NSW Bureau of Crime Statistics and Research

This bulletin has been independently peer reviewed.

CRIME AND JUSTICE BULLETIN

NUMBER 238 | AUGUST 2021

Early Appropriate Guilty Plea reform program - Process evaluation

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AIM

To determine whether stakeholders consider that the Early Appropriate Guilty Plea (EAGP) reform program is being implemented as planned and to identify which, if any, of the reform elements are critical to achieving the expected outcomes.

METHOD

A descriptive and thematic analysis of data from semi-structured interviews conducted between 22 June and 30 July 2020 with 35 stakeholders involved in implementing various elements of the EAGP program. Descriptive analysis of data from BOCSAR's Criminal Courts database is also included.

RESULTS

Since the EAGP reforms commenced, briefs of evidence are not served earlier on the Office of the Director of Public Prosecutions than those prepared prior to the reforms, but they are adequate to enable prosecutors to determine the most appropriate charge(s) and to certify the charge(s) laid by officers of the NSW Police Force. Charge certification and mandatory criminal case conferences occur, conference certificates are filed with the court and sentence discounts are applied strictly to the timing of the guilty plea. However, other elements of the program are not being consistently implemented. For example, briefs of evidence are not always adequate for accused persons to be able to decide whether or not to plead guilty in the Local Court, continuity in legal representation is not always achieved in practice from the service of the brief of evidence/charge certification to case finalisation, and magistrates do not always give accused persons the oral and written explanations regarding the Local Court committal process and the sentencing discounts that apply for pleading guilty.

Stakeholders consider that the reform elements critical to achieve an increase in guilty pleas overall, an increase in early guilty pleas and a reduction in the time taken to finalise indictable matters to be the early disclosure of briefs of evidence and mandatory criminal case conferencing. Charge certification is considered critical in achieving an increase in early guilty pleas and a reduction in the time taken to finalise indictable matters, while continuous legal representation is critical in achieving both an increase in trial readiness and a reduction in average trial length. Only half of the stakeholders considered the three-tiered statutory sentencing discount scheme to be critical in achieving an increase in early guilty pleas, an increase in guilty pleas overall and a reduction in the time taken to finalise indictable matters.

CONCLUSION

Most elements of the EAGP reform program are being implemented as planned. However, further improvements could be made in order to maximise the benefits achieved by the reforms.

KEYWORDS

process evaluation | early guilty pleas | charge certification | court delay | criminal case conferencing | continuous legal representation | sentencing discounts

Suggested citation: Trimboli, L. (2021). Early Appropriate Guilty Plea reform program - Process evaluation (Crime and Justice Bulletin No. 238). Sydney: NSW Bureau of Crime Statistics and Research.

INTRODUCTION

In the ten years to 2018, there were significant increases in court delay in the NSW District Court. Between 2013 and 2017, the median number of days from arrest to finalisation increased by 23.8 per cent for trial matters (from 578.5 days to 716 days) and 24.4 per cent for sentence only matters (from 389 days to 484 days) (NSW Bureau of Crime Statistics and Research, 2018). Lengthy delays in the finalisation of serious criminal matters are associated with considerable system costs, distress to victims and defendants, growth in the prison population and can serve to undermine public confidence in the criminal justice system.

The NSW Government introduced several initiatives concurrently in an attempt to reduce court delay and improve court efficiency. These included:

- the Rolling List Court pilot which began on 13 April 2015 at Sydney's Downing Centre;[1]
- the appointment of two additional public defenders (on 15 August 2016 and 15 May 2017);[2]
- the Table Offences Reforms,[3] with the first tranche beginning in November 2016;[4]
- the appointment of seven new permanent District Court judges in 2018/2019;
- special call-overs in some courts[5] so that public defenders could attempt to finalise multiple matters in one day by negotiating with accused persons awaiting trial; and
- readiness hearings for trials that are expected to last more than three weeks to ensure that both the prosecution and the defence are ready to proceed on the trial start date and achieve early resolution of criminal trials.

An additional government initiative, and the focus of this report, is the Early Appropriate Guilty Plea (EAGP) reform program. This is a major system-wide reform program designed to target the systemic issues in the criminal justice system that obstruct the entry of guilty pleas early in the court process and contribute to unnecessary delays in the District Court.

The Early Appropriate Guilty Plea reform program

The Early Appropriate Guilty Plea reform program commenced on 30 April 2018, following several years of development and stakeholder consultation. Its design was based on the recommendations of an enquiry by the NSW Law Reform Commission (LRC) (NSW Law Reform Commission, 2014) into opportunities for legislative and operational reform to encourage appropriate early pleas of guilty in criminal proceedings. The LRC noted the inefficiencies, costs and distress for victims of crime and witnesses associated with guilty pleas that are submitted after matters have been committed for trial in the District Court. In their review, the LRC identified a number of obstacles to defendants entering guilty pleas earlier in criminal proceedings. Some of these obstacles related to activities undertaken by the prosecution and some related to activities undertaken by the defence. Timing was a common theme of the prosecution-related obstacles, including that the prosecution served parts of the brief of evidence late, accepted a plea to a lesser charge late in the proceedings and that senior Crown Prosecutors with authority to negotiate

1 See Poynton, Paterson, & Weatherburn (2016) and Rahman, Poynton, & Weatherburn (2017).
2 On 6 December 2015, the then Attorney-General, Ms Gabrielle Upton, announced a $20 million package to reduce the NSW District Court backlog. This package included more than 250 extra sitting weeks for the District Court over the 18-month period from January 2016 to June 2017; funding for two new District Court judges appointed in March 2016 and two additional public defenders to work across Armidale, Port Macquarie, Tamworth and Taree. In the 2016/2017 State budget, an additional $39 million package was announced over two years; this included funds for three new District Court judges (to be based in Wagga Wagga, New England and Sydney), two new public defenders and staff to support the five new judges (sheriff officers, associates, jury attendants and reporting services monitors).
3 These are indictable offences which are listed in two tables in Schedule 1 of the *Criminal Procedure Act (1986)*. They are dealt with in the Local Court unless an election is made for the offence to be heard in the District Court. Table 1 offences are more serious and the election can be made by either the prosecutor or the defendant. Table 2 offences are less serious and the election can only be made by the prosecutor.
4 Recent research (Ringland, 2020) found that the process of re-classifying offences from strictly indictable to Table offences significantly reduced the number of matters finalised in the District Court, court delay and the likelihood of a custodial penalty being imposed.
5 These call-overs were held in Parramatta, Coffs Harbour, Gosford, Port Macquarie, Newcastle, Sydney, Wollongong and Lismore (Thorburn & Weatherburn, 2018).

were not briefed until late in the proceedings. Defence-related obstacles outlined by the LRC included an expectation by the defence that further evidence would be disclosed closer to the trial, a belief that the prosecution overcharges early and that charges would be downgraded as the proceedings advanced, a perception that the court was flexible in its application of sentencing discounts, a scepticism that sentencing discounts would be conferred to their clients, and a belief that they would obtain better results in negotiations that occur just prior to the trial. Other barriers to early guilty pleas identified by the LRC included discontinuity in legal representation on both sides resulting in inconsistent advice and negotiations, and the postponement of pleas by defendants in the hope the case would be withdrawn. The Commission concluded that significant reforms to legislative frameworks, case management practices and funding models were required in order to deal with the obstacles identified.

Key elements of the reforms

The Early Appropriate Guilty Plea reform program introduced six key elements to maximise the opportunity and incentives for defendants to enter early appropriate guilty pleas. The six interdependent elements are: (1) the early disclosure of the brief of evidence; (2) charge certification; (3) mandatory criminal case conferencing; (4) continuity of legal representation; (5) statutory sentencing discounts; and (6) Local Court case management. Each of these is described in more detail below.

1. The early disclosure of the brief of evidence

The reforms enable police officers to prepare simplified briefs of evidence, not necessarily in admissible forms. These simplified briefs, being less time-consuming to prepare, would provide prosecutors with the necessary information to determine charge(s) earlier in the process and the defence with the opportunity to make informed decisions about plea without delays. Since briefs are crucial to early charge advice, they must reflect a robust investigation and be sufficient to support a reasonable chance of conviction. In fact, the *Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*, No. 55, s 62(1) requires that each brief contain all the material that will form the basis, and affect the strength, of the prosecution case and that is relevant to the accused.[6] If the case proceeds to trial, admissible forms of evidence are then provided by the police.

2. Charge certification

The reforms abolished the committal hearing processes whereby Local Court magistrates considered the evidence against the defendant in order to determine whether there was sufficient evidence for the case to proceed to trial in a higher court. The new statutory requirement of charge certification serves the screening function previously performed by magistrates during the committal hearings and is designed to ensure that the most appropriate charge(s) are applied to the accused.

The charge certification process involves a senior prosecutor from the Office of the Director of Public Prosecutions (ODPP)[7] reviewing the brief of evidence and the charge(s). Following this review, the prosecutor signs and files a charge certificate with the Local Court Registry. This document either withdraws the charge(s) or confirms the specific offence(s) that are to proceed on indictment and specifies any back-up charges. The purpose of the charge certificate is to give the accused certainty about the charge(s) filed against them, thereby encouraging accused persons to enter a guilty plea early rather than waiting until the trial in the expectation that the charge(s) will be withdrawn or downgraded.

6 In addition, a comprehensive list of the specific materials to be included in each brief of evidence is stipulated in the Protocol agreed between the NSW Police Force and the NSW Office of the Director of Public Prosecutions (*Agreement between NSW Police Force and Office of the DPP (NSW) Concerning the Content and Service of an Early Appropriate Guilty Plea Brief and Charge Certification*, 27 April 2018).

7 For Commonwealth matters, the charge certificate is prepared by the Commonwealth Director of Public Prosecutions.

3. Mandatory criminal case conferencing

Prior to the implementation of the reforms, there was no formal requirement in NSW for the prosecution and the defence to discuss a case before it progressed to trial.[8] Now, senior and experienced prosecution and defence legal practitioners are mandated to participate in at least one case conference. The intention is that earlier negotiations between senior prosecutors and defence solicitors may achieve appropriate guilty pleas in the Local Court. The senior prosecuting solicitor who participates in the conference is the certifying prosecutor who signed the charge certificate. The case conference does not involve the court or a judicial officer. Instead, it is a private, formal and structured discussion between senior legal practitioners who have the authority to negotiate and resolve matters.

As a case management tool, the conference is designed to serve a number of functions: to determine if there are any offences to which the accused is willing to plead guilty; to facilitate the provision of additional material or other information; to facilitate the resolution of other issues; and to identify key issues for the trial and any agreed or disputed facts (*Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017,* No. 55, s 70). Case conferences apply to both adults and to serious children's indictable offences.

The legislation clearly specifies the parameters of the case conferences. For example:

- the prosecuting and defence solicitors are required to participate in the initial case conference either in person or by audio-visual link (*Criminal Procedure Act 1986*, No. 209, s 71(1-2));
- the accused person must be available to give instructions contemporaneously, either by audio-visual link, telephone or in person (*Criminal Procedure Amendment (Committals and Guilty Pleas) Regulation 2018*, s 9F(1));
- conferences are expected to last about one hour and more than one case conference can be held per matter (*Criminal Procedure Act*, s 70(5));
- separate case conferences should be held for each co-accused (*Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*, No. 55, s 73(1)); and
- a case conference is not required if the accused is unrepresented, pleads guilty and the plea is accepted by the magistrate or fitness to be tried for the offence(s) has been raised (*Criminal Procedure Act 1986*, No. 209, s 69).

4. Continuity of legal representation

The involvement of senior prosecutors in the early stages of a case is designed to encourage continuity of legal representation. Prior to the EAGP reforms, there were often numerous changes in both prosecution and defence legal counsel as a matter progressed through the courts. This was considered a barrier to early guilty pleas because negotiations had to start afresh as new legal practitioners became involved. Under the reforms, the same senior prosecutor (e.g. senior prosecuting solicitor, a Trial Advocate or a Crown Prosecutor) is responsible for the matter until the court process is finalised. Once the prosecutor has been assigned to the case, the ODPP is responsible for updating victims on the progress of the case and consulting on the charges to be certified. It is expected that the early and continuous involvement of senior, experienced prosecutors will result in victims being not only better informed about their matter, but also less distressed because there will be a consistent approach to their case.

