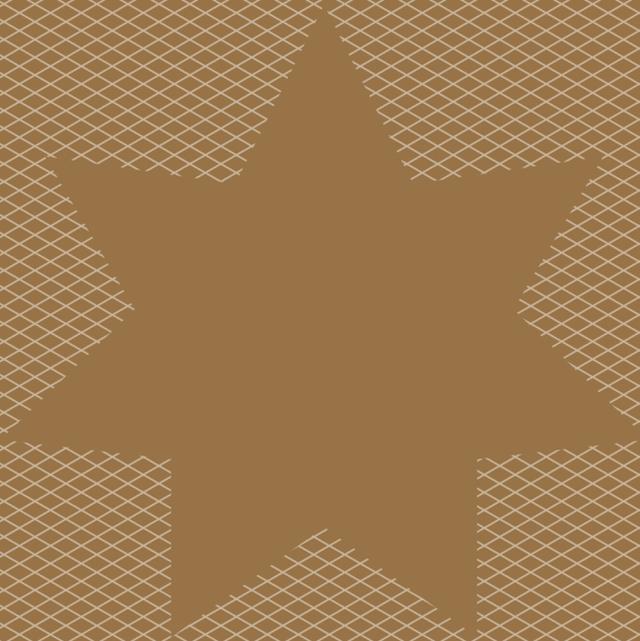




**CDPP**

*Australia's Federal Prosecution Service*

**Guidelines for dealings between  
Investigators and the  
Commonwealth Director of Public Prosecutions  
Last updated: January 2022**



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## Guidelines for dealings between Investigators and the Commonwealth Director of Public Prosecutions

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*November 2020*

### Introduction

The CDPP's purpose is to prosecute crimes against Commonwealth law through an independent prosecution service that is responsive to the priorities of our law enforcement and regulatory partners and that effectively contributes to the safety of the Australian community and the maintenance of the rule of law.

To achieve our purpose, we build effective partnerships with partner agencies and bring cases to a close through successful prosecutions.

The CDPP receives referrals from a diverse range of partner agencies with investigative functions. These guidelines have been prepared to assist such agencies in their dealings with the CDPP throughout the prosecution process.

The guidelines do not address every issue which can arise in dealings between the CDPP and partner agencies and will not provide the answer to every question which may arise.

*If you require assistance please contact the CDPP's Legal Business Improvement (LBI) Branch by email  
– [LBI@cdpp.gov.au](mailto:LBI@cdpp.gov.au)*

# Guidelines for dealings between Investigators and the Commonwealth Director of Public Prosecutions

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## 1. Purpose and Application

- 1.1 The purpose of these guidelines is to set out the roles, responsibilities and expectations of the CDPP and partner agencies by providing a framework for investigators in the conduct of the prosecution of Commonwealth criminal offences.
- 1.2 The guidelines apply to all partner agencies that refer briefs of evidence or seek advice from the CDPP. However, the CDPP from time to time enters into Memoranda of Understanding (MOUs) or other specific arrangements with some agencies, which will set out agreed roles and responsibilities between the CDPP and the agency on particular issues relevant to that agency<sup>1</sup>. The guidelines contained in this document are not designed to override those more specific arrangements. In the event that there is conflict, the terms of the specific arrangement will prevail. Where there is no specific arrangement in place, or the specific arrangement does not deal with a particular topic, these guidelines will apply.
- 1.3 The guidelines recognise that the CDPP and partner agencies are bound by their statutory and operational functions.

## 2. Other guidelines/resources

- 2.1 The CDPP's Partner Agency Portal hosted on the website [www.cdpp.gov.au](http://www.cdpp.gov.au) provides links to these guidelines, as well as to the [National Legal Direction – Prosecution Services for Partner Agencies](#) which sets out a useful overview of the services the CDPP can provide to partner agencies.
- 2.2 The Partner Agency Portal provides access to a range of other important policies, guidelines and resources for partner agencies, including the [Prosecution Policy of the Commonwealth](#) ('Prosecution Policy'), National Offence Guides, Warrant Manuals and important material relating to disclosure.

