

**EVALUATION OF BRISBANE CENTRAL
COMMITTALS PROJECT**

August 1996

Research & Co-ordination Division
Criminal Justice Commission

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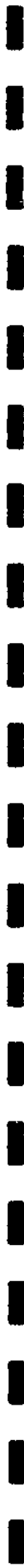
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ABBREVIATIONS

ALS	Aboriginal Legal Service
BCCP	Brisbane Central Committals Project
CJC	Criminal Justice Commission
Fitzgerald Inquiry	Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct
LAO	Legal Aid Office (Queensland)
ODPP	Office of the Director of Public Prosecutions
PCJC	Parliamentary Criminal Justice Committee
PPC	Police Prosecutions Corps
the Protocols	Brisbane Central Magistracy Committals Project Protocols
QPS	Queensland Police Service



EXECUTIVE SUMMARY

DESCRIPTION OF THE PROJECT

The Brisbane Central Committals Project (BCCP) was established with the aim of improving the efficiency and effectiveness of committal proceedings¹. The project is a "joint venture", funded by a special budgetary allocation, involving the Office of the Director of Public Prosecutions (ODPP), the Chief Stipendiary Magistrate, the Queensland Police Service (QPS) and the Legal Aid Office (LAO). The BCCP was launched on 1 July 1995 to run as a pilot project until 30 June 1996. Pending evaluation and decisions about future funding, the project has been extended on a reduced scale to 31 August 1996.

The BCCP has involved three key elements:

- the transfer from the QPS to the ODPP of responsibility for conducting prosecutions of all matters listed for committal in Brisbane Central Magistrates Court from 31 July 1995²
- agreement by the LAO to provide aid to all financially eligible defendants to facilitate early defence involvement
- the development of BCCP protocols (the Protocols) prescribing the manner and time frames in which matters must proceed.

Another important feature of the scheme is the 'continuity protocol', whereby cases handled under the project remain within the same ODPP workgroup – and preferably with the same officer – for the duration of proceedings in both the Magistrates Court and the higher court.

EVALUATION DESIGN

The evaluation design employed for this study had three components:

- a *process evaluation*, which focused on describing the operation of the project and assessing the extent to which there was compliance with the Protocols
- an *impact evaluation*, which sought to measure the extent to which the project had an effect on case processing and outcomes in the Magistrates Court and higher courts
- a *time costing analysis*, which aimed to assess the overall cost effectiveness of the project by comparing the value of the additional direct time inputs which the project required of the ODPP and LAO with the value of the time saved by the QPS.

1 A committal is a preliminary hearing, conducted before a magistrate to ascertain if there is enough evidence to justify proceeding with a criminal prosecution in the District or, as the case may be, Supreme Court.

2 The ODPP began receiving files from the commencement of the project in early July. The staff began conducting prosecutions from the end of July.

KEY FINDINGS

PROCESS EVALUATION

The data used for the process evaluation component of the study came from three sources:

- interviews with project participants
- progress reports prepared by participating agencies for the Litigation Reform Commission in June 1996
- statistical data from the project database maintained by the ODPP and from the Magistrates Court.

The key findings are as follows:

- The number of cases processed through the BCCP was substantially higher than had been anticipated. Workload pressures were particularly intense in the early months of the project, placing great strains on the resources and staff of the project team in the ODPP.
- There has been very little compliance with the Protocol requirement that the police brief be delivered to the ODPP and the defence 14 days prior to the Committal Mention Day. The average number of days by which briefs are late has fluctuated between 10 and 17 days. Late briefs have been the main cause of adjournments on Committal Mention Day.
- Over one third of matters proceeding as committals were dealt with by way of a hand-up brief on Committal Mention Day. However, there continue to be complaints from magistrates, police and the ODPP that some practitioners are requiring witnesses to attend committal hearings unnecessarily.
- Police arresting officers complained of having to prepare full briefs, only for matters to result in a plea or proceed by way of an *ex officio* indictment. This problem appears to have eased since the ODPP issued guidelines on *ex officio* indictments in March 1996.
- Due to high staff turnover and workload pressures, the ODPP has had great difficulty in complying with the continuity protocol. The LAO achieved a higher level of continuity within its in-house legal practice, but has experienced difficulties in matters involving private practitioners.
- Police – ODPP relations have been enhanced by the BCCP.
- Legal practitioners are largely positive in their views of the BCCP and the role of the ODPP in particular.
- The extent to which legal aid funding practices have impacted on the operation of the BCCP is not clear.

IMPACT EVALUATION

In order to measure the impact of the BCCP on case processes and outcomes, we relied on straightforward "before and after" comparisons. The primary sources of data for this chapter are a three month pre-pilot study undertaken by the ODPP in April - June 1995, which collected data on outcomes of matters mentioned for committal in the Brisbane Central Magistrates Court, and the BCCP database maintained by the ODPP. We also had access to some information on trends in late guilty plea and late *nolle prosequi* in the Brisbane District Court.

Using data from these two comparison periods, we examined:

- trends in the proportion of cases initially listed for committal which were:
 - * committed for trial
 - * committed for sentence, or processed as an *ex officio* indictment
 - * withdrawn prior to the hearing or discharged at the hearing
 - * finalised as summary matters
- the impact of the BCCP on higher court workloads
- trends in the number of late pleas of guilty and late entries of *nolle prosequi* for matters listed for trial in the District or Supreme Court.

Our study was constrained by three factors:

- pre-intervention data were available for only a relatively short period
- there was no control site
- the project itself had only a limited time span.

Because of these factors, our estimates of the *magnitude* of the effects attributable to the project need to be regarded with some caution, although we are confident that we have correctly identified the general *direction* of these effects.

We found that, following the establishment of the BCCP:

- There was a significant decline in the proportion of matters initially mentioned for committal which proceeded as committals for trial.
- The proportion of cases in which the defendant indicated an intention to plead guilty at, or prior to, committal increased by around 180 per cent. This was due largely to a marked rise in the use of the *ex officio* indictment procedure.
- There was little change in the proportion of matters initially listed for committal which were dealt with by way of a summary disposition.
- There was an initial increase in the proportion of matters withdrawn prior to committal, but by April 1996 the rate had returned to pre-project levels. This trend could indicate either that the ODPP's effectiveness as a filter declined or, more likely, that police had adjusted their behaviour and were less likely to proceed with cases that were evidentially weak.

- There is, as yet, no conclusive evidence that the BCCP has led to a reduction in higher court workload, or reduced the incidence of late pleas of guilty and/or *nolle prosequi* in the higher courts.

TIME COSTING ANALYSIS

The third – and most complex – component of the evaluation was an assessment of the cost implications of involvement in the project for the ODPP, LAO and QPS, based on a comparison of the direct time inputs involved in processing BCCP cases and non-BCCP cases. The primary purpose of this exercise was to determine the extent to which the extra time and cost inputs required of the ODPP and the LAO at the committal stage were “paid for” by subsequent time savings for these agencies in the post-committal stage and savings in police prosecutors’ and investigating officers’ time.

Information about the time and cost inputs associated with various case outcomes was obtained from the following sources.

- Data on the relative amount of time spent by LAO staff on BCCP and non-BCCP matters handled “in-house” were obtained from the LAO time recording system for the three-month period 15 January 1996 to 15 April 1996.
- Police prosecutors at Holland Park and Beenleigh were asked to record the amount of time which they spent on each committal matter handled in the period 20 February 1996 to 12 April 1996. A sample of police investigating officers was interviewed by telephone by CJC researchers at the conclusion of key stages in the prosecution process, and asked to estimate the time they had spent working on the case during that stage.
- Staff at the ODPP were asked to time record for the period 18 March 1996 to 17 May 1996, using data collection forms designed by the CJC. Data on ODPP time inputs into *ex officio* matters were obtained by asking officers to estimate after the event the amount of time involved in such matters. This approach was taken as the time recording period was not sufficiently long to cover an *ex officio* matters from start to end.

Several factors made it very difficult to measure accurately the overall cost effectiveness of the project.

- The ODPP time costing survey data, in particular, were of poor quality. As acknowledged by the ODPP, there was only limited compliance by its officers with the requirements of the time recording survey. Consequently, the time involved in dealing with various types of matters was significantly under-stated.
- Because of the short survey period, a relatively small proportion of the ODPP’s time records related to matters which had completed a key stage. This further reduced the reliability of some estimates.
- For practical reasons, we were not able to collect data on all the time and cost inputs associated with the processing of cases. To enable comparison of the ODPP, LAO and QPS we excluded overhead costs, including the cost of support staff, from consideration (hence our use of the term ‘direct time inputs’). This method captured only time inputs which were associated with particular cases, and therefore excluded significant amounts of time spent by staff on other related activities (such as attending meetings relating to the general operation of the BCCP).
- We were unable to quantify all of the potential benefits of the project. For example, we were not able to measure how much Magistrates Court and higher court time, if any, was saved as a result of the project, let alone assign a dollar value to any such savings.

Despite these limitations, the data which we have collected enable us to make some broad estimates as to whether the project can be considered to have "paid its way", and to determine whether time and cost savings have been achieved in the expected areas.

The key findings from our analysis are as follows:

- On an annualised basis, the BCCP has generated direct time savings for the QPS in the vicinity of \$524,000. The bulk of these savings have come from savings in investigating officers' time, due to more matters being finalised by way of *ex officio* indictments, and the earlier and more focused preparation of briefs of evidence.
- Direct time costs for the LAO have been around \$425,200, made up primarily of additional grants of aid to private practitioners. LAO involvement at the committal stage appears to have reduced, by around two hours per matter, the time which LAO in-house staff are required to put into matters post-committal.
- Direct time costs for the ODPP were in the range of \$78,000 to \$171,700, depending on the assumptions which are made about the extent of under-recording of time by the ODPP. The ODPP has saved some time "downstream" by increasing the proportion of matters processed by way of *ex officio* indictment and increasing the number of matters withdrawn at or prior to committal. However, the BCCP does not appear to have reduced the amount of time which ODPP staff spend on higher court matters committed for trial or sentence.
- Depending on which estimates are used for the ODPP, the BCCP as a whole has generated somewhere between a net overall saving in direct time inputs of \$20,600 and a net cost of \$73,100.
- Allowing for data limitations, and the need to make a large number of assumptions, this estimated range should be regarded as indicative only. However, we feel fairly confident in concluding that the BCCP has been close to cost neutral (measured in terms of direct time inputs).

CONCLUSION

On the basis of the results so far, we strongly support the continuation of the BCCP. If the BCCP is discontinued, it will be very difficult to get the various agencies to agree to reinstate the project if and when further funds become available. More specifically, termination of the project at this stage can be expected to result in:

- increased workload demands on police prosecutors
- increased workload demands on investigating police officers with a subsequent reduction in the time available to investigate other matters
- an effective increase in the ODPP's higher court workload of approximately 1,500 cases due to the abolition of the BCCP work group
- a reduction in early pleas, with deleterious consequences for witnesses (especially victims) and, potentially, for court listing practices
- an increase in weak cases entering the system, with consequent waste in ODPP, LAO and court time, and a decline in the quality of case preparation.

It was not our intention, in conducting this evaluation, to make detailed recommendations for improving the efficiency and effectiveness of the BCCP, but there are three areas in which improvements to the process could be made:

- It is very important to maintain coordinating mechanisms such as the Project Steering Committee and the Criminal Case Management Group of the Litigation Reform Commission, so that agencies have a forum in which to discuss and resolve problems on a continuing basis.
- If the BCCP is to be maintained, it is vital that data continue to be collected about the operation and impact of the project, and the value of time and cost inputs, so that any problems or shortcomings can be quickly identified and corrected.
- Operational difficulties have risen in the BCCP that may have impaired its effectiveness; most notably, the non-observance of the protocol times for delivering completed briefs by police and consequent late – and sometimes unnecessary – requests by defence solicitors for the attendance of witnesses. It may well be that further improvements could be expected with time under the BCCP. However, we would also recommend that serious consideration be given to providing the BCCP Protocols with a similar legislative underpinning to that which supports the Victorian regime.

CHAPTER 1

INTRODUCTION

This introductory chapter outlines:

- the nature and purpose of the Brisbane Central Committals Project (BCCP)
- the factors which led to the development of the project
- the funding of the project
- the arrangements that were set in place for the management and evaluation of the project
- the structure of the report.

THE BRISBANE CENTRAL COMMITTALS PROJECT

A committal is a preliminary hearing, conducted before a Magistrate to ascertain if there is enough evidence to justify proceeding with a criminal prosecution in the District or, as the case may be, Supreme Court (see Chapter 2 for a more detailed description of the criminal prosecution process and the place of the committal hearing in that process).

The BCCP was established with the aim of improving the efficiency and effectiveness of committal proceedings. The project is a "joint venture", funded by a special budgetary allocation, involving the Office of the Director of Public Prosecutions (ODPP), the Chief Stipendiary Magistrate, the Queensland Police Service (QPS) and the Legal Aid Office (LAO). The BCCP was launched on 1 July 1995 to run as a pilot project until 30 June 1996. Pending evaluation and decisions about future funding, the project has been extended on a reduced scale to 31 August 1996.³

The BCCP has involved three key elements:

- assumption by the ODPP of responsibility for conducting prosecutions of all matters listed for committal in Brisbane Central Magistrates Court from 31 July 1995⁴
- agreement by the LAO to provide aid to all financially eligible defendants to facilitate early defence involvement
- the development of BCCP protocols (the Protocols) prescribing the manner and time frames in which matters must proceed.

3 See p. 3 for further discussion.

4 The ODPP began receiving files from the commencement of the project in early July. The staff began conducting prosecutions from the end of July.

Another important feature of the scheme is the 'continuity protocol', whereby cases handled under the project remain within the same ODPP workgroup – and preferably with the same officer – for the duration of proceedings in both the Magistrates Court and the higher court.

BACKGROUND TO PROJECT

In 1989 the report of the Commission of Inquiry into Possible Illegal Activities and Associated Misconduct (Fitzgerald Inquiry) proposed that:

action be initiated to remove as far as is practicable, prosecution and legal advice responsibilities from the Police Department. Except in remote localities, prosecutions presently handled by police prosecutors would become the responsibility of legally qualified civilian staff of the Director of Public Prosecutions. (1989, pp. 381 – 382)

New South Wales, Victoria and South Australia have all, to varying degrees, transferred responsibility for prosecuting committals from the police prosecutors to the relevant Directors of Public Prosecutions. In the Australian Capital Territory, all committals are conducted by the Director of Public Prosecutions. Committal proceedings in federal matters prosecuted in State Courts are handled by the Commonwealth Department of Public Prosecutions.

Several other reports in Queensland and elsewhere have argued that some or all police prosecuting functions should be transferred to an independent prosecution agency. The Australian Institute of Judicial Administration (1990) recommended that the trend towards greater involvement by State and Territory prosecutions authorities in the conduct of committals should be encouraged, and that ultimately, all committals should be conducted by indicting authorities rather than police prosecutors (Brereton & Willis 1990, p. 89). This proposal was adopted in a report to the Commonwealth Attorney-General by the Access To Justice Advisory Committee (1994, p. 420). In Queensland the Police Prosecutions Working Party, established by the Criminal Justice Commission (CJC), examined Fitzgerald Inquiry recommendations and proposed in 1993 that:

- the ODPP assume responsibility for all committals in Queensland
- the QPS prosecutors retain responsibility for all other matters with certain exceptions, such as the prosecution of a simple offence where the defendant is a police officer (p. 18).

The Criminal Case Management Group, established by the Litigation Reform Commission (Queensland) unanimously agreed at a meeting in November 1994 on broad outlines for reform of the criminal process in Queensland. The group concluded that delay and cost in the criminal justice system could best be reduced through the intervention, at the earliest possible time, of the court, the ODPP and the LAO.

THE IPSWICH COMMITTALS PROJECT

In late 1994 funding was granted to the ODPP to initiate a pilot project in Ipswich which was intended to test the hypothesis that the involvement of the ODPP and the LAO in proceedings in the Magistrates Court prior to committal would result in an earlier resolution of matters and an increased quality of prosecutions.

The Ipswich Committals Project initially ran from October 1994 to December 1994 and was considered to have been highly successful by all participants. The report of KPMG Management Consulting (1995) concluded that the Ipswich Committal Project had achieved the following positive results for the criminal justice system:

- increased early resolution of matters through guilty pleas, as a result of better communication between parties and enhanced opportunities for negotiation
- a reduced backlog of cases in the District Court
- improved quality of case preparation by the ODPP, due to ODPP officers having a better understanding of the case characteristics and issues, and not being hindered in the preparation process by late or incomplete depositions and briefs of evidence (p. 7).

The apparent success of the Ipswich Project led to the development of a proposal for a larger pilot project to be implemented in the Brisbane Central Magistrates Court at North Quay.

In April 1995 KPMG Management Consulting also conducted a preliminary cost-benefit analysis for the proposed Brisbane project, based on early results from the Ipswich trial. The KPMG Management Consulting analysis necessarily assumed that the pattern of case outcomes in proceedings in Ipswich and Brisbane would be the same and that therefore the results of the two projects would be similar. KPMG Management Consulting also had to rely on estimates provided by the ODPP and LAO, both of the amount of work normally done by each agency on cases, and of the work which would be saved under the project.

KPMG Management Consulting concluded that the proposed project in Brisbane would generate net savings, if one-off establishment costs were excluded from the analysis, and would result in only a modest net cost if one-off establishment costs were charged to the first year of operation (1995, pp. 25-26).

FUNDING OF THE BCCP

The Treasury Department of Queensland allocated an additional \$1.024m to the ODPP in July 1995 to fund the BCCP. Because of a higher than expected volume and complexity of matters (see Chapter 4), additional staff had to be appointed by the ODPP. At a meeting of the Evaluation Steering Committee in mid-May 1996, it was revealed that the project was facing a projected budget shortfall of \$0.250m as at 30 June 1996. In response to this situation, it was decided to reduce the number of BCCP staff working on the project by four legal officers and three clerks and return responsibility for approximately half of the incoming committal matters to the QPS. In addition, supplementary funding was provided to the ODPP by the Department of Justice to enable the project to continue on a reduced scale to the end of August 1996.

The LAO received \$393,000 to fund the project. To assist in processing grants of aid for matters under the BCCP, the LAO installed a telecommunication landline to allow access by an LAO officer physically located in the court building to the LAO's computer system. Increased outlays, due to the cost of the landline to the Magistrates Court, the under-estimation of the number of grants expected for the period to 30 June 1996, and consequential higher than anticipated staff requirements, resulted in a funding shortfall estimated in late May 1996 to be \$164,000. The LAO had initially intended to cover this shortfall from its general budget. However, this did not prove to be necessary as the LAO was able to offset the shortfall by savings from the Ipswich Committals Project.

ARRANGEMENTS FOR PROJECT MANAGEMENT AND EVALUATION

The Protocols for the BCCP stipulated that a Steering Committee of the stakeholders, chaired by the Chief Stipendiary Magistrate, was to meet monthly or as otherwise determined to monitor and adjust the operation of the BCCP. An Evaluation Steering Committee was established in October 1995, chaired by the Deputy Director-General of the Department of Justice and Attorney-General (as it was then named) and including as members representatives of the LAO, ODPP and QPS, and the Chief Stipendiary Magistrate. That Committee requested that the CJC's Research and Co-ordination Division take responsibility for the evaluation three months after the project had commenced.

At the time this request was made, staff of the division had begun work on a report to Parliament on the more general issue of whether responsibility for conducting prosecutions in the Magistrates Court should be transferred from the QPS to the ODPP. This issue had been identified in the report of the Fitzgerald Inquiry (see above) and hence was a matter which the CJC was required to report on under s. 23(k) of the *Criminal Justice Act 1989*. In addition, the Parliamentary Criminal Justice Committee (PCJC), in its three year review released in February 1995, had flagged the transfer of the prosecutions function as a priority research area.

Following consultation with the PCJC⁵ in late 1995, the CJC determined that the Research and Co-ordination Division should take on responsibility for the BCCP evaluation and should suspend work on the larger report until this study had been completed. The CJC and the PCJC agreed that the evaluation would generate valuable information which would be of assistance in determining the extent to which – and under what circumstances – the ODPP should take over the prosecutorial functions of the QPS. The CJC was also mindful of its responsibilities under section 23(e) of the *Criminal Justice Act 1989* to research and report on proposals for reform of the criminal law and the law and practice relating to the administration of criminal justice.

MANAGEMENT OF EVALUATION PROCESS

CJC research staff met with the Evaluation Steering Committee on 8 November 1995 and the evaluation plan developed by the CJC was endorsed at the meeting. In December 1995 the Steering Committee was provided with a qualitative assessment of the BCCP's implementation, based on interviews with staff of the agencies involved and legal practitioners (CJC 1995a). In early 1996, at the urging of Treasury, KPMG Management Consulting was commissioned by the ODPP to provide an interim cost-benefit report on the project (KPMG 1996). The CJC provided KPMG Management Consulting with comments and data to assist with that study. In late April the CJC became aware that funding difficulties had been encountered by the ODPP in relation to the project. The Evaluation Steering Committee met on 13 May at the CJC's request to discuss the future of the BCCP. As a result of this meeting the CJC revised its timetable for completion of the evaluation. On 27 May the Department of Justice was provided with preliminary estimates of savings in police prosecutor and investigating officer time attributable to the project. At that stage we did not have usable costing data for the ODPP or the LAO.

On 28 June a preliminary report on the evaluation was provided to the members of the Evaluation Steering Committee and the Attorney-General. Following discussion with the ODPP and receipt of additional data some adjustments were made to the costing estimates contained in the preliminary report. This material was also provided to the Steering Committee. A draft of the final report was circulated to all agencies represented on the Evaluation Steering Committee on 16 August. Where appropriate, comments received from these agencies have been incorporated into this report.