8 An administrative trial was attempted and implemented through a Local Court practice note. This Criminal Case Conferencing Trial began in 2006 and was legislated in 2008. However, following a review (Yin Wan et al., 2010) which found little evidence that the scheme achieved its stated objectives, the Trial ended in 2012 with the repeal of the legislation.

5. Statutory sentencing discounts

A core element of the reforms is the introduction of statutory sentencing discounts for early guilty pleas to indictable offence(s) (*Crimes Sentencing Procedure Act,* s 25D(2)).[9] Prior to the reforms, sentencing discounts of up to 25 per cent were available for an early guilty plea. However, there were no statutory guidelines dictating their use which meant these discounts were not applied consistently by the courts. EAGP introduced a structured and transparent three-tiered regime to promote consistent application of sentencing discounts and strongly incentivise accused persons to enter a guilty plea before the matter proceeds to trial. The legislation allows:

- a 25 per cent discount for an early guilty plea (i.e. before the end of the committal proceedings in the Local Court);
- a 10 per cent discount if the guilty plea is entered after the accused is committed for trial in the District or the Supreme Court and at least 14 days before the matter is first listed for trial; and
- a five per cent discount in any other circumstances (i.e. less than 14 days before the trial is set down to start or during the trial).

The legislation requires that, when passing sentence, the court must indicate to the offender how the sentence was calculated and, if applicable, the reasons for reducing the discount or not applying it at all (*Crimes Sentencing Procedure Act*, s 25F(7)).

6. Local Court case management

With the implementation of the EAGP reforms, magistrates ensure that relevant certificates are filed with the court and give the accused explanations about the new processes created by the reforms. These explanations include the purpose of the committal proceedings, the charge certificate, the case conference and the associated certificate, the examination of prosecution witnesses and the committal for trial/sentence, and the statutory sentencing discount for guilty pleas.

Objectives of the EAGP reform program

The long-term goal of the EAGP reform program is to achieve effective and efficient resolution of legal disputes. The reforms are designed to change the composition of indictable matters in the District Court by reducing the proportion of matters that are committed for trial and increasing the proportion that proceed to sentence. The program involved both legislative changes[10] and substantial structural, technological and operational reforms across several key criminal justice agencies.[11] Its success, therefore, depends heavily on inter-agency co-operation, collaboration and risk management.

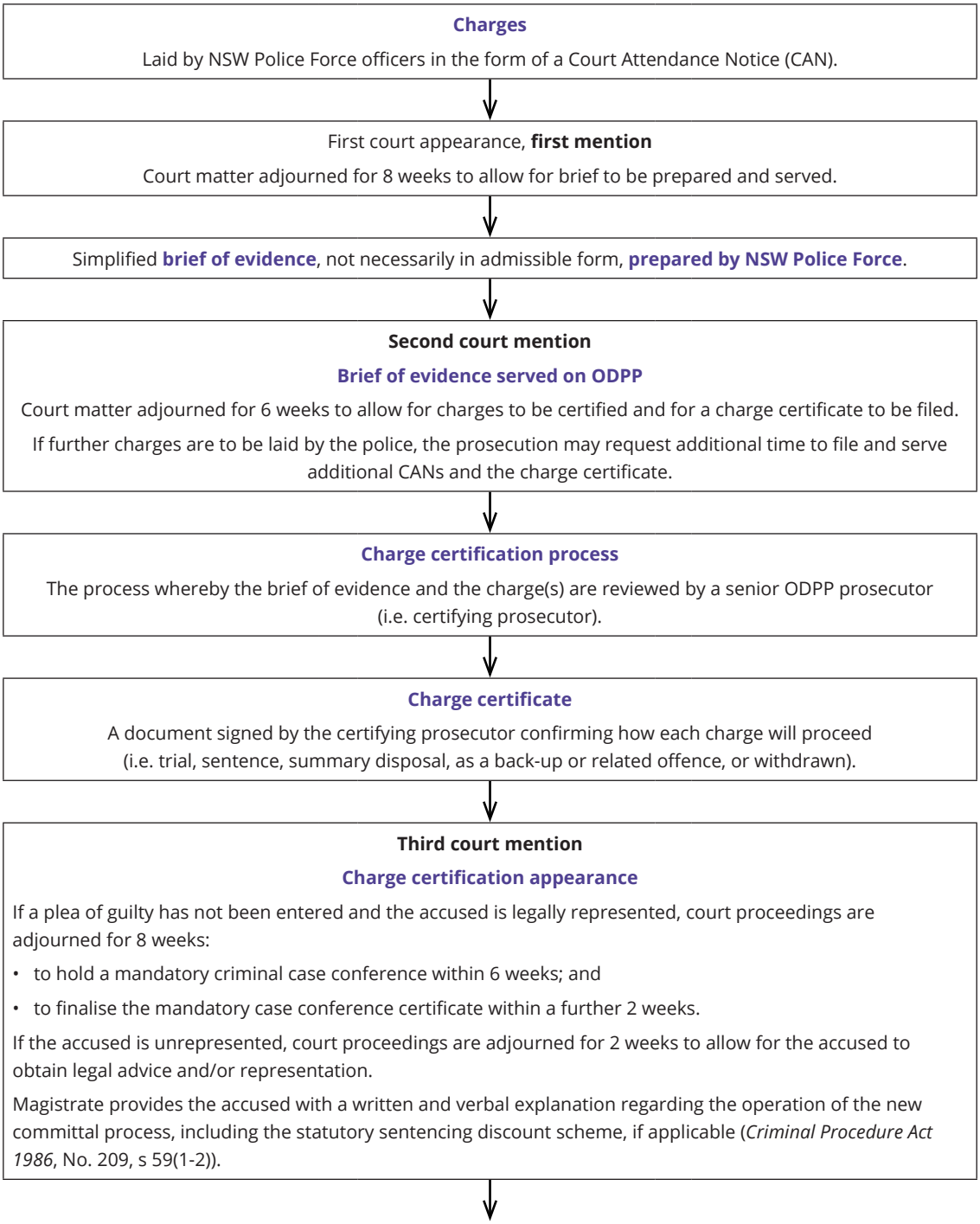
The reforms are also expected to improve the experiences of victims and witnesses through earlier involvement of senior, experienced prosecutors (with whom they can consult); greater clarity of the charges that will proceed on indictment and a reduction in the time spent preparing for trials that do not proceed. In addition, the reforms are expected to produce a broad range of benefits for other criminal justice agencies and individuals. For example, it is anticipated that police officers would spend less time preparing briefs of evidence and less time in court; defendants would have greater certainty of charges as a result of charge certification; the defence and prosecution teams (including Legal Aid NSW and the ODPP) would avoid preparation for trials that do not proceed; empanelling of juries for trials that do not proceed would be avoided; the demand on the remand system would be reduced; and a decrease in the rate of late guilty pleas would release the higher courts' resources to deal with more complex matters.

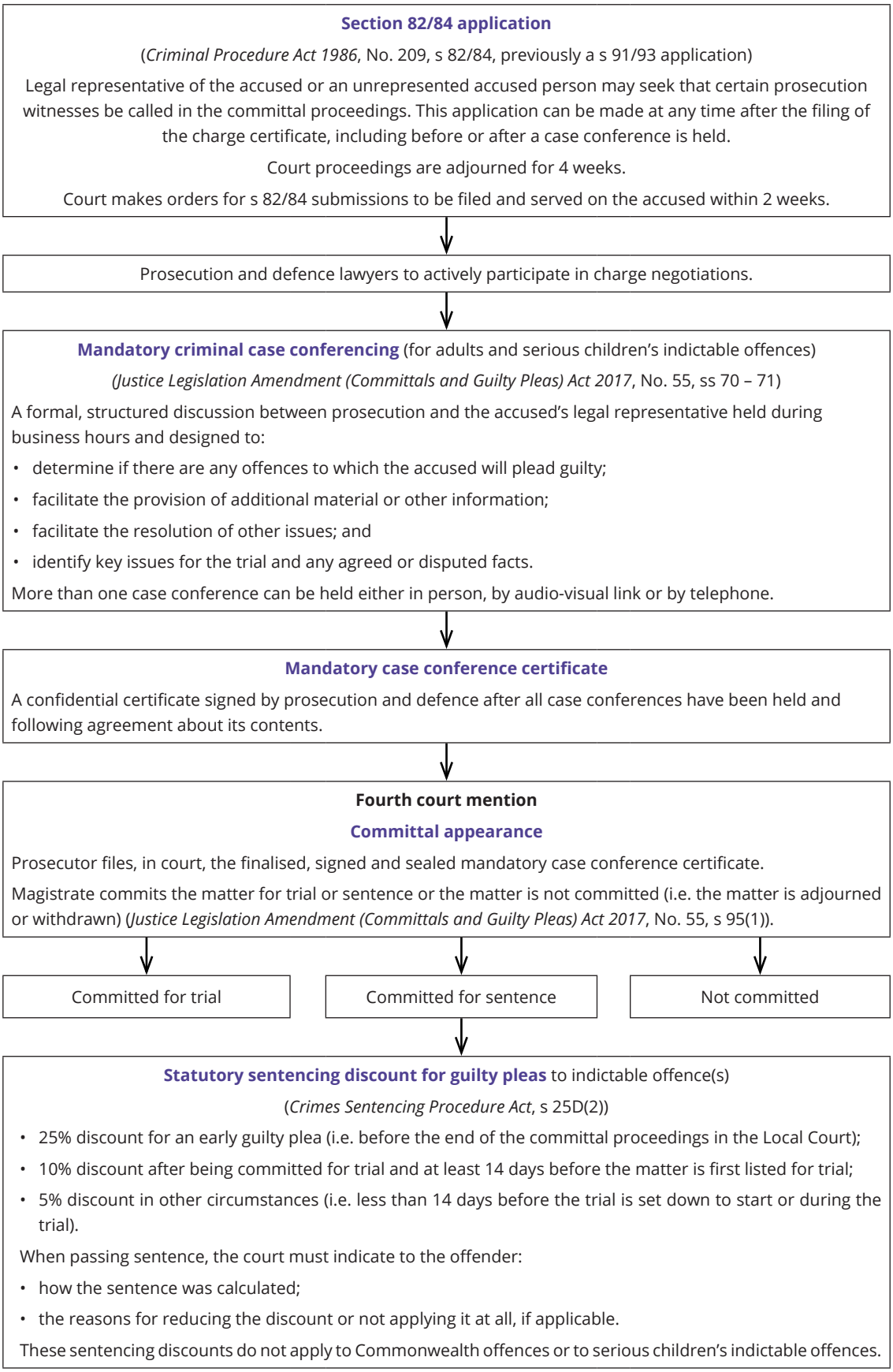
9 Statutory sentencing discounts for guilty pleas do not apply to Commonwealth offences or to serious children's indictable offences.
10 The relevant legislation includes the *Criminal Procedure Act (1986), Children (Criminal Proceedings) Act (1987), Crimes (Sentencing Procedure) Act (1999), Crimes (Administration of Sentences) Act (1999)* and *Crimes (Sentencing Procedure) Amendment (Sentencing Options) Act 2017.*
11 This includes the Office of the Director of Public Prosecutions (ODPP), Legal Aid NSW, the NSW Police Force and Court and Tribunal Services (CaTS).

How the Early Appropriate Guilty Plea reform program operates

The EAGP reforms apply to all criminal proceedings that commenced in NSW on or after 30 April 2018 where one or more offences is a strictly indictable criminal offence, a Table 1/Table 2 indictable offence (if an election is made for the matter to be heard in the District Court) or a serious children's indictable offence. Figure 1 illustrates the key features of the EAGP process.