## 3. The CDPP

- 3.1 The CDPP was established under the *Director of Public Prosecutions Act 1983* ('the Act') and began operations on 5 March 1984. Its functions include the responsibility for the prosecution of summary and indictable criminal offences against Commonwealth law which it undertakes in accordance with the Prosecution Policy of the Commonwealth.
- 3.2 The CDPP is not an investigative agency. It depends upon police and other investigators to investigate alleged offences and prepare briefs of evidence to support prosecution action. However, the CDPP may provide legal advice to investigators on prosecution related issues that arise during the course of an investigation. Such issues may include, for example, the admissibility of evidence and the most appropriate charges.
- 3.3 The CDPP's legal practice operates via six specialised Legal Practice Groups, each headed by a Deputy Director (also known as a Practice Group Leader), who is responsible for teams of lawyers in each State or Territory. These Practice Groups are responsible for the following key areas:

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<sup>1</sup> Occasionally, this may also occur via an exchange of letters.

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- Commercial, Financial and Corruption;
- Revenue and Benefits Fraud;
- International Assistance and Specialist Agencies;
- Organised Crime and Counter Terrorism;
- Illegal Imports and Exports;
- Human Exploitation and Border Protection.

3.4 The Act ensures that there is a separation of the investigative and prosecutorial functions in the Commonwealth criminal justice system. Prosecution decisions are made by the CDPP, independently of those responsible for the investigation. Whilst the conduct of prosecutions will occur in close consultation with investigators from the partner agency, the CDPP has the ultimate responsibility for deciding how a prosecution is conducted in accordance with the Prosecution Policy.

### **4. The decision to investigate**

4.1 The decision whether to commence an investigation is made by the relevant partner agency investigating the matter in accordance with their relevant statutory functions ('the partner agency').

4.2 That decision should be made in accordance with the law enforcement strategy of the partner agency and having regard to the Prosecution Policy. As a general rule, the more serious an alleged offence, the more likely it will be that the matter should be investigated, and prosecuted, rather than dealt with by some other process.

4.3 The Prosecution Policy recognises that there is no requirement that every offence which comes to the attention of the authorities must be prosecuted.

4.4 There is no requirement that the CDPP be consulted when a decision is made whether to commence an investigation.

### **5. The decision to arrest or proceed on summons or CAN**

5.1 Where an investigator has a power of arrest, the decision whether to arrest and charge or proceed on summons or Court Attendance Notice (CAN) or equivalent initiating process will be a matter entirely for the investigator. Where time permits, the CDPP is always assisted by some advance notice of an arrest, especially in cases where bail is likely to be an issue. Early engagement with the CDPP will help ensure that CDPP prosecutors are properly briefed in advance of any remand hearing.

5.2 Where an investigator wishes to proceed on summons or CAN or equivalent initiating process and wishes to have the matter prosecuted by the CDPP, it is strongly recommended that a brief of evidence be submitted to the CDPP recommending that criminal proceedings be commenced. In the unusual circumstance of a partner agency wishing to issue the initiating process without first submitting a brief of evidence to the CDPP for assessment, and where the agency would like to have the matter prosecuted by the CDPP, the CDPP should be consulted prior to the proceedings being initiated.

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### **6. Pre-brief advice during an investigation**

- 6.1 The CDPP is available, if required, to provide advice on any questions of law on prosecution related issues that arise during the investigation of an alleged offence against Commonwealth law. This service is available to all partner agencies in matters that are sensitive, significant, complex or major, that are of particular importance to an agency's enforcement strategy, that have significant resource implications or that are likely to have an impact on a broader class of cases. Senior members of CDPP staff provide this type of advice.
- 6.2 The CDPP regards the provision of pre-brief advice to partner agencies as a valuable practice that is in the interests of both the CDPP and agencies. Pre-brief legal advice on prosecution related issues may pertain to areas such as the choice of charges, the elements of offences, any substantive impediments to proving the offence and how these might be addressed, identifying particular witnesses who could be approached and lines of enquiry that might assist, options for scoping the investigation, the seriousness of the offending and any likely public interest considerations.
- 6.3 If advice is needed from the CDPP, it should be sought from the appropriate CDPP Assistant Director (Branch Head).
- 6.4 In requesting advice, the partner agency will need to identify the legal issues and potential offences on which the advice is sought and provide sufficient factual information against which to frame the advice given. This information should be provided in writing. Guidelines and templates have been developed by CDPP and various partner agencies for the provision of pre-brief advice. These documents set out what the CDPP requires in order to be able to provide effective and meaningful legal advice. For example, well established and effective guidelines and templates exist for the provision of qualified pre-brief advice to the AFP in more complex organised crime and counter-terrorism matters. Where these guidelines exist, they should be followed. Relevant guidelines are available from the Partner Agency Portal or CDPP Assistant Directors in the relevant jurisdiction.
- 6.5 Requests for urgent legal advice may be made, however advice can only be provided when there is adequate time to consider all relevant material.