5 Or the Legal, Constitutional and Administrative Review Committee, as it was known at that time.

STRUCTURE OF THE REPORT

This research report presents the findings of the CJC's evaluation of the BCCP, according to the following structure:

- Chapter 2 provides a general description of the role of the Magistrates Court and the committal process and outlines the objects of the BCCP and the Protocols developed for the project. This chapter also identifies the main changes made to the BCCP over the life of the project.
- Chapter 3 describes the various components of our evaluation methodology and discusses the difficulties involved in the evaluation of the project. The chapter also identifies the sources of data which were utilised.
- Chapter 4 focuses on how the BCCP worked in practice, with particular emphasis on the extent of compliance with the Protocols. The chapter also looks at the reasons why compliance with the Protocols was not always achieved, and briefly examines working relations between ODPP staff involved in the project, police and legal practitioners.
- Chapter 5 endeavours to quantify the impact of the BCCP on outcomes in the Magistrates Court and the higher courts. The chapter compares trends prior to, and following commencement of, the project in relation to: committals for trial; *ex officio* indictments; guilty pleas; and withdrawals. There is also a brief analysis of the impact of the project on higher court workloads and late pleas of guilty and *nolle prosequi*.
- Chapter 6 calculates the direct time input costs and savings for each of the three main agencies involved in the BCCP: the QPS, LAO and ODPP. These estimates are then used to draw some tentative conclusions about the overall cost effectiveness of the project.
- Chapter 7 summarises key findings and briefly sets out our conclusions and recommendations.



CHAPTER 2

PROJECT DESCRIPTION

INTRODUCTION

This chapter provides an overview of the prosecution process and describes the role of the committal hearing in that process. The chapter also describes the operation of the BCCP and how it has changed the prosecution process. Some of the key changes made to the BCCP over the life of the project are then described.

OVERVIEW OF THE PROSECUTION PROCESS

In order to understand the significance of the changes introduced by the BCCP, it is necessary to describe how a criminal charge, particularly a charge of an indictable offence, is processed from arrest through the court system.

A criminal prosecution may be commenced in one of two ways:

- by the arrest and charging of a person
- by service on the person of a complaint and summons which requires the person to appear before the court on a nominated date.

By far the majority of prosecutions of indictable offences are commenced by way of arrest and charge.

When the police arrest and charge a person with an offence they are required to take the person before a court as soon as practicable after arrest, unless they grant the person bail. In the vast majority of cases, people are granted bail by the police. Prior to the BCCP, those people who were granted police bail were required to appear before the Magistrates Court on the following day (except for arrests on a weekend when the person would be bailed until Monday).

APPEARANCE BEFORE THE MAGISTRATES COURT

The Magistrates Court is the court in which adults charged with criminal offences make their first appearance. The court has jurisdiction to hear and determine regulatory and simple offences and specified indictable offences in certain circumstances. With respect to indictable offences generally, the Magistrates Court conducts a preliminary hearing, known as a committal hearing, to determine whether there is sufficient evidence to justify committing the matter to a higher court for sentence or trial.

The manner in which the Magistrates Court deals with the matter depends upon whether the indictable offence is:

- a 'purely indictable' offence, in which case it has to proceed by way of committal or by *ex officio* indictment (see below); or
- a 'hybrid' offence, being one of the indictable offences which, in some cases, may be dealt with summarily (that is, as a sentence or trial in the Magistrates Court) rather than as a committal.

An indictable offence which is not dealt with summarily must be dealt with either by trial or sentence in the higher courts. The matter makes its way into the higher courts either by:

- being committed for trial or sentence to the higher court from the Magistrates Court; or
- the presentation of an *ex officio* indictment in the higher court which circumvents the need for a committal hearing.

A matter is committed by the magistrate to a specified sittings of the higher court and the ODPP must present an indictment in the higher court before the end of the sittings. The indictment contains the charges to which the person will be asked to plead. An *ex officio* indictment contains charges which have not been committed from the Magistrates Court. The latter course is most often used at the election of the defence, when the defendant intends to plead guilty in the higher court.

For criminal matters (other than traffic) the first appearance before the Brisbane Central Magistrates Court takes place in Court 1. A Duty Lawyer is available in Court 1 to appear for people who wish to plead guilty on that first appearance or to have their matter adjourned for a couple of weeks to enable them to obtain legal representation. Eventually, after the first or second appearance in Court 1, the matter is identified as:

- a committal proceeding (in the case of a purely indictable offence and some hybrid offences) or
- a summary plea of guilty or trial (if it was a hybrid offence and an election was made to have it dealt with summarily).

Prior to the BCCP, all of the above matters would be adjourned to Court 5 which was the clearing house for all summary trials and committals. Matters would be mentioned before the court each day of the week. These matters would either be assigned to a court for hearing on the day, given future hearing dates or adjourned for further mention.

As noted earlier, before the BCCP, police prosecutors were responsible for prosecutions in the Magistrates Court, including summary hearings and committal proceedings. At the time of the first appearance before the court, the police prosecutor would rely on a Form QP9 prepared by the investigating officer, for the details of the offence.⁶ The investigating officer was required to complete the QP9 after arrest and prior to the accused's appearance in court the following day. The full brief of evidence was to be completed prior to the committal hearing and often was only received by the Police Prosecutions Corps (PPC) a day or so before the hearing.

Before the adoption of the BCCP Protocols, legal aid was only provided for committal proceedings to persons charged with offences which are required to be dealt with in the Supreme Court (i.e. those carrying a maximum of 14 or more years imprisonment), except in special circumstances.⁷ The ODPP was generally not involved at committal stage⁸, only assuming responsibility for cases once they were committed to the Supreme Court or District Court for trial or sentence.

⁶ A QP9 is a police form setting out the relevant charge or charges which contains any antecedent material in relation to the defendant and a certified summary of facts then known by the investigating officer.

⁷ In determining whether special circumstances exist, the LAO applies a merit test.

⁸ The ODPP sometimes conducted committals for major crime and some sexual offences.

THE COMMITTAL HEARING

A committal hearing is a preliminary hearing conducted in the Magistrates Court to determine whether or not there is sufficient evidence to justify committing the matter to the higher court.⁹ This hearing provides an opportunity for the evidence of Crown witnesses to be tested and to assess the strength of the Crown case against the defendant.

As a general rule, witnesses are required to give evidence in person at committal proceedings. However, the *Justices Act 1886* permits the admission into evidence of 'written statements of witnesses tendered to them by the prosecution or the defence without those witnesses appearing before them to give evidence or make statements'.¹⁰ A written statement may only be admitted if the prosecution and the defence agree to its admission. A committal hearing where written witness statements are tendered is commonly called a hand-up committal. In some hand-up committals, one or more witnesses whose statements have been tendered may be required for cross-examination. Hand-up committals in which no witnesses are required for cross-examination are referred to as full hand-up committals.

CHANGES TO THE PROCESS MADE BY THE BCCP

Broadly, the BCCP was aimed at the 'more efficient and timely disposition of indictable offences' (Chief Stipendiary Magistrate et al. 1995, p. 2). The project sought to achieve this aim through the implementation a number of changes to the criminal prosecution process. These changes are set out in the Protocols governing the operation of the BCCP which were jointly adopted by the Chief Stipendiary Magistrate, the Commissioner of Police, the Director of Public Prosecutions and the Director of the Legal Aid Office.

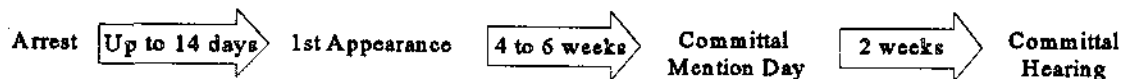
There are five main areas in which the BCCP has varied the prosecution process:

- the implementation of new bail procedures following the arrest of a person for an indictable offence
- the division of responsibility between the QPS and the ODPP for the prosecution of offences in the Magistrates Court
- the provision of legal aid to financially eligible persons appearing before the Brisbane Central Magistrates Court on an indictable offence
- the more efficient preparation, delivery and disclosure of police briefs of evidence
- the establishment of new procedures in the Brisbane Central Magistrates Court, especially the Committal Mention Day system.

⁹ Section 104 of the *Justices Act 1886* refers to an 'examination of witnesses in relation to an indictable offence'. Subsection (2) refers to whether there is evidence 'sufficient to put the defendant upon his trial for any indictable offence'.

¹⁰ Section 110A(2) *Justices Act 1886*.

The effect of these changes (discussed in more detail below) is that the time line for the progress of a case through the BCCP is broadly as follows:



NEW BAIL PROCEDURES

At the same time as the BCCP was commenced, the QPS instituted changes to the bail procedure. Although these changes were implemented independently of the BCCP, they formed part of the Protocols and are an important part of the operation of the project. The effect of the changes is that following arrest, persons eligible for bail are to be bailed by the watchhouse keeper for up to 14 days before their first appearance in the Magistrates Court¹¹, rather than appearing in court on the day of arrest or the following day.

Under the new procedures, defendants who are granted bail are to be supplied with a Bail and Appearance Information Kit.¹²

ODPP RESPONSIBILITY FOR PROSECUTION OF COMMITTALS

Under the Protocols, the ODPP is now responsible for the prosecution in the Magistrates Court and higher courts of all matters which are purely indictable offences. For hybrid offences, the PPC retains responsibility for the prosecution until it is decided that the matter will be heard in the higher court, at which time the ODPP will take over the prosecution. If the matter is to be dealt with summarily, it is retained by the PPC. If a hybrid matter reverts to a summary matter after the ODPP takes over, the ODPP is to retain the prosecution.

Originally, the Protocol required ODPP prosecutors to appear in Court 1 on the first mention of all purely indictable offences. The ODPP found that attendance at Court 1 mentions placed great burdens on the time of ODPP staff without significant benefits being achieved. Shortly after the commencement of the BCCP, it was agreed between the ODPP and the QPS that the practice prescribed by the Protocol would be changed so that the PPC retained responsibility for all first mentions of matters in Court 1 (and in some cases, for second mentions in Court 1), including purely indictable matters. The PPC also now appears, with instructions from the ODPP, on all mentions of ODPP matters that are listed in Magistrates Court 1. The ODPP takes over the prosecution after the Court 1 mentions and prior to the matter reaching Court 5 on Committal Mention Day.

Until the establishment of the BCCP, the ODPP's Solicitors Branch had the carriage of matters which had been committed for trial or sentence, after the committal hearing in the Magistrates Court. A lawyer from that branch was required to attend to such tasks as preparing the indictment, obtaining further statements from witnesses, interviewing the complainant, corresponding with the defence and having the matter listed for trial. A Crown Prosecutor from the ODPP's Prosecutors Branch was allocated once the matter was listed for trial or sentence.

¹¹ The policy is set out in Chapter 16.21.2 of the QPS Operational Procedures Manual. Those denied watchhouse bail still appear in the Magistrates Court the next day.

¹² The Kit was to contain, at the least, copies of each of the defendant's bail undertaking, the Bench Charge Sheet and interview audio tape (if any), together with a sheet advising about the availability of legal aid and a legal aid application form.

The BCCP Protocols provide that the ODPP (and the LAO) would, with some exceptions, implement a continuity principle whereby 'a single officer will, if at all possible, retain responsibility for a matter throughout its entire course through the committal system and, if appropriate, to the taking of pleas in the superior courts . . .' (Chief Stipendiary Magistrate et al. 1995, p. 6). That principle was one of two considerations which led to a restructuring of the ODPP into teams or workgroups comprised of preparations and advocacy staff.¹³

To satisfy the requirement of the continuity principle, a workgroup within the ODPP was established to operate under the BCCP ("workgroup 4"). Originally this workgroup comprised five legal officers (who did Magistrates Court appearances) and seven clerks. These positions were newly created for the project. Over the course of the project the number of staff in the workgroup fluctuated, reaching a maximum of 19 staff at one stage.

The staff in workgroup 4 work on files from committal through to completion in the higher court. The work they do on the file at the higher court stage is work that, but for the existence of the BCCP, would have been done by the existing ODPP staff.

LAO AGREEMENT TO PROVIDE AID AT THE COMMITTAL STAGE

Under the Protocols, the LAO agreed to provide legal aid to financially eligible people appearing before the Brisbane Central Magistrates Court in committals prosecuted by the ODPP. As noted earlier, the availability of legal aid services at committal stage was limited prior to the BCCP.

The LAO agreed to provide services either by representing defendants themselves or by referring cases to private practitioners. The grants of legal aid under the project are not subject to a merit test. The LAO also agreed to ensure that the Protocols are followed by private practitioners.

The continuity principle also applies to the LAO in-house practitioners, requiring a single officer to maintain carriage of the case through committal to finalisation in the higher court.¹⁴

THE IMPOSITION OF TIME LINES FOR POLICE BRIEF PREPARATION

A key feature of the Protocols is the imposition of detailed time lines for the preparation of police briefs. Essentially the time lines require that:

- the investigating officer complete the QP9 within three shifts after arrest so that it is available to the PPC not more than five days after the date of arrest
- where the matter is an indictable offence, and therefore to be handled by the ODPP, the PPC is to forward it to the ODPP within six days of the date of arrest
- key witness statements are to be obtained by investigating officers at the earliest opportunity and supplied before the first mention date (being the date to which the defendant had been granted bail – not more than 14 days after arrest), to enable decision-making by ODPP and the defence

¹³ The other consideration was the need to forge closer links between preparations staff and Crown Prosecutors with a view to improving efficiency, performance and morale, as recommended by the Administration of Criminal Justice Review Committee (1993).

¹⁴ As noted in Chapter 4, there are impediments to the operation of the continuity principle in relation to cases assigned to private practitioners.

- the full Police Brief is to be delivered to the ODPP and the defence by not later than 14 days prior to the Committal Mention Day.

The PPC is required to establish and maintain the PROS INDEX¹⁵ for all matters. According to the Protocols, the investigating officer retains possession of all original documents and exhibits 'until the hearing of the committal unless otherwise required'. QPS officers also remain responsible for notification of witnesses and their attendance at court as and when required.

COMMITTAL MENTION DAY SYSTEM

At the first or second mention of a matter before the Magistrates Court (in Court 1) a matter which is to be a committal is adjourned to a Committal Mention Day in Court 5 six weeks after the mention date. The period of six weeks may be extended, if circumstances indicated that a longer period is appropriate. For example, where QPS investigations are incomplete or more time is required in order to finalise the preparation of the prosecution case, the prosecutor is to inform the Chief Stipendiary Magistrate of the time realistically required to complete those steps to enable the matter to proceed to committal.

On Committal Mention Day, where possible, full hand-up committals are dealt with. Where a committal hearing involving witnesses or consideration of physical evidence is required the matter is given a hearing date 14 days or longer after the Committal Mention Day. Defence lawyers are expected to advise the Magistrate which prosecution witnesses and evidence will be required for the hearing and are expected to justify a blanket demand for all prosecution witnesses to be called or for exhibits to be produced. The Protocol called for the cessation of 'unnecessary and wasteful practices in scheduling of committals, arranging witnesses and the like'.

If a matter is identified as proceeding by *ex officio* indictment, it will be adjourned for a six week (or longer) period to facilitate that course. Once the Magistrates Court is notified that the matter has been dealt with by *ex officio* indictment in the higher court, the matter will be withdrawn in the Magistrates Court.

MODIFICATIONS MADE OVER THE LIFE OF THE PROJECT

During the course of the project, there were some significant changes to the structure of the project and the context in which it operated. Those changes are described below:

APPEARANCES IN COURT 1

As explained earlier in the chapter, within the first month of the project, the workload of the ODPP staff meant that they were no longer able to appear on the first mention of indictable offences in Court 1. Accordingly it was agreed that the QPS would resume responsibility for all matters in Court 1 and the ODPP would take over the prosecution after the matter was adjourned to Court 5 for committal mention.

¹⁵ The PROS INDEX is a case management database maintained by QPS and containing details of all cases prosecuted by the PPC. Case information is updated on a regular basis during the prosecution process.

EX OFFICIO INDICTMENTS

During the course of the project there was considerable confusion, especially among police, as to what material was required for a matter to proceed by way of *ex officio* indictment. Accordingly, on 20 March 1996, procedures for pleas of guilty on *ex officio* indictments were issued by the Director of Public Prosecutions where the defence has indicated a desire to proceed by way of such an indictment. Previously, no guidelines had existed in relation to matters where the defendant indicated an intention to proceed by way of *ex officio* indictment.¹⁶

GUIDELINES AS TO CHARGING OF "LESSER" OFFENCES

Guidelines were issued to the Commissioner of Police and all officers of the QPS, by the Director of Public Prosecutions¹⁷ on 16 May 1996 which were intended to ensure a consistent approach to the charging of offenders. The guidelines state that they are not intended to be construed as part of a statutory enactment, but would require adaptation from case to case to meet particular circumstances. The guidelines covered such matters as the charging of persons with "false pretence type" offences, unlawful use or possession of motor vehicles and stealing and/or receiving in circumstantial cases or where equivocal admissions have been given.

CHANGES IN LEGAL AID FUNDING RULES

Throughout the course of the BCCP, the LAO found it necessary to make alterations to its funding rules. In particular, in December 1995, it introduced a revised payment policy under which matters dealt with by *ex officio* indictment were not to be considered as part of the BCCP in determining payment to private legal practitioners (see Chapter 4 for further discussion).

CUTBACK OF ODPP STAFF INVOLVEMENT

As stated above, the ODPP workgroup responsible for the BCCP fluctuated significantly in size during the course of the project, reaching a high of 19 staff in October 1995. However, in late May 1996, as a result of lack of funds, there was a substantial reduction in the size of workgroup 4 when the employment of four legal officers and three clerks was terminated. The number of matters which the workgroup could realistically deal with was necessarily affected by this reduction in staffing levels.

As a consequence of the reduction in staffing levels, the QPS agreed to take back responsibility for some committals. From early June 1996, the ODPP continued to receive all matters for Committal Mention Day. However, after the matters were given committal hearing dates some were referred back to the PPC for PPC staff to appear on the committal hearing. Since that time, around five committals a day are sent back from the ODPP to the PPC.

¹⁶ The ODPP had previously published guidelines concerning the circumstances in which that Office would present an *ex officio* indictment in the absence of a committal (see Director of Public Prosecutions 1995 p. 15).

¹⁷ Pursuant to section 11 (1)(a) of the *Director of Public Prosecutions Act 1984*.

CONCLUSION

This chapter has provided a broad overview of the operation of the criminal prosecution process and described how that process was changed by the implementation of the BCCP. The key changes were the:

- amendment by the QPS of bail procedures so that most people are bailed to appear in court 14 days after their arrest, rather than the following day
- transfer from the QPS to the ODPP of responsibility for conducting prosecutions of all matters listed for committal in the Brisbane Central Magistrates Court from 31 July 1995
- agreement by the LAO to provide legal aid to all financially eligible defendants in matters listed for committal in the Brisbane Central Magistrates Court
- imposition of strict time frames for the completion and distribution of the Police Brief to the ODPP and the defence
- establishment of a Committal Mention Day each Monday in the Brisbane Central Magistrates Court to which all committal matters are adjourned from Court 1.

CHAPTER 3

PROJECT EVALUATION: METHODOLOGY AND DATA SOURCES

INTRODUCTION

The evaluation design which we employed had three components:

- a *process* evaluation, which focused on describing the operation of the project and assessing the extent to which there was compliance with the Protocols
- an *impact* evaluation, which sought to measure the extent to which the project had an effect on case processing and outcomes in the Magistrates Court and higher courts
- a *time costing* analysis, which aimed to assess the overall cost effectiveness of the project by comparing the value of the additional direct time inputs which the project required of the ODPP and LAO with the value of the time saved by the QPS.

This chapter sets out the key questions which we addressed in each component of the study, briefly describes the data sources and methodology which were employed, and discusses the study's limitations.

PROCESS EVALUATION

The data used for the process evaluation component of the study came from three sources:

Interviews with project participants. An initial round of interviews was conducted in late 1995, to ascertain how the various "players" thought the BCCP was operating in terms of its objectives, and to identify any operational problems that might be corrected. A full report of the findings from these interviews was prepared for the Steering Committee on 15 December 1995. The second round of interviews took place in July 1996. Those interviewed on this second occasion were:

- a group of twelve Magistrates and the Co-ordinating Clerk
- staff of the ODPP, including the manager of the BCCP workgroup, legal officers, clerks and support staff
- an LAO representative
- four private practitioners who had represented clients legally aided under the BCCP
- two private practitioners who had represented privately funded clients whose cases had been dealt with under the project Protocols
- four members of the PPC (including a Brief Manager)
- a Judge of the District Court.

Numerous investigating officers interviewed during this second round had also been interviewed in December 1995. Most of the interviews were conducted in person (either individually or in a group). The investigating officers and the District Court Judge were interviewed by telephone.

Progress reports prepared by participating agencies. In June 1996, the Criminal Case Management Group of the Litigation Reform Commission convened a meeting of all agencies involved in the BCCP to review the progress of the project. For the purposes of this meeting, the various agencies prepared short reports addressing a range of general and specific issues identified by the Litigation Reform Commission. Agencies were asked to comment on how the Protocols had worked for them, and to indicate what additional or different resources were required in order to achieve the goals of the Protocol. More specific issues addressed included: whether there had been compliance with particular parts of the time frames in the Protocols; how the continuity principle within the ODPP and LAO had operated; and whether QP9s were 'objective and credible' documents. All agencies gave permission for us to refer to these reports in preparing this evaluation.

Statistical data. Using the BCCP database maintained by the ODPP, we were able to determine to what extent there had been compliance with the time frames set down in the Protocols. We also had access to monthly statistics compiled by the Magistrates Court Co-ordinating Clerk. Those statistics recorded information such as: the numbers of matters allocated committal hearing dates and the anticipated length of the hearings set down; and reasons why matters could not be allocated a committal hearing date (for example, because the briefs were delivered late, further inquiries were to be made or more charges were to be preferred).

IMPACT EVALUATION

METHODOLOGY

In order to measure the impact of the BCCP on case processes and outcomes, we relied on straightforward "before and after" comparisons. The pre-project data consisted of all matters commenced as committal proceedings¹⁸ and finalised in the Brisbane Central Magistrates Court, during April, May and June 1995. These data were collected from court records by the ODPP specifically for the purposes of the evaluation. The post-project implementation data covered the period August 1995 to May 1996.¹⁹ These data were taken from the database set up by the ODPP to assist with the management and evaluation of the BCCP.

Using data from these two comparison periods, we examined trends in the proportion of cases initially listed for committal which were:

- committed for trial
- committed for sentence, or processed as an *ex officio* indictment
- withdrawn prior to the hearing or discharged at the hearing
- finalised as summary matters.