Figure 1. Operation of the Early Appropriate Guilty Plea reform process in NSW




Section 82/84 application
(Criminal Procedure Act 1986, No. 209, s 82/84, previously a s 91/93 application)
Legal representative of the accused or an unrepresented accused person may seek that certain prosecution witnesses be called in the committal proceedings. This application can be made at any time after the filing of the charge certificate, including before or after a case conference is held.
Court proceedings are adjourned for 4 weeks.
Court makes orders for s 82/84 submissions to be filed and served on the accused within 2 weeks.
Prosecution and defence lawyers to actively participate in charge negotiations.
Mandatory criminal case conferencing (for adults and serious children's indictable offences)
(Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017, No. 55, ss 70 – 71)
A formal, structured discussion between prosecution and the accused's legal representative held during business hours and designed to:
• determine if there are any offences to which the accused will plead guilty;
• facilitate the provision of additional material or other information;
• facilitate the resolution of other issues; and
• identify key issues for the trial and any agreed or disputed facts.
More than one case conference can be held either in person, by audio-visual link or by telephone.
Mandatory case conference certificate
A confidential certificate signed by prosecution and defence after all case conferences have been held and following agreement about its contents.
Fourth court mention
Committal appearance
Prosecutor files, in court, the finalised, signed and sealed mandatory case conference certificate.
Magistrate commits the matter for trial or sentence or the matter is not committed (i.e. the matter is adjourned or withdrawn) (Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017, No. 55, s 95(1)).
Committed for trial
Committed for sentence
Not committed
Statutory sentencing discount for guilty pleas to indictable offence(s)
(Crimes Sentencing Procedure Act, s 25D(2))
• 25% discount for an early guilty plea (i.e. before the end of the committal proceedings in the Local Court);
• 10% discount after being committed for trial and at least 14 days before the matter is first listed for trial;
• 5% discount in other circumstances (i.e. less than 14 days before the trial is set down to start or during the trial).
When passing sentence, the court must indicate to the offender:
• how the sentence was calculated;
• the reasons for reducing the discount or not applying it at all, if applicable.
These sentencing discounts do not apply to Commonwealth offences or to serious children's indictable offences.

1. First court mention

Criminal proceedings commence in the same way as in the past, with the first court appearance or first mention occurring after officers of the NSW Police Force lay charge(s) in the form of a Court Attendance Notice. At this first court appearance, the police prosecutor appears in court and the matter is adjourned for eight weeks to allow police officers to prepare a brief of evidence. The police prosecutor has carriage of the proceedings until the brief of evidence is served, at which point the ODPP assumes responsibility for the case.

2. Second court mention

It is no longer necessary to serve a copy of the brief of evidence on the court or judicial officer. Instead, as Figure 1 shows, at the second court mention, the police brief of evidence is served on the ODPP prosecutors and orders are sought for charge certification. The court matter is adjourned for a further six weeks during which the charges are certified or confirmed and the charge certificate is filed. If further charges are to be laid by the police, the prosecution may request additional time to file and serve additional Court Attendance Notices and the charge certificate. The brief of evidence is allocated to an ODPP solicitor who prepares the first charge certification report within three weeks of the adjourned period. This is reviewed by a Managing Solicitor who then allocates the matter to a senior ODPP Prosecutor (i.e. a senior solicitor, Solicitor Advocate or Crown Prosecutor) for certification. The brief of evidence is returned to the solicitor with carriage to prepare for the charge certification appearance, including requesting additional charges from the police, where directed, and preparing, filing and serving the charge certificate and any other necessary documents. The ODPP solicitor or certifying prosecutor appears in all future court appearances until the case is finalised. Within six weeks, the prosecutor files a signed charge certificate with the Local Court Registry. The charge certificate is served on the accused's legal representative or on an unrepresented accused and a copy is filed in court (*Criminal Procedure Act 1986*, No. 209, s 67(1)).

3. Third court mention

At the third court mention, if the accused is legally represented and has entered a plea of not guilty, court proceedings are adjourned for a further eight weeks. This is to allow mandatory criminal case conference(s) to be held during the first six weeks and the mandatory case conference certificate to be finalised and filed with the court in the subsequent two weeks. As Figure 1 shows, after all case conferences have been held and following agreement about its contents, the prosecution and defence solicitors sign a mandatory case conference certificate. This certificate is a record of all the negotiations between the prosecution and the defence, both during the case conference(s) and any informal discussions. The magistrate then provides the accused with a written and verbal explanation regarding the operation of the new committal process, including the statutory sentencing discount scheme, if applicable (*Criminal Procedure Act 1986*, No. 209, s 59(1-2)).

The discussions at the case conference(s) are confidential, not admissible and cannot be published. Similarly, all matters in the case conference certificate are confidential (*Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017*, No. 55, s 79). According to the legislation, an unreasonable failure on the part of the prosecutor or the defence solicitor to participate in a case conference or file a case conference certificate can result in the magistrate discharging the accused, adjourning the committal proceedings or committing the accused for trial or sentence (*Criminal Procedure Act 1986*, No. 209, s 76). 'Section 82/84 applications' (previously s 91/93 applications) can be made by the accused person's solicitor either before or after case conferences have been held. These applications call to court prosecution witnesses mentioned in the brief of evidence to give evidence in the committal proceedings.

4. Fourth court mention

At the fourth court mention (or the committal appearance), both the prosecuting and defence solicitors are present in court when the envelope containing the finalised and signed mandatory case conference certificate is sealed. The prosecuting solicitor then files the certificate in court where it is retained on the court file. The sealed envelope can only be opened by a District or Supreme Court judge during the

sentencing proceedings, or subsequent appeal proceedings (if applicable). At the fourth court mention, the accused appears either in person or by audio-visual link to enter a plea to the offence(s). If the magistrate is satisfied that both a charge certificate and a case conference certificate have been filed, he/she makes a committal order for trial (if the accused enters a plea of not guilty) or sentence (if the accused enters a plea of guilty) to the District or Supreme Court. However, the accused can only be committed if both the charge certificate and the case conference certificate have been filed (*Criminal Procedure Act 1986*, No. 209, Division 7, s 94).

The present study

To determine if the EAGP reforms are achieving their objective of more effective and efficient resolution of legal matters, the NSW Bureau of Crime Statistics and Research (BOCSAR) undertook both a process evaluation and an outcome evaluation of the reform program. This report deals only with the process evaluation. The key aims of the process evaluation were to determine whether each of the EAGP elements is operating as planned and which (if any) EAGP elements are critical to the effectiveness of the reforms.

Specifically, this study was designed to answer the following six key questions regarding program implementation, with each question reflecting one of the six reform elements:

1. Are briefs of evidence prepared by the NSW Police Force being served on the Office of the Director of Public Prosecutions (ODPP) earlier in proceedings since the EAGP reforms commenced?

   Are briefs of evidence in EAGP matters adequate to enable ODPP prosecutors to determine the most appropriate charge(s)?
2. Are charges laid by the NSW Police Force in EAGP matters being certified by senior prosecutors?
3. Are mandatory criminal case conferences occurring where appropriate and conference certificates being filed with the court?
4. Is continuous legal representation being achieved from service of the brief or charge certification/ case conference to case finalisation?
5. Are sentencing discounts for guilty pleas being applied in accordance with the three-tiered statutory sentencing discount scheme?
6. Are magistrates giving accused persons the oral and written explanations regarding the Local Court committal process and the sentencing discounts that apply for pleading guilty?

The process evaluation also attempted to identify which (if any) of the reform elements are considered by key stakeholders to be critical to achieving the following outcomes:

1. an increase in guilty pleas overall;
2. an increase in early guilty pleas;
3. a reduction in the time taken to finalise indictable cases;
4. an increase in trial readiness; and
5. a reduction in average trial length.

METHOD

Semi-structured telephone interviews were conducted with a total of 35 key stakeholders between 22 June and 30 July 2020 to obtain their perspectives on the EAGP reforms. The heads of agencies involved in the various elements of the reform program's implementation were asked to nominate four individuals with direct experience with EAGP matters who could be invited to participate in an interview.

The final sample comprised of four or five nominated stakeholders from each agency, that is, NSW Police Force's police prosecutors; staff of the NSW ODPP, such as solicitors, Trial Advocates and Crown Prosecutors; defence legal practitioners (solicitors and barristers) employed by the Aboriginal Legal Service (NSW/ACT), Legal Aid NSW and the Public Defenders' Office; private practitioners nominated by the Law Society of NSW and the NSW Bar Association; Local Court magistrates and District Court judges. It was anticipated that a spectrum of viewpoints would be gathered as these agencies are involved in different elements of the program's implementation. Stakeholders from rural and regional NSW were also represented in the interviews.

Interview questions related to whether each of the EAGP elements is operating as planned and which (if any) EAGP elements are critical to the effectiveness of the reforms. In addition, stakeholders were asked whether there are any major challenges associated with implementing the EAGP reform package, whether the implementation of the EAGP reform package has produced any unexpected consequences (either positive or negative), and any suggestions they had for other changes that could be made to encourage early guilty pleas and achieve better case management. A copy of the interview schedule is in Appendix A. Stakeholders' responses to yes/no questions were coded and presented in tabular form, while their comments were thematically analysed.

The stakeholder interviews were supplemented with an analysis of available data from BOCSAR's Criminal Courts database. These data were extracted from a bespoke dashboard that was developed, and is being maintained, by BOCSAR to monitor the progress of the EAGP reforms. The data summarise the first 24 months of the reform program's implementation (from 30 April 2018 to 30 April 2020) and include trends in finalised committals in the NSW Local and Children's Courts, trends in finalised cases in the higher courts and some early measures of court delay.

RESULTS

Overview of the first 24 months of EAGP implementation

Committals finalised in the NSW Local and Children's Courts

In the first 24 months of the EAGP's operation, 7,944 committals were finalised in the NSW Local and Children's Courts. Almost three in five (58.5%, n = 4,649) of these matters were classified as EAGP cases. As expected, the vast majority of offenders in these EAGP cases were adults, the Local Court was the court of committal and matters were committed to the District Court (4,581 or 98.5%). About three in four (76.7%, n = 3,566) of the EAGP committals involved strictly indictable offences. Non-EAGP matters comprised the bulk of finalised committals throughout 2018. However, since February 2019, the number of EAGP committals has been steadily rising and by March 2020[12] all finalised sentence and trial committals involved EAGP matters.

12 COVID-19 may have had an impact on the number of matters finalised during April 2020.

Figure 2 shows the number of committals finalised each month in the Local and Children's Courts between 29 April 2016 and 30 April 2020 by type of committal (i.e. sentence vs trial). There has been a downward trend in the total number of committals finalised each month since the commencement of the EAGP reforms. This is true for both trial and sentence committals, though the decrease is more pronounced for trial committals. Trial committals decreased from an average of 194 trials per month in the 24 months prior to EAGP implementation to an average of 142 per month in the 24 months after program implementation. Meanwhile, sentence committals decreased from an average of 202 per month to 188 per month over the same period.

Figure 2. Number of committals finalised each month in the NSW Local and Children's Courts (29 April 2016 – 30 April 2020)

