



**ODPP**  
New South Wales

Early Appropriate Guilty Pleas Project

## CHANGE MANAGEMENT PLAN

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### 1 BACKGROUND AND REASONS FOR ORGANISATIONAL CHANGE

There are significant problems in the processing of indictable offences through the courts in NSW, resulting in an urgent need to improve the management of these more serious offences and to expedite their progress through the courts.

#### 1.1 Pressures on the District Court

The increasing number of serious criminal matters prosecuted is more than the District Court can process. The administration of indictable cases in the NSW District Court is in crisis, with extensive delays in finalising criminal cases and a growing backlog.

Over the five years to 2015, the rate at which indictable criminal matters were registered in the District Court was faster than the rate at which the District Court could finalise them. Without significant change, the delays and the pending trial caseload of the District Court will continue to grow.

While recent backlog reduction measures appear to have had some impact on the backlog they are not expected to alter the long-term trajectory of the backlog forecast.

#### 1.2 Increase in indictable criminal matters

The increase in indictable criminal matters over time has been caused by a number of factors, many of which are outside the control of the court system. In recent years there has been:

- an increase in people being charged with serious crimes
- a significant increase in the number of matters proceeding to trial
- an increase in the number of matters committed for sentence to the District Court
- an increase in trial duration

There is no reason to expect that the additional demand on the system will slow down, especially given the increased use of new technology by police to apprehend offenders, and an increase in complex matters being prosecuted.

While the increased demand on the court can be correlated to a significant increase in police resourcing over recent years, there was also a decrease in the resourcing of the District Court, over the same period, resulting in a reduction of four District Court judges.

The delays and the outstanding backlog of criminal cases cause significant problems, including:

- inefficiency and additional costs for justice agencies, including courts, NSW Police Force (NSWPF), Office of the Director of Public Prosecutions (ODPP) and Legal Aid (LANSW)
- negative impacts on victims, witnesses and defendants, whose lives may be on hold while they wait for cases to be resolved
- increased pressure on the prison system as defendants who are bail-refused are incarcerated for longer

The pressures on the system are compounded by an inefficient system that results in the heightened prevalence of late guilty pleas.

#### 1.3 System inefficiencies

The current administration of serious criminal matters is inefficient.

The majority of indictable matters are resolved by a guilty plea, however many guilty pleas are entered very late, after there has been substantial time and effort expended on preparing a matter for trial. Guilty pleas reduce the time and resources required to finalise a matter. In 2015, approximately 73% of all indictable matters in the District Court were resolved through a guilty plea.

To finalise an indictable offence, if there is sufficient evidence to establish a case to answer, matters are either finalised in the Local Court; 'committed for sentence' (if the defendant enters an early guilty plea) or 'committed for trial' (where there is no plea entered or a plea of not guilty) to a higher court (District Court or Supreme Court). Approximately one third of guilty pleas are entered after the matter has been committed for trial, after the matter has left the Local Court. These are considered 'late guilty pleas'. Of these late guilty pleas, two thirds are entered very late – on the first day of trial.

Guilty pleas that are entered late in proceedings are highly inefficient because:

- significant resources are expended unnecessarily preparing for trials that don't proceed
- other matters are delayed while they sit in the queue waiting

Late guilty pleas create a major inefficiency in the current system and compound the pressure on the system caused by the increasing demand.

## 2 PROPOSED CHANGES

### 2.1 Law Reform Commission Report 141

The Early Appropriate Guilty Plea (EAGP) Reform is based upon the blueprint recommended in the 2014 NSW Law Reform Commission (LRC) Report 141: Encouraging Appropriate Early Guilty Pleas, as modified by the Department of Justice following consultation with the EAGP Steering Group and other stakeholders.

The LRC report found that the present system does not sufficiently encourage appropriate early guilty pleas, thus significantly contributing to inefficiency in the system.

The LRC Report identified a range of underlying drivers causing defendants to plead guilty late including:

- inconsistencies in representation, advice, and negotiations
- a lack of early involvement by senior legal practitioners
- challenges with obtaining a sufficient brief of evidence in a timely manner
- a defence expectation of initial overcharging and subsequent reduction
- perceptions of flexibility in sentence discounts for pleas

The EAGP Reform addresses each of these issues and entrenches opportunities for early appropriate guilty pleas.

### 2.2 Key changes through EAGP Reform

The EAGP Reform consists of five key changes to the current indictable matter process.

#### 2.2.1 Early disclosure

NSWPF will provide a brief of evidence early in proceedings to enable the ODPP to review the charge/s

### 2.2.2 Charge certification

A senior prosecutor of the ODPP will review the brief once it is provided and then confirm, amend or withdraw the charge. This will avoid charges being modified or withdrawn later in the process and removes the incentive for defendants to delay a guilty plea while they wait to see if the charge is amended closer to trial.