18 All matters listed in Court 5.

19 As the project only started in July 1995, there were few finalised cases for that month. These cases have been excluded to avoid understating the annualised figures.

We also addressed the issue of whether the project had any "downstream" benefits, in the form of reduced higher court workload and a reduction in the number of late pleas of guilty and *nolle prosequi* entered for matters listed for trial in the District or Supreme Court. For this latter purpose, we utilised data provided by the Court Administrator which recorded, on a weekly basis, the number of trials listed, whether or not they proceeded as trials, and the reasons why trials did not proceed. Reasons included that the matter became a plea of guilty, or a *nolle prosequi* was entered, in the week prior to or the morning of the trial.

LIMITATIONS

For a study of this kind, we would have preferred to compare outcomes under the project with a pre-pilot period of at least 12 months, rather than just the three months of data collected by the ODPP. This would then have enabled us to control the effect of any random short term variations in outcomes and possible "seasonal" effects (the tendency for some outcomes to occur more or less frequently at some times of the year than others). A longer pre-pilot comparison period would also have made it easier to distinguish secular trends (longer term changes which would have occurred regardless of the establishment of the project) from impacts which were specifically due to the project itself. We had initially hoped to be able to "back-capture" data for several additional months, but this proved not to be possible given tight time frames and the competing resource demands of other CJC research projects.

The relatively short life span of the project was another factor which made it difficult to quantify the extent of changes in outcomes. Allowing for a settling-in period of at least two to three months, and the fact that the project had to be substantially modified after May 1996 because of the funding shortfall, the BCCP only operated as intended for about eight months. Given that it can take many months for matters committed to the higher courts, especially trials, to be finalised, this made it very difficult to obtain a clear picture of the impact of the project on court listing practices and hearing delay.

The ideal research design – in addition to including longer pre- and post-comparison periods – would also have utilised some form of "control site", as a way of making sure that any changes in outcomes which were identified were not due to some intervening event external to the project (such as a change in ODPP policy, or a general shift in the tactics used by defence lawyers). We were able to compare trends in committals for sentence and in the use of *ex officio* indictments in the BCCP with trends for the Brisbane ODPP as a whole, but the scope for this type of analysis was limited because some outcome data were collected only for the BCCP (such as the number of withdrawals, and the proportion of matters initially listed for a committal which were disposed of summarily). Another factor which limited the scope for comparison was that there was no other court in Queensland which had the same characteristics, and processed the same volume and type of cases, as the Brisbane Central Magistrates Court. By contrast, with the Ipswich project it had been possible to compare outcomes in Ipswich with those for Townsville, a court of roughly equal size.

On balance, we are satisfied that the outcome data collected for the evaluation were sufficiently robust to enable us to ascertain that the project has, or in some instances has not, had an impact in the expected direction. However, because we were only able to draw upon three months of pre-project data and were not able to make comparisons with a control site, we cannot be as confident about the reliability of our estimates of the *magnitude* of those impacts.

TIME COSTING

The third – and most complex – component of the evaluation was an assessment of the cost implications of involvement in the project for the ODPP, LAO and QPS, based on a comparison of the direct time inputs involved in processing BCCP cases and non-BCCP cases. The primary purpose of this exercise was

to determine the extent to which the extra time and cost inputs required of the ODPP and the LAO at the committal stage were "paid for" by subsequent time savings for these agencies in the post-committal stage and savings in police prosecutors' and investigating officers' time.

DATA SOURCES

Information about the time and cost inputs associated with various case outcomes was obtained from the following sources.

THE LEGAL AID OFFICE TIME RECORDING DATABASE

Data on the relative amount of time spent by LAO staff on BCCP and non-BCCP matters handled "in-house" were obtained from the LAO time recording system for the three-month period 15 January 1996 to 15 April 1996. New costing codes came into effect on 15 January 1996 allowing costing to be broken into Magistrates Court and higher court time. The sample selected for this survey involved cases for which aid was granted in either the Magistrates Court or the higher courts on or after this date. The LAO also provided us with data on the total costs of additional grants of aid assigned to private practitioners under the BCCP.

SURVEYS OF POLICE PROSECUTORS

To provide an estimate of the time saved by police prosecutors through not being involved in committals, police prosecutors at Holland Park and Beenleigh were asked to record the amount of time which they spent on each committal matter handled in the period 20 February 1996 to 12 April 1996. Due to a low return rate from Holland Park, we asked that Beenleigh Prosecutors time record for an additional four weeks ending 10 May 1996. At the end of this period, we had data on a total of 145 matters.

SURVEYS OF INVESTIGATING OFFICERS

A sample of police investigating officers was interviewed by telephone by CJC researchers at the conclusion of key stages in the prosecution process, and asked to estimate the time they had spent working on the case during that stage. These stages were: arrest to committal; committal to presentation of indictment; and indictment to finalisation. For the arrest to committal stage, investigating officers in 100 BCCP cases were surveyed using weekly prosecution lists from Brisbane Central Magistrates Court over the four weeks from 4 March 1996 to 29 March 1996. The non-BCCP group consisted of a sample of investigating officers in 100 cases set to appear in Beenleigh Magistrates Court in the same four-week period.

Higher court cases were sampled at two stages: presentation of the indictment and finalisation by either trial or sentence. Using ODPP records, approximately 50 cases were selected at each stage for both the BCCP and non-BCCP samples. BCCP cases were selected using the BCCP workgroup computer which provided a list of all cases for which indictments had been presented in the District Court from 1 November 1995 to 1 February 1996. Non-BCCP cases were selected using District Court lists for the five-week period, 22 January 1996 to 26 February 1996.

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS TIME RECORDING SURVEY

All staff at the ODPP were asked to time record for the period 18 March 1996 to 17 May 1996, using data collection forms designed by the CJC. (The survey was initially planned for a period of 12 weeks but, for various reasons beyond the CJC's control, started late and stopped early.) Officers were asked to record in 15 minute blocks all the time they spent working on particular files (excluding matters such as bail applications and Mental Health Tribunal matters), including both preparation and court time. Any time that could not be identified with a particular case, or which was spent on other matters such as administration and leave were to be excluded. As there was insufficient time for this study to follow cases from beginning to end, the prosecution process was broken into "blocks" spanning one critical event to another. These critical events were identified as:

- BCCP
 - * QP9 received
 - * Committal Mention Day
 - * Committal hearing
 - * Indictment presented
 - * Trial/sentence
- non-BCCP
 - * Depositions received/files allocated (post committal)
 - * Indictment presented
 - * Trial/sentence.

When the survey of time recording was completed, cases which fell into each of these blocks were identified from a number of sources. The resulting 417 cases provided the ODPP sample.

Data on ODPP time inputs into *ex officio* matters were obtained by asking officers to estimate after the event the amount of time involved in such matters. This approach was taken as the time recording period was not sufficiently long to cover any *ex officio* matters from start to end.

LIMITATIONS OF COSTING ANALYSIS

As discussed in more detail in Chapter 6, several factors made it very difficult to measure accurately the overall cost effectiveness of the project.

First, the ODPP time costing survey data, in particular, were of poor quality. As acknowledged by the ODPP, there was only limited compliance by its officers with the requirements of the time recording survey. Consequently, the time involved in dealing with various types of matters was significantly understated. As discussed in detail in Chapter 6, we attempted to correct for these under-estimates by addition of weighting factors, but because we did not have the time or resources to conduct a detailed audit of ODPP time recording practices, we cannot be confident of the accuracy of the adjustments which we have made.

Second, because of the short survey period, a relatively small proportion of the ODPP's time records related to matters which had completed a key stage. This further reduced the reliability of some estimates; for example, there were no data on cases finalised as higher court trials and data on only 22 cases finalised as guilty pleas in the higher courts.

Third, for practical reasons, we were not able to collect data on all the time and cost inputs associated with the processing of cases. While total budget figures for ODPP and LAO involvement in the BCCP were

available, it was impossible to estimate total savings for the QPS, because we were unable to disaggregate items of the police budget and apportion them to the committals component of police prosecutions. Accordingly, in order to enable comparison of the ODPP, LAO and QPS we excluded overhead costs, including the cost of support staff, from consideration (hence our use of the term 'direct time inputs'). Moreover, the method captured only time inputs which were associated with particular cases, and therefore excluded significant amounts of time spent by staff on other related activities (such as attending meetings relating to the general operation of the BCCP).

Fourth, we were unable to quantify all of the potential benefits of the project. For example, we were not able to measure how much Magistrates Court and higher court time, if any, was saved as a result of the project, let alone assign a dollar value to any such savings. We were also unable to quantify benefits for witnesses and victims. It is often argued that one of the benefits of an early identification of guilty pleas is a reduction in trauma for victims and witnesses, who know from an early stage that they will not be required to give evidence in trial proceedings. This is a plausible hypothesis, but it would have been very time consuming and expensive to have collected the data required to test this proposition, and virtually impossible to quantify the financial benefits.

Despite these limitations, the data which we have collected enable us to make some broad estimates as to whether the project can be considered to have "paid its way", and to determine whether time and cost savings have been achieved in the expected areas. Moreover, our estimates have a much stronger empirical base than those contained in the KPMG report, which were based to a large extent on the perceptions and guesses of various participants in the process.

SUMMARY

Table 1, provides a summary of the above discussion. The table lists the key questions which we addressed in the evaluation, and the various data sources which were utilised.

TABLE 1 – SUMMARY OF EVALUATION DESIGN

Key Evaluation Questions	Data Sources
<u>Process Issues</u>	
To what extent did project workload exceed expectations?	ODPP BCCP database.
How much compliance was there with the Protocol time frames?	Interviews, agency reports, BCCP database.
How effectively did the Committal Mention Day system work?	Interviews, agency reports.
Did the project reduce the disruption caused by witnesses?	Interviews, agency reports.
To what extent was there compliance with the continuity principle set down in the Protocols?	Interviews, agency reports.
What impact did the project have on relations between the ODPP, police and legal practitioners?	Interviews, agency reports.
<u>Impact Issues</u>	
What impact did the project have on the proportion of matters:	ODPP pre-pilot data, ODDP BCCP database, published and unpublished ODPP data.
<ul style="list-style-type: none"> • proceeding as committals for trial or sentence • processed as <i>ex officio</i> indictments • finalised summarily • withdrawn prior to, or at, committal 	
What effect did type of legal representation have on outcomes under the project?	ODPP BCCP database.
What effect did the project have on higher court workload?	Unpublished ODPP data.
Did the project lead to a reduction in late pleas of guilty and late <i>nolle prosequi</i> ?	Unpublished District Court data.
<u>Costing Issues</u>	
What impact did the project have on the direct time inputs of the QPS, ODPP and LAO?	Investigating officers and police prosecutor surveys, LAO time recording database, ODPP time recording survey, and agency reports and commentaries.



CHAPTER 4

PROCESS ISSUES

INTRODUCTION

This chapter describes the operation of the BCCP and assesses the extent to which there was compliance with the Protocols. Specific areas examined are:

- project workload
- compliance with Protocol time frames
- the Committal Mention Day system
- calling of witnesses
- unnecessary preparation of briefs
- the operation of the 'continuity principle'
- police - ODPP relations
- the ODPP and legal practitioners
- LAO payment practices.

As detailed in the preceding chapter, the primary sources of data for this component of the evaluation were the progress reports provided by the various agencies to the Litigation Reform Commission in June 1996 and the interviews conducted with individuals and organisations associated with the project. We have also utilised some statistical data collected by the ODPP and the Magistrates Court.

PROJECT WORKLOAD

Both the LAO and the ODPP reported that the workload associated with the project had been underestimated and that this had created substantial budgetary difficulties.

In the case of the ODPP, funding was based on the assumption that the BCCP would process 4.3 times the number of matters handled under the Ipswich project. The ODPP calculated this ratio by comparing the number of matters committed from the Brisbane Central Magistrates Court for a 10 month period with the number of committals from the Ipswich Court over the same period. The KPMG Phase 2 report estimated that the BCCP would deal with 1,684 finalised matters during the 12 months of the project (1995, p. 20).

In its June 1996 report to the Litigation Reform Commission, the ODPP indicated that it had underestimated the actual work demands, and therefore funding requirements, of the BCCP for the following reasons:

- The assumption that the BCCP workload would be 4.3 times that of Ipswich was based solely on a comparison of the number of cases being *committed from* the Brisbane and Ipswich Courts.

According to the ODPP, a subsequent analysis of the pre-pilot data indicated that the number of matters initially mentioned for committal, but not resulting in a committal for trial or sentence, was 13 per cent higher in Brisbane than in Ipswich. These other matters – *ex officio* indictments, withdrawals and summary pleas – formed a substantial part of the ODPP's workload under the BCCP.

- The number of matters entering the committal system in the Brisbane Central Magistrates Court during the course of the BCCP was well above the level of previous years. In its report the ODPP observed that, for reasons unknown, the number of matters referred to the Brisbane Central Committals Project to 31 March 1996 was 20 per cent higher than the pre-pilot data had predicted.
- The more complicated mention process in Brisbane (relative to Ipswich) and the larger scale of the project made communicating with police officers more difficult and added to overall workload.

The LAO, in its report to the Litigation Reform Commission, stated that the increases in the number of non-prescribed criminal committals assigned to private practitioners, and the number handled in-house by the Brisbane Office, were substantially in excess of original estimates. The LAO has informed us that these initial projections were based upon data from the ODPP.

Figure 4.1 provides an overview of workload trends in the BCCP for the period July 1995 to June 1996. The figure shows the number of new matters coming into the project each month (measured by the number of QP9s received) and the number of matters finalised each month.

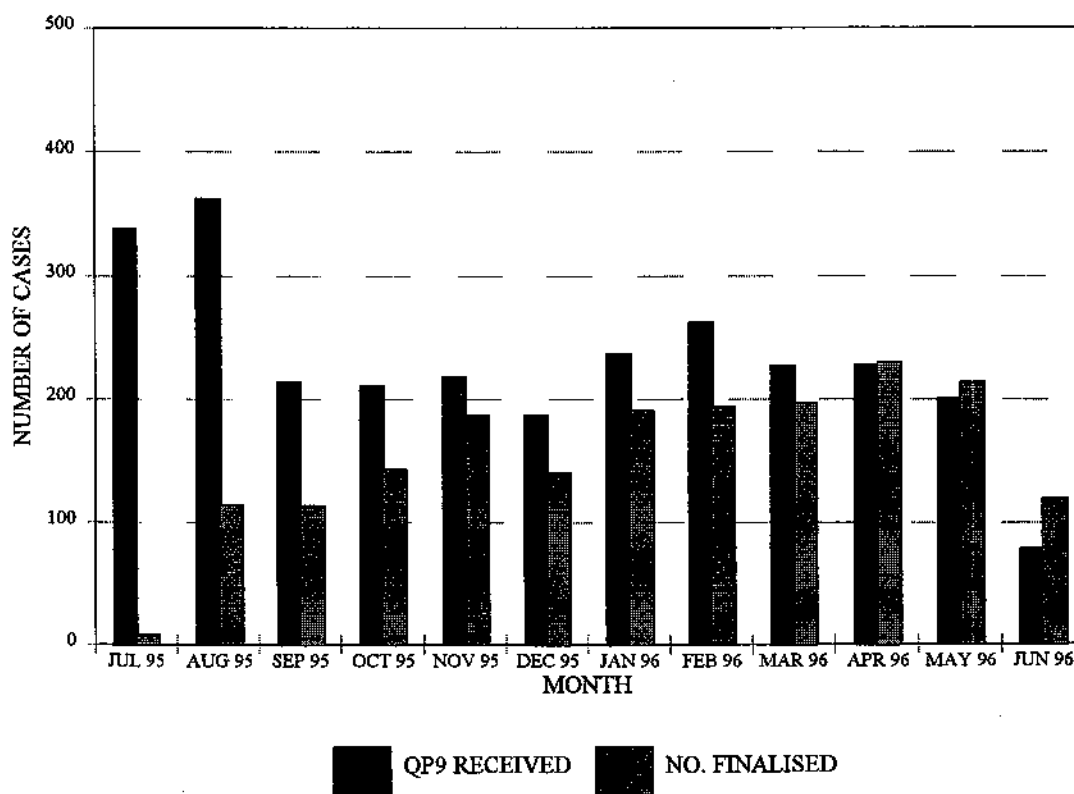


FIGURE 4.1 – NUMBER OF CASES RECEIVED BY THE ODPP AND FINALISED IN BRISBANE CENTRAL MAGISTRATES COURT DURING THE BCCP PROJECT PERIOD (JULY 1995 – JUNE 1996)

Source: ODPP BCCP case management database.

Key points to note from the above figure are as follows:

- In the first two months of the project, 700 QP9s were received by the ODPP, representing an annualised workload of 4,200 incoming matters, far in excess of predicted workload.²⁰ In subsequent months the number of incoming matters declined substantially to an average of 206 matters per month. However, the early surge of cases placed great strains on the resources and staff of the ODPP, such that it was not until April 1996 that the number of cases finalised in the month equalled the number received.
- As indicated, based on data contained in the KPMG Phase Two report (1995, p. 20), it was anticipated that the BCCP would process 1684 finalised matters over the course of 12 months. This number was reached by May 1996, after only 11 months.

Because of the workload pressures on ODPP staff, some aspects of the project did not operate as intended. For example, in its report to the Litigation Reform Commission, the ODPP observed that:

Ideally, disclosure, discussion and negotiation should have commenced between ODPP and defence lawyers before the first committal mention day. Unfortunately, it has not proved possible at the funded staffing level, for individual ODPP lawyers to fully familiarise themselves with briefs in advance of committal mention days. (1996, p. 4)

Excessive workload possibly also contributed to the high turnover of ODPP staff working on the project (see below) and to the subsequent loss of continuity.

COMPLIANCE WITH TIME FRAMES

QP9s

Under the Protocols, the PPC was responsible for ensuring that QP9s were provided to the ODPP no more than six days from the date of arrest. All interviewees agreed that, although this time frame was not adhered to, QP9s were generally received in adequate time, being shortly after the first mention date.

POLICE BRIEFS

The police brief provided to the ODPP and defence practitioners is supposed to contain statements of all witnesses, exhibits and any taped record of interviews.²¹ Under the Protocols, the police brief is required to be delivered to the ODPP and the defence 14 days prior to the Committal Mention Day. The purpose of setting this time limit was to facilitate early examination of the brief by the ODPP and the defence, thereby enabling key decisions about pleas, the calling of witnesses and so on to be made on Committal Mention Day.

²⁰ There is evidence to suggest that some officers in the QPS may have used the start-up of the BCCP as an opportunity to clear a backlog of matters. While only 20 per cent of matters received by the ODPP in September 1995 were more than a month old, around 50 per cent of the matters received by the ODPP in July 1995 were more than a month old. It was also suggested to us that, especially in the early stages, some matters were diverted from other Magistrates Courts in the Brisbane area into the BCCP.

²¹ These requirements are stipulated in clause 14.2 of the Protocols.

It was acknowledged by all involved with the BCCP that compliance with the 14 day time limit was the exception rather than the rule. Figure 4.2 confirms this view. It shows that during the first full three months of the BCCP, 60 per cent of briefs were received after the due date; by May 1996, this percentage had increased to around 92 per cent.

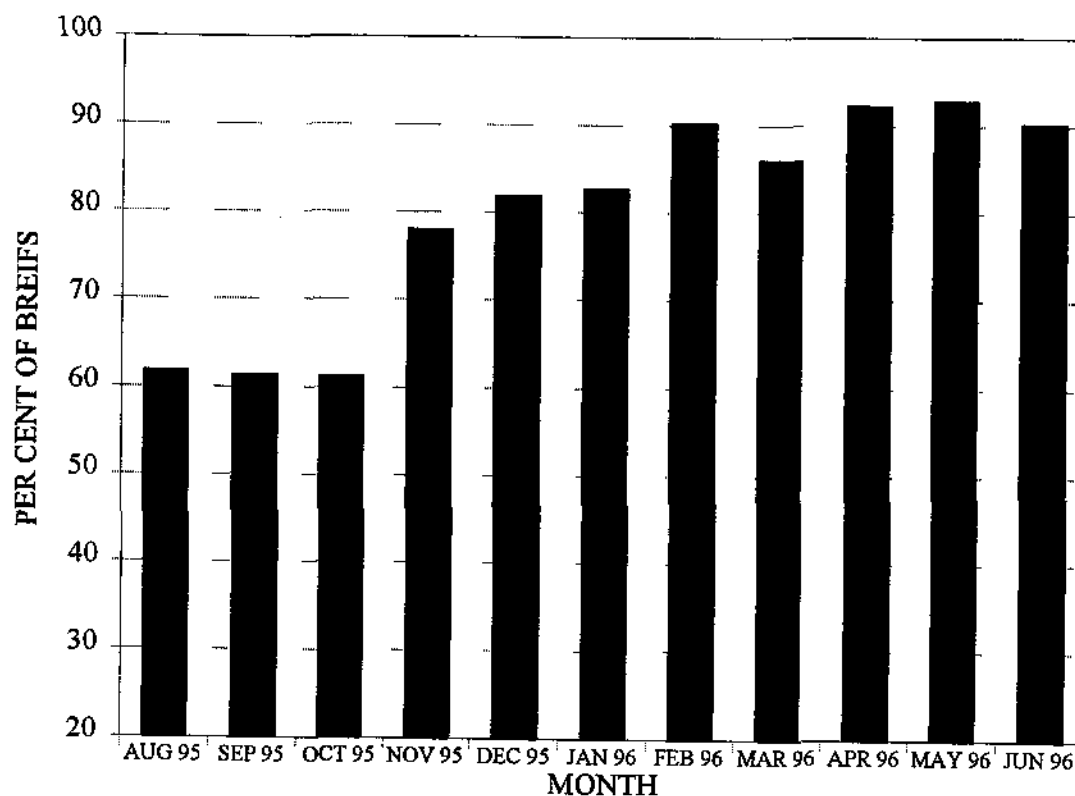


FIGURE 4.2 – PERCENTAGE OF BRIEFS RECEIVED BY ODPP OUTSIDE THE TIME FRAME PROVIDED IN PROTOCOL 14.2: BCCP (AUGUST 1995 – JUNE 1996)

Source: ODPP BCCP case management database.

