem prudent for the QPS and the ODPP to revisit the communication memorandum and include guidance to police and staff of the ODPP about meetings that should be occurring regularly.

Given that some of the *Seeking justice* recommendations are yet to be fully implemented, we make the recommendations below, to ensure that both the QPS and the ODPP remain focused on how they handle sexual offences and continue to work together to improve the system. Full implementation of the *Seeking justice* recommendations should ultimately improve the quality of the criminal justice system's response to victims of abuse, and enhance the community's confidence in its capacity to do so. We therefore consider the full implementation of the recommendations to be important, and suggest a mechanism for the ongoing monitoring of their implementation.

RECOMMENDATIONS

Recommendation 1

That the Director of Public Prosecutions and Commissioner of Police reconvene the ODPP/QPS Operations Committee to meet regularly and monitor the progress of each agency in implementing the outstanding *Seeking justice* recommendations for a further 18 months after the publication of this review. The ODPP/QPS Operations Committee should particularly focus on the implementation of recommendations that:

- **senior managers of the Queensland Police Service and the Office of the Director of Public Prosecutions schedule and participate in regular meetings to discuss the progress of sexual offence matters under investigation and before the courts**
- **the Office of the Director of Public Prosecutions implements specialist sexual offence training for all legal staff and Victim Liaison Officers**
- **the Queensland Police Service continue to roll out the specialist sexual offence training for officers who work with victims of sexual assault**
- **the Office of the Director of Public Prosecutions and the Queensland Police Service develop procedures to ensure that commitments made in memoranda of understanding, especially by the Office of the Director of Public Prosecutions, are reflected in internal policies, and that there are processes to ensure compliance with these policies (e.g. in relation to Part 2 of Recommendation 13 and Recommendation 15)**

Recommendation 2

That, after 18 months, the ODPP/QPS Operations Committee provide a report documenting the progress made in the intervening period to the Attorney-General and Minister for Justice and the Minister for Police and Corrective Services. A summary of the relevant details from that report should be included in the annual reports of the Office of the Director of Public Prosecutions and the Queensland Police Service.

APPENDIXES

APPENDIX A: SUBMISSIONS AND CONSULTATIONS

Submissions to the review

Queensland Police Service (QPS)
Officer of the Director of Public Prosecutions (ODPP)
Legal Aid Queensland (LAQ)
Bravehearts Inc.
Protect All Children Today (PACT)

Consultations undertaken for the review

QPS Child Sexual Investigation Unit (CSIU)
QPS Townsville Child Protection and Investigation Unit (CPIU)
QPS Cairns CPIU
QPS Cairns Criminal Investigation Branch (CIB)
QPS Brisbane
QPS Brisbane CPIU
QPS Training Academy
QPS Child Safety & Sexual Crime Group, State Crime Operations
ODPP Townsville
ODPP Cairns
ODPP Brisbane
ODPP Gold Coast
ODPP Rockhampton
LAQ Brisbane
Bravehearts Inc.
Protect All Children Today (PACT)
The Esther Centre
Rockhampton Rape and Incest Survivors Support Centre (RRISSC)
Brisbane Rape and Incest Survivors Support Centre (BRISSC)

APPENDIX B: CHANGES IN LEGISLATION

Changes introduced in s. 21AC and 21AD of the *Evidence Act 1977* under the *Evidence (Protection of Children) Amendment Act 2003*

The *Evidence (Protection of Children) Amendment Act 2003* was assented to on 18 September 2003 and came into force on 5 January 2004 (note ss. 1 and 2 came into force on 18 September 2003). This Act amended the *Evidence Act 1977* to provide new procedures for dealing with child witnesses and introduced the term 'affected child witness'. The amending provisions are found in Part 2, Division 4A, of the *Evidence Act 1977*, 'Evidence of affected children'.

An 'affected child' is defined in section 21AC and 21AD of the *Evidence Act 1977* as:

- a child under 16 years
- or a special witness in section 21A who is 16 or 17 years.

Under the new Act, some of the procedures changed in the following ways:

- there are differences in the manner in which affected child witnesses give their evidence in the Magistrates, District and Supreme Courts
- there is a mandatory provision for an affected child witness to give evidence via audiovisual links and/or the use of screens unless the court orders otherwise
- the court is required to videotape a child's evidence for use in the same court or for rehearing
- every affected child witness has the right to a support person in court
- certain instructions are to be provided to the jury
- restrictions are placed on the ability to cross-examine the affected child witness.