### 2.2.3 Mandatory criminal case conferencing

Criminal case conferencing between the senior prosecutor who certified the charge and a properly instructed defence lawyer will be mandatory. The conferencing will assist parties to have meaningful discussions about the case and either resolve it by a plea, or refine the issues in contention, earlier in the process.

### 2.2.4 Local Court case management

The Local Court committal process will be replaced with more flexible case-management of matters, before the matter is moved to the higher court for trial (or sentence).

### 2.2.5 Structured sentence discounts

A transparent three-tiered statutory discount scheme will be introduced to ensure consistent application of sentence discounts and strengthen the incentive for early guilty pleas.

These five pillars of the EAGP Reform provide an interdependent and mutually reinforcing package to improve the systemic inefficiency and productivity issues faced by the criminal justice system.

## 2.3 Risks of not changing

- There is little option than to make some significant changes to the current management of criminal matters if the spiralling wait time is to be curtailed. The courts will continue to generate a backlog of cases and there could be an increase in the average time from arrest to finalisation of an indictable offence, currently numbering 587 days.
- Victims and witnesses will continue to endure a stressful and lengthy wait before their matter is resolved, even though the ODPP acknowledges that putting lives on hold is less than optimal.
- A lack of clarity about charges that will be prosecuted will influence the accused to defer entering a plea, and this will result in time and effort being wasted preparing matters for trial, which is costly to Government. There may be an added cost burden on Government when accused are on remand in already over-crowded prisons.
- If there is no timeliness to completing matters and ODPP lawyers are forced to double-handle cases, an increase in job frustration is likely accompanied by a decrease in job satisfaction. Retaining experienced and engaged lawyers could become a serious problem.

## 2.4 Benefits of the changes

### **TIMELIER VICTIM OUTCOMES:**

Reduced stress and trauma for victims from reduced delay, fewer last minute changes of charges and continuity in representation

### **IMPROVED DISTRICT COURT EFFICIENCY:**

Significant increase in proportion of early guilty pleas and decrease in average trial length

### **REDUCED DELAY IN COMPLETING MATTERS:**

Guilty pleas identified and dealt with much earlier, other matters moving through the system faster

### **A BETTER WAY TO WORK:**

Improved processes will reduce double handling and increase timeliness  
Case ownership from start to finish to improve job satisfaction

### **REDUCTION IN WASTED COST:**

Less wasted time and effort in preparing cases that plead just before trial.

## **3 MINISTERIAL APPROVAL**

Ministerial approval is not required for the scope of changes within the ODPP.

*Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017* passed 18 October 2017.  
Anticipated commencement 30 April 2018.

## **4 EMPLOYEE COMMUNICATION STRATEGY**

Please refer to Appendix A – EAGP Employee Communication Strategy

## **5 SUPPORT SERVICES**

No staff will be made redundant or declared excess as a direct result of the EAGP reform changes.

In addition to the level of communication and information as identified under Section 4 above, any staff affected by the proposed changes have access to and support from their local manager, their Executive and the HR team. Staff are encouraged to discuss any areas of concern and will be supported to obtain any appropriate information in relation to superannuation and taxation. All staff have access to counselling through the ODPPs Employee Assistance Program (EAP) provider and details are available on the intranet or through their manager or the HR team.

The ODPPs WellCheck Program is being piloted during this period of change and staff are encouraged to take advantage of the counselling and support services available.

In addition to the extensive training programs that have been developed for staff in relation to the procedural changes associated with the EAGP reform, for those staff who may wish to seek out promotion or reassignment to alternative roles a series of training programs are being provided specifically designed to assist staff in the following areas:

- Job Application Skills;
- Interview Skills;
- Local Court Practice management;
- Trial Practice management.

## **6 CONSULTATION**

The Office has undertaken an open and transparent approach to consultation with employees and the PSA. Please refer to Section 4 above for details of the level of communication and consultation undertaken. All staff have been provided with numerous and ongoing opportunities to provide comment, feedback and make inquiries into any and all aspects of the changes.

In addition the Office has undertaken the following consultation with the PSA:

- “EAGP Reform” added to the Joint Consultative Committee agenda as a standing item, and the Project Owner has provided a detailed update on progress and any related issues at each meeting;
- Details of the proposed structure provided to the PSA and appropriate time provided to allow for consultation with members before providing feedback. Any questions and concerns raised have been responded to.

It is expected that the Office and the PSA will continue to work together in a collaborative and constructive manner to ensure that the changes will be delivered in line with the external timeframes and statutory obligations that have been created by the introduction of the new legislation.

