



## Indictments

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### Content of the Indictment and Signing the Indictment

Normally regional offices decide the content of indictments and sign the indictment in accordance with the Director's authorisation. This may include deciding whether an accused should be indicted on charges different in number and/or nature to those upon which the committal order was made.

In the following situations, the Director must sign the indictment:

- (a) it is proposed to include a count or counts in the indictment in reliance on the power under s6(2B)(a) - where the prosecution relates to an offence on which the person was examined but not committed for trial;
- (b) it is proposed:
  - to include one or more counts in the indictment in reliance on the power under s6(2B)(b) - an offence disclosed in the course of committal on which the person was not examined or committed for trial; and
  - the count or counts would be substantially different, either in number and/or kind, from the offence or offences for which a committal order was obtained; or
- (c) the matter involves an ex officio under section 6(2D).

Any proposed indictment must be referred to the Director if it:

- involves a case that is politically sensitive,
- could be contentious; or
- where the Director has previously indicated that he should be consulted in relation to the decision whether to institute a prosecution on indictment.

The ultimate responsibility for ensuring that an indictment includes appropriate counts, and is in a proper form, rests with the person who signs it.

## 2 Dating Indictments

The following table sets out when indictments are to be dated according to jurisdiction.

Jurisdiction	Time at which indictment to be dated
ACT	Dated when signed
NSW	Dated when signed
NT	Dated when signed
Qld	Dated when presented
SA	Dated when presented
Tas	Dated when presented
Vic	Dated when signed
WA	Dated when signed

## 3 Changing Charges from the Committal Order

When the offence/s to be included on the indictment are different to those in the committal order, the changes are made through the operations of sections 6(2A) to 6(2D) and possibly section 9(4) of the DPP Act. The operation of those powers and the authority to operate those powers is discussed below.

Where the prosecutor proposes to proceed on charges which are different from those initially laid, or to discontinue some of the original charges, the officer should consult with the Australian Federal Police (AFP) or other referring agency which may wish to comment or provide further information, relevant evidence or public interest factors.

- **The Ex Officio Powers in Sections 6(2A) to 6(2D)**
- If the offence to be included is founded on facts or evidence disclosed in the course of the committal proceedings (s6(2B)(b))

If the offences to be included are not substantially different in number and/or kind (for example in substance and/or elements) to the committal order the decision under section 6(2B) can be made at the regional office level in accordance with the authorisation so long as the matter is not politically sensitive, contentious or a matter which the Director has indicated he should be consulted on.

- If the defendant consents to the inclusion of the offence (s6(2A))

If the offence in one which the defendant consent to being included on the indictment, the decision can be made at the regional office level in accordance with the authorisation unless

the matter is politically sensitive, contentious or a matter which the Director has indicated he should be consulted on.

- If the offence is one which the defendant was examined but not committed for trial (s6(2B)(a)) or not been examined or committed in relation (s6(2D))

If the offence is one which the defendant was examined but not committed for trial or a true ex officio, the decision to include the offence on the indictment must be referred to the Director for decision.

- **The No Bill Power in Section 9(4)**
- Discontinuing a charge which is included on the committal order

Section 9(4) of the DPP Act states:

Where:

- (a) a person is under commitment, or has been indicted, on a charge of an indictable offence against a law of the Commonwealth; and
- (b) the prosecution for the offence was instituted, has been taken over or is being carried on by the Director;

the Director may decline to proceed further in the prosecution and may, if the person is in custody, by warrant signed by the Director, direct the discharge of the person from custody, and where such a direction is given, the person shall be discharged accordingly.

As the person is under commitment for a charge, the charge should be formally discontinued if a decision is made not to include it on the indictment.

The decision under 9(4) can be made at the regional level, in accordance with the delegation, if the charge or charges are to be replaced by charges which are founded on facts or evidence disclosed in the course of the committal proceedings and are not substantially different in number and/or kind (for example in substance and/or elements) to the committal order. However, if the matter is politically sensitive, contentious or a matter which the Director has indicated he should be consulted on, the decision should be referred to the Director.

In all other matters, the decision to discontinue should be referred to the Director.

#### 4. Amending Indictments

If an indictment can be amended through a procedural legislative provision or court rules, the amendment occurs without reference to the powers in section 9(4) or sections 6(2A) to (2D) of the DPP Act. The decision to seek an amendment to an indictment under the procedural provision is made by the regional office. The Director should be informed of the amendment if the matter is politically sensitive, the decision could be considered contentious or the Director has previously indicated he should be consulted in relation to the decision.

If an indictment cannot be amended through a procedural legislative provision or court rules, the amendment occurs through the operation of the powers in section 9(4) or sections 6(2A) to (2D) of the DPP Act in the same way as discussed above in relation to changing charges from a committal order.