



## Timely Prosecutions

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### Timely Prosecutions - Overview

1. Timeliness is relevant at all stages of the life of a prosecution and it is a fundamental aspect of achieving our key strategic themes of:
  - a. Providing an efficient and effective prosecution service: and
  - b. Engaging effectively with partner agencies and stakeholders.

It is also an important aspect of how we discharge our ethical obligations to the court and to defendants.

2. Key internal CDPP activities which assist timeliness include:
  - a. actively managing cases through regular meetings between case officers and supervisors using appropriate case management tools (i.e. PowerBI Reports/caseHQ, particularly in the brief assessment phase);
  - b. undertaking a preliminary review/triage of all new brief assessment files within 10 days to identify any critical deficiencies in the evidence which may prevent or significantly delay a timely assessment, to confirm the appropriate jurisdiction and to understand the effort/time it will take to complete the brief assessment. This is discussed further below;
  - c. 'workshopping' cases that have novel, unique or complex aspects to them with a group of CDPP prosecutors to assist in identifying potential issues, solutions and approaches;
  - d. making timely requisitions to the partner agency where identified gaps in the evidence can be rectified;
  - e. drafting charges as soon as there is sufficient evidence in the brief to satisfy the test in the *Prosecution Policy of the Commonwealth*, noting non-critical requisitions should not delay the commencement of prosecution action;
  - f. raising issue(s) with the relevant Prosecution Team Leader (PTL) at an early stage;
  - g. for complexity 3 and 4 prosecutions, preparing a Litigation Plan early, either at the brief assessment or committal phase, to assist in the efficient management of the prosecution. The plan should include resourcing and use of counsel, and be updated during the life of the prosecution;
  - h. where counsel is to be engaged in the brief assessment phase, doing so without delay and informing counsel of the expected timeframes for completion of work;
  - i. ensuring that adequate time is provided to the decision maker and any reviewer to consider and determine any recommendation(s) when applying the Decision Making Matrix (DMM);
  - j. utilising legal templates developed by CDPP;
  - k. using electronic systems and digital litigation software where appropriate to assist with analysis of evidence; and
  - l. keeping information about matters accurate and up to date in caseHQ;

- m. considering whether partner agency resources might be used to prepare chronologies or analysis of evidence;
  - n. considering whether the case needs to be re-allocated to another case officer or to another branch or region.
3. Prosecuting is a collaborative effort and effective communication with partner agencies is essential to a successful and timely prosecution outcome. Key activities that will assist include:
- a. completing the relevant file task in caseHQ and sending an acknowledgement to the referring agency upon allocation of a brief assessment matter to the case officer;
  - b. ensuring early engagement with the partner agency once a referral has been made. This enables ongoing communication and allows the case officer to gain a better understanding of the brief of evidence more quickly and efficiently. It is also an opportunity for the partner agency to advise the CDPP of any aspect of the brief which is not yet complete. In more complex matters, where case officers have not had detailed pre-brief engagement, an overview of the brief by the informant should be requested;
  - c. ensuring timely and responsive communication to the informant of any important information about the case or its progress through the courts;
  - d. ensuring requisitions are made only where necessary, to ensure partner agency resources are not wasted. This may include a discussion with the partner agency to ensure the requested material can be obtained and the likely timeframe for doing so.

#### **Triaging Files in the Brief Assessment Practice**

- 4. File triage is a critical part of effective case management of brief assessment matters. The process involves an early initial assessment of the brief by the case officer in order to give the case officer an understanding of the key issues in the matter, to confirm the appropriate jurisdiction, whether there are any obvious risks, deficiencies or queries that need to be followed up with the informant or the case officer's PTL and to allow the case officer to plan when the matter will be worked on in order to meet the relevant brief assessment KPI. Importantly, the process also assists the CDPP to build productive working relationships with our stakeholder agencies through early engagement and analysis of the brief.
- 5. There is a file triage task in caseHQ to assist case officers complete the triage process. The file triage task in caseHQ must be completed within 10 days of a brief being allocated to the case officer. Completion of this task within 10 days should be monitored by PTLs and Branch Heads during file reviews and fortnightly meetings using the PTL Dashboard.
- 6. The case officer should make a record of the triage of the file in the comments box associated with the task. How much detail is required will depend on the matter. For straightforward matters the comments may be very brief noting for example that no particular complexities are apparent, how many hours the matter is likely to take to assess and when the case officer plans to work on the file.
- 7. Triaging is very different to assessing the brief, involving a preliminary analysis of the matter only. The file triage process allows issues to be identified and addressed at the earliest opportunity. The list below provides guidance as to what should be considered during the triage process.
  - a. Is the matter in the appropriate jurisdiction? If it is likely that the matter will proceed on indictment, the brief should be assessed by the office in the State where the offending occurred, and proceedings commenced in that jurisdiction. In summary matters, where the defendant is no longer residing in the State in which