## 7 WORKFORCE PLANNING NEEDS AND IMPACT ON SERVICES AND FUNCTIONS

The changes actuated through the introduction of the *Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017* have been considered and the introduction of a vertical practice team-based approach to managing matters is anticipated.

### 7.1 Type of Change

The core changes will be to workflow and the workforce structure with resulting impact to IT systems, forms and records. The Certification of Charges by a senior prosecutor four weeks after service of the brief of evidence (supplanting the Bill Finding process currently conducted in the District and Supreme Courts) and the mandatory Case Conference in the Local Court necessitates the involvement and appearance of more senior staff at an earlier stage in the prosecution of matters. The workforce redesign will account for the changes in responsibility for components of standardised processes that will also change.

While the changes will be incremental to a point, a complicating factor is the need to operate a dual system for a number of years. From the go-live date all new matters will be dealt with according to the *Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017*, however existing matters will need to follow the former legislative process until those matters are finalised.

### 7.2 Staff affected by the changes

In the organisational transformation process triggered by the legislative reforms, the Workforce Design team will assist project team members in ensuring an appropriate workforce structure is designed to deliver the important function of the ODPP effectively. It is anticipated this will include minor changes to the roles and responsibilities of the levels of lawyers (and Crown Prosecutors), and administrative staff and the detailed processes required to underpin the effective management of criminal proceedings within the Local and District Courts.

While there will be a change to the structure of the workforce, it is not intended there will be redundancies offered. It is anticipated there will not be enough experienced lawyers within the existing structure and this will necessitate promotion of existing lawyers into new roles.

The level of legal authority delegated to all lawyers is under review. It will be important to ensure there are enough individuals who are adequately experienced and developed professionally to fill the increased number of more senior positions that are anticipated as integral to the new legislative regime. This could prove to be problematic given the relative emptiness of the current talent pools from which these lawyers could be appointed and the existing difficulty of finding relevantly qualified staff to employ in those more senior roles.

Some existing lawyers may require skill development to support and ensure they are able to step into a more senior positions and manage the higher level of duties required of that position.

It is anticipated that the requirement for a more senior workforce will account for the attrition of Level 1 lawyers, as they are promoted to Level 2 positions.

Administrative Officers will have some minor changes to their roles as they will be required to support the new legislative process.

### **7.3 Timeframe and Complexity**

The broad reforms will have a high level of complexity, and are expected to impact on the ODPP based on

- the number of changes
- those staff whose role may change as a result of the organisational restructure
- the need for more staff with increased skill levels
- the need for more uniformity of standardised procedures
- the interdependencies on staff within other agencies who must also make changes

Understanding the workflow following revised processes and the responsibility for duties in them, coupled with the management of tasks, will involve careful and thorough change management.

Given the complex nature of the changes, and the dependence on other agencies to manage complex changes within their own work practices, this high-risk project requires careful change management so that the ODPP workforce is able to make a successful transition to a more efficient way of working.

## **8 CHANGES TO ORGANISATION STRUCTURE**

Please refer to Appendix B – ODPP Workforce Design Proposal

Also attached is the EAGP Workforce Design Methodology which outlines the process that was followed in designing the proposed structure.

## **9 PROPOSED MEANS OF FILLING POSITIONS**

### **Reassignment**

Any staff reassignment will be done in accordance with the provisions of the Government Sector Employment Act 2013 (GSE).

Existing substantive ongoing staff will be assigned to new roles at the same level within the new structure. Staff will be assigned to roles at the same geographical location wherever possible, and any movement to a different location will be done so in consultation with the staff member. It is not anticipated that any staff will be required to move residence as a consequence of reassignment.

### **Recruitment**

Whilst the preference of the ODPP is to utilise 'internal' options for the filling of all positions first, the provisions of the GSE Act 2013 must be adhered to in the filling of roles and as no employees will be declared excess as a consequence of the changes a total 'internal' recruitment program is not an available option. With this in mind the following priority order will be used to fill any opportunities that arise as a result of the proposed new structure:



1. *Transferring existing ongoing staff who lodge an Expression of Interest (EOI) for lateral (at level) transfers to different locations;*
2. *Appointing current acting/temporary staff who were formally merit tested for their existing temporary/acting appointment;*
3. *Appointing and/or promoting current staff who are in pre-existing talent pools and have not yet been offered an appointment;*
4. *Formal external recruitment action.*

Please note the following relevant issues:

- Staff in pre-existing talent pools, including those who have been appointed to their current temporary/acting roles based on formal external recruitment, need not reapply for roles at that level;
- EOI opportunities for lateral transfer will be circulated at or about the same time as external roles are advertised to allow for appropriate workforce planning. Requirements will be included in the individual EOIs but are likely to include such things as tenure, status, referees and an up to date PDP which confirms the staff member is meeting expectations;
- Lodging an EOI is not a guarantee of a lateral transfer. EOIs will be carefully considered to ensure any movement is operationally viable and this will involve considering factors such as tenure, experience, team balance and operational requirements. The temporary nature of many roles will also be a factor in these decisions.
- Talent pools are valid for 12 months from the date they are approved. Any staff who is in a current pool that expires in the near future and who have not yet been made an offer should consider reapplying if the position is advertised. This will ensure that in the event that a role arises in a suitable location in the future (eg after the current talent pool they are in expires) they will remain in a valid talent pool.