### **7. Search warrants and other compulsory powers**

- 7.1 In some cases partner agencies will have the ability under a specific Act to apply for a search warrant or to exercise some other compulsory power in the course of an investigation. The decision to apply for a warrant or to use other compulsory powers is a matter for the partner agency and it is advisable for the agency to seek advice from its lawyers in considering the appropriateness of doing so and any related issues. However, the CDPP has on-line resources such as Warrant Manuals to assist investigators. These can be accessed through the CDPP Partner Agency Portal.
- 7.2 The CDPP is generally only available to provide assistance to partner agencies in relation to the preparation of documentation and the making of applications for search warrants, telephone interception warrants and stored communications warrants in particularly serious, complex, contentious or sensitive matters.

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7.3 Where a partner agency has obtained evidence that has been collected through the exercise of compulsive powers that abrogate the privilege against self-incrimination, such material should not be supplied to the CDPP without prior consultation with a senior CDPP prosecutor. Investigators should also seek advice from their own in-house legal teams prior to supplying such information to CDPP. In some cases, particularly where the persons who have been compulsorily examined may be the subject of criminal proceedings, providing such material to the prosecution may compromise the prosecution and give rise to an application for the criminal proceedings to be permanently stayed. The partner agency should have regard to the legislative scheme under which the material is obtained, to ascertain any restrictions on the use of the material and the circumstances in which the material may be disclosed. The agency should however inform the CDPP of the existence of this material in accordance with the [Guidelines on Disclosure for Investigators](#), located on the Partner Agency Portal.

### 8. Matters to consider when referring briefs to CDPP

- 8.1 Some partner agencies have functions to investigate a mix of civil, administrative or quasi-criminal proceedings in addition to criminal offences and will determine, according to their internal guidelines and policies whether to investigate criminal offences. Where an agency has conducted an investigation into an alleged criminal offence and it is of the view that the Prosecution Policy test has been met, a brief may be referred to the CDPP. The Prosecution Policy is a two stage test that must be satisfied before a prosecution is commenced. There must be sufficient evidence to prosecute the case, namely, reasonable prospects of conviction and it must be evident in light of the provable facts and the whole of the surrounding circumstances that the public interest requires a prosecution to be pursued.
- 8.2 The CDPP takes into account the views of the partner agency on the strength of the evidence and public interest factors in deciding whether a prosecution should be commenced. The agency should ensure that its views are clearly set out and communicated to the CDPP case officer. It may also assist the CDPP to understand how the particular case fits within the partner agency's law enforcement strategy.
- 8.3 The partner agency may, in any situation where it is unsure whether the Prosecution Policy test is met, or where it is of the view that matters are finely balanced, consult with the CDPP and submit a brief of evidence for assessment.
- 8.4 Where an agency conducts summary prosecutions by arrangement with the CDPP and the case is of a kind normally conducted by the agency, then the brief should be referred to the agency's prosecution section, not the CDPP. The prosecuting section can consult the CDPP if required.

### 9. Preparation and Referral of briefs to CDPP

- 9.1 Investigators will need to prepare the brief of evidence to ensure it complies with the relevant local jurisdictional requirements. The appropriate jurisdiction will be governed by where the charges will be filed. The CDPP can assist investigators if they are not sure which jurisdiction applies.