the offending occurred, consideration should be given to whether the matter should be referred to the State in which the offending occurred (taking into account the location of the informant, where the witnesses mostly reside and the likelihood the defendant will plead guilty).

- b. Are there any statutory limits that apply to issuing charges? If so, the case officer should enter the time limits into caseHQ and diarise these to ensure that the brief is assessed before this date.
  - c. Has there been delay in referral of the matter and if so, what is the cause of the delay? The case officer may need to follow up with the informant.
  - d. Are there co-defendants?
  - e. How long is it estimated the brief will take to assess and given competing commitments when will the case officer work on the matter in order to meet the relevant brief assessment KPI?
  - f. If the matter is complex, is a team based approach required? If so, these resources should be allocated as soon as practicable.
  - g. Is the brief in the agreed form and does it allow for navigation?
  - h. Are all relevant details correctly recorded in caseHQ? (e.g. partner agency linked, co-accused linked to related files, date of birth, victim details).
  - i. Does the brief contain sensitivities that should be drawn to the attention of the Branch Head/PGL and/or Director?
  - j. Is there a National Offence Guide for the recommended offences or will the elements potentially need to be settled by the PGL?
  - k. Are there obvious deficiencies or queries in relation to the brief? If so, the case officer should get in touch with the informant as soon as possible.
  - l. Is it a matter that would benefit from an early meeting with the informant to clarify issues immediately obvious during the triage process?
  - m. Are there any other issues that will impact on the ability of the case officer to assess the brief? These may include a conflict of interest, wellbeing aspects, security rating or material from compulsory proceedings.
8. Following the triage process case officers should have a general sense of whether the recommended offences appear to be supported by the alleged facts. The process will enable a meaningful discussion to take place between the case officer and their PTL during the file review process. The outcome of the file triage should be noted in the status summary within caseHQ.

#### **Targets for Assessing Brief Assessments – 90 Days**

9. The CDPP's brief assessment practice is a core activity. The CDPP currently aims to have 85% of briefs assessed within 90 days, with a 15% tolerance to reflect that it may be challenging to always achieve this target for our more complex work.
10. The 90 day limit is the outer target. For briefs alleging regulatory or straightforward offending, a much shorter time is often possible. From time to time, shorter time frames are agreed between the CDPP and agencies.
11. Whilst the 90 day target is an important goal, it does not come at the expense of our fundamental responsibility of ensuring compliance with the Prosecution Policy of the Commonwealth.
12. Meeting this target is the subject of ongoing discussion and collaborative effort across the CDPP with regular monitoring of the target at all levels.

### Statutory Time Limits and Consents

13. Care must always be taken to ensure that any statutory time limits are complied with and that any statutory consents are obtained prior to the issue of charges in relation to brief assessments. A list of provisions requiring a statutory consent is maintained by the library and be accessed via the link