Figure 4.3 shows that the average number of days by which briefs were late has fluctuated between 10 and 17 days, with the worst period being between February and April 1996.

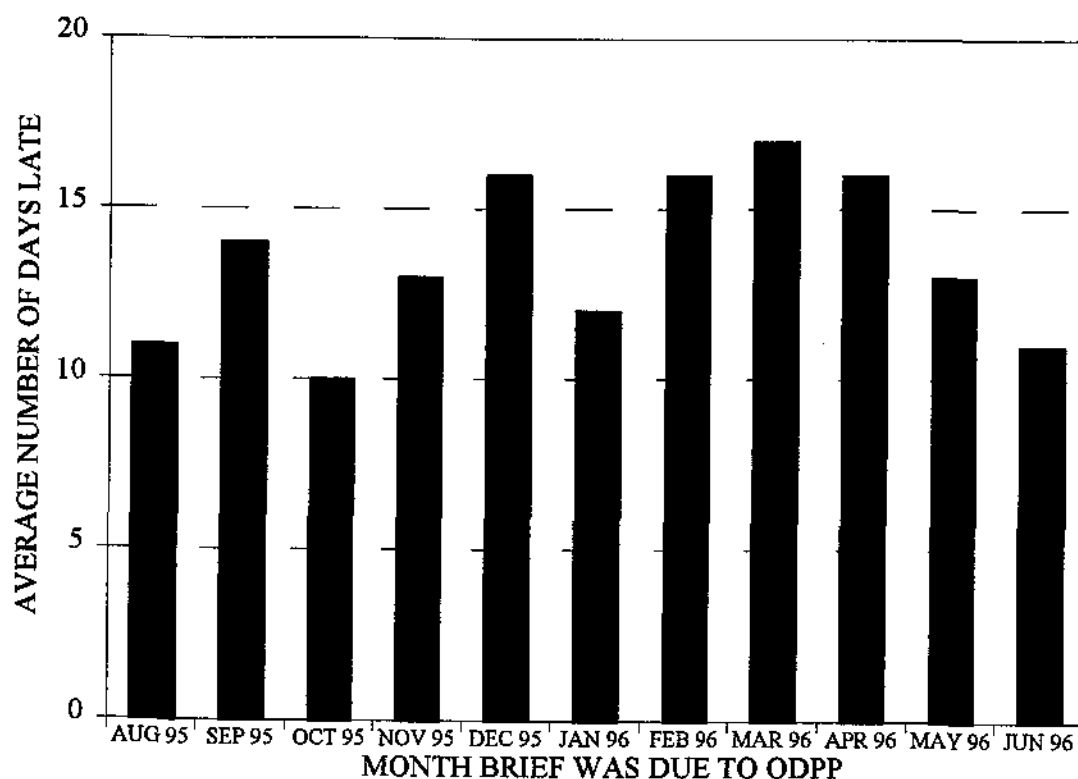


FIGURE 4.3 – AVERAGE NUMBER OF DAYS BY WHICH BRIEFS WERE LATE: BCCP (AUGUST 1995 – JUNE 1996)

Source: ODPP BCCP case management database.

In late May 1996, the ODPP implemented a system whereby QPS regional inspectors are now supplied with a list of briefs due four weeks in advance of the Committal Mention Day, so that they can ensure that the responsible officer prepares the brief in time. Figure 4.3 shows that the average number of days by which briefs were late declined from 16 days in April to 11 days in June 1996. This trend *may* indicate that the new policy has had some effect – a view supported by ODPP staff involved in the BCCP – but we cannot be confident that this improvement will be sustained over time.

The late delivery of briefs often results in the defence seeking an adjournment on the Committal Mention Day, which in turn contributes to delay and the wasting of court – and practitioner – time. As shown by Figure 4.4, between August 1995 and mid July 1996, there were around 450 matters not finalised on Committal Mention Day because the brief was late or incomplete. These matters represented about 15 per cent of defendants whose cases were dealt with under the BCCP.²²

²² Matters which were “finalised” included those for which a committal hearing day had been assigned and which had been adjourned to the *ex officio* callover list. Finalised cases also include matters which had previously been mentioned at an earlier committal mention.

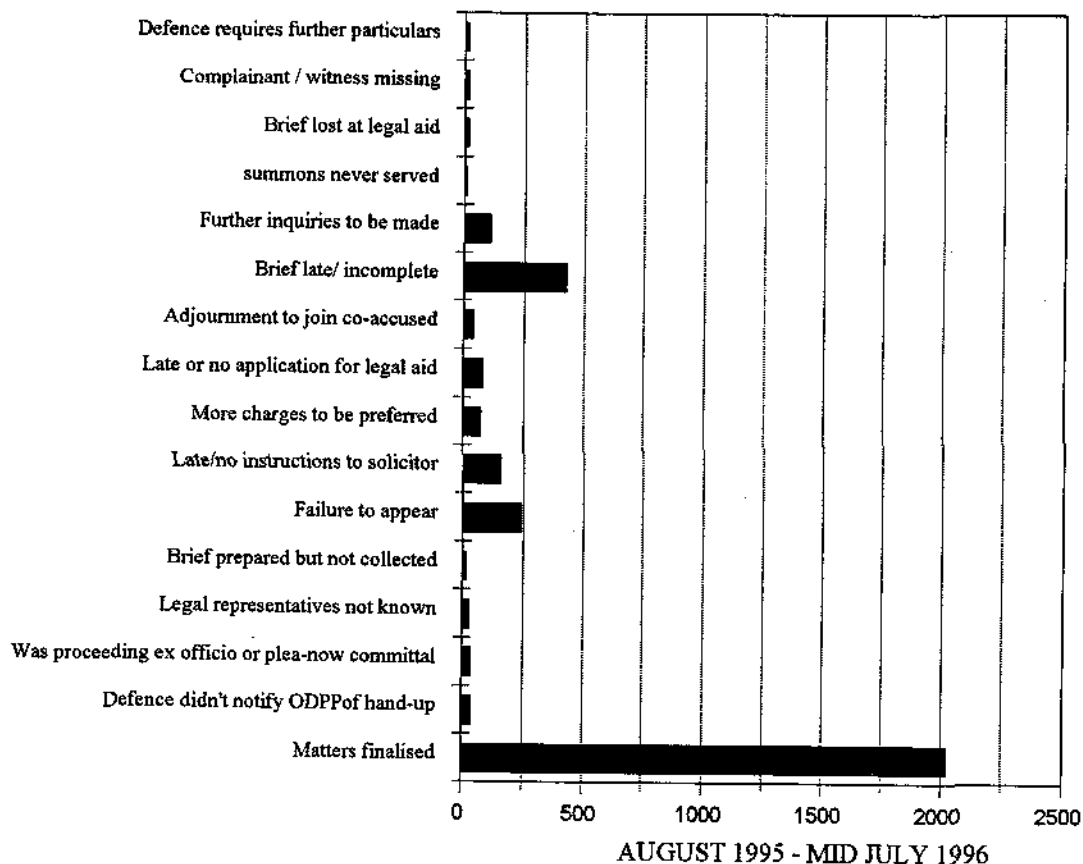


FIGURE 4.4 - MATTERS FINALISED AND NOT FINALISED AT COMMITTAL MENTION DAY, BCCP (AUGUST 1995 - MID JULY 1996)

Source: Magistrates Court Co-ordinating Clerk

The late delivery of briefs has had other significant negative consequences for the operation of the BCCP. Where briefs are not delivered until the day of, or shortly before, the committal mention, it is very difficult for the defence and the ODPP to conduct meaningful discussions about pleas. In addition, the defence is often not in a position to determine which witnesses, if any, will be required for cross-examination, or the length of the hearing time required. The defence has tended to "play it safe" in these circumstances by making overly generous estimates of how many witnesses and how much time will be needed. However, according to the ODPP a practice has developed whereby defence representatives now undertake to notify the ODPP within seven days of the Committal Mention Day of the number of witnesses who will be required (see below).

Two competing explanations have been advanced for the lack of compliance with the Protocol time frames. The view of many operational police is that the time frames for preparing full briefs are unrealistic, given the many other demands which are placed on officers' time. Under the Protocols, investigating officers generally only have four weeks from the first mention date to have a brief compiled, checked and delivered to the ODPP. This can create particular difficulties where an officer goes on leave or has to attend a training course. Another consideration is that under the BCCP, 90 per cent of the work done by investigating officers now has to be performed prior to the committal hearing, whereas previously it was split roughly equally pre- and post-committal. (This change in practice may have contributed to the erroneous view of many investigating officers that their overall workload has increased under the BCCP.)

An alternative explanation is that the late delivery of briefs is primarily a function of the police "work culture", rather than a result of the time frames being too tight. According to this interpretation, even if police were allowed more time in which to prepare briefs, they would still tend to put off doing the required preparation until as late as possible. Consistent with this analysis, the ODPP observed in its report to the Litigation Reform Commission that 'a police culture certainly seems to have developed whereby police look upon the Committal Mention Day as the date that the brief is due' (1996, p. 10).²³

It may be possible to justify a modest extension to the Protocol time frames, but we are persuaded – both by what we were told by others and our own observations – that cultural factors are a significant obstacle to achieving greater compliance with the Protocols. As in many work settings, people work to what they see as the "real" deadlines, not those which might be formally set down on paper. If there is to be greater compliance with time lines, it must be clearly communicated to those involved that deadlines are to be taken seriously, and that non-compliance will have significant negative consequences. This may require, amongst other things, giving committal time frames a legislative basis, as has been done in several other Australian jurisdictions.

ALLOCATION OF HEARING DATES

The Chief Stipendiary Magistrate, in his report to the Litigation Reform Commission in May 1996, reported that 'the general timetable is not being met . . . in respect of allocation of hearing dates within 14 days of the Committal Mention Day, particularly where more than one day is required for the hearing' (p. 3). According to the ODPP's report, the more usual adjournment is between four and six weeks after the Committal Mention Day. The ODPP has suggested that 'failure to comply with the two weeks specified in the Protocols seems to be mainly a function of the court diary, with availability of defence and assigned DPP lawyers playing a minor role' (1996, p. 10).

COMMITTAL MENTION DAY

ODPP officers and all the practitioners and police interviewed were of the view that the court resources allocated for the Committal Mention Day were stretched and the atmosphere at times was one of 'chaos'. It was agreed that all matters are reached eventually, but for some practitioners the wait can be lengthy, especially for those who only have one or two matters to be heard. In the early days of the BCCP, Committal Mention Days continued into the afternoon, but interviewees indicated that, more recently, all matters have been heard by about 1.00 p.m.

The magistrates who were interviewed believed that the confusion experienced on Committal Mention Day has been caused mainly by the various parties frantically trying to negotiate outside the court. This practice appears to be at least partly a consequence of the late delivery of briefs (see above). It was suggested to us that the lawyer culture of negotiation at the door may also have been a contributing factor.

²³ This may not have been entirely the fault of investigating officers. Some said in interviews that their senior officer took the view that, because the officers had four weeks in which to prepare the brief, there were many other jobs they could be doing in the meantime.

The LAO, in its report to the Litigation Reform Commission, observed that:

On occasions, the number of defendants required to appear in Court 5 on Mondays is enormous.²⁴ This has resulted in some defence lawyers being unable to properly provide defendants with the information they sometimes require, because of the volume of work. (1996, p. 2)

Another factor which has contributed to the congestion is the practice of investigating officers attending court to tender the original statements and exhibits, in matters which are, or might be, proceeding as 'hand-up' committals. According to the ODPP:

The practice has been that . . . arresting officers . . . retain possession of original statements and exhibits until they are required to be tendered at committal hearings. This was the arrangement which previously existed with PPC. The design of the pilot project did not incorporate a change to this arrangement . . . Because of the difficulties . . . in respect of late briefs and consequent late advice by defence as to whether matters are to proceed by way of hand up many arresting officers are required to attend with originals just in case a matter turns into a hand up on the morning of the committal mention. This has led to congestion in the courts on Committal Mention days and considerable waste of police resources. (1996, pp. 3-4)

In relation to the second of the above factors, the ODPP has indicated that police attendance at the Committal Mention Day could be reduced markedly if the ODPP took over responsibility for receiving and storing original statements and exhibits. However, no action has been taken on this proposal pending a decision about the future of the project.

The Magistrates Court Co-ordinating Clerk has informed us that recently the number of defendants at the Committal Mention Day has reduced dramatically, but it is unclear why this has occurred or whether the trend will continue over the longer term.

CALLING OF WITNESSES

It was anticipated that the early involvement of legal practitioners, the proposed time frame for delivery of briefs and the Committal Mention Day system would lead to a decrease in the number of committal hearings scheduled and the number of witnesses required to appear at those hearings. This, in turn, would save time for the courts and other agencies involved in the committal process, and would reduce the disruption caused to witnesses.

According to data collected by the Magistrates Court Co-ordinating Clerk, 39 per cent of matters which proceeded as committals were dealt with by way of a hand-up brief at committal mention.²⁵ According to the ODPP, 16 per cent of matters are disposed of on Committal Mention Days as full hand-ups, without any cross-examination of witnesses (1996, p. 13). In addition, a significant number of matters set down for committal hearing on other days are ultimately disposed of in this manner 'after negotiation with DPP as to charges or after defence representatives have had a chance to speak to the witnesses outside of court while waiting to get on' (p. 14). Unfortunately, due to a lack of comparable data, it is not possible to determine whether the rate of full hand-ups without cross-examination has increased since the establishment of the BCCP. We also do not have any data on hearing lengths or the average number of witnesses called per hearing, for either the pilot or pre-pilot periods.

24 Committal Mention Days are held each Monday in Court 5.

25 The base figure for this estimate excludes matters adjourned for further mention, withdrawn matters, matters dealt with summarily and matters adjourned to be dealt with by way of an *ex officio* indictment. The ODPP database records that 35 per cent of matters were finalised in the Magistrates Court by means of a hand-up brief (although not necessarily on the Committal Mention Day).

The magistrates whom we interviewed believed that it was still common for witnesses to be required to attend the committal hearing, but then not to be cross-examined. Magistrates also perceived it to be the practice of some legal firms to make blanket demands for all witnesses to be present at the committal hearing. The QPS, in its report to the Litigation Reform Commission, made a similar complaint:

Operational police are still being required to subpoena all witnesses for the committal hearing day and have them present at the court due to the fact that defence representatives are not advising the DPP which witnesses are required. Often many, or all, of these witnesses are not required at the committal hearing but they must still be paid for their appearance which results in a waste of resources. Stipendiary magistrates are not requesting the defence to justify their blanket demand for all witnesses at the committal callover day. (1996, p. 5)

On the other hand, the practitioners who spoke to us said that they rarely made a blanket demand for all witnesses to be present. According to these practitioners, such demands were made only where a brief had not been delivered to the defence in time for proper consideration to be given to it. In those circumstances, once the defence had an opportunity to consider the brief provided, the practitioners would generally contact the ODPP to advise which witnesses would not be required at the hearing. The LAO informed the Litigation Reform Commission that 'In most cases, the in-house practice advises the court on the Committal Mention Day of which witnesses are required . . . It is very rare for the in-house practice to request all witnesses' (1996, p. 6). The ODPP, in its report, said that blanket requests for witnesses were far more common at the start of the BCCP; most defence lawyers now notify the Office of which witnesses would be required shortly after the Committal Mention Day. However, the ODPP also reported that 'there are a few "repeat offenders" who habitually refuse to nominate the witnesses they require until the last moment' (1996, p. 13). According to the ODPP, difficulties in this respect occur in approximately five per cent of cases (p. 13).

In summary, it appears that, notwithstanding the procedural changes introduced by the BCCP, some witnesses are still being required to attend committal hearings unnecessarily. The late delivery of briefs is one contributing factor, although the ODPP and defence lawyers appear to have been fairly successful in developing an informal procedure for dealing with this problem. The other factor, undoubtedly, is simply that it is a matter of habit for some practitioners to make blanket requests for witnesses. It may be very difficult to break such habits in the absence of a legislative requirement that the defence justify to the court why they are seeking to call particular witnesses.

UNNECESSARY PREPARATION OF BRIEFS

The requirement to prepare a full brief was an issue frequently raised by investigating officers. These officers were clearly frustrated by the number of occasions on which it had been necessary for a full brief to be prepared, only for the matter to result in a plea or proceed by way of an *ex officio* indictment. This problem was acknowledged by the ODPP in its report to the Litigation Reform Commission in June 1996:

. . . the defence often indicate a willingness to plead guilty to an *ex officio* indictment after the full brief of evidence has been prepared ie after the committal callover day. Approximately 228 or 8% of matters mentioned at a committal callover have been adjourned for *ex officio* mention. This means that arresting officers have been put to the unnecessary work of putting together a brief that ultimately is not required. (p. 12)

One of the explanations suggested by the ODPP was that some defence lawyers had the attitude that they needed to see the full brief before they could commit their client to a plea of guilty.

As noted in our report, *Results of Interviews with BCCP Participants* (December 1995), there was initially a good deal of confusion about what material was required from police in cases which were to proceed by way of an *ex officio* indictment (CJC 1995a). Some defence lawyers were of the view that all that was needed was a QP9. On the other hand, LAO policy was not to consider *ex officio* pleas without a full brief of evidence. Similarly, we were informed that the ODPP had adopted a policy of requiring a full brief of evidence (an equivalent, we understand, to that required for a committal by straight hand-up).

These differing views caused confusion among police, some of whom had been advised by defence lawyers that they would only need to prepare a QP9 because the matter was to proceed *ex officio*, only to then be told by ODPP that they had to prepare a full brief. Some police officers tended to postpone the preparation of the brief in the hope that the matter would become an *ex officio*.

We recommended in the December 1995 report that a clear protocol be developed outlining the circumstances in which *ex officio* proceedings should be considered and the material which should be available to the parties before a decision is taken to proceed *ex officio*. As a result, in March 1996 the ODPP, after consultation with the LAO, developed and issued guidelines on *ex officio* indictments, which were aimed at facilitating the earlier identification of matters to be dealt with by means of this procedure. The QPS, in its report to the Litigation Reform Commission, acknowledged that the situation has improved following the promulgation of these guidelines. However, according to the LAO, the guidelines need to be further communicated to the profession.²⁶

THE CONTINUITY PRINCIPLE

Under Protocol 11, the ODPP and the LAO undertook to ensure that 'a single officer will, if at all possible, retain responsibility for a matter throughout its entire course through the committal system and, if appropriate, to the taking of pleas in the superior courts'. In practice, the ODPP has had great difficulty complying with this protocol, primarily because of high staff turnover due to the project only being funded for 12 months (which meant that staff were only employed on temporary contracts) and the heavy workload borne by ODPP officers working within the BCCP. The ODPP reported to the Litigation Reform Commission in June 1996 that each of the eight legal positions in the BCCP had changed hands at least once since December 1995, and not one of the original team of lawyers who commenced work in the BCCP in July 1995 was still there. The ODPP also observed that the requirement to list certain matters for committal each day, coupled with the limited number of ODPP lawyers, made some breaks in continuity inevitable.

The LAO informed the Litigation Reform Commission that the in-house legal practice of the Office, which handles just under 40 per cent of the legally aided matters in the BCCP, had not experienced the continuity problems encountered by the ODPP. However, the LAO noted two impediments to the operation of the continuity principle in relation to cases assigned to private practitioners (1996, p. 5):

- Some matters handled by private practitioners at the committal stage are transferred to the in-house legal practice when the case moves to the District Court.²⁷

²⁶ The ODPP noted in its report to the Litigation Reform Commission that a continuing legal education seminar has been suggested to educate defence representatives about the *ex officio* process and to encourage its use. However, the seminar has been postponed pending a decision on whether the BCCP will continue.

²⁷ Under the *Legal Aid Act 1978*, most committal matters are non-prescribed crime, meaning that the principle of practitioner of choice applies. By contrast, indictable matters dealt with in the higher courts are prescribed. For such matters, the defendant does not have a choice of practitioner.

- In 1995/96, the LAO piloted a project under which a proportion of District Court matters were tendered out to private practitioners.²⁸ The LAO estimated that 68 per cent of all matters which had been assigned to successful tender firms under the project involved a change of solicitor following committal.

Although it has not been possible for either the ODPP or the LAO to give full effect to the continuity principle, the situation under the BCCP was a substantial improvement over that which applied previously. If the long term funding of the BCCP could be assured, it is likely that the capacity of the ODPP to provide continuity would be substantially enhanced.

POLICE – ODPP RELATIONS

One of the benefits of the BCCP has been the enhanced relationship between ODPP and investigating officers. The ODPP staff interviewed were very enthusiastic about the improved communication between their office and QPS operational police. The QPS, in its report to the Litigation Reform Commission, stated that:

A better working relationship has developed between the Office of the Director of Public Prosecutions and the Queensland Police Service which has resulted in direct access by operational police and Legal Services Branch members to legal advice from that office. (1996, p. 1)

Similarly, several of the investigating officers whom we interviewed commented that their matters had been dealt with expeditiously and professionally by ODPP staff, with some going so far as to state that ODPP staff were easier to work with than some officers of the PPC. Some police also acknowledged that ODPP staff were generally better equipped to deal with more complicated matters and, by virtue of their relationship with the legal fraternity, were in a better position to negotiate than police prosecutors.

Other police were critical of aspects of the ODPP's involvement in the project. Specific complaints included that:

- some ODPP staff still had an "us and them" attitude to the police
- some ODPP staff were insufficiently sympathetic to the difficulties which police encountered in finalising briefs
- at times it was very difficult to make initial contact with the appropriate ODPP staff member
- the PROS INDEX had not always been kept up to date by the ODPP²⁹
- in some instances offenders with a lengthy criminal history were being inappropriately prosecuted by the ODPP for a regulatory offence

²⁸ This project involved the allocation of blocks of work to firms who had successfully tendered for District Court matters.

²⁹ The PROS INDEX is a case management database maintained by QPS and containing details of all cases prosecuted by the PPC. Case information is updated on a regular basis during the prosecution process. According to the ODPP, some problems, which stemmed in part from initial restricted access to the PROS INDEX, have since been resolved. However, the QPS reports that there are still problems with the updating of the system by ODPP staff.