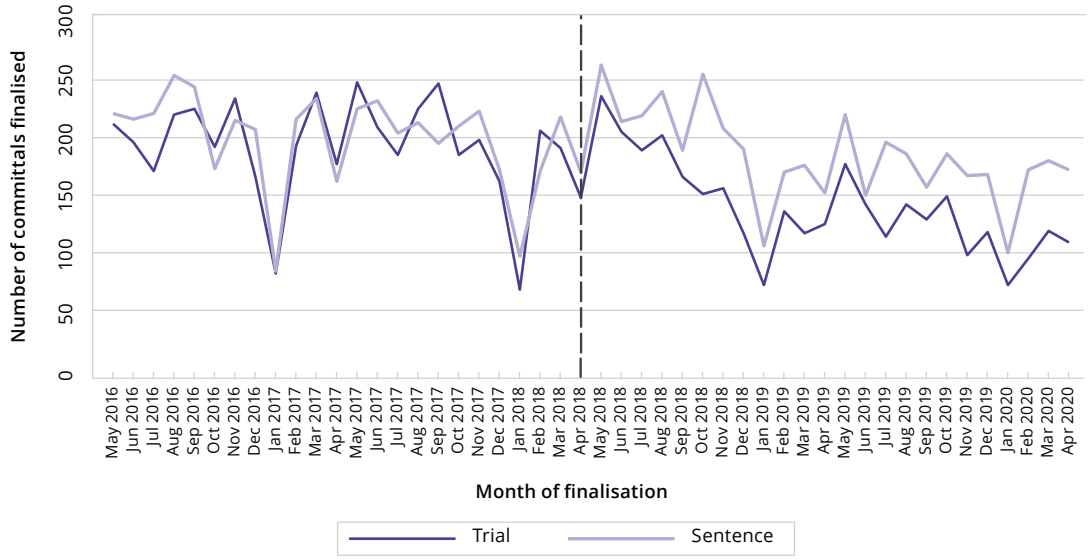
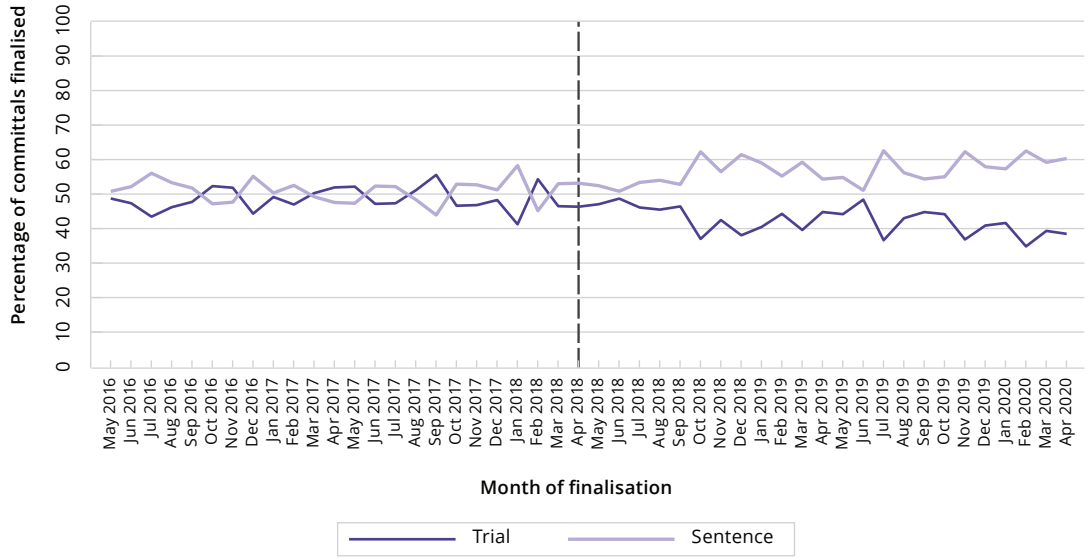


Figure 3 shows the composition of committal matters finalised each month in the Local and Children's Courts. In the 24 months prior to the implementation of the EAGP reform (29 April 2016 and 29 April 2018), committals were evenly split between trial and sentence matters. However, in the 24 months after program implementation (30 April 2018 – 30 April 2020), around 60 per cent of committals have been sentence committals and around 40 per cent trial committals. This is consistent with the patterns observed in Figure 2 that monthly finalisations by trial have fallen relative to those by sentence since the EAGP reform program was introduced.

Figure 3. Proportion of trial and sentence committals finalised each month in the NSW Local and Children's Courts (29 April 2016 – 30 April 2020)



Cases finalised in the higher courts

Figure 4 shows the number of cases finalised in the higher courts during the first 24 months of the EAGP. Of the 9,104 higher court finalisations during this period, 75 per cent (n = 6,825) were non-EAGP matters. EAGP cases comprised a small proportion of all matters finalised in the higher courts over the entire 24-month period, however, between February and April 2020, they represented the majority of sentence finalisations (77.4%) and around 38 per cent of trial finalisations. Of the 2,279 EAGP cases finalised, most were committed as sentence matters (1,808 or 79.3%), involved strictly indictable offences (1,726 or 75.7%), involved adult offenders (2,267 or 99.5%), were finalised in the District Court (2,263 or 99.3%) and were finalised by sentence (1,980 or 86.9%).

Figure 4. Number of cases finalised in NSW higher courts by outcome (30 April 2018 – 30 April 2020)

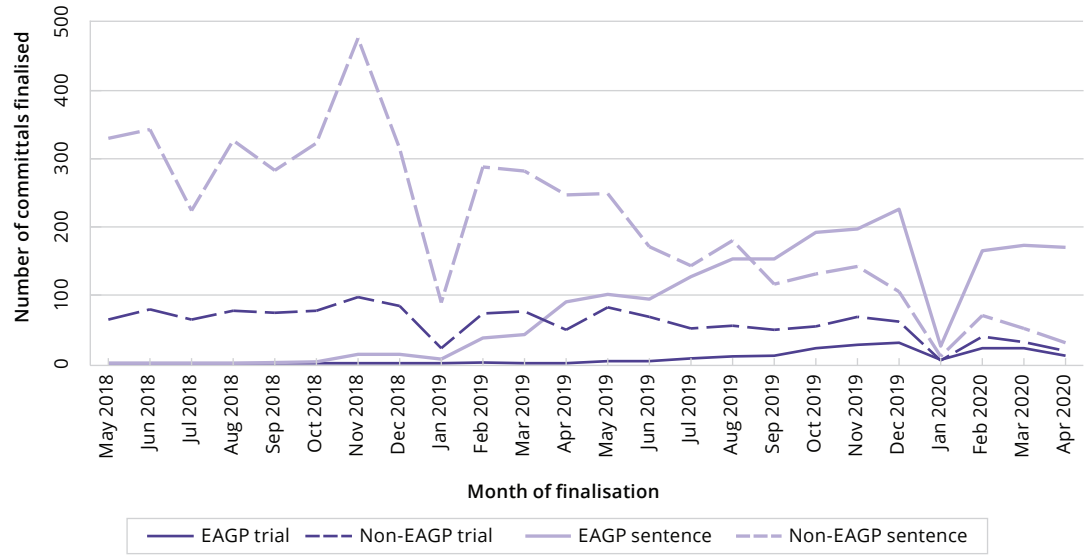


Figure 5. Median number of days from police charge to finalisation and from committal to the District Court to finalisation (29 April 2016 – 30 April 2020)

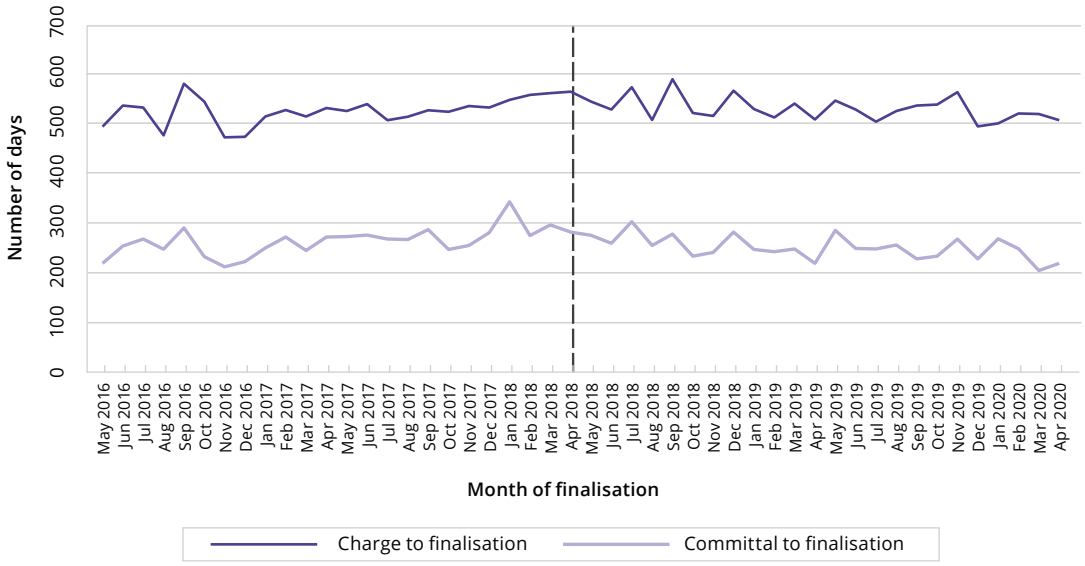


Figure 5 shows the median number of days from police charge to finalisation of the case and from committal to the District Court to finalisation for the 24-month period prior to the EAGP implementation and the first 24 months after program commencement. Prior to EAGP, there was an upward trend in both the median number of days from police charge to finalisation and days from committal to finalisation in the District Court (14.2% and 28.0%, respectively). Since EAGP, however, the trend in days from charge to finalisation has stabilised and days from committal to finalisation has decreased, albeit not significantly. The median number of days from police charge to finalisation was 533 in the 24 months prior to the EAGP implementation and 537 in the first 24 months after program commencement ($p = .632$). Meanwhile, the median number of days from committal to finalisation fell from 270 in the 24 months prior to the EAGP to 257 in the first 24 months after program implementation ($p = .089$).[13]

On face value, these trends suggest that EAGP was associated with a significant change in the total number (and composition) of matters committed to the higher courts and a reduction in the delay between committal and finalisation of cases. However, it is important to note that other initiatives to reduce the District Court backlog, including the Table Offences reforms, also occurred during this period. As a result, it is not possible to state whether the changes observed are due to the EAGP reforms or to any of other initiatives introduced concurrently. It is also worth noting that only finalised matters are observed; any complex matters that have yet to be finalised are not included in the above data.

A more definitive test of the impact of EAGP on early guilty pleas is provided by Klauzner and Yeong (2021). Klauzner and Yeong compared outcomes for two cohorts, the first cohort consisted of cases charged before the EAGP reforms were implemented and the second cohort consisted of cases charged after the EAGP reforms became operational. There are two features of Klauzner and Yeong's study which improve upon the descriptive analysis above. First, they restrict the sample to an equal window before and after EAGP, i.e. comparing committals with an equal 'opportunity' to be finalised. Second, they control for observed characteristics of matters, and thus estimate the impact of EAGP accounting for differences in defendant and case characteristics occurring over the same period.

13 These data were analysed using two-sample t-tests with equal variances.

Stakeholder interviews

1. Briefs of evidence prepared by the NSW Police Force

Key indicators that the EAGP reform program is being implemented as planned in relation to briefs of evidence are that they are served earlier than they were prior to the implementation of the reforms and they are adequate to enable ODPP prosecutors to determine the most appropriate charge(s) and to certify the charge(s) laid by the NSW Police Force. Table 1 summarises stakeholder responses to several questions relating to briefs of evidence.

Table 1. Briefs of evidence: Stakeholder responses to interview questions

	Stakeholders' response				
	Yes		No		Total [1.]
Interview question	N	%	N	%	N
Are briefs of evidence now being **served earlier** than they were prior to the implementation of the reforms?	9	32.1	19	67.9	28
Are briefs of evidence **adequate** to enable ODPP prosecutors to determine the most appropriate charge(s) and **to certify** the **charge(s)** laid by the NSW Police Force?	5	100.0	0	0.0	5
Are briefs of evidence **adequate for accused persons** to be able to decide whether or not they should plead guilty in the Local Court?	10	55.6	8	44.4	18

[1.] Total number of stakeholders who answered the question; excludes those who could not comment.

Briefs of evidence are not served on the ODPP earlier since the EAGP reforms began, but they are adequate to enable prosecutors to determine the most appropriate charges

As Table 1 shows, since the implementation of the reforms, briefs of evidence prepared by the NSW Police Force officers are not served earlier on the ODPP compared with those prepared before the reforms commenced. This is the perception of 19 (67.9%) out of 28 stakeholders for whom this question was relevant (police prosecutors, prosecutors, defence lawyers and magistrates); 13 (68.4%) of these 19 stakeholders were defence lawyers. As one stakeholder noted:

> If you extend the time for police to serve the brief, they'll focus on the end date, not the beginning date. It will actually mean rather than serve them at six weeks as it used to be, now making it eight weeks just means a longer delay. It's quite commonplace in the DPP list to have to adjourn the matter again because the brief hasn't been served, and that, of course, has a compounding effect, it delays the charge certification and everything else.

Table 1 also indicates that, while post-reform briefs of evidence are not served earlier than those prepared pre-reform, they are adequate to enable ODPP prosecutors to both determine the most appropriate charge(s) and to certify the charge(s) laid by officers of the NSW Police Force. This is according to the five prosecution staff interviewed. However, one of these stakeholders qualified this perception by stating that briefs of evidence are adequate only when they comply with guidelines set out in the *Agreement between NSW Police Force and the Office of the DPP (NSW) Concerning the Content and Service of an Early Appropriate Guilty Plea Brief and Charge Certification* (dated 27 April 2018). By contrast, only around half (10 or 55.6%) of the 18 defence lawyers interviewed believed that the briefs of evidence are adequate for accused persons to decide whether or not to plead guilty in the Local Court. Examples of the material which some defence lawyers assert is not provided in briefs of evidence and which would be relevant to the accused's defence include: Forensic and Analytical Science Service (FASS) certificates; statements from crime scene investigators, other police officers and other witnesses; criminal histories of witnesses; police video interviews (rather than only transcripts) with the accused persons; triple 0 phone calls; DNA evidence; material (e.g. telephone intercepts) translated in languages other than English; expert evidence; analyses from ballistics experts; transcripts of phone calls; tendency notices; coincidence notices; exculpatory evidence; and probative evidence.