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- 9.2 The CDPP’s strong preference is for briefs to be prepared and provided in an electronic brief format. The CDPP can assist investigators with advice and training on e-briefs. In preparing the brief of evidence, investigators must have regard to the CDPP’s [e-Brief Referral Guidelines](#) on the CDPP’s Partner Agency Portal. An e-Brief referred to the CDPP is set out in a standard folder structure and is divided into various parts including covering material, the evidence, witness and victim contact details and the disclosure material. The *e-Brief Referral Guidelines* set out minimum standards and instructions for providing e-Briefs to the CDPP. The CDPP acknowledges that not all partner agencies will be able to prepare briefs in an electronic form and there may be a need to prepare a paper brief. The information set out in the *e-Brief Referral Guidelines* can be applied and adapted to the preparation of briefs generally, including paper briefs.
- 9.3 The brief covering material is to include the Letter of Referral which should contain any comments by the investigator regarding any matters relevant to the prosecution including, but not limited to, the availability and sufficiency of evidence, possible defences, witness concerns, public interest factors, any administrative action undertaken or proposed, statutory time limits for commencement of the prosecution and any other matters relevant to the case.
- 9.4 The evidentiary material is to include a comprehensive index which lists and consistently describes every evidentiary item in the brief and electronic copies of all brief items consisting of all relevant material that the CDPP requires to conduct the prosecution. An exception exists in relation to briefs involving child exploitation material. Photographs and videos containing child exploitation material must not be included in briefs provided to the CDPP.
- 9.5 All material, documents and annexures referred in an e-brief will need to meet digital standards in accordance with the CDPP’s *e-Brief Referral Guidelines*.
- 9.6 All original documents and exhibits will be retained by the partner agency until they are needed in court, unless the CDPP requests otherwise.
- 9.7 The brief covering material should identify, in a Victim Details List, any victim in relation to the criminal conduct alleged in the brief of evidence, even if that victim is not a potential witness in the matter. The CDPP’s [Victims of Crime Policy](#) defines “victim” as an identified individual who has suffered harm as a direct result of an offence or offences committed, or apparently committed, against Commonwealth law or prosecuted by Commonwealth authorities. “Harm” includes physical or mental injury, pregnancy, emotional suffering and economic loss.
- 10. Victims of Crime**
- 10.1 The CDPP’s Prosecution and Victims of Crime policies set out the CDPP’s obligations towards victims of crime involved in matters prosecuted by the CDPP. In particular, the CDPP is required to keep victims informed of the prosecution process and seek their views in relation to certain prosecution decisions including plea negotiations and decisions to commence or discontinue a prosecution. The CDPP has a dedicated Witness Assistance Service (WAS) that provides information and support to victims and witnesses involved in matters prosecuted by the CDPP.

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### 11. Sending the CDPP documents with a security rating

- 11.1 Both the CDPP and partner agency acknowledge their obligations under the Protective Security Framework.
- 11.2 The CDPP operates a PROTECTED Information Communication Technology (ICT) network. Information with a security classification higher than PROTECTED (that is, CONFIDENTIAL, SECRET and TOP SECRET) must not be transmitted to the CDPP via email or loaded onto any CDPP ICT system. Partner agency staff with a need to provide such material to the CDPP should, if necessary, contact their relevant Agency Security Advisor or the CDPP for advice on the best way to deliver such material to the CDPP.
- 11.3 Sometimes material gathered during an investigation will be given a security classification to protect operational security during the investigation. Where this has occurred, the partner agency should give consideration to the question of whether such material can be re-classified or de-classified before referring this material to the CDPP as part of a brief of evidence.
- 11.4 Wherever possible, briefs of evidence submitted to the CDPP should not contain any documents marked “PROTECTED” or higher. This is because the CDPP must be able to disclose the evidence and other material in a brief of evidence to people outside the CDPP, such as counsel briefed by CDPP, defence practitioners and the court without breaching the Protective Security Policy Framework.
- 11.5 If the partner agency wishes to provide the CDPP with a document marked “PROTECTED” or higher, the document should not usually be included in the brief but instead either:
- Attached to the Letter of Referral; or
  - If it is unused material or other material disclosed to the CDPP, attached to the Disclosure Certificate accompanying the brief.
- 11.6 In either case, the Letter of Referral should explain the basis upon which the partner agency had decided to either provide the document to the CDPP and retain the classification of the document under the Protective Security Framework. In particular, the covering letter should explain the nature of the damage to the Commonwealth likely to be caused by the disclosure of the document to people outside the Commonwealth, including counsel briefed by the CDPP, defence practitioners and the court.
- 11.7 If the partner agency has any doubt about sending the CDPP a document marked “PROTECTED” or higher, it should consult the CDPP prior to sending the material to the CDPP.

### 12. Transmission of a brief of evidence

- 12.1 E-briefs can be referred to the CDPP via the CDPP Referrals Gateway. An e-brief template is available for partner agencies to use. Training manuals and guides for the CDPP Referrals Gateway are available through the Partner Agency Portal. Size restrictions apply to the volume of material that can be submitted through the CDPP Referrals Gateway. Agencies can contact the CDPP via [referrals@cdpp.gov.au](mailto:referrals@cdpp.gov.au) for assistance. If the size of the brief is too large to send through the CDPP Referrals Gateway then investigators can refer a brief of

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evidence in electronic, paper form or a combination of both in accordance with Safe Hand transfer protocols.