- charges were often withdrawn or reduced by the ODPP without consultation with the investigating officer and/or complainant, as required by clause 21 of the Protocol³⁰
- ODPP officers did not try hard enough to obtain agreement from the defence to proceed by way of an *ex officio* indictment.

Notwithstanding these complaints (some of which are no longer valid, if they ever were) it is our impression that the working relationship between police and the ODPP has improved substantially as a result of the BCCP.

THE ODPP AND LEGAL PRACTITIONERS

Perceptions of the ODPP by private practitioners and LAO staff were largely favourable. Interviewees generally described ODPP officers as hardworking, dedicated and prepared to assist practitioners in a prompt and cooperative manner. In its report to the Litigation Reform Commission, the LAO stated that 'recent practices have led to open lines of communication and a good working relationship' with officers of the ODPP (1996, p. 4).

Practitioners saw four beneficial aspects of being able to deal directly with the ODPP at the committal stage:

- The ODPP tended to have less of a vested interest in the outcome of the proceedings than police prosecutors.
- The appearance of ODPP legal officers in court on their own matters had the effect of creating "ownership" of the file which, in turn, meant those officers took more interest in achieving the best possible outcome.
- ODPP officers were more willing to listen to argument about whether or not charges should proceed. Most of the private practitioners interviewed were frustrated by the lack of autonomy afforded to police prosecutors under the hierarchical structure of the QPS.
- The ODPP officers were seen as being more experienced in District Court practices and procedures and, therefore, better able to identify matters which should not proceed in the District Court.

Some practitioners complained that it was sometimes difficult to establish contact with the ODPP in relation to specific matters. However, others said that they had not encountered any problems in this regard. (These practitioners volunteered that this may have been because of their large volume of work involving the ODPP, which meant that they were in regular contact with the ODPP staff.)

LEGAL AID PAYMENT PRACTICES

Some magistrates expressed the view that the payment of \$500 per committal in matters briefed out by the LAO was 'funding an industry'. Other interviewees commented on rumours that some defence lawyers had taken advantage of the legal aid payments system associated with the BCCP.

30 Officers of the ODPP explained that the Protocols were unmanageable in many cases involving multiple charges or numerous complainants. It was said that there is a greater emphasis on notifying the investigating officer and complainant in relation to crimes against the person than crimes against property.

In Chapter 5, we consider whether the type of legal representation provided to the defendant had any bearing on the proportion of matters committed for trial under the BCCP. Our conclusion there is that legal aid funding practices have had no appreciable influence on the proportion of matters committed for trial in the higher court. This, of course, leaves open the possibility that legal aid funding practices have impacted on the operation of the BCCP in other ways.

Early on in the project, some practitioners were claiming the \$500 fee at the Magistrates Court stage and proceeding by way of *ex officio* indictment. These practitioners would then claim another fee for conducting a District Court sentencing matter. However this practice ceased after December 1995, when the LAO introduced a revised payment policy under which the fee for a matter proceeding by way of an *ex officio* indictment covered both the mention in the Magistrates Court and the sentence in the District Court.

CONCLUSION

The key findings reported in this chapter are as follows:

- The workload of the BCCP was substantially higher than had been anticipated. Workload pressures were particularly intense in the early months of the project, placing great strains on the resources and staff of the project team in the ODPP.
- There has been very little compliance with the Protocol requirement that the police brief be delivered for the ODPP and the defence 14 days prior to the Committal Mention Day. The average number of days by which briefs are late have fluctuated between 10 and 17 days. Late briefs have been the main cause of adjournments on Committal Mention Day.
- Over one third of matters proceeding as committals were dealt with by way of a hand-up brief on Committal Mention Day. However, there continue to be complaints from Magistrates, police and the ODPP that some practitioners are requiring witnesses to attend committal hearings unnecessarily.
- Police investigating officers complained of having to prepare full briefs, only for matters to result in a plea or proceed by way of an *ex officio* indictment. This problem appears to have eased since the ODPP issued guidelines on *ex officio* indictments in March 1996.
- Due to high staff turnover and workload pressures, the ODPP has had great difficulty in complying with the continuity protocol. The LAO achieved a higher level of continuity within its in-house legal practice, but has experienced difficulties in matters involving private practitioners.
- Police – ODPP relations have been enhanced by the BCCP.
- Legal practitioners are largely positive in their views of the BCCP and the role of the ODPP in particular.
- The extent to which legal aid funding practices have impacted on the operation of the BCCP is not clear.



CHAPTER 5

ASSESSING THE IMPACT OF THE PROJECT

INTRODUCTION

This chapter focuses on describing and quantifying the BCCP's impact on outcomes in the Magistrates Court and higher courts. Specific aspects examined are:

- trends in the proportion of cases initially mentioned for committal which were:
 - * committed for trial
 - * committed for sentence, or processed by way of an *ex officio* indictment
 - * dealt with in the summary jurisdiction
 - * withdrawn prior to, or discharged at, the committal hearing.
- impact on higher court workloads
- trends in the number of late pleas of guilty and late entries of *nolle prosequi* entered for matters listed for trial in the District or Supreme Court.

The primary sources of data for this chapter are the three month pre-pilot study undertaken by the ODPP in April–June 1995, which collected data on outcomes of matters mentioned for committal in the Brisbane Central Magistrates Court, and the BCCP database maintained by the ODPP. We also had access to some information on trends in late guilty pleas in the Brisbane District Court.

As discussed in detail in Chapter 3, our study was constrained by three factors:

- pre-intervention data were available for only a relatively short period
- there was no control site
- the project itself had only a limited time span.

Because of these factors, our estimates of the *magnitude* of the effects attributable to the project need to be regarded with some caution, although we are confident that we have correctly identified the *general direction* of these effects.

DATA DEFINITIONS AND SCOPE

Except where otherwise indicated, all rates for the BCCP and pre-pilot comparison period are expressed as a proportion of matters *initially listed for committal mention*. These matters consist of all “purely” indictable offences (that is, those which must be heard in a higher court) and those hybrid offences where an election was made at the first court appearance to have the matter proceed by way of committal. We do not take into account cases where the defendant was charged with a simple offence only or those cases

involving hybrid offences where an election was made at the first appearance to have the matter dealt with summarily. Except where indicated, rates are stated as a proportion of *finalised cases*, that is matters where: there was a committal for trial or sentence; an *ex officio* indictment was presented; the matter was resolved as a summary plea; or the case was withdrawn by the prosecution or dismissed by the magistrate.

It should also be noted that we only present outcome data for the period up until the end of May 1996. As discussed in Chapter 2, the form of the BCCP was substantially modified in mid-June. When responsibility for approximately 50 per cent of matters was handed back to the QPS we decided not to include data outcome for June onwards so as to avoid our measures of impact being "contaminated" by these procedural changes.

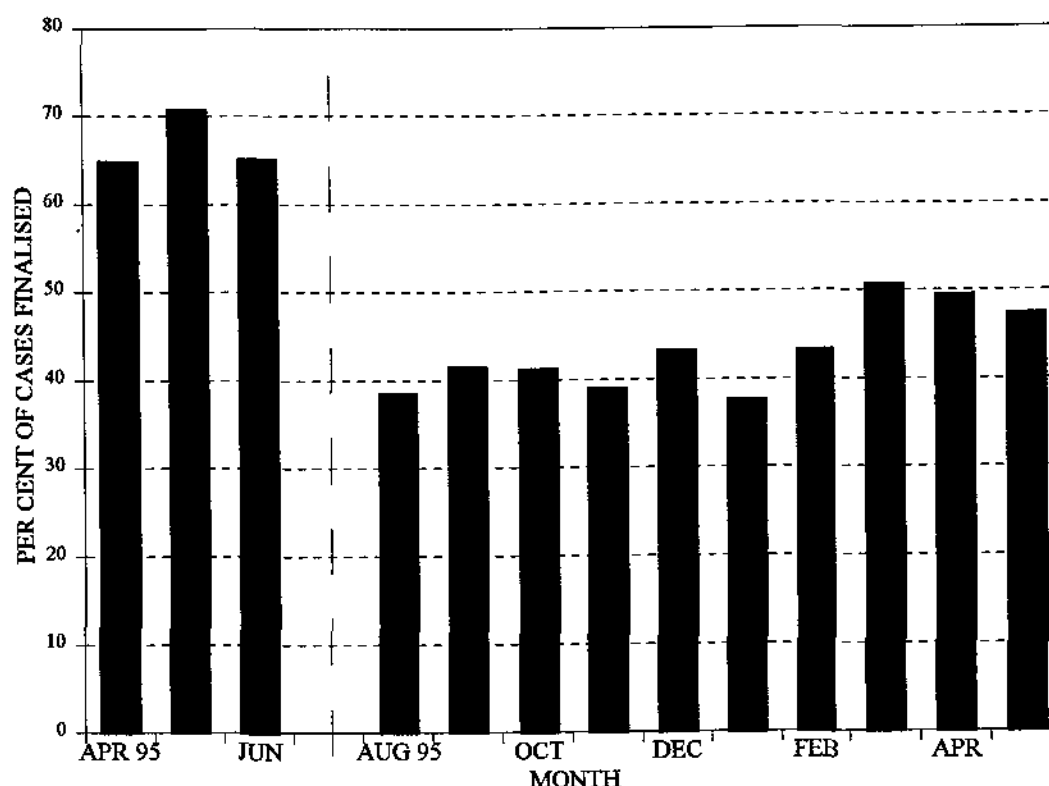
COMMITTAL OUTCOMES

TRENDS IN COMMITTALS FOR TRIAL

It was anticipated that the BCPP would result in a reduction in the number and proportion of matters committed for *trial* in the higher courts, due to a combination of the following:

- more guilty pleas being identified at, or prior to, the committal
- an increase in matters being dealt with summarily, rather than by way of committal to a higher court
- an increase in matters being withdrawn prior to or at committal.

Figure 5.1 shows that, as predicted, following the establishment of the project there was a decline in the proportion of those cases initially listed for committal mention which were finalised as committals for trial. During the pre-pilot period, in excess of 65 per cent of matters were committed as trials, whereas in the first seven months of the project, the proportion was around 40 per cent. There was some increase in the trial committal rate after February 1996, but the rate remained well below that of the pre-pilot period.



**FIGURE 5.1 – TRIAL COMMITTAL RATES:
COMPARISON OF PRE-PILOT AND PILOT OUTCOMES
(APRIL 1995 – MAY 1996)**

Source: ODPP pre-pilot data. ODPP BCCP case management database.

Notes:

1. Figure shows the proportion of cases initially mentioned for committal which were finalised as committals for trial in a higher court.
2. Vertical broken line shows commencement of BCCP. July 1995 excluded due to insufficient data.

TRENDS IN GUILTY PLEAS: HIGHER COURT MATTERS

Around 80 per cent of matters which are dealt with in the higher courts in Queensland are eventually resolved by a plea of guilty (CJC 1995b, p. 14). However, traditionally, most of these pleas have not been indicated until after the committal stage. For example, in the 1994/95 financial year, only 11 per cent of matters finalised in the higher courts were committals for sentence, with a further 8.7 per cent being processed as *ex officio* indictments.

In recent years, identifying more guilty pleas at an early stage has become an important objective of criminal justice system reform. Early identification can contribute to better court listing practices and, potentially, improve the utilisation of available court sitting time. In addition, there are obvious benefits to victims, witnesses and, in many instances, defendants, in having matters resolved quickly.

It was anticipated that the BCCP would increase the number of pleas in higher court matters identified at, or prior to, committal through a combination of the following factors:

- the ODPP would be much better placed than police prosecutors to negotiate with defence representatives over charges
- more defendants would be legally represented, thereby ensuring that the ODPP had someone to negotiate *with*
- briefs would be better prepared, and available at an earlier stage, thereby enabling defence lawyers to make more informed decisions about what was in the best interests of their clients.

There was a general perception amongst those interviewed that the project had been effective in increasing the early identification of pleas for matters proceeding to the higher courts. This was generally thought by practitioners to be attributable to the fact that early pleas are more likely to be identified where discussions on a "without prejudice" basis take place early in the process and the prosecutor has the authority to negotiate.

Figure 5.2 shows trends in committals for sentence and *ex officio* indictments in the pre-pilot and pilot periods.

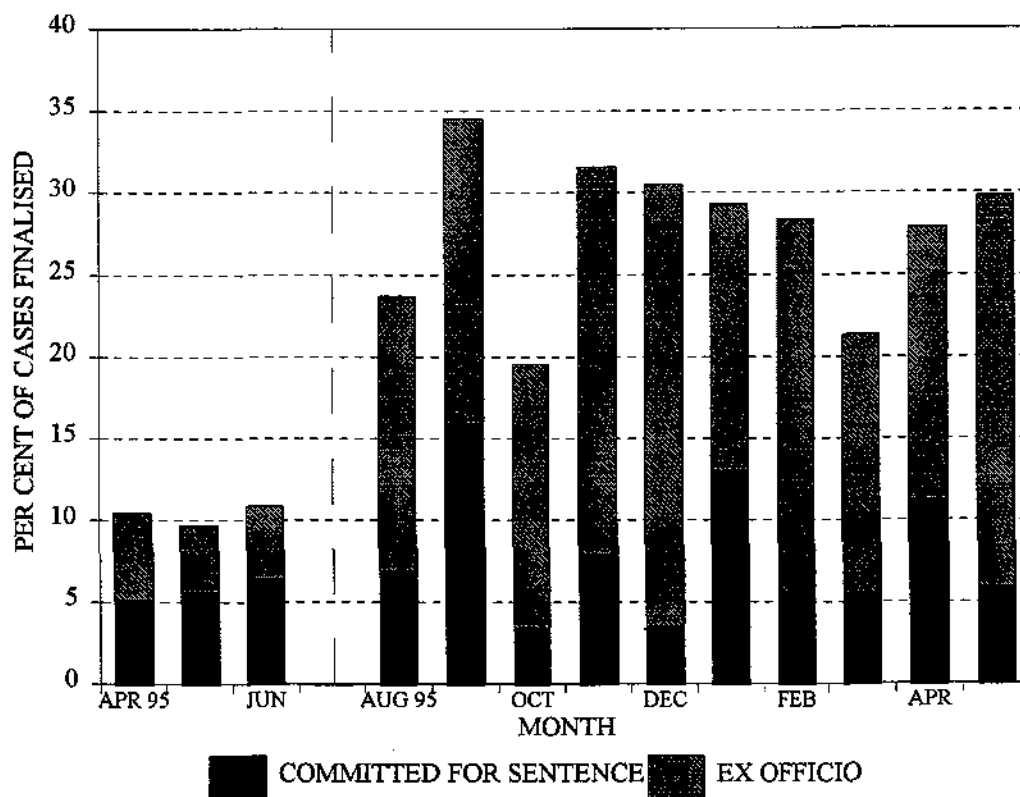


FIGURE 5.2 – COMMITTAL FOR SENTENCE RATE AND *EX OFFICIO* INDICTMENT RATE: PRE-PILOT AND PILOT OUTCOMES (APRIL 1995 – MAY 1996)

Source: ODPP pre-pilot data; ODPP BCCP case management database.

Notes:

1. Figure shows proportion of matters initially mentioned for committal which were finalised by means of a committal for sentence or an *ex officio* indictment.
2. July 1995 excluded due to insufficient data.

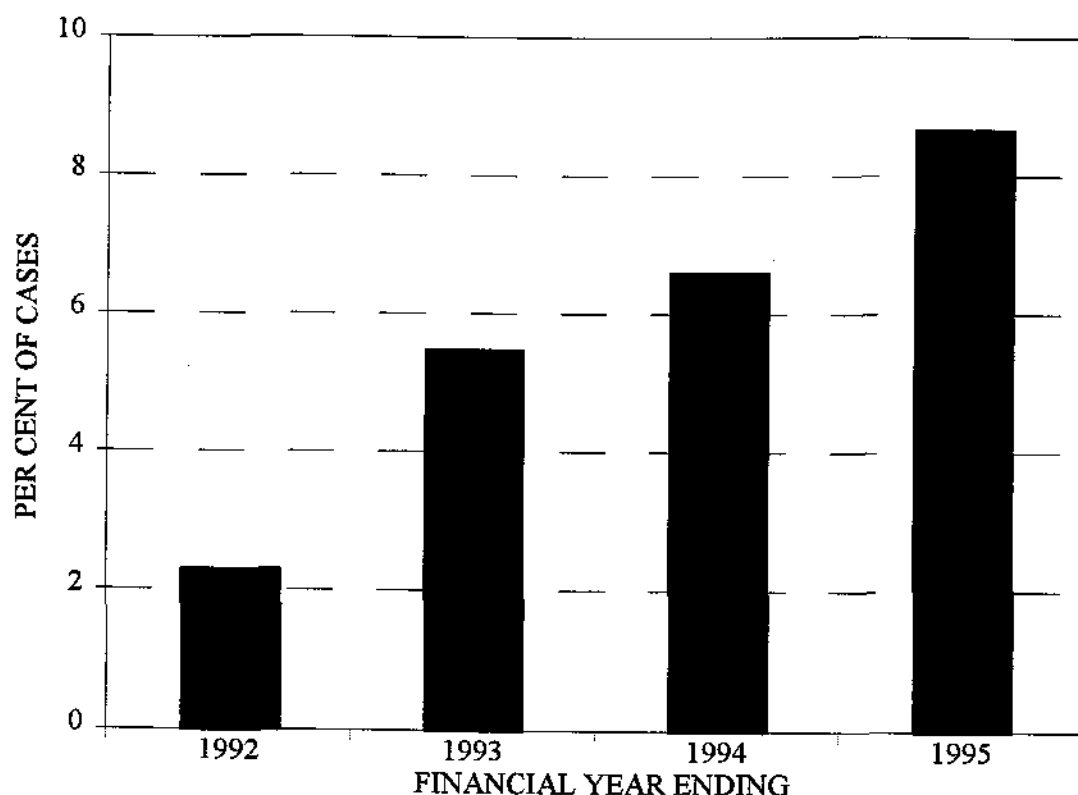
Key points to note are:

- In the three month pre-pilot comparison period, only about 10 per cent of matters initially mentioned for committal were subsequently finalised by a committal for sentence or an *ex officio* indictment.
- Over the life of the BCCP, an average of 28 per cent of all matters initially listed for committal were dealt with as committals for sentence or by means of an *ex officio* indictment, an increase of 180 per cent on the pre-project guilty plea rate.
- The largest growth was in the use of *ex officio* indictments (see below) which increased from about five per cent of matters mentioned for committal in the pre-pilot period to around 20 per cent under the BCCP. By comparison, there was only a modest overall rise in the proportion of matters committed for sentence.

One suggestion put to us was that the increase in the use of *ex officio* indictments reflected a system-wide trend, rather than being attributable specifically to the BCCP. In order to ascertain whether this was the case, we first examined trends in the use of *ex officios* prior to the BCCP.

Figure 5.3 shows, for the years 1991/92 to 1994/95, the proportion of depositions received by the ODPP's Brisbane³¹ office which were handled by way of an *ex officio* indictment. The trend is clearly upwards with the rate increasing from 2.3 per cent in 1991/92 to 8.7 per cent in 1994/95. However the increase in the rate following the commencement of the BCCP was well above what we would have predicted from this long term trend. The average annual growth in the *ex officio* rate between 1992 and 1995 was 2.1 per cent. On the basis of past trends, we would have predicted an *ex officio* rate in 1995/96 of 10.8 per cent, whereas the comparable rate for cases processed under the BCCP was actually 26.5 per cent.

31 Matters handled by the ODPP's Brisbane Office are those proceeding to the Brisbane District and Supreme Courts and Circuit Courts in which staff of the Brisbane Office appear.



**FIGURE 5.3 – PROPORTION OF DEPOSITIONS RECEIVED BY BRISBANE ODPP
DEALT WITH BY *EX OFFICIO* INDICTMENT (1991/92 – 1994/95)**

Source: ODPP Half Yearly Report: January to June 1995.

Figure 5.4 provides a more specific comparison of trends in *ex officio* rates for BCCP cases and non-BCCP cases processed by the Brisbane ODPP in the period July 1995 – June 1996. Data are presented in three month blocks to smooth out monthly fluctuations. To enable comparability of data, we have stated the *ex officio* rate for BCCP cases as a proportion of matters proceeding to a higher court (committals for trial and sentence, and *ex officio* indictments), rather than of all cases initially listed for committal mention (which is the basis of the rate shown in Figure 5.3). For each three months, the rate for non-BCCP cases was calculated as follows:

$$\frac{\text{Total number of } ex\ officios\ (Brisbane) - BCCP\ ex\ officios}{\text{Total depositions (Brisbane) - BCCP matters proceeding to higher court}}$$

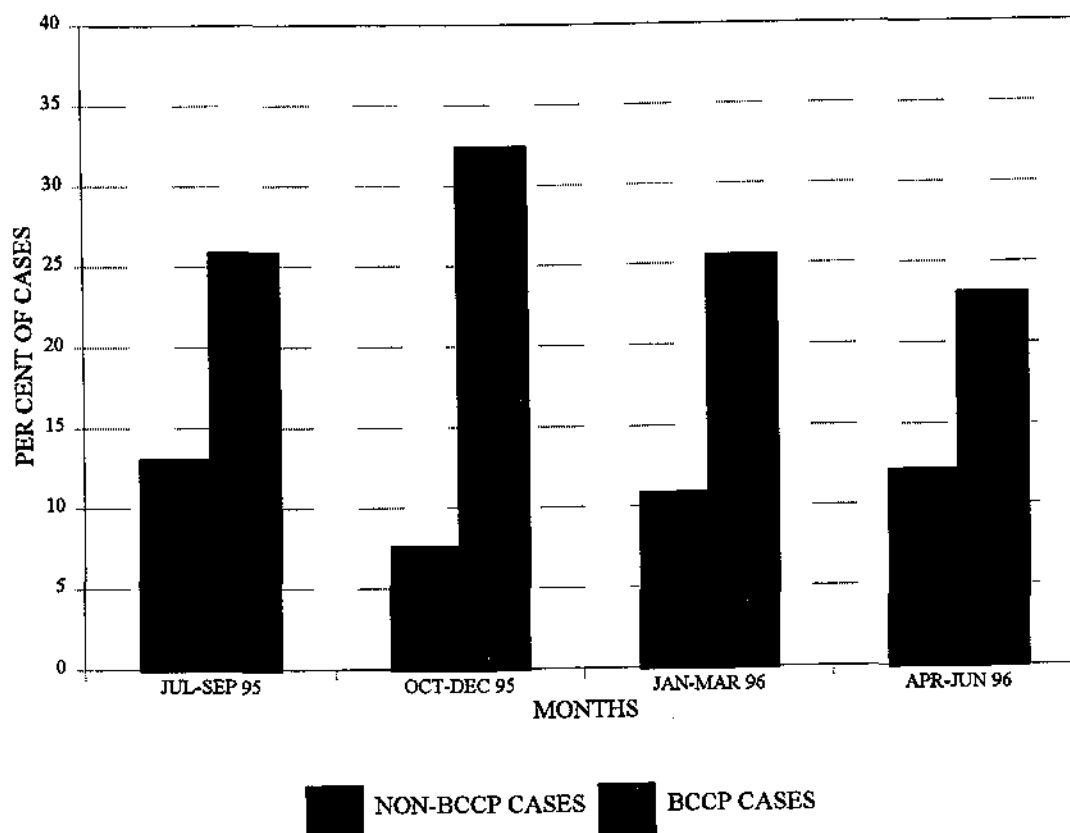


FIGURE 5.4 – COMPARISON OF *EX OFFICIO* INDICTMENT RATES, BCCP AND NON-BCCP CASES: BRISBANE (JULY 1995 – JUNE 1996)

Source: ODPP BCCP case management database, ODPP unpublished data.