In relation to committal hearings for charges that were laid after 4 January 2004:

- the prosecution can rely on section 93A statements
- defence must make an application for a directions hearing to apply to the court to cross-examine the affected child witness
- an affected child witness cannot be called to give evidence unless ordered to do so by a magistrate
- the test for the magistrate to apply when determining if an affected child witness should be cross-examined is whether:
 - the interests of justice require it
 - the prosecution case is not adequately disclosed or a charge is not adequately particularised
 - the child's evidence is relevant to the issue
- defence must disclose in their application at the direction's hearing the issue/s on which they propose to cross-examine the child. If there is a deficiency in the affected child's evidence this may be resolved by obtaining an addendum statement
- if permission is granted to cross-examine the child at the committal, defence are limited to question only matters raised at the direction's hearing.

REFERENCES

- Allen, A & Dawson, D 2004, 'Assessment of risk of reoffending by Indigenous male violent and sexual offenders', *Trends and Issues in Criminal Justice*, Australian Institute of Criminology.
- Crime and Misconduct Commission 2001, *Funding justice: legal aid and public prosecutions in Queensland*, CMC, Brisbane.
- Crime and Misconduct Commission 2003, *Seeking justice: an inquiry into the handling of sexual offences by the criminal justice system*, CMC, Brisbane.
- Crime and Misconduct Commission 2004, *Protecting children: an inquiry into abuse of children in foster care*, CMC, Brisbane.
- Crime and Misconduct Commission 2007, *Reforming child protection in Queensland: a review of the implementation of recommendations contained in the CMC's Protecting Children report*, CMC, Brisbane.
- Department of Justice and Attorney-General 2004, *Review into the operations of the Office of the Director of Public Prosecutions and its inter-relationship with the Department of Justice and Attorney-General*, JAG, Brisbane.
- Director of Public Prosecutions Queensland 1985, 'Guidelines to the Crown prosecutors, the solicitor for prosecutions and legal staff concerned with the prosecution of offences (issued pursuant to s. 11(1)(a) of the *Director of Public Prosecutions Act 1984*)', in Carter et al. *Carter's Criminal Law of Queensland*, Butterworths, 1988, pp. 150, 117–53,061 [Service 43].
- Director of Public Prosecutions Queensland 2003, *Guidelines to replace all previous guidelines*, Appendix 1, *ODDP 2002–03 annual report*, viewed 10 October 2007, <www.justice.qld.gov.au/odpp/annualreport/append0203.pdf>.
- Heath, M 2005, *The law and sexual offences against adults in Australia*, Australian Centre for the Study of Sexual Assault, Issues Paper no. 4, June 2005, pp. 6–7. Also available on the centre's website <www.aifs.gov.au/acssa/pubs/issue/i4.html> (viewed 5 September 2007).
- McSherry, B, Keyzer, P & Freiberg, A 2006, *Preventative detention for 'dangerous' offenders in Australia: a critical analysis of proposals for policy development*, Report to the Australian Criminology Research Council.
- Mercadoa, CC & Oglloff, JRP 2006, 'Risk and the preventive detention of sex offenders in Australia and the United States', *International Journal of Law and Psychiatry*, 30(1), pp. 49–59.
- Office of the Director of Public Prosecutions 2007a, Queensland Government, Brisbane, viewed 5 September 2007, <www.justice.qld.gov.au/odpp>.
- Office of the Director of Public Prosecutions 2007b, Queensland Government, Brisbane, complaints form, viewed 5 September 2007, <www.justice.qld.gov.au/odpp/complaint.htm>.
- Queensland Ombudsman 2003, *Effective Complaints Management: information for Queensland's public sector agencies*, Queensland Ombudsman, Brisbane.

Queensland Police Service 2006, *Queensland Police Service Annual Statistical Review 2005–06*, viewed 5 September 2007, <www.police.qld.gov.au/Resources/Internet/services/reportsPublications/statisticalReview/0506/documents/annualStatisticalReview2005-2006.pdf>.

QUEENSLAND LEGISLATION CITED IN THE TEXT

Child Protection Act 1999

Crime and Misconduct Act 2001

Criminal Code Act 1899

Criminal Law (Sexual Offences) Act 1978

Criminal Offence Victims Act 1995

Director of Public Prosecutions Act 1984

Evidence Act 1977

Police Powers and Responsibilities Act 2000