- 12.2 Save in exceptional circumstances, no original exhibits or evidential material should be provided to the CDPP. All original exhibits and evidential material should, wherever possible, be retained by the partner agency.

### 13. Return and retention of copy briefs

- 13.1 The CDPP will retain a copy of the brief of evidence supplied by the partner agency until such time as the prosecution of a matter is finalised. A matter will be finalised when a decision is made not to initiate a prosecution or when prosecution proceedings before the courts, including any appeals, have been completed. The CDPP's copy of the brief of evidence will then be destroyed. A CDPP file which does not include a copy of the partner agency brief of evidence, will be archived in accordance with the *National Archives Act 1983*. The CDPP will not retain a copy of the partner agency brief of evidence in either paper or digital form. Partner agencies wishing to retain a copy of the evidence used in support of a prosecution should make their own arrangements for the retention of such material.

### 14. Offers of Assistance to Authorities and Accomplices

- 14.1 There will be circumstances where investigators will need to consider whether to treat an accomplice as a suspect or a witness. The decision whether to give an accomplice an undertaking (ie an indemnity) under the Act is a matter for the CDPP. That decision will be made in accordance with the applicable guidelines (see 14.2) and Chapter 6 of the Prosecution Policy.
- 14.2 In these circumstances, investigators should refer to the [Guidelines for Commonwealth Investigative Agencies – Offers of Assistance to Authorities](#) on the Partner Agency Portal, and contact the CDPP for discussion and advice.

### 15. Security

- 15.1 Where there are security concerns around witnesses, informants and other persons involved in the judicial process, special arrangements may be developed in consultation with police or court security staff. The CDPP and partner agencies are committed to ensuring the safety of all individuals involved in the prosecution process and will address such concerns on a case by case basis as they arise.

### 16. Non publication and other protective orders

- 16.1 The CDPP's approach to non-publication and other protective orders is set out in its [National Legal Direction – Suppression Orders, Non-Publication Orders and Pseudonym Orders](#). In cases where the disclosure of information or evidence is likely to cause considerable harm to a partner agency, witness or other person, the partner agency may request the CDPP to seek a court order prohibiting the publication of such information. Where the CDPP considers it is appropriate to do so it will make any such application on behalf of the witness or the partner agency. However, in cases where, for example, an order is sought to protect investigative

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methodology or intelligence, it is likely to be necessary for the partner agency to make an application for these orders on its own motion.

- 16.2 Similarly, where a partner agency makes a claim for legal professional privilege or public interest immunity in order to decline to answer a question or produce a document, the partner agency should be prepared to appear and make submissions in support of such a claim when called on to do so.
- 16.3 Partner agencies should consult early with the CDPP about the need for any such protective orders and in order to determine who will be responsible for making the relevant application for such orders.

### **17. The decision to prosecute and conduct of the case**

- 17.1 Once a brief of evidence is referred to the CDPP, the decision to prosecute or to continue a prosecution rests with the CDPP. The CDPP will make this decision in accordance with the Prosecution Policy and will take into account the views of the partner agency and any victims.
- 17.2 Where practicable, a brief of evidence should be referred to the CDPP for assessment before charges have been laid.
- 17.3 The CDPP recognises, however, that it will often be necessary and appropriate that a prosecution be instituted by way of arrest and charge without an opportunity for consultation with the CDPP. In such cases, if difficult questions of fact or law are likely to arise it is most desirable that there be consultation on those issues before the arrest provided the exigencies of the situation permit. The decision to arrest is a decision of the investigating official. The CDPP will review cases commenced by way of arrest when a brief of evidence has been prepared.
- 17.4 If the CDPP decides that charges should not be laid in any matter that has been referred to it for assessment, it will provide written reasons for that decision to the partner agency. The reasons will include advice on whether there were any deficiencies in the brief of evidence and whether further investigation is required.
- 17.5 If the CDPP decides that charges should be laid in a matter, the partner agency should, if required, nominate an officer to act as the informant.
- 17.6 Once a prosecution has been commenced, in the course of conducting the prosecution, the CDPP may decide that:
- any charges on foot should be amended or withdrawn and new charges laid;
  - the proceedings should be discontinued entirely;
  - an appeal against a decision or sentencing outcome should be pursued.
- 17.7 The CDPP appreciates the very considerable time, effort and resources that partner agency staff apply to their investigations. The CDPP also appreciates how important many of these matters are to the investigative agencies who refer such matters for prosecution. The CDPP does not make any decision to withdraw charges lightly and is committed to consulting with the partner agency prior to any decision to withdraw charges being made. Such consultation will aim to enable the CDPP to fully appreciate the views and concerns of the partner agency