Note: See text above for an explanation of how these rates were derived.

This figure shows that the rate at which *ex officio* indictments were used for BCCP cases was consistently at least double that of the non-BCCP cases. On the basis of these data and our analysis of longer term trends it can be concluded that the increased use of *ex officio* indictments under the BCCP was primarily attributable to the project itself, rather than to some extraneous factor.

As indicated, there was only a modest increase in committals for sentence over the course of the BCCP: the *ex officio* indictment was clearly the preferred means for processing early pleas of guilty. The popularity of this procedure is attributable to a combination of factors:

- There appears to be a view amongst some practitioners that proceeding by way of *ex officio* had sentencing advantages for their clients because it indicated an intention to plead guilty at the earliest opportunity.
- Under section 600 of the *Criminal Code*, a defendant who is committed for sentence cannot change his or her plea without the leave of the court; there is no such limitation on changing pleas for defendants who proceed by way of an *ex officio* indictment.
- Once the intention to proceed by way of an *ex officio* indictment was indicated, the matter was no longer subject to the time-lines of the BCCP. This may have been in the interests of some practitioners and defendants.

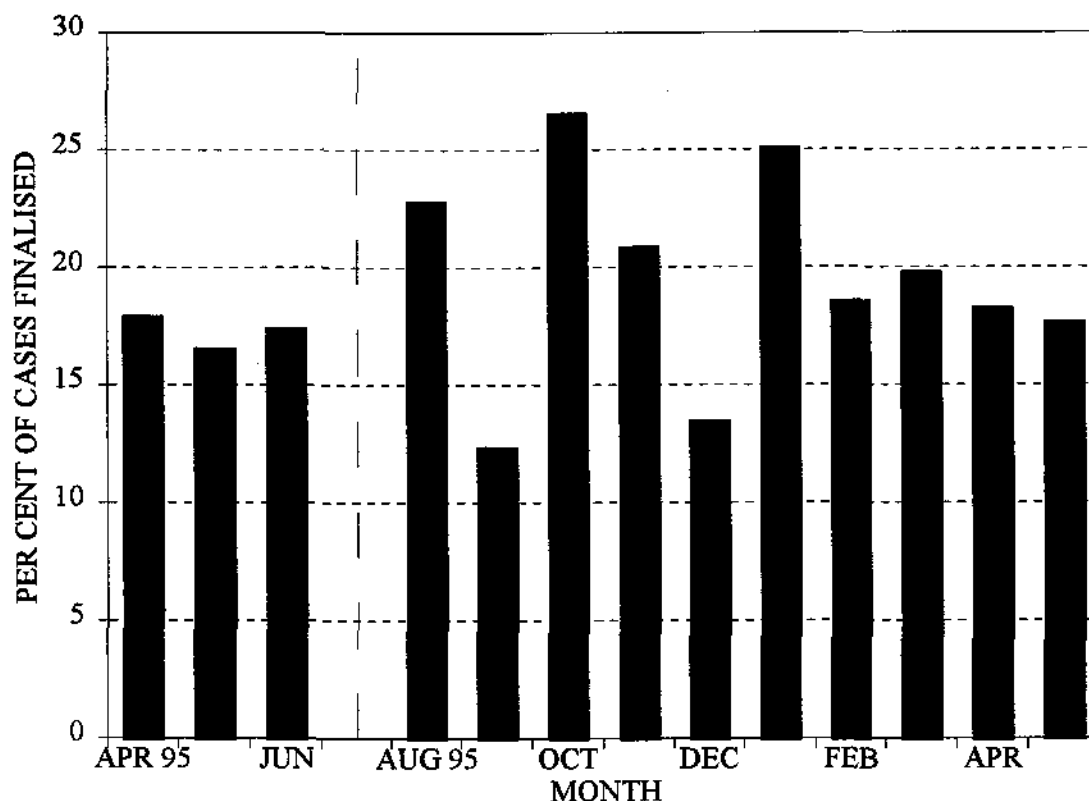
Although the BCCP has led to a significant increase in early pleas, there is scope for further improvement. Under the project, committals for sentence and *ex officio* indictments accounted for 38 per cent of matters proceeding to the higher courts. However, as indicated above, around 80 per cent of the criminal cases dealt with in the higher courts are eventually resolved as pleas of guilty.

SUMMARY OUTCOMES

It was anticipated that under the BCCP a greater proportion of matters initially mentioned for committal would be finalised as summary matters, because:

- the ODPP would be more willing – and better placed – than police prosecutors to reduce charges in appropriate cases so that matters could be finalised in the Magistrates Court
- the availability of legal aid at an early stage of proceedings would facilitate more informed decision-making by defendants.

There was a general perception among those interviewed that the BCCP had succeeded in diverting more cases to be dealt with summarily. For example, one defence practitioner estimated that there had been a net reduction of one third in matters reaching the District Court. However, Figure 5.5 shows that the BCCP apparently had little impact on the proportion of matters initially listed for committal which were dealt with by way of a summary disposition. In the pre-pilot period, an average of 17 per cent of matters initially mentioned for committal mention were finalised as summary matters. The summary disposition rate fluctuated in the first six months of the project, with figures ranging from 12 to 27 per cent of all disposals. In the last four months of the project the rate averaged just below 20 per cent of all cases finalised; only slightly higher than the pre-pilot rate. Of the matters finalised summarily under the BCCP, 96 per cent were pleas of guilty.



**FIGURE 5.5 – SUMMARY DISPOSITION RATES:
COMPARISON OF PRE-PILOT AND PILOT OUTCOMES
(APRIL 1995 – MAY 1996)**

Source: ODPP pre-pilot data; ODPP BCCP case management database.

Notes:

1. Figure shows the proportion of cases initially mentioned for committal which were finalised by means of a summary plea.
2. July 1995 excluded due to insufficient data.

Interpretation of these data is complicated by two factors:

- The rate shown in Figure 5.5 is based on cases initially set down for a committal mention. It is likely that the BCCP has resulted in more cases being converted into summary matters *prior* to this stage, as a result of the ODPP modifying charges and the police themselves altering their charging practices in response to informal feedback and formal directives from the ODPP.³² The QPS has also advised us that more matters are now being converted to summary charges prior to going to the ODPP.
- Because of data limitations, we were not able to ascertain the proportion of matters proceeding to the higher courts which *could* have been dealt with summarily had the defendant so elected; hence, we do not know how much scope there was for improving the summary disposition rate.

³² See Chapter 2, concerning the Director of Public Prosecutions directive on the charging of regulatory offences, issued in May 1996.

On balance, however, it would appear that the BCCP was less effective than anticipated in diverting matters from the higher courts into the Magistrates Court. Possible explanations for this include that:

- some defence practitioners perceived that defendants are likely to receive more favourable sentencing treatment in the higher courts and therefore saw little to be gained from entering a summary plea
- some defendants may not have been ready to enter a plea at such an early stage in the process.

It was also suggested to us that legal aid funding rules may have created an incentive for some practitioners to leave matters in the committals stream, rather than dealing with them summarily, although there was no clear evidence of this (see Chapter 4).

WITHDRAWALS

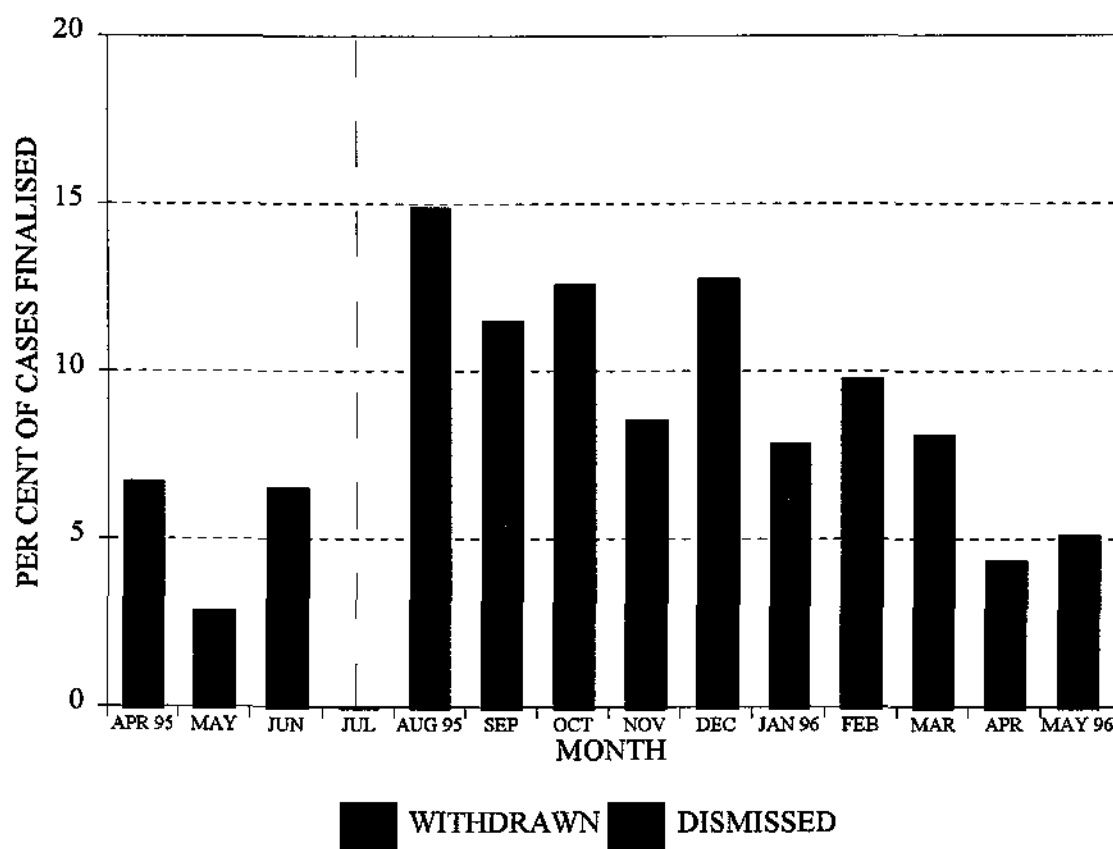
Involvement of the ODPP in the committals process was also expected to result in fewer weak cases proceeding to and beyond the committal stage, for the following reasons:

- There was a strong incentive for the ODPP – as the body responsible for higher court prosecutions – to filter out weak cases at an early stage in order to avoid having to deal with these matters later in the process. By comparison, police prosecutors were not required to make an assessment of the prospect of a conviction in the higher court because their responsibility was only to establish a *prima facie* case.
- ODPP staff, being independent from police, would be less likely to respond to pressure from investigating officers to persist with prosecutions which had a low chance of success.

Figure 5.6 shows that, as predicted, the withdrawal rate in the first few months of the BCCP was well above that of the pre-pilot period. However, by April the rate had returned to pre-project levels. One interpretation of these data is that the ODPP's effectiveness as a filter declined over the lifespan of the project due to factors such as high staff turnover, workload pressures which prevented staff from examining briefs properly, and so on. However, a contrary interpretation is that the data showed that:

- after an initial learning period, police became familiar with the criteria applied by the ODPP and were therefore less likely to proceed with cases which were evidentially weak; and
- due to improved communication between police and ODPP officers during the investigation stages, the quality of preparation improved.

Anecdotal evidence suggests that ODPP involvement has had some positive effect on police charging and brief preparation practices. On this basis, we consider that the second of the two interpretations has more plausibility, although we have not been able to test for this directly.



**FIGURE 5.6 – WITHDRAWAL AND DISMISSAL RATES:
COMPARISON OF PRE-PILOT AND PILOT OUTCOMES
(APRIL 1995 – MAY 1996)**

Source: ODPP pre-pilot data; ODPP BCCP case management database

Notes:

1. Figure shows proportion of cases initially listed for committal which were finalised by withdrawal by the prosecution or dismissal by a magistrate.
2. July 1995 excluded due to insufficient data.

Figure 5.6 also shows that the proportion of matters in the pre-pilot and pilot periods which were discharged at committal remained very low in both periods, equating to only 1–2 per cent of cases initially mentioned for committal. However, the BCCP was not expected to lead to an increase in the discharge rate. If anything, the rate should have been even lower under the project because of more weak cases being withdrawn prior to committal.

EFFECT OF TYPE OF REPRESENTATION ON OUTCOMES

As part of our analysis of outcomes under the BCCP, we included an analysis of the effect of the type of legal representation on type of disposal. This analysis was undertaken primarily to ascertain whether early resolution of matters was more likely to occur when a matter was handled 'in-house' by the LAO than when it was assigned to a private practitioner.

Figure 5.7, below, shows the proportion of matters committed for trial under the BCCP, according to whether the defendant was represented by the LAO in-house legal practice, a private practitioner funded by the LAO, an Aboriginal Legal Service (ALS), or some other representative (usually a privately funded lawyer).

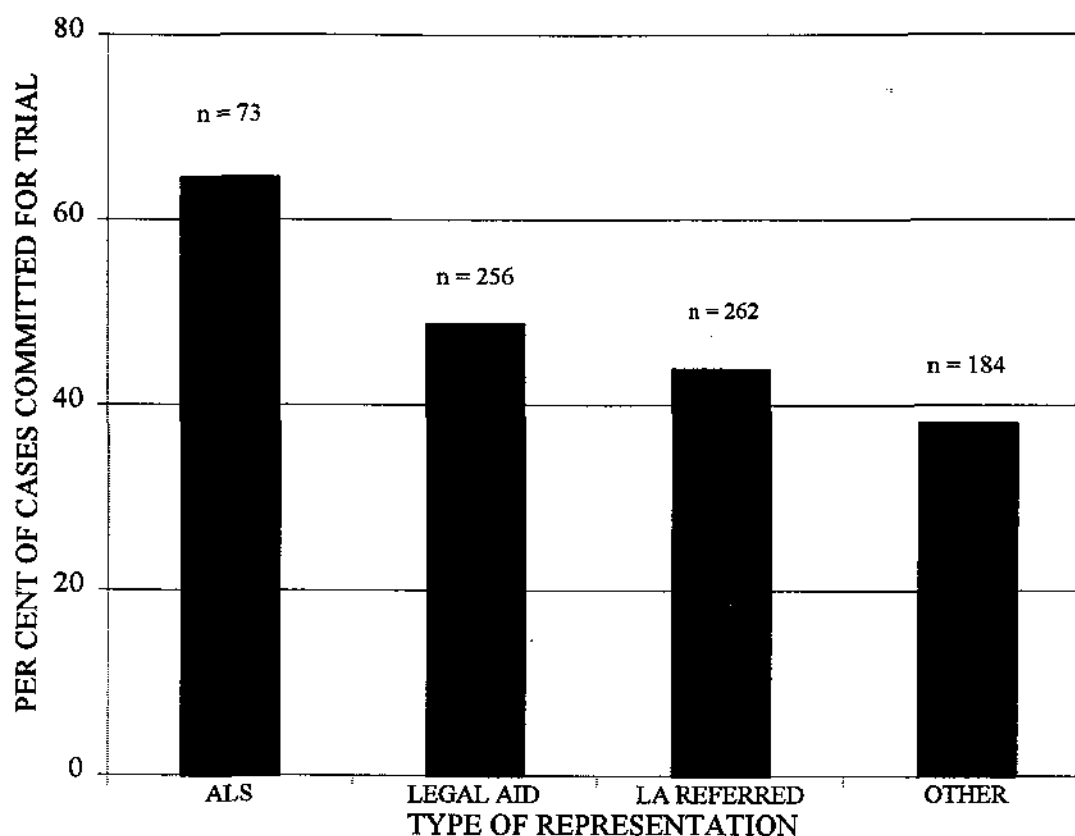


FIGURE 5.7 – TYPE OF REPRESENTATION AND PROPORTION OF MATTERS COMMITTED FOR TRIAL: BCCP (JULY 1995 – JUNE 1996)

Source: ODPP BCCP case management database.

In interpreting this figure, it should be noted that the lower the trial committal rate, the greater the proportion of matters which were resolved early. The graph shows some variation among the four groups, with the trial committal rate being the highest for defendants represented by the Aboriginal Legal Service and the lowest for the 'other' category (mainly privately funded representation). Significantly, legal aid-referred solicitors had a slightly lower proportion of cases committed for trial (44%) than those represented by the LAO in-house practice (49%). This finding is inconsistent with the view, expressed by some of our interviewees, that LAO officers were more likely to seek an early resolution of a matter than private practitioners.

POST-COMMITTAL IMPACTS

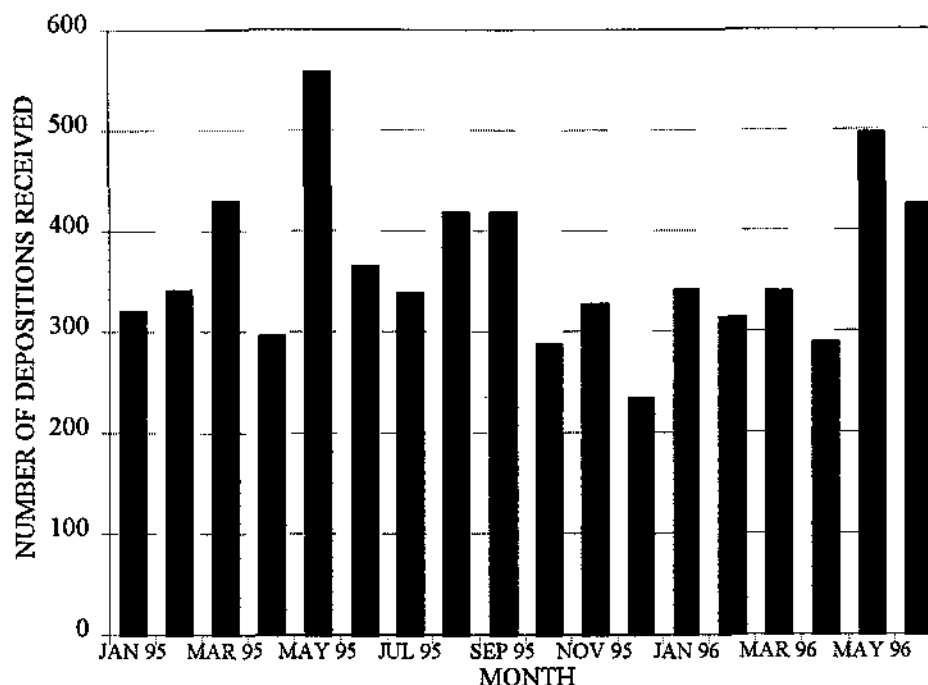
Prior to and during the project, various claims were made about the potential benefits for the higher courts of early involvement by the ODPP. Anticipated benefits included:

- reduced higher court workload, due to more matters being diverted into the summary jurisdiction
- fewer late pleas of guilty and, consequently, improved listing practices, because:
 - * more pleas would be identified prior to, or at, committal
 - * where a matter was committed for trial, the defence and prosecution would be able to engage in any plea negotiations at an earlier stage of proceedings because of improved case preparation and the operation of the 'continuity principle'
- fewer late entries of *nolle prosequi*, due to weak cases being identified and withdrawn at an earlier stage of proceedings.

REDUCED HIGHER COURT WORKLOAD

As discussed above, we did not find any evidence of a significant increase in the proportion of matters being finalised as summary prosecutions. However, this may have been because we only focused on the outcome of cases which were mentioned for committal *after* the first appearance.

As a way of checking whether the implementation of BCCP had an effect on higher court workload, we examined monthly trends in depositions received by the Brisbane ODPP for the period January 1995 – June 1996. Our analysis showed that an average of 385 depositions per month were received in the period January – July 1995, compared with an average of around 353 per month for the period August 1995 – June 1996, after the project came into effect. This equates to a fall in the predicted higher court workload, over this later period, of around 350 cases. Such results are *prima facie* consistent with the suggestion that establishment of the BCCP resulted in *some* overall reduction in higher court workload. However, as shown by Figure 5.8, there is considerable month-to-month fluctuation in the number of depositions received by the ODPP, and the possible influence of seasonal factors cannot be discounted. In addition, we were not able to determine whether the reduction in the number of cases was specific to Brisbane, or part of a Statewide trend unrelated to the introduction of the BCCP. Hence, we cannot say conclusively, on the data available to us, that the BCCP has contributed to a reduction in overall higher court workload.



**FIGURE 5.8 – TOTAL NUMBER OF DEPOSITIONS RECEIVED BY THE BRISBANE ODPP
(JANUARY 1995 – JUNE 1996)**

Source: ODPP unpublished data.