2. Charge certification

Integral to the EAGP reform process is certification of charges laid by the NSW Police Force by senior prosecutors. To obtain insights into how well this process is operating, stakeholders were asked whether certification provides greater certainty about the charges that will ultimately proceed to trial, whether there are any delays in the process and the effectiveness of the charge negotiation process prior to charge certification. Stakeholders were also asked to offer any suggestions for improving the process. Table 2 summarises the stakeholder responses to these questions.

Table 2. Charge certification: Stakeholder responses to interview questions

	Stakeholders' response				
	Yes		No		Total [1]
Interview question	N	%	N	%	N
Is charge certification **occurring**?	26	100.0	0	0.0	26
Has the charge certification process provided defence lawyers with **greater certainty** about the charges that will ultimately proceed to trial?	8	50.0	8	50.0	16
Have you experienced any **delays** in the charge certification process?	18	78.3	5	21.7	23
Is the process of **negotiating charges** prior to the charge certification phase **effective**?	12	48.0	12	48.0	25 [2]

[1] Total number of stakeholders who answered the question; excludes those who could not comment.
[2] Includes one stakeholder who noted that it depends on the individuals involved.

Charge certification is occurring, but there are mixed perceptions about its effectiveness

As Table 2 shows, each of the 26 relevant stakeholders (police prosecutors, prosecutors and defence lawyers) stated that charge certification is occurring. However, defence lawyers interviewed were equally divided over whether or not charge certification provides greater certainty about the charges that will ultimately proceed to trial.

In addition, just over half (16 or 53.3%) of the relevant stakeholders perceived that the charge certification process is operating well; these 16 stakeholders comprised all the prosecution staff, all the magistrates and six of the defence lawyers interviewed. A further seven (23.3%) stakeholders perceived that the effectiveness of the process varied from case to case. However, the remaining seven (23.3%) stakeholders stated either that the process is not working well (5 or 16.7%) or that the process is not adhering to the required time frames (2 or 6.7%).

Stakeholders gave a number of reasons for these perceptions, including:

- Delays (12 or 24.5% of their 49 comments), for example, there is a delay of several weeks in charging because the ODPP becomes involved only after the brief of evidence is served; charge certification delays the negotiation process; it does not occur within the requisite timeframe, leading to two or three adjournments; and there are often applications in the Local Court for extensions of time because further information has been requested. Several stakeholders noted that some of the main reasons for these delays relate to the brief of evidence. As one stakeholder observed:

  > the delays at the charge certification stage are more on the brief preparation than the DPP certification.

- Variations in the quality of the charge certification process, depending on the charge certifier (9 or 18.4%). For example, some prosecutors 'rubber-stamp' the charges laid by the police while

  > other certifiers are more diligent...some prosecutors will look to see whether there are alternative charges that are more appropriate in the circumstances.

- The exclusion of critical details (9 or 18.4%) from the charge certificate, for example, the amounts of drugs in drug supply charges or the name and rank of the charge certifier; certification being based on scant evidence or lesser/alternative charges rather than the primary offences; and an over-emphasis on some issues, such as the potential credibility of witnesses.
- The internal processes of the ODPP (6 or 12.2%), for example, not all certificates are signed with the requisite level of authority, the ODPP solicitor with carriage is not authorised to resolve matters, the reporting process is cumbersome, and a lack of oversight of the process by a Crown Prosecutor which has consequences for the case conference.

Despite these issues, stakeholders also made some positive comments regarding the charge certification process. They perceived that there are advantages in having senior ODPP staff involved earlier in the process (4 or 23.5% of 17 comments). It was noted that it is beneficial for the prosecutor who will run the trial to be involved in the charge certification process as it means he/she is more invested in the entire process, and he/she has already considered the evidence to support the charge. The charge certification process facilitates improved co-operation between parties (3 or 17.6%), with stakeholders commenting that the ODPP staff are more receptive to offers from the defence lawyers at an earlier stage, the ODPP are willing to have discussions about more appropriate charges and more evidence is being provided promptly when required.

Stakeholders are divided over whether the charge negotiation process prior to charge certification is effective

As can be seen from Table 2, the 25 stakeholders for whom the question was relevant (police prosecutors, prosecutors and most defence lawyers) were equally divided over whether or not the process of negotiating charges prior to the charge certification phase is effective. Twelve stakeholders (48.0%) stated that the process is effective/can be effective/works reasonably well while 12 stated that the process does not happen/is not effective/is no more effective than it was pre-reform. One stakeholder noted that the effectiveness of the process depends on the individuals involved. In explaining their reasons for these perceptions, stakeholders referred to the willingness of the prosecutor to engage in the process and his/her characteristics (8 or 25.8% of 31 comments), including 'his/her skill, seniority, delegation and how early he/she considers the matter'; and that the effectiveness of the process was undermined by the lack of oversight and the lack of involvement of the ODPP from the beginning (7 or 22.6%).

The charge certification process could be made more effective

Eight (22.9%) of the 35 stakeholders interviewed believed that no changes were required to make the charge certification process more effective and one stakeholder asserted that the process hinders negotiations. The remaining 26 stakeholders made some suggestions about how the process could be improved. In addition to the preparation of comprehensive briefs of evidence by NSW police officers and their timely service (10 or 25.0% of 40 comments), other suggestions related to the ODPP (10 or 25.0%). Here, stakeholders noted a need for: earlier allocation of tasks within the Office; the provision of more resources and more time for officers to complete the task; the Office to be given more discretion regarding the timeframe for more complicated and more serious matters; increased streamlining of the process; further review and refinement of the Office's procedures for making requisitions to the NSW Police Force; earlier involvement of senior Crown Prosecutors; greater attention to the appropriateness of the charges certified; and conferencing of critical witnesses to ensure credibility. Earlier discussions between the various parties were suggested as another way of improving the charge certification process (7 or 17.5%), for example, joint discussions between officers of the ODPP, the NSW Police Force's Officers-in-Charge (OIC) and defence lawyers; and earlier conversations between the ODDP solicitors and OICs in order to obtain further evidence. Stakeholders also suggested the imposition of sanctions when charge certification is not timely or when charges are changed following the charge certification process (3 or 17.5%).

3. Mandatory criminal case conferences

Another key indicator of successful implementation of the EAGP reform program is that case conferences are occurring and that conference certificates are being filed with the court. Stakeholders were also asked their perceptions of various elements of the mandatory criminal case conferencing process, including how well the conferences achieve their objectives, the critical features of conferences, and the advantages and disadvantages of legal practitioners holding case conferences.

Mandatory criminal case conferences occur and conference certificates are filed with the court, but case conferences only achieve their principal objective

As Table 3 shows, the mandatory criminal case conferencing process is occurring, and conference certificates are being filed with the court, according to all stakeholders for whom these questions were relevant (26 and 20 stakeholders, respectively).

Table 3. Mandatory criminal case conferencing: Stakeholder responses to interview questions

	Stakeholders' response				
	Yes		No		Total [1]
Interview question	N	%	N	%	N
Is the mandatory criminal case conferencing process **occurring**?	26	100.0	0	0.0	26
Are conference certificates being **filed with the court**?	20	100.0	0	0.0	20

[1] Total number of stakeholders who answered the question; excludes those who could not comment.

Mandatory case conferencing has one principal and two subsidiary objectives:

> the principal objective of the case conference is to determine whether there are any offences to which the accused person is willing to plead guilty.
>
> A case conference may also be used ...
>
> - To facilitate the provision of additional material or other information which may be reasonably necessary to enable the accused person to determine whether or not to plead guilty to one or more offences,
> - To facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts.
>
> *(Source: Justice Legislation Amendment (Committals and Guilty Pleas) Act 2017, s 70 (2-3)).*

Stakeholders reported that the principal objective of case conferencing is being achieved well or fairly well. As one stakeholder noted:

> Case conferencing is quite effective at understanding whether the accused is willing to plead to anything and discussing a clear offer.

However, the two subsidiary objectives of the process are rarely being achieved, or at best, only being achieved to a minimal degree. This is based on the views of the 18 defence lawyers and five prosecution staff who were interviewed and who had had experience with the case conferencing process. In addition to the briefs of evidence being regarded as inadequate (4 or 17.0% of 24 comments), stakeholders explained that the defence lawyers' reservations about divulging information is one of the reasons why the process does not achieve the subsidiary objective of resolving other issues and identifying key issues for the trial (8 or 33.3%). For example:

> the resolution of other issues is not in the best interest of a defence lawyer's client and therefore is not something that would typically be done at a case conference.

Mandatory case conferences foster resolution of matters, continuity, negotiation, earlier focus and frank discussions

The 29 stakeholders with either direct experience or at least some knowledge of the process (namely defence lawyers, prosecution staff, most magistrates and most judges) identified a number of other benefits of holding mandatory criminal case conferences in the Local Court. One advantage is the resolution of matters (16 or 26.2% of the 61 comments made by these stakeholders). As some stakeholders noted, case conferences save time, money and an unnecessary trial in the District Court. Continuity is another advantage (10 or 16.4%), with the legal practitioners who attend the conference being the same practitioners who will conduct the trial (if the trial proceeds). As one stakeholder noted:

> It means that, from the beginning, there are lawyers who consider how the matter will run if there is a trial, to avoid last-minute offers from the Crown or last-minute pleas or last-minute resolutions after the matter has been set down for trial.

A related comment referred to legal practitioners being more invested in the process and more likely to engage in consultation because they would be 'professionally embarrassed if they are unprepared' (3 or 4.9% of comments). Stakeholders noted that case conferences foster early, more considered negotiation (8 or 13.1%); an earlier focus on relevant evidence and issues (8 or 13.1%) as well as the identification and frank discussion of issues (which could guide how cases are prepared for trial and whether any further requisitions should be sent to the police), the strengths and weaknesses in the cases and potential pleas (7 or 11.5%).

As one stakeholder succinctly summarised, the mandatory case conferencing process involving senior legal practitioners:

> ensures an early start to: (a) any plea negotiations; and (b) the case management of any trial in terms of identifying the likely issues and non-issues at trial, so that both the defence and the Crown can focus on those matters which are in dispute and other matters that can be resolved by some agreement which could avoid the calling of some witnesses, therefore shortening the trial.

Preparedness, experience and delegation to make decisions are critical features of mandatory case conferences

Preparedness is one of the critical features of case conferences in achieving early appropriate guilty pleas in the Local Court. This feature comprised 33 (45.2%) of the 73 comments made by the prosecutors and defence lawyers interviewed. It refers to the fact that both the prosecutors and the defence lawyers need to have comprehensive knowledge of the brief of evidence and have taken instructions from their clients/complainants/police officers-in-charge in order to engage in meaningful negotiations with the other legal practitioner. In addition, the participants' level of experience and delegation or authority to make decisions at the case conferences were perceived to be critical features of the process (10 or 13.7%). As one stakeholder noted:

> the greater the experience of the lawyers involved, the better their understanding of how the trial process will go and the greater their willingness to enter into suitable negotiations that achieve appropriate outcomes for all involved, including by resolution earlier rather than later, by way of plea rather than by way of trial.

The adequacy of briefs of evidence to ensure all relevant evidence is available to the accused was also considered critical (8 or 11%).

Mandatory case conferences have logistical challenges, but no inherent disadvantages

Stakeholders observed some practical and logistical issues associated with the conferences (9 or 12.3%). Two-thirds of the comments regarding logistical issues referred to issues relevant to accused persons held in custody, for example, the availability of conference rooms, limited times provided by correctional facilities for defence lawyers to access their clients, and technological problems preventing defence lawyers obtaining instructions from their clients.

Although noting that the case conferencing process was operating well, one stakeholder suggested it could be improved by providing guidance on preparing for a case conference, and stipulating requirements for the parties to consider the agreed facts and whether the police facts are sufficient.