## 10 PROPOSED VOLUNTARY REDUNDANCY PROGRAM

No redundancies are anticipated from the changes.

## 11 IMPACT OF THE RESTRUCTURE ON EEO GROUPS

Due to the increase in roles across the Office no impact on EEO Groups is anticipated. If any issues arise they will be dealt with appropriately on a case by case basis.

## 12 IMPACT OF THE RESTRUCTURE ON STAFF WITH SPECIAL NEEDS

No impact on staff with special needs is anticipated. Any staff who have workplace adjustments in place, these adjustments will remain and continue to be reviewed and evaluated over time in accordance with existing protocols.

## 13 IMPACT ON RURAL COMMUNITIES

## EARLY APPROPRIATE GUILTY PLEAS

No impact on rural communities is anticipated. As noted previously the overall program has the expected impact of improving 'justice' for the community state-wide.

### 14 MANAGEMENT OF EXCESS EMPLOYEES

No staff will be declared excess as a consequence of the reform program.

### 15 MANAGEMENT OF TEMPORARY EMPLOYEES

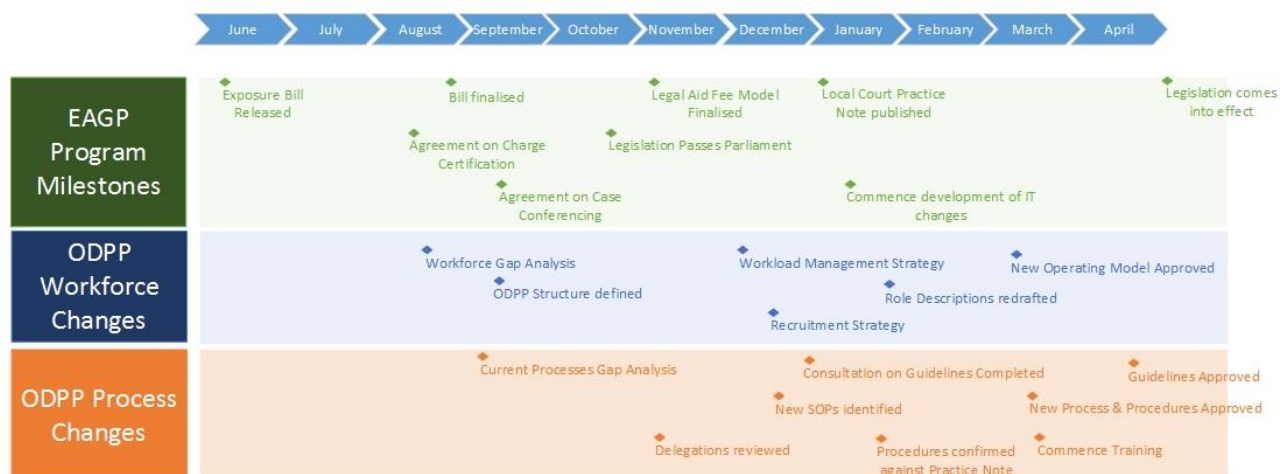
No current temporary staffing contracts will be terminated early due to the EAGP changes. Existing temporary staff will have the opportunity to apply for any roles advertised externally. Temporary staff will have access to the same support services as those available to ongoing staff.

### 16 CORPORATE AND SHARED SERVICE REFORM

Not applicable

### 17 PROPOSED TIMETABLE FOR IMPLEMENTATION

Below is a copy of the initial proposed milestones table (as provided to all staff in the initial roadshows and provided to the PSA (September 2017).



During the program a number of timeframes have been revised due to various factors, including extensions to consultation periods to allow for detailed feedback from all staff.

The following steps relating to workforce changes also apply:

- 14 February 2018 to 29 March 2018 - Consultation period for feedback on the proposed ODP structure.
- February 2018 to June 2018 – ongoing recruitment activities to prepare talent pools for anticipated increase in roles at various levels.
- March 2018 to June 2018 – ongoing training activities to prepare staff for anticipated procedural changes arising from the EAGP legislative changes.
- 30 March 2018 to 6 April 2018 – Consideration and incorporation of any appropriate changes provided during the consultation period.
- 6 April 2018 – Announcement of finalized new structure.
- April 2018 to June 2018 – staged transition to the new structure.