LATE PLEAS AND NOLLE PROSEQUI

Late pleas of guilty and late withdrawals of prosecutions (*nolle prosequi*) are a major cause of inefficiency in the operation of the higher criminal courts. It is very difficult for court administrators to provide certainty in listing, and maximise the utilisation of court time, when it is not known how many of the matters which are listed as trials will actually proceed as such. In addition, late pleas and withdrawals have a disruptive and at times traumatic effect on witnesses, and can create substantial scheduling difficulties for legal practitioners.

Because of the relatively short time frame of the BCCP and the substantial delays between committal and trial it is very difficult, at this stage, to assess whether the project has resulted in a reduction in the number of late pleas and/or *nolle prosequi*. The period between committal and presentation of indictment in the District Court is about 10 weeks. It then typically takes a further 3–6 months – and sometimes considerably longer – for the matter to be disposed of by trial.³³ This means that any possible effect of the project on late pleas and *nolle prosequi* would not become apparent until May or later. A further difficulty is that the higher court data available to us all (trials listed in the Brisbane District Court) do not differentiate between BCCP and non-BCCP cases, making it very difficult to attribute any change in outcomes specifically to the effect of the project.

³³ According to recent District Court statistics for Brisbane, 60 per cent of matters are finalised within six months of presentation of indictment and 85 per cent within 12 months.

Figure 5.9, below, shows the proportion of cases listed for trial in the Brisbane District Court in the period from 20 March 1995 to 27 July 1996 in which a plea of guilty, or a *nolle prosequi*, was entered on the morning of, or in the week prior to, the date on which the trial was listed. The data have been grouped into eight week blocks to smooth out week-to-week fluctuations and make it easier to identify any trends. The figure shows that there was a decline in the rate of late pleas and *nolle prosequi* in the period 29 April to 17 June, which is about when we would expect to see evidence of any beneficial effect on trial listing practices in the higher courts. However, the rate increased again in the following period. Given the volatility of these data, and the other considerations referred to above, it would be unwise at this stage to make any claims about the possible impact of the BCCP on the efficiency of the higher courts.

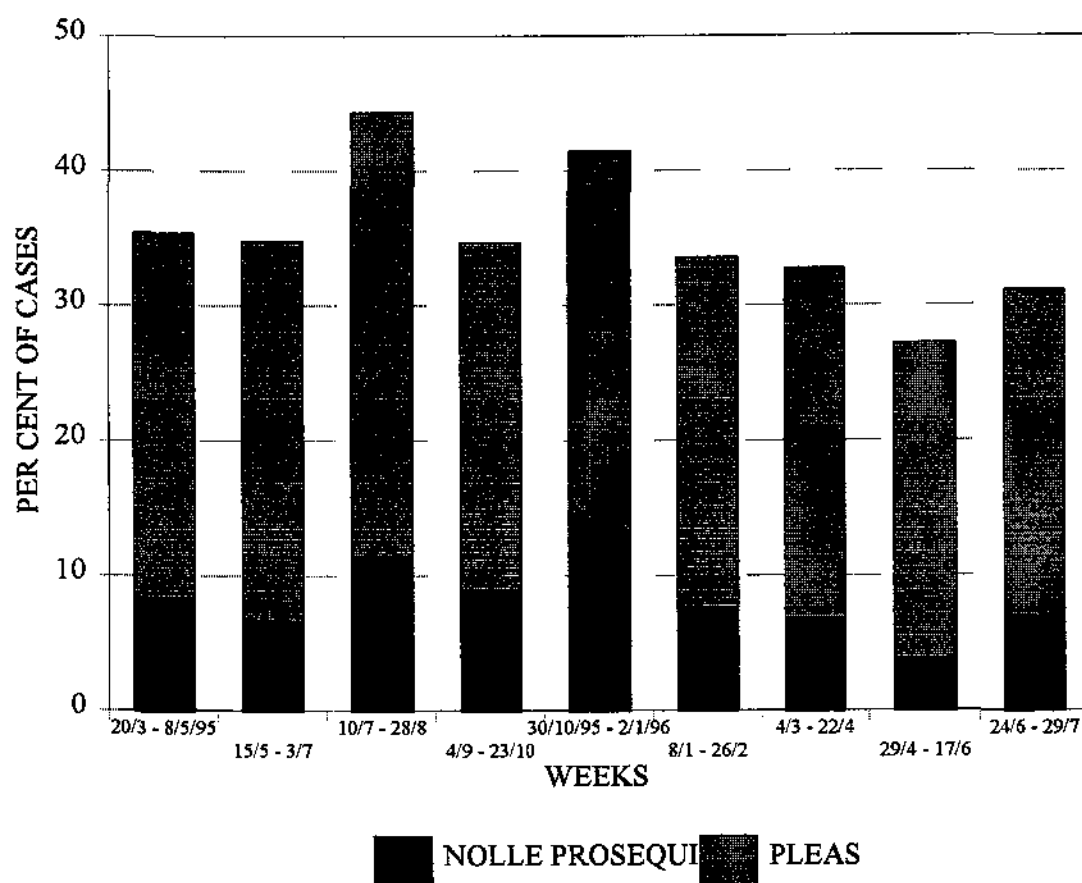


FIGURE 5.9 – PROPORTION OF CASES LISTED FOR TRIAL WHICH RESULTED IN A PLEA OR A *NOLLE PROSEQUI* PRIOR TO, OR ON THE MORNING OF TRIAL: BRISBANE DISTRICT COURT (MARCH 1995 – JULY 1996)

Source: Unpublished data provided by Court Administrator, Brisbane.

Note: All periods shown are eight week blocks, except for the period 24/6/1996 to 29/7/1996, which is a six week block.

CONCLUSION

Following the establishment of the BCCP:

- There was a significant decline in the proportion of matters initially mentioned for committal which proceeded as committals for trial.
- The proportion of cases in which the defendant indicated an intention to plead guilty at, or prior to, committal increased by around 180 per cent. This was due largely to a marked rise in the use of the *ex officio* indictment procedure.
- There was little change in the proportion of matters initially listed for committal which were dealt with by way of a summary disposition.
- There was an initial increase in the proportion of matters withdrawn prior to committal, but by April 1996 the rate had returned to pre-project levels. This trend could indicate either that the ODPP's effectiveness as a filter declined or, more likely, that police had adjusted their behaviour and were less likely to proceed with cases that were evidentially weak.
- There is, as yet, no conclusive evidence that the BCCP has led to a reduction in higher court workload, or reduced the incidence of late pleas of guilty and/or *nolle prosequi* in the higher courts.

CHAPTER 6

TIME COSTING ANALYSIS

INTRODUCTION

This chapter focuses on measuring the direct time inputs and savings incurred by the various agencies as a result of their involvement in the BCCP. The main object of this exercise is to assess whether the extra time inputs of the ODPP and the LAO at the committal stage were counter-balanced by savings "downstream" for these agencies and by savings to QPS.

This chapter:

- outlines the general approach employed
- presents the results of our analysis for the individual agencies and the project as a whole
- compares our estimates with those of KPMG.

THE GENERAL APPROACH

The approach which we used to assess the cost implications of the BCCP was necessarily fairly complex, but in broad terms consisted of five steps.

1. Based on our analysis of BCCP outcome data we estimated how many matters of each type – committal, summary proceeding, matter discharged/withdrawn and *ex officio* indictment – would be finalised under the BCCP in a full year. For comparison purposes, we used the pre-pilot data collected by the ODPP to estimate how many matters of each type would have been finalised over the same period had the BCCP not been established.
2. We used the time costing data described in Chapter 3 to estimate the average time expended by police prosecutors and investigating officers, ODPP legal staff and LAO in-house staff in relation to different types of cases.
3. We determined the average \$ cost per hour of employing police prosecutors and investigators and LAO and ODPP legal staff, based on information provided by the various agencies. For matters referred by the LAO to private practitioners, we used the fee set by the LAO as a measure of the cost per case.
4. We estimated the total \$ value of the direct time inputs required of each agency involved in the BCCP, assuming a full 12 months of the project. These estimates were then compared with our estimates of the value of the inputs which would have been required of each agency had the BCCP not been established. On this basis, we were able to determine the value of additional or saved direct time inputs for each agency.
5. We aggregated the net costs/savings in direct time inputs for each agency to obtain an estimated net cost/saving for the project as a whole.³⁴

³⁴ Further details about the methodology and estimates contained in this chapter may be obtained from the CJC's Research and Co-ordination Division.

This approach enabled us to assess the extent to which the additional time inputs required "up front" from the ODPP and the LAO were counterbalanced by time savings at a later stage of proceedings. We were also able to determine the extent to which the additional time inputs required from the ODPP and the LAO were compensated for by savings in the time inputs of QPS prosecutors and investigating officers.

As emphasised in Chapter 3 we did not endeavour to provide a full cost-benefit analysis of the project because:

- Our focus was on quantifying direct time inputs, rather than on measuring the *total* costs and savings for each agency (such as support staff and other overheads). Total budget figures were available for ODPP and LAO involvement in the BCCP, but it was impossible to estimate the total value of police resources saved under the project, due to the difficulty of disaggregating items of the QPS budget.
- Our method captured only those time inputs which were attributable to particular cases, and therefore excluded significant amounts of time spent by staff on other activities. (It would be quite reasonable to expect that 25 per cent or more of an employee's working time in a normal week could not be attributed to particular cases.)
- We did not include the courts in our estimates of time inputs and savings. As discussed in Chapter 5, we did not have sufficient data to estimate how much Magistrates Court and higher court time, if any, has been saved as a result of the BCCP. Further, we did not have any reliable measure of the hourly cost of higher or lower court time.
- We made no attempt to place \$ values on non-quantifiable benefits, such as reduced trauma and inconvenience for complainants and witnesses.

It also must be emphasised, as detailed in Chapter 3, that the quality of some of our time costing data was poor, especially that obtained from the ODPP survey. Estimates taken from the police and ODPP time costing surveys, and the LAO time costing system, are also susceptible to sampling error. In addition, our estimates of the impact of the project on the mix of case outcomes were based on only a three month pre-pilot period. Had we examined a longer or different period, we might have obtained a somewhat different set of predicted outcomes. For all of these reasons, the estimates of direct costs and savings which are presented in the following discussion are intended to be indicative only.

OUTCOME DATA

Table 6.1 contains the outcome data which we used for our calculations. The table shows:

- the outcomes of matters initially identified as committal proceedings and finalised in the Brisbane Central Magistrates Court in:
 - * April, May and June 1995 – the pre-pilot period
 - * August 1995 to May 1996 – the BCCP period
- the estimated number of cases of each type which would be finalised over a full year of the BCCP
- the predicted number of cases of each type which would have been finalised over the same period had the BCCP not been implemented.

**TABLE 6.1 – CASE OUTCOMES IN THE MAGISTRATES COURT FOR
PRE-PILOT AND BCCP CASES**

Outcome	Pre-Pilot (April– June 1995)	Pre-Pilot Adjusted	BCCP (Aug 1995 – May 1996)	BCCP Annualised
Committed for sentence	26 5.8%	120	137 7.9%	164
Committed for trial	301 67.3%	1,393	756 43.8%	907
Discharged	7 1.6%	33	14 0.8%	17
Summary plea / trial	77 17.2%	356	339 19.7%	407
<i>Ex officio</i>	20 4.5%	93	340 19.7%	408
Withdrawn (other)	16 3.6%	75	139 8.1%	167
TOTAL	447	2,070	1,725	2,070

Source: ODPP.

Notes:

1. BCCP annualised figures were calculated by dividing BCCP data for the period August 1995 – May 1996 by 10 and multiplying by 12.
2. Pre-pilot adjusted data were calculated by taking 2,070 as the base figure (the annualised total of BCCP cases) and assuming that the distribution of case outcomes would have been the same as for the pre-pilot period.

TIME INPUT ANALYSIS

PROJECT IMPACT ON QPS DIRECT TIME INPUTS

POLICE PROSECUTORS

Police prosecutors saved time under the BCCP as they were no longer required to be involved in any committal proceedings after the first appearance in Court 1. To estimate the amount of time which would be saved in a full year of the BCCP, we proceeded as follows:

1. We asked police prosecutors in Holland Park and Beenleigh Magistrates Courts to record for a period of 12 weeks the time they spent on each matter which they handled during that period. From these records we calculated the average prosecutor time required for each type of court finalisation.
2. We subtracted 10 minutes from these estimates to allow for the fact that police prosecutors in Brisbane Central Magistrates Court still appear on the first mention. (Prosecutions Branch staff informed us that, on average, the first appearance, including preparation, would take 10 minutes.) This gave us an estimate of the amount of prosecutorial time *saved* under the BCCP for each type of matter.

3. To determine the *total* time which would be saved by police prosecutors over a full year of the BCCP, we multiplied the estimated average time saved for each type of outcome by the total number of cases in each category, using the adjusted, pre-pilot data from Table 6.1.

Table 6.2 shows how our estimates of total direct time savings were obtained.

TABLE 6.2 – ESTIMATED SAVINGS IN DIRECT TIME INPUTS FOR POLICE PROSECUTORS

Type of Finalisation	Average Time Saved (hrs)	Number of Cases	Total Time Saved (hrs)
Committal	2.0	1,513	3,026
Summary proceeding	0.7	356	249
Discharged/withdrawn	1.4	108	151
<i>Ex officio</i>	0.3	93	28
TOTAL		2,070	3,454

According to the data in this table, the estimated total annual saving in time for QPS prosecutors under the BCCP is 3,454 hours. We costed the value of this time by charging half of it at the hourly wage plus on costs of Sergeants Level 2 (\$24.96) and half of it at the hourly wage plus on costs of Senior Constables Level 2 (\$22.20).³⁵ This gave us an estimated value of police prosecutor time saved by the BCCP (to the nearest \$100) of \$81,400. Given that the time recording surveys may have understated the number of hours which police prosecutors actually devoted to particular matters, it may be that the actual savings were higher than this estimate.

POLICE INVESTIGATING OFFICERS

The BCCP had the potential to reduce the average time spent on cases by investigating officers in two ways:

- by reducing the amount of time involved in finalising cases, due to the earlier and more focused preparation of briefs
- by increasing the proportion of quick means of finalisation (in particular, through greater use of the *ex officio* indictment procedure, which normally does not require the preparation of a full brief or attendance at court).

We estimated how much police investigating officer time would be saved over a full year of the BCCP according to the following steps:

1. We calculated the average time spent by officers in relation to each type of outcome for BCCP and non-BCCP cases, using data collected in our survey of investigating officers. For this exercise, we assumed that the time spent by investigating officers working on cases after the indictment was presented did not differ between BCCP and non-BCCP cases.

³⁵ Level 2 is the middle band of both ranks. Hourly rates for Police were provided by the QPS to CJC accounts staff. The on cost figure of 23.74 per cent is the on cost rate used by ODPP and used in our preliminary reports.

2. We estimated the total time spent by investigating officers under the BCCP, by applying our estimates of the average investigating officer time per outcome type to the BCCP annualised outcome data shown in Table 6.1.
3. To ascertain how much investigating officer time would have been expended if the BCCP had not been established, we multiplied our estimate of the average time involved per type of matter in non-BCCP cases by the pre-pilot adjusted outcome data shown in Table 6.1.
4. We estimated the total time saved in a full year of the BCCP by subtracting the total hours calculated by Step 2 from the total hours calculated by Step 3.

The data used for these calculations are shown in Table 6.3.

TABLE 6.3 – ESTIMATED SAVINGS IN DIRECT TIME INPUTS FOR POLICE INVESTIGATING OFFICERS

BCCP

Type of Finalisation	Average Time (hrs)	Number of Cases	Total Time (hrs)
Committal	37.1	1,071	39,734
Summary proceeding	14.7	407	5,983
Discharged/withdrawn	34.5	184	6,348
<i>Ex officio</i>	23.7	408	9,670
TOTAL		2,070	61,735

NON-BCCP

Type of Finalisation	Average Time (hrs)	Number of Cases	Total Time (hrs)
Committal	46.4	1,513	70,203
Summary proceeding	20.8	356	7,405
Discharged/withdrawn	* 34.5	108	3,726
<i>Ex officio</i>	* 23.7	93	2,204
TOTAL		2,070	83,538

Note: * These times are based on data for BCCP cases, as the non-BCCP sample included only one case which was finalised by discharge/withdrawal and one finalised by *ex officio* indictment. The trends in other finalisation types between BCCP and non-BCCP cases suggest these estimates may be low, reducing the overall estimated savings.

The above table shows that the estimated total annual saving in time for police investigating officers, due to the operation of the BCCP, is 21,803 hours. This amount represents the difference between the BCCP and non-BCCP estimates. In our survey, 50 per cent of investigating officers were Constables, 35 per cent

were Senior Constables and 13 per cent were Sergeants. We used these ratios to calculate a weighted average hourly wage plus oncost figure of \$20.29.³⁶ The estimated value of police investigating officer time which would be saved under the BCCP on an annualised basis is therefore \$442,400.

OVERALL POLICE SAVINGS

In summary, the estimated total value of police direct time inputs – prosecutors and investigating officers combined – which would be saved in a full year by the BCCP is \$523,800. The bulk of these savings are derived from savings in investigating officer time, due to more matters being finalised by means of *ex officio* indictments and to the BCCP reducing the amount of time required of officers involved in matters proceeding by way of committal or a summary plea.

PROJECT IMPACT ON LEGAL AID

The BCCP involved significant new time and cost inputs for the LAO, in the form of time spent by in-house staff working on committal proceedings and additional money grants of aid for matters referred to private legal practitioners.

IN-HOUSE MATTERS

In order to estimate the additional time inputs of the LAO in-house practice under the BCCP, it was necessary to estimate the additional time spent in the Magistrates Court by LAO staff under the BCCP and subtract any time saved in the higher courts by:

- reducing the amount of time involved in the higher court phase of proceedings for any given matter
- increasing the proportion of quick means of finalisation (e.g. by use of *ex officio* indictments)
- reducing the number of matters flowing through the higher courts.

Staff of the LAO have been time recording for some time, as a regular administrative practice. These records were provided to the CJC. The time recording data included the amount of time spent by staff on individual cases, according to the type of legal aid granted. This enabled us to determine an average amount of time spent by legal staff on the following types of cases:

- BCCP cases at the Magistrates Court stage³⁷
- BCCP cases in the higher court
- non-BCCP cases in the higher court.

36 Using the hourly rates for the middle band of each rank (Level 3 for Constable and Level 2 for Senior Constable and Sergeant) and on costs calculated as 23.74 per cent of wages.

37 The data enabled us to identify those matters for which aid would not have been granted but for the BCCP. We have excluded committals which are 'prescribed matters', as the BCCP did not result in any *additional* time inputs for these matters.

The total average time taken for a BCCP case was calculated by adding the average time spent on cases at the Magistrates Court stage with the average time spent on cases at the higher court stage.

Estimates for time inputs in the higher courts were based on District Court cases only, as there were very few Supreme Court matters completed in the pre-pilot or project periods. Further, we only estimated the average time inputs for matters finalised by plea of guilty, because data were available for only a small number of trials. Our calculations of net LAO direct time inputs therefore assume that the time saved in work on a trial under the BCCP is the same as that saved in work on a matter committed as a trial and resolved as a plea. This assumption is, if anything, conservative.

We were able to distinguish between District Court matters which were granted aid for a plea only (indicating that these had been resolved as pleas during the committal stage) and matters which were granted aid for review of depositions before plea (indicating that these matters were "possible trials"). District Court inputs included matters in which committals were assigned to in-house lawyers and some matters which were referred to private practitioners for the committal stage and brought in-house for the higher court stage.

Our analysis of LAO staff time records is summarised in Table 6.4.

TABLE 6.4 – ESTIMATED DIRECT TIME INPUTS FOR LAO IN-HOUSE PRACTICE

Type of Aid	BCCP Average Time (hrs)	Non-BCCP Average Time (hrs)	BCCP Difference (hrs)
Magistrates Court Stage (a)	10.9	0	10.9
District Court plea only	8.0	10.5	-2.5
District Court: possible trial/plea	11.2	13.4	-2.2
All District Court pleas (b)	10.0	12.1	-2.1
TOTAL (a + b)	20.9	12.1	8.8

Source: LAO time recording system.

As Table 6.4 indicates, the average amount of time spent by in-house lawyers on BCCP proceedings in the Magistrates Court was 10.9 hours. The average time spent on matters resolved in the District Court as pleas of guilty was 10.0 hours for BCCP cases and 12.1 hours for non-BCCP cases.

For each type of District Court matter aided, BCCP cases required around two hours less in time inputs than non-BCCP cases. For both the BCCP and non-BCCP, matters identified as pleas of guilty at the committal took less time in the District Court than matters which were not identified as pleas until later.

We estimated the net costs of the BCCP to the LAO in-house practice in the following manner:

1. The LAO reported that there were 554 additional grants of aid for committal proceedings assigned in-house in the first 11 months of the project. Annualised this represents 604 grants of aid; 412 more than in the previous year.
2. We multiplied the estimate of 412 additional grants of aid assigned in-house in a year of the BCCP by the average committal input of 10.9 hours, to calculate the total additional in-house input into committals. The resulting estimate was 4,491 hours.

3. We then calculated the input of LAO staff into BCCP matters in the higher court as follows:
 - The LAO estimated that the number of BCCP higher court matters handled in-house over a year to be 375.³⁸
 - Using the data in Table 6.1 we calculated that 61 per cent of these higher court matters would have been committed as trials and the remaining 39 per cent would have been identified as pleas of guilty at the Magistrates Court stage (either as committals for sentence or a *ex officio* pleas). On this basis, we estimated that of the 375 higher court matters to be handled in-house over the year, 230 would have been committed as trials and the remaining 145 would have been committed as sentences or dealt with as *ex officio* pleas.
 - Using the time recording data from Table 6.4 above, we multiplied 230 possible trials by 11.2 hours, and 145 pleas by 8.0 hours. Adding these two amounts together gave a total higher court direct time input for BCCP cases by LAO staff of 3,736 hours.
4. The total additional time inputs by LAO staff as a result of the BCCP is the sum of the estimates calculated in steps 2 and 3, being 8,227 hours in a full year.
5. To calculate the LAO staff input assuming no BCCP, we assumed (again using the pre-pilot adjusted data in Table 6.1) that 2,070 Magistrates Court proceedings would have led to 1,606 matters being finalised in the higher courts, either as committals for trial or sentence or as *ex officio* pleas. We assumed that the same proportion of these matters would have been handled in-house as under the BCCP (25%). This gave us an estimated 407 matters which would have been handled by LAO staff in a full year of the BCCP.
6. Using the pre-pilot adjusted data in Table 6.1, we calculated that 86.7 per cent of the higher court matters would have been committed for trial and the remaining 13.3 per cent would have been committed for sentence or been *ex officio* pleas. Applying these percentages to the estimated 407 higher court matters, we calculated that LAO staff would have handled 353 possible trials and 54 sentences if there had been no BCCP in place. Using the non-BCCP time recording data in Table 6.4, we calculated the total higher court direct time input of LAO staff, assuming no BCCP as 5,297 hours (i.e. 353 possible trials multiplied by 13.4 hours, plus 54 sentences multiplied by 10.5 hours).
7. In order to estimate the total net additional time spent by LAO staff due to the BCCP, we subtracted the direct time inputs calculated in Step 6 from those in Step 4, giving 2,929 additional hours of direct time input.
8. Applying an hourly cost of \$25.00³⁹ per hour, we estimated that the net additional direct time input by LAO staff attributable to the BCCP in a full 12 month period would be \$73,200.