4. Continuous legal representation

Continuous legal representation from charge certification to case finalisation is a key element of the EAGP reform program. Stakeholders were asked about their opinions on various aspects of continuity of legal representation, for example, whether or not senior prosecutors and defence lawyers are involved earlier in the process during the post-reform period compared to the pre-reform period, which elements of the court process are facilitated by continuous legal representation, and the advantages and disadvantages of continuity.

Senior legal practitioners are involved earlier, but continuous legal representation is not always achieved

Senior prosecutors and defence lawyers are more often involved early in the court process since the implementation of the EAGP reforms. This is the perception of 24 (92.3%) of the 26 relevant stakeholders (police prosecutors, prosecutors and defence lawyers). Only two (7.7%) stakeholders disagreed with this view. However, half of the stakeholders (18 out of 34 or 52.9%) interviewed indicated that continuity of representation from charge to finalisation is not being achieved or only achieved sometimes. Twelve (66.7%) of these 18 stakeholders were defence legal practitioners, with some stating that 'continuity was not achieved from the prosecution side'.

Continuity of legal representation facilitates improved client service, charge certainty, narrowing of issues for trial, candid negotiations and early discussion of pre-trial issues

Prosecution and defence practitioners were asked whether continuity of legal representation facilitates various elements of the court process. Table 4 summarises their responses.

Table 4. Whether specific elements of the court process are facilitated by continuity of legal representation

	Continuity of representation			
	Facilitates	Marginal impact/ conditional response [1.]	Has little or no impact/continuity does not occur	Total [2.]
Elements of the court process	%	%	%	N
Improved 'client service' to victims/defendants	81.8	9.1	9.1	22
Certainty of charges	72.7	9.1	18.2	22
Narrowing of issues for trial	60.0	20.0	20.0	20
More meaningful and candid negotiations in case conferencing	57.1	9.5	33.3	21
Early discussion of pre-trial issues	50.0	22.2	27.8	18

[1.] For example, the issue is dependent upon the competence and diligence of the practitioner involved rather than continuity per se.
[2.] Total number of stakeholders who answered the question; excludes those who could not comment.

As Table 4 shows, at least half of the prosecution and defence legal practitioners who were interviewed noted that continuous legal representation facilitates improved 'client service' to victims/defendants (81.8%), certainty of charges (72.7%), a narrowing of issues for trial (60.0%), more meaningful and candid negotiations in case conferencing (57.1%) and the early discussion of pre-trial issues (50.0%).

Stakeholders described the mechanisms by which they thought these benefits were achieved. Continuity by the prosecution has the advantage of providing a consistent contact person or 'the same face' who can answer questions. This allows a rapport to develop with the victims/complainants, witnesses, police officers-in-charge and the defence lawyers. Similarly, an advantage of continuous defence legal

representation is better service and rapport-building with the clients. For example, clients have more trust and confidence in their lawyers and are, therefore, more likely to have frank discussions, give better instructions and accept the advice given. In addition, it is less distressing and unnecessary for clients to 'say the same things over and over again'. As one stakeholder observed:

> The client does not feel that he/she is just a number or a name on a piece of paper.

Stakeholders offered several reasons why continuity contributed to these outcomes. First, generating greater investment in, or ownership of, a matter and increased accountability of legal practitioners (11 or 6.2% of the 176 comments made regarding the advantages of continuous legal representation) since they will ultimately be required to argue the case. As one stakeholder noted:

> The barrister who will run the trial has the responsibility for every decision that is being made, so they cannot palm it off to someone down the line by just treating the preliminary processes as unimportant or irrelevant.

A related advantage is greater familiarity with the brief of evidence and the history of the matter, resulting in both sides having a better understanding of the strengths and weaknesses of the case and being more prepared when it came to legal arguments and submissions (13.6% or 24 of the comments).

The twin themes of increased efficiency and associated resource savings were also cited as advantages of the continuity of legal representation (17.6%). Stakeholders noted that continuity results in more efficient trials because the main issues have already been identified, resources expended in preparing and investigating a matter have not been wasted and there is no need for another legal practitioner to understand the brief of evidence or obtain instructions.

Continuity raises logistical and resourcing challenges and precludes 'a fresh pair of eyes'

Stakeholders also noted several logistical and resourcing challenges faced by both the defence and prosecution when trying to maintain continuity of legal representation. This theme comprised about two in five of the comments made regarding the disadvantages of continuity (41.5% or 27 of the 65 comments made regarding the disadvantages of continuous legal representation). Some of the issues identified were that the solicitor who runs the case conference is not always available to conduct the case at the trial and staff movement or leave sometimes necessitates a re-allocation of matters. One stakeholder noted that:

> It is possible that a legal practitioner is given matters that all resolve, and somebody else is given matters that all proceed to trial. One person can carry a very heavy trial load, while someone else does not. So, managing workloads is difficult.

It was suggested that an unintended consequence of continuity was the limited opportunity for a different approach or 'a fresh pair of eyes' on the matter which could result in poorer outcomes. The absence of a different perspective (20.0% or 13 of the comments) and inflexible attitudes or positions of some legal practitioners (16.9% or 11 of the comments) could make it difficult to negotiate or to consider 'possible alternative pathways to resolution'. One stakeholder observed that:

> There is no independent person to review whether the position taken in the negotiations is a reasonable one.

5. Three-tiered statutory sentencing discount scheme

A key indicator of the successful implementation of the EAGP reform program is the application of sentencing discounts for guilty pleas in accordance with the three-tiered statutory sentencing discount scheme. Stakeholders were asked whether or not accused persons are better able to make an informed decision about sentencing discounts and the committal process since the implementation of the reforms, compared to before the reforms; the advantages and disadvantages of the three-tiered statutory sentencing discount scheme; and whether or not sentencing discounts are a consideration in an accused person's decision to plead guilty in the Local Court. Table 5 summarises stakeholder responses to several questions relating to the statutory sentencing discount scheme.

Table 5. Statutory sentencing discount scheme: Stakeholder responses to interview questions

Interview question	Stakeholders' response						Total [1.]
	Yes		Sometimes		No		
	N	%	N	%	N	%	N
Are the sentence **discounts** being strictly **applied according to the timing of the guilty plea**?	21	100.0	0	0.0	0	0.0	21
When passing sentence and applying the sentencing discount, do sentencing **judges indicate** to the accused person **how the sentence** imposed was **calculated**?	19	79.2	3	12.5	2	8.3	24
When passing sentence and either **not applying the sentencing discount or reducing the discount**, do sentencing **judges indicate** to the accused person the **reasons** for that determination?	11	91.7	0	0.0	1	8.3	12
Is the **sentence discount a key consideration** in an accused person's decision **to plead guilty** in the Local Court?	18	60.0	6	20.0	3	10.0	30 [2.]

[1.] Total number of stakeholders who answered the question; excludes those who could not comment.
[2.] Three of these stakeholders were undecided.

Sentencing discounts for guilty pleas are applied in accordance with the statutory discount scheme

As Table 5 shows, sentencing discounts are being applied strictly in accordance with the three-tiered statutory sentencing discount scheme and the timing of the guilty plea, according to all the 21 relevant stakeholders (prosecutors and defence lawyers) in a position to answer this question.

Four in five stakeholders (19 out of 24; 79.2%) also reported that, when passing sentence, judges communicate to the accused how the sentence was calculated either 'very well' or 'reasonably well'. Only two (8.3%) stakeholders disagreed with this statement and three (12.5%) noted that this varied by judicial officer. Similarly, 11 (91.7%) of the 12 stakeholders (who were in a position to comment) believed that, in cases where sentencing discounts were not applied or were reduced, the judge had indicated the reasons for that determination to the accused person either 'very well' or 'reasonably well'.

Sentencing discount is a key consideration in the decision to plead guilty early

As Table 5 shows, the sentencing discount is a key consideration in an accused person's decision to plead guilty in the Local Court, according to three in five (18 or 60.0%) of the 30 relevant stakeholders who could comment (mainly defence lawyers, some police prosecutors, some prosecutors and some judges). An additional six (20.0%) stakeholders believed that the discount was either one of many factors or a significant, but not a key, factor in the decision to plead guilty. Three (10.0%) stakeholders stated that the discount is not a key consideration in the decision-making process of an accused person and the remaining three (10.0%) stakeholders were undecided on the issue. However, the responses to this question varied according to the category of stakeholder. Most (16 or 88.9%) of the 18 defence legal practitioners who were interviewed believed that the sentencing discount is either a key consideration in an accused person's decision to plead guilty in the Local Court (13 or 72.2%) or one of many factors in the decision (3 or 16.7%). By contrast, the remaining categories of stakeholders gave a range of responses to this question.

The three-tiered statutory sentencing discount scheme has some advantages but also substantial disadvantages

Stakeholders noted other benefits of the three-tiered statutory sentencing discount scheme, for example, it provides greater clarity (17 or 29.8% of 57 comments) and certainty (9 or 15.8%), ensuring that there are 'no surprises' for accused persons in terms of the consequences of their decision. As one stakeholder stated:

> The precipitous drop-off between the Local Court and the District Court means that an accused person is faced with a very stark and very clear decision.

These stark choices may explain why half (13 or 50.0%) of the 26 relevant stakeholders (some police prosecutors, defence lawyers, some magistrates and District Court judges) stated that accused persons are in a better position to make an informed decision about sentencing discounts and the committal process since the implementation of the reforms compared to prior to the reforms. Stakeholders also observed that the scheme provides greater clarity for victims because they know that the accused would not receive the maximum discount if he/she enters a guilty plea at a later stage.

In addition to the scheme being beneficial to accused persons and to victims, stakeholders noted its broader benefits for legal practitioners and the court system (6 or 10.5%). For example, more concrete advice about the discounts can be given by defence practitioners to their clients and by prosecutors to the victims of crime and other relevant parties. In addition, as one stakeholder noted:

> The 25 per cent discount, if taken at the Local Court, saves intensive preparation and the enormous resources invested by the police, ODPP and the defence in the two-week period prior to the trial, time spent by the prosecution preparing both the matter and the witnesses, conducting conferences, photocopying the brief multiple times, making copies of everything for the jury, etc.

Despite these advantages, a sizeable proportion of stakeholders noted problems with the new sentencing discount model. In fact, of the 77 comments made regarding the scheme's disadvantages, the majority (66 or 85.7%) were expressed by the defence legal practitioners and judges who were interviewed. These two categories of stakeholders observed that the scheme is too rigid and inflexible. They noted that the scheme is unfair to, or has a negative impact on, the accused (12 or 15.6% of comments received), again, with some comments noting that this was due to an inadequate brief of evidence or the late service of key material. There was also a perception amongst these stakeholders that the second and third tiers of the scheme are insufficient to motivate accused people to plead guilty (12 or 15.6% of the comments). As one stakeholder summarised:

> Once in the District Court, an accused person perceives the 10 per cent discount as not worth it and five per cent as completely negligible, so the trial will run.

The removal of the court's discretion was noted as a disadvantage (8 or 10.4% of the comments), for example:

> There are so many reasons why a person might change their plea. Removing the court's discretion to consider those reasons and determine an appropriate discount is not an advantage to the system in general.

Although only comprising a small proportion of comments (3 or 3.9%), some stakeholders observed that the scheme does not recognise the utilitarian benefits of guilty pleas in the District Court, particularly in sexual assault and child sexual assault matters, for example:

> The lack of recognition that the decision to plead guilty is difficult to make at the preliminary stage, particularly for some offences, such as sexual assault, where one of the biggest factors in terms of utilitarian value relates to whether a complainant has to give evidence and re-live the trauma of the sexual abuse.

6. Local Court case management

A key indicator of successful EAGP program implementation in relation to Local Court case management is that, as required by legislation, magistrates give accused persons the oral and written explanations regarding the purpose of the committal process, charge certification, case conferences and the statutory sentencing discounts that apply for pleading guilty.

Only half (8 or 50.0%) of the 16 stakeholders in a position to answer the question (namely, police prosecutors and some defence lawyers) stated that magistrates give accused persons oral and written explanations regarding the new processes. Of the remaining stakeholders, three (18.7%) noted that, whether the explanations are given varies by magistrate and five (31.2%) stated that magistrates never give the explanations. Some stakeholders noted that magistrates generally give the explanations if an accused is not represented but rely on the legal representative to pass on this information wherever relevant. However, as one stakeholder stated:

> The magistrates generally read whatever's in the legislation, which is not particularly friendly to those not familiar with the process or not familiar with the language. It's probably going over most of their heads because of the context it's being delivered in and because of the words being used, it's not plain English. It's also quite vague. It doesn't have any specifics, for example, 'in your matter, if you plead guilty, instead of this sentence, you will get this other sentence', which would convey some meaning to them. 'You may get a discount' is probably too general. It doesn't convey much meaning for most people.