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and, at the same time, enable the CDPP to explain why it is thought necessary to withdraw charges. Unless impracticable to do so, the CDPP will provide the agency with reasons for the decision in writing.

- 17.8 The CDPP will consult with the partner agency to enable the agency to consider the matter and provide its views to the CDPP before a final decision is made in relation to discontinuing a matter entirely (unless impracticable to do so) and will provide the agency with reasons for the decision in writing.
- 17.9 The CDPP will actively engage with defence in exploring opportunities for early resolution of the case in accordance with the guidelines set out in clauses 6.14 to 6.21 of the Prosecution Policy. Also known as “charge negotiations”, this process can occur at any stage of the proceedings. The CDPP will ensure that the views of the partner agency are obtained and taken into account in considering any resolution of the matter. Where there is a victim that relates to the matter/charges in issue, the CDPP is also obliged to consider the victim’s views.

### **18. Release of counsel’s advice to partner agencies**

- 18.1 It is a function of the CDPP to provide legal advice to referring agencies. The CDPP may brief counsel to provide advice to the CDPP to assist the CDPP in assessing briefs of evidence and advising on legal issues.
- 18.2 The CDPP takes counsel’s advice into account in making its own assessments on legal issues and in then providing legal advice to referring agencies. As advice to agencies is provided by the CDPP, generally counsel’s advice is not provided to agencies.
- 18.3 Where there is consideration of providing a copy of counsel’s advice to an agency, the CDPP will decide whether this is appropriate in light of the circumstances involved. For example, this course may be appropriate to enable an agency to provide comments to the CDPP in complex matters. Other situations where this may be appropriate may include where the advice suggests additional investigative steps that could be taken to strengthen the case, where an agency is conducting a review of an investigation at the conclusion of a matter, or where providing counsel’s advice is appropriate given the history of dealings between the agency and the CDPP.
- 18.4 Advice by counsel to the CDPP is covered by legal professional privilege. If the CDPP provides a copy of counsel’s advice to an agency, it is not waiving the CDPP’s privilege in relation to third parties. Accordingly the advice should not be disseminated by an agency without consultation with the CDPP.

### **19. Timeliness**

- 19.1 The CDPP is committed to ensuring that all matters referred by the partner agency are dealt with in a timely manner. Upon receiving a complete brief of evidence, subject to clause 19.4, the CDPP will aim to make a decision on whether there is sufficient evidence to commence the prosecution within internal timeliness targets. Agencies should refer to the CDPP’s Partner Agency portal for information about current time frames which apply to brief assessments.

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- 19.2 Where requisitions of substance are requested by the CDPP in order to make a proper assessment of the brief, the clock will stop as regards timeliness targets, with the file being internally suspended by the CDPP. The clock will re-start once the relevant requisitions have been answered. The CDPP will notify an agency when a matter is suspended and outline the reason for the suspension and will also inform an agency when the suspension has been lifted.
- 19.3 If it is not possible, because of the complexity of the case or otherwise, to make a prosecution decision within the applicable published time frame, the CDPP will make a decision as soon as possible and will keep the partner agency informed of developments in the meantime.
- 19.4 If there is a statutory time limit applicable to the commencement of charges, the relevant expiry date should be clearly flagged with the CDPP and the CDPP will make every endeavour to assess the brief within that statutory time frame.
- 19.5 If a partner agency requires advice urgently it should advise the CDPP at the time advice is sought.

### **20. The informant**

- 20.1 The partner agency will nominate an officer to act as the informant and include these details in the brief of evidence at the time of referral. The referral should also contain contact details of the informant's supervisor. The informant will be responsible for providing support during the prosecution process. The CDPP should be notified of any changes to the nominated informant as soon as possible.
- 20.2 Where a defendant is to be charged on summons, the CDPP will advise the partner agency of the appropriate charges to be laid. The CDPP will draft the charges and will advise the informant when they are available to be signed. The CDPP will be responsible for filing the initiating process and serving it on the defendant. The partner agency/informant is responsible for undertaking any enquiries to locate the defendant and providing an address for service to the CDPP.