<http://documents.dppnet/Library/Consents/Consent to prosecute 180820.docx>

### Requisitions and Suspensions

14. Where requisitions of substance are made to the partner agency during the brief assessment phase it is appropriate to suspend the brief assessment, allowing for a reasonable timeframe for provision of the material. Not every requisition seeking material will justify suspension. The type of material sought that may constitute a requisition of substance justifying a suspension will vary in each case. Broadly, where the decision to commence a prosecution cannot be made, or one or more elements of the relevant offence cannot be proved without the material sought, suspending the brief assessment phase will be appropriate. It is critical that informants are advised when briefs are suspended and unsuspended.
15. A suspension usually puts the ball back in the informant's court to undertake further investigations. There are two exceptions to this general rule. It will be appropriate to suspend a file where the requisitions of substance relate to material that is to be obtained via the mutual assistance process. The mutual assistance process is an extension of the investigation process, where evidence is sought to be obtained outside of Australia by international authorities, for use in the CDPP's case. In addition, in relation to some offences, the CDPP is not permitted to institute proceedings without first obtaining a consent to prosecute. Where the CDPP has completed its assessment of the brief, and is awaiting the consent of a third party to commence the prosecution (eg from the Attorney-General) it is appropriate to suspend the file, as the CDPP's brief assessment phase has been completed. A brief assessment phase should not be suspended, however, for the sole reason of the CDPP awaiting counsel's advice.
16. Requisitions on files can occur throughout the life of a case. Whether a requisition is needed at the time of the brief assessment, or at all, is a question of judgment. In line with the DMM<sup>1</sup> case officers should discuss requisitions as needed with their PTL, including where they are likely to require a lengthy suspension of the matter or where there is some uncertainty as to what might be required. The PTL may be able to suggest a different course which may obviate the need for a requisition or suspension, thus saving time as well as partner agency resources<sup>2</sup>.
17. Experience has shown that suspensions can continue for very lengthy periods of time if they are not actively managed. Experience also shows that the more suspensions that occur on a file and the longer those suspensions occur, the less likely that a prosecution will ever be commenced. On that basis, in addition to the usual fortnightly file reviews conducted by case officers and PTLs, to facilitate the timely assessment of matters a formal suspension review between the case officer and PTL should occur 60 days following suspension of a matter and, where the file remains suspended, every 60 days thereafter, until the file is no longer suspended. For Complexity 3 matters the review should also involve the Branch Head if the PTL and case officer determine it is appropriate and for Complexity 4 matters the Branch Head should always be involved. Management of this process occurs via a formal suspension review task as well as the PTL dashboard, which will flag reviews that are overdue.

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<sup>1</sup> Decisions relating to seeking requisitions appear in the brief assessment, committal and trial phase of the DMM.

<sup>2</sup> The CDPP may have an agreed requisition policy in place with some agencies, which set out standard timelines for the provision of requisitions and the process by which requisitions should be made.

18. A formal suspension review should be an active review of the need for the suspension and the reason for the delay. Prior to the review, the case officer must obtain an update from the agency as to time frames and the reason for the delay in obtaining the requisition. Lengthy suspensions may mean that a point has been reached, following consultation with the agency, where a decision is made for an assessment to proceed in the absence of the requested material, or for the file to be closed pending receipt of the material. As to the former, the public interest may be best served, for example, by expeditiously proceeding with a portion of the alleged offending, rather than pursuing a course of lengthy requisitions in the hope of obtaining evidence that covers the entirety of the alleged offending.
19. The prosecution file in caseHQ is an important repository of information about the progress of the matter throughout the prosecution. If requisitions are required through the life of the case, this may be recorded with a requisitions event and, if the file is in the brief assessment phase, the file should be suspended if the requisition is of substance. Information about the outcome of triaging the file, the reason(s) for suspensions, any follow up with the agency, the outcomes of suspension reviews and an estimated time frame for completion of the file should all be recorded on the caseHQ file. The status summary of the caseHQ file should be reviewed on a monthly basis and updated where necessary.

#### **Timely Filing of Indictments**

20. Time limits for filing indictments (and whether indictments need to be filed) vary according to jurisdiction, and whether the matter has been committed for sentence or trial.
21. Case officers should always comply with local statutory time limits. Subject to any shorter time frame being prescribed by legislation, best practice dictates that the outer time limit in which an indictment should be settled is within 30 days of committal for trial. In complex matters, or where the CDPP did not have the conduct of the committal proceeding, discussions should be held between the case officer, PTL and Branch Head to nominate a date for the indictment to be settled as soon as practicable up to a maximum of 90 days after committal, provided statutory time limits can still be met in doing so. Case officers should ensure that caseHQ is updated to record the date by which the Indictment needs to be settled.

#### **Adjournment of Trials**

22. Inculpatory evidence sometimes emerges late in proceedings. Where reliance on that evidence may lead to the adjournment of the trial and consequential delay, careful consideration should be given to whether that evidence needs to form part of the prosecution case. Consultation with PTLs and Branch Heads should occur in this situation as to the most appropriate course to adopt.