Critical aspects of the reform for achieving the expected outcomes

As indicated earlier, in addition to addressing the six questions regarding program implementation, BOCSAR's process evaluation attempted to identify which, if any, of the EAGP elements are critical to achieving each of the reform program's five expected outcomes. Table 6 shows stakeholders' responses to this question.

Table 6 has several noteworthy features:

- At least 60 per cent of the stakeholders considered the early disclosure of briefs of evidence to be critical in achieving four of the reform's five expected outcomes – an increase in guilty pleas overall (67.6%), an increase in early guilty pleas (88.6%), a reduction in the time taken to finalise indictable matters (80.0%) and an increase in trial readiness (61.8%). As stakeholders observed:

  > The early disclosure of the brief of evidence is crucial so that the accused knows the case they will face at trial and is not making a decision on partial information. One of the most important things the accused wants to know is, 'how strong is the case against me? Am I going to win my trial or not?' A defence lawyer cannot properly advise on that without the full brief of evidence and not knowing what the jury will see.
  >
  > A full and early brief is pivotal to achieving an increase in trial readiness and all the other factors flow on from the brief being available.

- Between 65 and 72 per cent of stakeholders considered mandatory criminal case conferencing to be critical in achieving three of the five expected outcomes – an increase in guilty pleas overall (71.9%), an increase in early guilty pleas (68.6%) and a reduction in the time taken to finalise indictable matters (64.7%). As a stakeholder commented:

  > getting the parties together early will encourage discussion of the issues, the weaknesses, the strengths and who is prepared to move where.

- While charge certification is considered to be critical in achieving an increase in early guilty pleas (60.0%) and a reduction in the time taken to finalise indictable matters (61.7%), 65.6 per cent of stakeholders believed that it is not critical in achieving a reduction in average trial length.

- Continuous legal representation is considered to be critical in achieving both an increase in trial readiness (72.7%) and a reduction in average trial length (62.5%). As stakeholders noted:

> Continuity of representation throughout the process is critical to trial readiness because the person responsible for the trial is preparing from when they get the brief, e.g. assessing the brief for sufficiency, issuing requisitions to police, conferencing witnesses.
>
> Continuity of representation provides clarification, promoting both sensible and quick resolution where quick resolution is possible. Where resolution is not possible, it also promotes prompt identification of issues at trial and sensible dialogue about the way that those issues can be efficiently resolved.

- More than 80 per cent of the stakeholders believed that the three-tiered statutory sentencing discount scheme was not critical in achieving either an increase in trial readiness (84.8%) or a reduction in average trial length (93.7%). As one stakeholder noted, 'the scheme is only relevant to pleas'.
- Only half (51.4%) of the stakeholders considered the three-tiered statutory sentencing discount scheme to be critical in achieving an increase in early guilty pleas, with an additional 11.4 per cent indicating that this element of the reform is helpful, but not critical, in achieving this outcome.
- Between 62 and 93 per cent of stakeholders considered that Local Court case management is not critical in achieving any of the expected outcomes of the reform package.

The reform package is being delivered largely as planned, but there have been some challenges

About two in three (21 or 65.6%) of the 32 stakeholders answering this question stated that the EAGP reform package is largely being delivered as planned. However, ten (31.2%) stakeholders disagreed; most of these stakeholders were defence lawyers. One stakeholder noted that the reform package is sometimes being delivered as planned.

Changing organisational culture and habits are major challenges associated with the EAGP reform program. This issue accounted for one in five (or 14) of the 73 comments made by the stakeholders interviewed. Stakeholders referred to the challenges of changing previous habits; involving people earlier rather than 'leaving things to the last minute'; and building positive working relationships that did not previously exist. Stakeholders also noted the need to educate defence lawyers about charge certification, case conferencing and how the system as a whole works. It was perceived that the legal profession should accept that sentencing discounts are not 'illusory', but that they are being applied genuinely.

Unsurprisingly, some (9 or 12.3%) of the challenges noted by the stakeholders related to issues surrounding the briefs of evidence. As one stakeholder noted:

> It all hinges on the brief of evidence, how accurate and complete and early it is provided.

Other challenges that stakeholders identified in implementing the EAGP reform program included:

- police-related issues (9 comments), for example: a lack of appropriate training and understanding of the process by operational police officers who prepare the briefs of evidence and that the majority of general duties and junior police officers have no prior experience with the ODPP;
- a lack of continuity of legal representation in practice (4 comments), for example: 'DPP do not assure or maintain the trial advocate or Crown Prosecutor who participated in the case conference for the trial';
- poor communication between the police and the ODPP (4 comments);
- resource and funding issues (4 comments), for example, resourcing the ODPP and Legal Aid NSW because they have a huge number of EAGP matters; and
- balancing solicitor, court and judicial workloads (3 comments).

Table 6. Which EAGP elements are considered critical to achieve each expected outcome, percentage of stakeholders

EAGP element	Expected outcome of the EAGP reform package																			
	Increase in guilty pleas overall				Increase in early guilty pleas				Reduction in time taken to finalise indictable matters				Increase in trial readiness				Reduction in average trial length			
	Critical	Not critical	Helpful	Total [1.]	Critical	Not critical	Help-ful	Total	Critical	Not critical	Helpful	Total	Critical	Not critical	Helpful	Total	Critical	Not critical	Helpful	Total
Early disclosure of briefs of evidence	67.6	29.4	2.9	34	88.6	8.6	2.9	35	80.0	14.3	5.7	35	61.8	23.5	14.7	34	35.5	54.8	9.7	31
Charge certification	48.5	45.4	6.1	33	60.0	31.4	8.6	35	61.7	38.2	-	34	52.9	41.2	5.9	34	34.4	65.6	-	32
Mandatory criminal case conferencing	71.9	18.7	9.4	32	68.6	20.0	11.4	35	64.7	26.5	8.8	34	48.5	51.5	-	33	54.8	45.2	-	31
Continuous legal representation	51.5	24.2	24.2	33	48.5	33.3	18.2	33	57.1	28.6	14.3	35	72.7	21.2	6.1	33	62.5	31.2	6.2	32
Three-tiered statutory sentencing discount scheme	48.5	48.5	3.0	33	51.4	37.1	11.4	35	45.7	51.4	2.9	35	15.1	84.8	-	33	6.2	93.7	-	32
Local Court case management	26.7	63.3	10.0	30	28.1	62.5	9.4	32	30.3	66.7	3.0	33	12.9	83.9	3.2	31	3.3	93.3	3.3	30

[1.] Total number of stakeholders who answered the question; excludes those who could not comment or were uncertain about whether or not the element was critical.

At least 60 per cent of the stakeholders who answered the question considered this element to be critical

At least 60 per cent of the stakeholders who answered the question considered this element **not** critical

The delivery of the reform package has produced some unexpected consequences

Twenty (57.1%) of the 35 stakeholders interviewed noted that the EAGP reform package had resulted in some unexpected consequences, most of which were negative, while only a few positive consequences were not expected:

- the package facilitates improvements in skills among professionals working in the criminal justice system (e.g. junior solicitors learn to negotiate; 4 comments);
- there are improved relationships and better co-operation between professionals from different agencies (3 comments); and
- EAGP procedures greatly reduce the time taken to deal with fitness to be tried matters by allowing magistrates to commit these matters to the District Court which then considers the fitness issues (1 comment).

While there were few unexpected positive consequences, stakeholders noted several negative consequences of the reforms that were not anticipated. One of these was the perceived adverse effect of some of the new procedures (10 or 26.3% of 38 comments), including the incongruity of the requirement to hold mandatory case conferences when the accused person has no intention of entering a guilty plea; ODPP not appearing in bail application matters and the subsequent need for police prosecutors to appear in these matters with limited information about the strengths and weaknesses of the prosecution case; and a concentration of more complex matters in District Court trials (e.g. matters involving violence, complex drug matters, child sexual assault matters and sexual assault matters) because accused persons tend not to plead guilty to these offences in the Local Court. As one stakeholder noted:

> Pleading guilty [to child sexual assault or sexual assault] is a big decision to make and often the accused can't make it at the preliminary stage. If the accused pleads guilty, then they're acknowledging their guilt to their family, friends, et cetera, et cetera, but if they go to trial and are found guilty, they can always blame the jury and say the jury got it wrong.

The themes of delays in the court process (9 or 23.7%) and the rigidity of the sentencing discount structure (5 or 13.2%) were again raised. For example, matters take longer to resolve in order to allow for the charge certification and case conferencing processes to occur, Commonwealth matters take longer to reach the District Court, and trials will always run once matters reach the District Court because the five and 10 per cent discounts offered at this stage are perceived to be insufficient to motivate defendants to plead guilty. Although only comprising a small proportion of the comments, some stakeholders noted the impact of the reform package on the professionals involved (4 or 10.5%). For example, the increased workload for ODPP staff and police prosecutors; and welfare and mental health concerns for ODPP trial prosecutors, Crown prosecutors and solicitor advocates due to the high concentration of District Court trials dealing with child sexual assault and sexual assault matters because, as noted earlier, defendants do not plead guilty.

Other changes could encourage early appropriate guilty pleas and achieve better case management

Four (11.4%) of the 35 stakeholders stated that no other changes are necessary to encourage early appropriate guilty pleas and achieve better management of cases. However, two of these stakeholders noted that the current elements of EAGP need to be more effectively implemented. Given their comments regarding various elements of the reform, some of the suggestions made by the remaining stakeholders are not surprising. These include that the prosecution should be required to disclose at an early stage how the trial will run, including which witnesses will be called, whether there will be expert evidence and any tendency or coincidence issues; and that the defence legal practitioners should be required to disclose their case earlier in order to narrow issues and shorten the trial length (13.8% of 58 comments). An associated issue noted was that briefs of evidence should both be served early and they should include more relevant information not just be compliant with the Agreement between the NSW Police

Force and the ODPP (4.0%). It was also suggested that substantial improvements could be achieved by the earlier involvement of the ODPP in matters (7 or 12.1%), for example:

> The ODPP should be involved from the start because they have the ultimate power to resolve the matter, so changing the memorandum of understanding.

Making adjustments to the statutory sentencing discounts to obtain more guilty pleas comprised a further 8.6 per cent of the comments. Some suggested improvements on the current sentencing discount model included increasing the maximum discount from 25 to 30 per cent or allowing a larger discount for guilty pleas to more complex matters, such as child sexual assault, to acknowledge the benefits of a child not having to give evidence.

Other changes that stakeholders believed could encourage early appropriate guilty pleas and achieve better management of cases include:

- closer case management by the court (4 comments). As one stakeholder noted:

  > the magistrate be required to ask two questions of the parties: 'can this resolve in the Local Court?' and 'have you reduced the length of the trial?' If these questions are asked by the bench, lawyers have to answer them and the work will be done.

- incorporating elements of other schemes or processes (4 comments, e.g. the re-introduction of committal hearings in cases where there is a high chance of an acquittal or resolution, or sentence indication hearings in which both the Crown and the accused agree on a sentence which is then binding on the court);
- adjusting some timeframes (3 comments, e.g. decreasing the time to prepare the brief of evidence from eight to six weeks);
- a provision to allow an accused to plead guilty before a brief of evidence is prepared (2 comments); and
- imposing meaningful sanctions for not adhering to EAGP procedures (2 comments).

DISCUSSION

The main purpose of this study was to gauge stakeholder perceptions about whether the EAGP reform program is being implemented as planned and which, if any, of the key elements are critical to achieve the program's expected outcomes. Overall, two in three stakeholders stated that the EAGP reform package is largely being delivered as intended.