38 The LAO has indicated that this number is likely to increase with the conclusion of the District Court Tender Project.

39 The assumed hourly pay rate for Legal Aid officers is the same as for ODPP staff (see below).

PAYMENTS TO PRIVATE PRACTITIONERS

In order to arrive at a final estimate of the net additional cost of the BCCP to the LAO, it is necessary to add to the above estimate the total cost of additional grants of aid assigned to private practitioners under the BCCP. This figure has been calculated by the LAO as \$352,000 (1996, p. 4).

COST TO LAO: SUMMARY

The estimated total annual cost to the LAO of the additional direct time inputs and additional assigned matters attributable to the BCCP is **\$425,200**. Most of these costs (\$352,000) derive from additional grants of aid assigned to private practitioners.

IMPACT OF PROJECT ON ODPP DIRECT TIME INPUTS

As with the LAO, in order to determine the additional direct time inputs expended by the ODPP under the BCCP, it was necessary to calculate the total time expended by ODPP staff on matters up to the end of committal stage, and then subtract from that amount any post-committal time savings attributable to the project. To ascertain the magnitude of post-committal savings we needed, in turn, to consider the extent to which the BCCP:

- reduced the average amount of time expended by ODPP staff on any given case type (trial, guilty plea, *ex officio* indictment, etc.)
- increased the proportion of matters finalised by means which required fewer ODPP time inputs, such as *ex officio* indictments
- reduced the number of matters flowing through to the higher courts.

The time costing data which we utilised for these various calculations were obtained primarily from surveys of ODPP legal staff – both those involved in the BCCP and those handling non-BCCP matters – conducted over a period of eight weeks (see Chapter 3 for a detailed description). Unfortunately, because the ODPP were not accustomed to time recording, it is likely that a number of staff failed to record some aspects of their work. This may have been a particular problem in relation to the pre-committal component of the BCCP, where staff had very fragmented working days because of the large number of matters for which they had responsibility.

Because of our concerns with the quality of ODPP time recording data, we have used two estimates of direct time inputs: the first based on the time recording survey data and the second on the assumption that ODPP staff recorded only half of the actual time inputs in the Magistrates Court stage and 75 per cent of the time spent on higher court matters.

ESTIMATES BASED ON THE TIME RECORDING DATA

Using data from the time recording survey, we calculated that ODPP legal staff spent an average of three hours per committal matter (excluding *ex officio* indictments) and 8.5 hours per higher court matter for both BCCP and non-BCCP matters.⁴⁰

The average time input per higher court matter was estimated by aggregating time records across the two key stages from committal to presentation of indictment and from presentation of indictment to finalisation. Estimated time per higher court matter was deemed to be the same for both BCCP and non-BCCP cases because the survey data showed no significant differences between these two sub-samples. This finding was somewhat disappointing, given the expected "downstream" benefits for the ODPP of early involvement in matters. However, as discussed in Chapter 4, the ODPP had difficulty maintaining continuity because of the high staff turnover associated with the project. Our analysis of LAO time costing data (see above) indicates that the BCCP has reduced higher court time inputs for the LAO by around two hours or more per matter. These results suggest that similar benefits for the ODPP might be obtained over the longer term if the project can be placed on a more secure footing.

Our estimate of ODPP direct time inputs for *ex officio* matters was based on ODPP officers' estimates after the event. This approach was taken because the time recording survey period was not long enough to cover any *ex officio* matters from beginning to end. We assumed that the amount of ODPP staff time required to finalise an *ex officio* matter would be the same for BCCP and non-BCCP cases alike.

Table 6.5 shows how we used these time estimates to calculate the additional direct time inputs required of the ODPP over a full year of the BCCP. According to the table, the net additional time required of the ODPP under the project was 3,119 hours. Involvement in the Magistrates Court required an additional input of just under 5,000 hours, but this was counterbalanced to some extent by the higher number of withdrawals under the BCCP and the increase in *ex officio* indictments. (On average, an *ex officio* indictment requires 2.5 hours less of ODPP time than a higher court matter in which there has been a committal for trial or sentence.)

40 This estimate does not include any trials, as no matters were finalised by trial during the survey period. However, we have assumed that the time taken to prosecute matters resolved as trials, and the number of matters resulting in trials, would have been the same regardless of whether the BCCP was operating.

TABLE 6.5 – ESTIMATED DIRECT TIME INPUTS FOR THE ODPP

BCCP

Type of Proceeding	Average Time (hrs)	Number of Cases BCCP Annualised	Total Time (hrs)
Committal/Summary Disposition	3.0	1,662	4,986
Higher court	8.5	1,071	9,104
<i>Ex officios</i>	6.0	408	2,448
TOTAL			16,538

NON-BCCP

Type of Proceeding	Average Time (hrs)	Number of Cases Pre-pilot Adjusted	Total Time (hrs)
Committal/Summary Disposition	0	0	0
Higher court	8.5	1,513	12,861
<i>Ex officios</i>	6.0	93	558
TOTAL			13,419

NET BCCP ADDITIONAL TIME 3,119 hours

Notes:

1. Committal/Summary Disposition includes committals for trial or sentence, withdrawals, discharges, and matters finalised summarily, but excludes *ex officios*.
2. Higher court includes committals for trials and sentence, but excludes *ex officios*.

To calculate a dollar value for the net additional ODPP direct time input under the BCCP, we have used an hourly rate of \$25.00 (including on costs of 23.74%) which represents the actual weighted average rate paid by the ODPP to staff on the project.

Our estimate of the cost of the additional direct time input to the BCCP required by the ODPP in a full year is therefore **\$78,000**.

ADJUSTED ESTIMATES

When the results of the time costing survey were provided to the ODPP, the Office expressed concern that our estimates of average time inputs had significantly understated the actual time per matter spent by ODPP officers, particularly at the committal stage. The ODPP pointed out that LAO staff recorded an average of 10.9 hours per committal matter, compared to our estimate of only three hours (although we would not expect ODPP inputs to be as high as for the LAO, given that police do the investigating and brief preparation for the ODPP).

Subsequently, the ODPP produced an estimate suggesting that the time spent at the committal stage by staff of the BCCP was about 7.75 hours. This estimate was reached by a fairly complex set of inferences based on:

- the total number of hours available to BCCP staff
- our preliminary data concerning direct time inputs in the higher courts.

If the ODPP estimate of an average time input of 7.75 hours per committal is accepted, it would follow that BCCP staff were recording less than 40 per cent of their actual direct time inputs. We are not persuaded that under-recording took place to this extent. Using the time recording data, we were able to determine the number of hours per week recorded by the average officer over the life of the survey. On this basis we are satisfied that, across the ODPP as a whole, in excess of 70 per cent of direct time inputs into specific cases were accounted for by the survey.

Although we are satisfied that the ODPP estimate was an over correction, we accept that the time costing survey may have underestimated, to at least some extent, the average time inputs associated with various outcomes. To take account of this possibility we repeated the costing analysis, assuming that ODPP staff had only recorded:

- half of the time actually spent on cases in the committal phase (recognising the ODPP argument that under-recording was more likely to occur at this stage of proceedings)
- 75 per cent of time inputs in the higher court phase.

These re-calculations are shown in Table 6.6

TABLE 6.6 – ADJUSTED ESTIMATED DIRECT TIME INPUTS FOR THE ODPP

BCCP

Type of Proceeding	Average Time (hrs)	Number of Cases BCCP Annualised	Total Time (hrs)
Committal/Summary Disposition	6.0	1,662	9,972
Higher court	11.3	1,071	12,102
<i>Ex officios</i>	6.0	408	2,448
TOTAL			24,522

NON-BCCP

Type of Proceeding	Average Time (hrs)	Number of Cases Pre-pilot Adjusted	Total Time (hrs)
Committal/Summary Disposition	0	0	0
Higher court	11.3	1,513	17,097
<i>Ex officios</i>	6.0	93	558
TOTAL			17,655

NET BCCP ADDITIONAL TIME

6,867

Notes:

1. Committal/Summary Disposition includes committals for trial or sentence, withdrawals, discharges, and matters finalised summarily, but excludes *ex officios*.
2. Higher court includes committals for trials and sentence, but excludes *ex officios*.
3. Assumes that the ODPP staff only recorded half of their time inputs up to the Committal stage and three quarters of their time inputs in the higher court stage.

Applying the same assumptions as above about the hourly cost of ODPP staff, the revised estimate of the cost of the additional direct time input by the ODPP attributable to the BCCP is approximately \$171,700. We therefore conclude that, depending on what assumptions are made about the extent of under-recording by the ODPP, the net cost of ODPP direct time inputs into the BCCP over a full year is somewhere within the range of \$78,000–\$171,700.

NET EFFECT OF THE PROJECT

In summary, our estimates of the net direct time input costs and savings for the QPS, ODPP and LAO are:

QPS	\$523,800 (saving)
DPP	\$78,000 – \$171,700 (cost)
LAO	\$425,200 (cost)
Net Effect	\$20,600 (saving) – \$73,100 (cost)

As discussed at the outset of this chapter, these estimates are approximate only because of the shortcomings of some of the time costing data utilised, and the difficulties associated with precisely

quantifying the impact of the BCCP on case outcomes. In addition, as discussed above we have made no attempt to account for less direct costs, to factor in possible savings in Magistrates Court or higher court time, or to quantify benefits to witnesses. However, in terms of the direct time inputs required of the major agencies, the BCCP appears – on the data available to us – to be close to cost neutral.

COMPARISON WITH OTHER ESTIMATES

CJC PRELIMINARY REPORT

The CJC's preliminary report on the evaluation, which was produced at the end of June 1996, estimated a net direct time saving of \$191,000 attributable to the BCCP. Following discussions with the ODPP concerning possible under-recording in the time costing survey we ran these calculations again; this time assuming that ODPP staff had recorded only 50 per cent of time inputs into BCCP matters and 75 per cent of inputs into higher court matters. This gave us an alternative estimate of \$49,000 in savings.

Since producing these estimates, we have received additional outcome data, revised data from the LAO on the number of matters handled in-house, and revised data on hourly rates of staff for LAO and ODPP. It is highly likely that were this costing exercise to be repeated in another two to three months time using additional data, we would come up with yet another set of estimates of net impact. It therefore bears repeating that the estimates presented here are intended to be indicative only.

COMPARISON WITH BUDGET ALLOCATIONS PROVIDED TO ODPP AND LAO

Our estimate of the net additional ODPP staff time inputs required in the first year of the BCCP appears quite low, given that funding of \$1.024m was provided to the ODPP for the first year of the BCCP. We have already noted the reasons why our estimate of direct time inputs cannot be used as an estimate of the actual cost of the BCCP to the ODPP. However, the discrepancy is so large as to warrant some further comment.

In initiating the BCCP, the ODPP re-organised its staffing arrangements and created a new organisational unit. This group of staff have handled not only Magistrates Court proceedings but also, under the continuity protocol, higher court proceedings to the point of presenting the indictment. In addition, these staff also instruct in sentencing hearings of *ex officio* matters. In other words, they perform work which would otherwise have to be done by other ODPP staff. It appears that only around half of the total amount allocated to the ODPP was used specifically to support an ODPP presence in the Magistrates Court, with the remainder being expended on dealing with matters post-committal. This is not intended as a criticism of the ODPP as we understand that the Office's involvement in the BCCP was funded on the understanding that there would be continuity through to the end of higher court proceedings. Our comments are aimed simply at explaining why there is such a large divergence between our estimate of the direct time input cost for the ODPP and the ODPP's total budget allocation for the BCCP.

On the other hand, our estimates of the cost of LAO direct time inputs is very close to the amount actually allocated to the LAO for the project (\$393,000), although still well below the LAO's projected outlays of \$550,000. The discrepancy for the LAO may be less than that for the ODPP partly because about two thirds of the LAO outlays were in the form of payments to practitioners: these payments reflect the full cost of the work involved (apart from some administrative overheads for the LAO).

COMPARISON WITH KPMG MANAGEMENT CONSULTING ESTIMATES

The *Cost-benefit Analysis for the Brisbane Committals Pilot Project – Phase Three Report* prepared by KPMG Management Consulting (KPMG) estimated that the cost of the BCCP over a twelve month period would be approximately \$521,062 (1996, p. 20). Excluding the once-off establishment, rent and property charges, the twelve month cost estimated by KPMG was \$136,480 (p. 20). This amount differed from our estimated cost/savings for the following reasons:

- KPMG looked at the total costs and savings to the ODPP and to the LAO from involvement in the project but only savings in direct time inputs from police (excluding overheads etc.). By contrast, we compared only the additional direct time inputs from the ODPP, LAO and QPS, to allow us to compare like with like.
- Of necessity, KPMG had to rely on reports from the parties as to estimated time savings flowing to the ODPP and the QPS from ODPP involvement in the project. We found that, even on the adjusted time recording figures for the ODPP, the estimated time savings used in the KPMG report represented a considerable overstatement. On the other hand, the estimates provided by police to KPMG considerably understated the hours saved by the QPS investigating officers. To some extent this was compensated for by an overstatement by KPMG of the amount of time saved by police prosecutors. However, our data still showed an overall QPS time saving considerably greater than estimated by KPMG.
- The KPMG estimates of annualised outcomes were based on the period 1 August 1995 to 31 December 1995, whereas our estimates were based on the period 1 August 1995 to 31 May 1996.
- The KPMG estimate included estimated savings to the courts, in witness expenses and to the Queensland Corrective Services Commission. Although we recognise that there are expected savings in these areas, we were not in a position to quantify those savings, given that no data were available to confirm the estimates.

The KPMG Report also included an examination of the impact of the BCCP over the five year period from July 1995 to 30 June 2000. We did not attempt such analysis due to the lack of reliable data.

CONCLUSIONS

In summary, the key findings from our analysis of direct time and cost inputs associated with the BCCP are as follows:

- The BCCP has generated direct time savings for the QPS in the vicinity of \$524,000. The bulk of these savings have come from savings in investigating officers' time, due to more matters being *finalised by way of ex officio* indictments, and the earlier and more focused preparation of briefs of evidence.
- Direct time costs for the LAO have been around \$425,200, made up primarily of additional grants of aid to private practitioners. LAO involvement at the committal stage appears to have reduced, by around two hours per matter, the time which LAO in-house staff are required to put into matters post-committal.
- Direct time cost for the ODPP were in the range of \$78,000 to \$171,700, depending on the assumptions which are made about the extent of under-recording of time by the ODPP. The ODPP has saved some time "downstream" by increasing the proportion of matters processed by

way of *ex officio* indictment and increasing the number of matters withdrawn at or prior to committal, but the BCCP does not appear to have reduced the amount of time which ODPP staff spend on higher court matters committed for trial or sentence.

- Depending on which estimates are used for the ODPP, the BCCP as a whole has generated somewhere between a net overall saving in direct time inputs of \$20,600 and a net cost of \$73,100.
- Allowing for data limitations, and the need to make a large number of assumptions, our estimate of the net value of time inputs should be regarded as indicative only. However, we feel fairly confident in concluding that, measured in terms of direct time inputs, the BCCP has been close to cost neutral.

CHAPTER 7

CONCLUSIONS AND RECOMMENDATIONS

INTRODUCTION

This concluding chapter

- briefly summarises the key findings of the evaluation
- outlines the impact which a withdrawal of funding for the BCCP would have on the criminal justice system
- identifies some ways in which the effectiveness of the BCCP can be enhanced
- makes suggestions concerning the design and evaluation of future projects.

SUMMARY OF KEY FINDINGS

The BCCP, like most new initiatives, experienced some implementation problems. Especially in the early months of the project, the workload was substantially greater than expected. Some of the project Protocols, particularly the time frames for the delivery of briefs, were not complied with and this impacted adversely on aspects of the project. In addition, the goal of ensuring continuity in the conduct of prosecutions was not attained, because of high staff turnover and heavy workloads in the ODPP.

Despite these difficulties, the BCCP has achieved some significant positive outcomes. In particular, there has been a substantial increase in the number of matters identified as guilty pleas at, or prior to, committal. There is also some evidence that the presence of the ODPP at the committal stage has reduced the number of weak cases entering the system. With some adjustments and the securing of long term funding for the project, it should be possible for the project to have an even greater impact on outcomes in the Magistrates Court (particularly, in terms of diverting more matters into the summary jurisdiction). It is too early to measure any downstream benefits of the project for the higher courts, but we are fairly confident that such effects will become apparent if the project is placed on a more secure footing.

Our analysis of time inputs has established that the introduction of the BCCP has resulted in substantial savings in police time, by reducing demands on police prosecutors and, most importantly, the time required of police investigating officers. To date, there have been only relatively modest benefits for the ODPP and the LAO in terms of time savings post-committal, but again, we anticipate that these benefits will become more apparent if the project continues to operate. Overall, on the limited data available to us, the project appears to be close to cost neutral, in terms of the cost of direct time inputs attributable to the various agencies.

FUTURE OF THE BCCP

On the basis of the results so far, we strongly support the continuation of the BCCP. If the BCCP is discontinued, it will be very difficult to get the various agencies to agree to reinstate the project if and when further funds become available. More specifically, termination of the project at this stage can be expected to have the following negative consequences:

- increased workload demands on police prosecutors
- increased workload demands on investigating police officers with a subsequent reduction in the time available to investigate other matters
- an effective increase in the ODPP's higher court workload of approximately 1,500 cases due to the abolition of the BCCP work group
- a reduction in early pleas, with deleterious consequences for witnesses (especially victims) and, potentially, for court listing practices
- an increase in weak cases entering the system, with consequent waste in ODPP, LAO and court time, and a decline in the quality of case preparation.

We do not consider it our responsibility to determine whether the ODPP and the LAO were given sufficient funding to run the BCCP, or whether it would be appropriate for the QPS, as a significant beneficiary of the BCCP, to make some contribution to project running costs. These are matters which must be resolved by the relevant Government Departments and the agencies concerned. We do, however, regard it as essential that sufficient funding be provided to enable the ODPP to take responsibility for all committal matters coming through the Brisbane Central Magistrates Court. The current temporary arrangement, whereby the ODPP is maintaining a reduced involvement by sharing the workload with the QPS, should not be used as the model for maintaining the project over the longer term.

IMPROVING THE EFFECTIVENESS OF THE BCCP

It was not our intention, in conducting this evaluation, to make detailed recommendations for improving the efficiency and effectiveness of the BCCP. Specific problems with the operation of the project can best be identified and corrected by those agencies directly involved. However, we do make three general suggestions:

- It is very important to maintain coordinating mechanisms such as the Project Steering Committee and the Criminal Case Management Group of the Litigation Reform Commission, so that agencies have a forum in which to discuss and resolve problems on a continuing basis.
- If the BCCP is to be maintained, it is vital that data continue to be collected about the operation and impact of the project, and the value of time and cost inputs, so that any problems or shortcomings can be quickly identified and corrected.
- As documented in detail in Chapter 4, there have been operational difficulties in the BCCP that may have impaired its effectiveness; most notably, the non-observance of the Protocol times for delivering completed briefs by police and consequent late – and sometimes unnecessary – requests by defence solicitors for the attendance of witnesses. Allowing due regard for differences between local legal cultures we think that the figures for the number of “straight hand-up”

committals, and the number of committals for trial, are disappointing compared to the Victorian figures under the "Pegasus" Protocol (on which the BCCP was modelled). It may well be that further improvements could be expected with time under the BCCP. However, we would also recommend that serious consideration be given to providing the BCCP Protocols with a similar legislative underpinning to that which supports the Victorian regime.

DESIGN AND EVALUATION OF FUTURE PROJECTS

It was unfortunate that an initiative which was designated as a *pilot project*, and which involved a considerable outlay of funds, did not contain any budgetary provision for conducting a properly designed evaluation, or commence with a clear data collection plan. A further complication was that the project was set up in such a way as to make it very difficult to collect the information required to make an informed assessment about the desirability of maintaining long term funding. (We refer here particularly to the failure of the ODPP to establish a proper time recording system from the outset of the BCCP.)

On the basis of our experience with this and other projects, we would recommend that the following principles apply to the funding of future pilot projects within the criminal justice system:

- the budget for the project should include a component for evaluation, equivalent to approximately five per cent of total project cost
- the initial project design should include a plan for collecting and recording data which will enable the impact and cost effectiveness of the project to be assessed
- the person(s) or organisation responsible for conducting the evaluation should be included on the project steering committee from the outset.

Finally, it is very important that pilot projects are allowed to run for sufficient time to enable all likely effects – negative as well as positive – to be quantified. In the case of the BCCP, there has simply not been enough time allowed to enable the downstream benefits of the project to be accurately identified and quantified. Moreover, the fact that the project was initially only funded for 12 months (in fact less than that, as it transpired) introduced a considerable element of uncertainty, as exemplified by the high rate of turnover amongst project staff. This factor diminished the overall effectiveness of the project and may have led us to understate the benefits which could result from such arrangements being implemented on a more permanent basis. There is no hard and fast rule as to how long pilot projects should run; much depends on the size and nature of the projects and the effects which are sought to be achieved. However, in this case, a trial period of at least 18 months was required.



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