### **21. Court attendances**

- 21.1 When charges have been laid in a matter, it is the CDPP's responsibility to ensure that the partner agency is aware of all relevant court dates. Details of dates that are unsuitable to investigators and/or witnesses to attend court should be provided to CDPP on an ongoing basis and prior to the listing of hearing dates with the court. The CDPP will seek to avoid listing cases on dates when investigators/witnesses are unavailable but sometimes this is unavoidable. The CDPP will give as much notice as possible of court dates and inform the agency as to whether an officer is required at court.
- 21.2 The partner agency should ensure that the informant, or other appropriate officer, is present at court on each occasion that he or she is needed. If the agency is not sure whether the informant, or other officer, is needed on a particular day, it should consult the CDPP.

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- 21.3 It is the responsibility of the partner agency to ensure that any witness who is an officer of that agency is present at court when needed, and similarly, any witness from other federal agencies, as subpoenas will not be issued for such witnesses. It is the CDPP's responsibility to ensure that other witnesses attend court, although in some cases the CDPP may rely on the partner agency to assist in locating or serving subpoenas on those witnesses.
- 21.4 If the CDPP requires additional evidence after a case has been set down for hearing, including evidence to prove departmental procedures or to produce departmental records, it will give the agency concerned as much notice as possible and explain why the additional evidence is required.
- 22. Bail**
- 22.1 The CDPP ordinarily appears for the partner agency in bail proceedings conducted during business hours. The CDPP will consult and take into account any views of partner agencies on the question of whether bail should be or not be opposed, as well as to any appropriate conditions which ought to apply to the grant of bail.
- 22.2 The CDPP has the final decision on the question of whether bail is to be opposed in any given case. If the CDPP decides to oppose or not oppose bail, contrary to the views of the partner agency, the CDPP will advise the partner agency of its reasons before the hearing of the bail application.
- 22.3 Where a bail application is listed in circumstances of urgency and consultation with the partner agency is not possible, the CDPP will advise the partner agency as soon as possible thereafter.
- 23. Briefing counsel**
- 23.1 The decision whether to brief counsel from the private bar to prosecute or advise in any matter that has been referred to the CDPP, and the choice of counsel, rests with the CDPP.
- 23.2 While the CDPP will endeavour to brief the same counsel for various stages of the prosecution, this is not always possible, or appropriate.
- 23.3 Once the CDPP has briefed counsel, all contact between the partner agency/informant and counsel should ordinarily be either through, or include the CDPP.
- 24. Prosecution Disclosure**
- 24.1 There are legal obligations on agencies involved in the prosecution process to make appropriate prosecution disclosure. Prosecution disclosure will be carried out by the CDPP in accordance with the [Statement on Disclosure in Prosecutions Conducted by The Commonwealth](#) (CDPP Disclosure Statement). When referring a brief to the CDPP, the partner agency should provide the CDPP with a completed disclosure certificate. Partner agencies should also have regard to [Guidelines on Disclosure for Investigators](#) in order to comply with their disclosure obligations.

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- 24.2 The CDPP Disclosure Statement deals with the need to ensure that the defendant/accused receives a fair trial by having adequate notice of the evidence to be adduced as part of the prosecution case. In addition to fulfilling any local statutory obligations relating to disclosure, the Prosecution must disclose to the defendant/accused any material which:
- can be seen on a sensible appraisal by the Prosecution to run counter to the prosecution case, or
  - might reasonably be expected to assist the defendant/accused in advancing a defence, or
  - might reasonably be expected to undermine the credibility or reliability of a material prosecution witness.
- 24.3 As the courts generally regard the partner agency and the prosecuting agency as “the Prosecution”, the CDPP largely depends on the partner agency to inform it of the existence of material which should be disclosed to the defence, whether the agency holds it, or is aware it is held by a third party including a Commonwealth, State or Territory agency, private entity or individual.
- 24.4 The CDPP is available to assist and work with the partner agency in discharging the prosecution’s duty of disclosure.
- 24.5 Disclosure should be timely and occur as soon as is reasonably practicable. The disclosure obligation is ongoing throughout the prosecution process and continues after the trial or hearing and the conclusion of any appeals.