Reflecting the six research questions, other key findings from the interviews include that:

1. briefs of evidence are not served on the ODPP earlier in proceedings since the implementation of the EAGP reforms commenced (67.9% of 28 relevant stakeholders) but are adequate to enable prosecutors to determine the most appropriate charge(s) (100% of 5 relevant stakeholders);
2. charges laid by the NSW Police Force in EAGP matters are certified by senior prosecutors (100% of 26 relevant stakeholders);
3. mandatory criminal case conferences occur and conference certificates are filed with the court (100% of 26 and 20 relevant stakeholders, respectively);
4. continuity in legal representation is not always achieved in practice from the service of the brief of evidence to case finalisation (52.9% of 34 stakeholders);
5. sentence discounts are applied strictly to the timing of the guilty plea (100% of 21 relevant stakeholders); and

6. magistrates do not always give accused persons the oral and written explanations regarding the Local Court committal process and the sentencing discounts that apply for pleading guilty (50% of 16 relevant stakeholders).

It is clear that some aspects of the EAGP reform program are being delivered as planned. Based on the perceptions of the stakeholders interviewed, briefs of evidence are adequate to enable prosecutors to determine the most appropriate charge(s), charge certification occurs, mandatory criminal case conferences occur, conference certificates are filed with the court and sentence discounts are applied strictly to the timing of the guilty plea. As some stakeholders noted, these processes must occur as they are all defined in legislation. However, stakeholders perceive that other elements of the program are not always operating as intended. In particular, stakeholders noted issues related to the service of briefs of evidence, the scope of mandatory criminal case conferences, continuity of legal representation, and case management in the Local Court.

Stakeholders observed that briefs of evidence are not served on the ODPP earlier than they were prior to the implementation of the reforms, even though they are no longer required to be in an admissible form and therefore should be simpler and less time-consuming for police officers to prepare. Defence lawyers accounted for seven in 10 (68.4%) of the 19 stakeholders who expressed this view. In addition, only slightly more than half of the defence legal practitioners regarded the post-reform briefs of evidence as adequate for accused persons to be able to decide whether or not to plead guilty in the Local Court, asserting that crucial evidence (e.g. expert evidence, DNA evidence, transcripts) is often not included. Briefs of evidence are the fundamental ingredient in the committal process. Any difficulties with the timing of their service, their quality or completeness have a compounding effect and can delay or disrupt subsequent stages.

Furthermore, under the EAGP arrangements, a matter is generally not allocated to a prosecutor until the brief of evidence is served on the ODPP by the NSW Police Force. Some stakeholders argued that this arrangement precludes early engagement between the defence and prosecution teams. Earlier engagement could facilitate the preparation of a fuller brief of evidence, simplify charge negotiations, allow for the identification and requisitioning of essential pieces of evidence or materials, and assist in narrowing issues. The earlier active involvement of, and oversight by, ODPP prosecutors was perceived to provide a possible solution to these issues. However, it was recognised that this may be difficult to achieve in practice given the heavy workload of senior prosecutors. Other stakeholders suggested that stricter case management by the Local Court may assist. It was proposed that judicial officers could, where necessary, force the disclosure of relevant evidence and encourage parties to have further discussions.

The importance of briefs of evidence in the reform program's success is reinforced by stakeholders' responses to the interview questions regarding which of the EAGP program elements are critical to achieve the program's expected outcomes. Of the six EAGP elements, the early disclosure of briefs of evidence was considered by at least 60 per cent of the stakeholders to be critical in achieving four of the five expected outcomes – an increase in early guilty pleas (88.6% of stakeholders), an increase in guilty pleas overall (67.6%), an increase in trial readiness (61.8%) and a reduction in the time taken to finalise indictable matters (80.0%).

Mandatory criminal case conferencing was another element of the EAGP reform package that most stakeholders considered critical in achieving an increase in guilty pleas overall (71.9% of stakeholders), an increase in early guilty pleas (68.6%) and a reduction in the time taken to finalise indictable matters (64.7%). Stakeholders noted that case conferencing achieves these outcomes by promoting more open and frank discussions between parties, helping to narrow the issues to be resolved ahead of trial and ensuring senior legal practitioners who would ultimately conduct any trial are invested and engaged in early consultations. Determining whether there are any offences to which the accused is willing to plead is the primary objective of case conferences and this objective is, in the view of most stakeholders, clearly being met. However, the two subsidiary objectives of the mandatory criminal case conferencing process, namely the provision of additional material to enable a plea to be entered and the identification of key

issues for the trial, are rarely being achieved. This suggests that refinements to the case conferencing model to enable additional issues to be addressed through this process could result in further system efficiencies, particularly with respect to trial readiness and trial length.

Continuity of legal representation was also identified as an important element of the EAGP reform package. Nearly three-quarters of stakeholders interviewed considered continuity to be critical in achieving an increase in trial readiness and 63 per cent considered it critical in achieving a reduction in average trial length. Most stakeholders recognised the advantages of continuous legal representation, most notably that it facilitates improved client service, narrowing of issues for trial and certainty of charges. More than 90 per cent also agreed that senior legal practitioners are more often involved early in the court process since the implementation of the EAGP reforms. However, only half of the stakeholders asserted that continuous legal representation was being achieved from charge to case finalisation. Several logistical and resourcing challenges (e.g. staff movements and leave) faced by both the defence and prosecution were noted in this regard. Some stakeholders also raised concerns about the increased workload of ODPP staff and police prosecutors arising from their earlier involvement in the committal process. This raises the question as to whether such a high-level of engagement can be sustained over the longer-term given the growing number of complex matters (such as sexual assault) that are being brought before the courts; matters which are potentially less amenable to early resolution.

Interestingly, only about half of the stakeholders interviewed considered the three-tiered statutory sentencing discount scheme to be critical in achieving either an increase in early guilty pleas (51.4%) or an increase in guilty pleas overall (48.5%). This is contrary to the expectation that the certainty of a substantial sentencing discount would provide a strong incentive for accused persons to plead guilty early in the process. One possible explanation for this unexpected result is that, at the time the interviews were undertaken, only a relatively small number of EAGP matters had been finalised in the higher courts across NSW (approximately 2,280).[14] As more matters proceed to the sentencing stage and experience with the sentencing discount scheme broadens, this element of the reform package may play a greater role in the early resolution of matters. However, it is also possible that the benefits of the sentencing discount scheme are not being communicated clearly enough to have the desired effect. Only half of the police prosecutors and defence legal practitioners interviewed asserted that magistrates give accused persons the oral and written explanations regarding the new processes, including the statutory sentencing discounts for pleading guilty early. Some stakeholders noted that magistrates generally delegate the task of the oral explanation to the accused person's legal representative. The failure by the magistrates to explain the discount scheme has the potential to undermine the benefits that are expected from this element of the reforms. This aspect of the EAGP program should continue to be monitored.

The current study encapsulates the opinions of a wide range of stakeholders who represent the diverse justice agencies/individuals directly involved in each stage of the EAGP reform program. While most of these stakeholders reported that the EAGP program is being delivered (for the most part) as intended, their responses highlight the challenges in delivering a major system-wide reform program. This undertaking is particularly difficult in circumstances where the success of the reform package is contingent on the active and continued co-operation of multiple different agencies that are operating within an adversarial system. Whether the long-term goal of effective and efficient resolution of legal disputes has ultimately been achieved by the EAGP reforms is the focus of BOCSAR's outcome evaluation (Klauzner & Yeong, 2021). The results presented in this bulletin, however, indicate that further refinements to the EAGP model could be considered in order to maximise the benefits realised by the reforms.

14 These matters were finalised between 30 April 2018 and 30 April 2020. An additional 6,825 non-EAGP matters were finalised over this time period. Of the 2,280 EAGP matters finalised, 1,980 (86.9%) were sentence only matters and 174 (7.6%) were trial matters, with most of the charges finalised being strictly indictable (1,726 or 75.5%).

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APPENDIX A - INTERVIEW SCHEDULE

Briefs of evidence prepared by the NSW Police Force

1. Do you believe that the briefs of evidence are now being served earlier than they were prior to the implementation of the reforms?
2. [for ODPP prosecutors] How adequate are the briefs of evidence that are served by the NSW Police Force on the ODPP prosecutors to enable prosecutors to determine the most appropriate charge(s) and to certify the charge(s) laid by the NSW Police Force? Explain.
3. [for defence lawyers] How adequate are the briefs of evidence that are served by the prosecutor on the defence for accused persons to be able to decide whether or not they should plead guilty in the Local Court? Explain.

Charge certification process

1. Is charge certification occurring?
2. [for defence lawyers] Has the charge certification process provided you with greater certainty about the charges that will ultimately proceed to trial?
3. Have you experienced any delays in the charge certification process?
   If yes, what are the reasons for the delays?
4. How well is the charge certification process operating?
5. How effective is the process of negotiating charges prior to the charge certification phase? Explain.
6. What changes, if any, are required to make the charge certification process more effective?

Mandatory criminal case conferences in the Local Court

1. Is the mandatory criminal case conferencing process occurring?
2. Are conference certificates being filed with the court?
3. According to the *Justice Legislation Amendment Committals and Guilty Pleas Act 2017* (s 70 (2-3)):

   > the principal objective of the case conference is to determine whether there are any offences to which the accused person is willing to plead guilty.
   >
   > A case conference may also be used ...
   >
   > - To facilitate the provision of additional material or other information which may be reasonably necessary to enable the accused person to determine whether or not to plead guilty to 1 or more offences,
   > - To facilitate the resolution of other issues relating to the proceedings against the accused person, including identifying key issues for the trial of the accused person and any agreed or disputed facts.

   How well are case conferences achieving these objectives? Explain.
4. What features of case conferences are critical to achieve early appropriate guilty pleas in the Local Court?
5. What are the advantages of a senior prosecutor and defence lawyer holding mandatory criminal case conferences in the Local Court?
6. What are the disadvantages of a senior prosecutor and defence lawyer holding mandatory criminal case conferences in the Local Court?

Continuous legal representation from service of the brief or charge certification/case conference to case finalisation

1. In your experience, are senior prosecutors and defence lawyers involved earlier in the process during the post-reform period compared to the situation prior to the implementation of the reforms?
2. In your experience, since the reforms began, is continuity in legal representation being achieved in practice from the service of the brief or charge certification to case finalisation?
3. To what extent has continuity of representation facilitated:
    a) certainty of charges;
    b) more meaningful and candid negotiations in case conferencing;
    c) narrowing of the issues for trial;
    d) early discussion of pre-trial issues;
    e) improved 'client service' to victims and defendants.
4. What are the advantages of continuous ODPP legal representation from the service of the brief or charge certification to case finalisation?
5. What are the challenges/disadvantages associated with continuous ODPP legal representation from the service of the brief or charge certification to case finalisation?
6. What are the advantages of continuous Legal Aid representation from the case conference to case finalisation?
7. What are the challenges/disadvantages associated with continuous Legal Aid representation from the case conference to case finalisation?

Three-tiered statutory sentencing discount scheme

1. From your experience, are the sentence discounts being strictly applied according to the timing of the guilty plea?
2. From your observation, when passing sentence and applying the sentencing discount, how well do sentencing judges indicate to the accused person how the sentence imposed was calculated?
3. From your observation, when passing sentence and either not applying the sentencing discount or reducing the discount, how well do sentencing judges indicate to the accused person the reasons for that determination?
4. From your observation, are accused persons better able to make an informed decision about sentencing discounts and the committal process now, since the implementation of the reforms, compared to before the reforms? Explain.
5. In your opinion, has the sentence discount been a key consideration in an accused person's decision to plead guilty in the Local Court?
6. What are the advantages of a three-tiered statutory sentencing discount scheme?
7. What are the disadvantages of a three-tiered statutory sentencing discount scheme?

Local Court case management

1. From your observation, are magistrates giving accused persons the oral and written explanations regarding the committal process and the sentencing discounts that apply for pleading guilty?

Critical aspects of the reform for achieving the expected outcomes

1. Which (if any) of the reform elements are critical to achieving the reform program's expected outcome of:
    a) an increase in guilty pleas overall?
    b) an increase in early guilty pleas?
    c) a reduction in the time taken to finalise indictable cases?
    d) an increase in trial readiness?
    e) a reduction in average trial length?

2. Is the reform package being delivered as intended?
3. What are the major challenges associated with implementing the reform package?
4. Is the delivery of the reform package producing any unexpected consequences (either positive or negative)? Explain.

Other changes to encourage early appropriate guilty pleas

1. What other changes, if any, would encourage early appropriate guilty pleas and achieve better management of cases?

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ISSN 2204-5538 (Online) • ISBN 978-1-925343-98-4