### **25. Reporting requirement/Court Results**

- 25.1 Once charges have been laid in a matter, the CDPP is responsible for ensuring that the partner agency is kept informed of progress in the case. Following each court appearance, the CDPP will notify the agency of the result and new court date by way of an email to the informant.
- 25.2 Upon the completion of a matter, the CDPP will notify the informant within 24 hours of the outcome of the matter. A written prosecution report will be sent to the partner agency within 14 days.
- 25.3 Post-trial reports are prepared by CDPP prosecutors following a trial, and will be forwarded to informants at the conclusion of the matter. A similar report is also prepared in complex summary hearings and will be provided to informants at the conclusion of the case.
- 25.4 In cases that are not routine or are complex it may be appropriate to conduct a post case review. This involves representatives from the partner agency (including the informant), the CDPP case officer and supervisor and sometimes Prosecuting Counsel, participating in a conference to discuss issues arising from the prosecution in a supportive and constructive way. Agencies or the CDPP may request a post case review where appropriate.
- 25.5 Post-trial reports and post case reviews are mechanisms which assist the CDPP and partner agencies to identify best practice and lessons learned to ensure continual improvement in performance.

**26.     Reparation**

- 26.1     Section 21B of the *Crimes Act 1914* gives the CDPP power, at the end of criminal proceedings, to seek a reparation order in respect of any loss suffered or any expense incurred by the Commonwealth or public authority of the Commonwealth by reason of the offences found proved by the court. A court may also order reparation “*to any person, by way of money payment or otherwise, in respect of any loss suffered, or any expense incurred, by the person by reason of the offence*”. That is, a court has the same power to order reparation to an individual victim of a federal offence as it does to order reparation to the Commonwealth or a public authority of the Commonwealth. A reparation order is, in effect, a short cut to obtaining a civil judgment in respect of money improperly obtained, or loss caused, by the relevant offences. A reparation order can be registered and enforced as if it was a civil judgment.
- 26.2     A reparation order may not reflect the full loss to the Commonwealth or person because the order covers only those losses and expenses incurred by reason of the offences proved before the court. Any loss not recovered by the reparation order should be recovered by other processes.
- 26.3     The CDPP will apply for a reparation order in any case where there is a proper basis for doing so unless the partner agency has requested that a reparation order not be sought.
- 26.4     Accordingly, if an agency does not want the CDPP to apply for a reparation order, it should make this clear when the brief of evidence is referred to the CDPP.
- 26.5     It is the CDPP’s view that, as a matter of law, investigation costs cannot be recovered by way of a reparation order under section 21B of the *Crimes Act*.

**27.     Proceeds of Crime**

- 27.1     While the Criminal Assets Confiscation Taskforce led by the AFP has primary responsibility for confiscation and recovery action under the *Proceeds of Crime Act 2002* (Cth) (POCA), the CDPP continues to be responsible for conducting applications limited to:
- forfeiture orders pursuant to section 48 of the POCA where no restraining order has been sought at the time the application is made; and
  - pecuniary penalty orders pursuant to section 116 of the POCA relating to a person’s conviction where no restraining order has been sought at the time the application is made.
- 27.2     The AFP is responsible for conducting litigation for all other proceedings under the POCA.
- 27.3     The CDPP’s International Assistance and Specialist Agencies (IASA) Practice Group takes a lead coordination role in regard to responsibilities associated with proceeds of crime. The CDPP will take into account any views of the partner agency with regard to POCA applications, however the final decision on whether an application should be made remains with the CDPP. The CDPP will provide the partner agency with reasons for its decision.

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### 28. Superannuation benefits

- 28.1 The relevant legislation in this area is the *Crimes (Superannuation Benefits) Act 1989* (Cth) (CSB Act), which covers all Commonwealth employees other than officers and staff members of the AFP. Officers and staff members of the AFP are covered by Part VA of the *Australian Federal Police Act 1979* (Cth).
- 28.2 The CSB Act provides a mechanism under which a Commonwealth officer who has been convicted of a corruption offence can lose the government-funded component of his or her superannuation benefits. The officer must be sentenced to more than 12 months imprisonment and must serve at least one day in prison. The Act does not affect an officer's rights to a return of employee contributions plus interest.
- 28.3 The mechanism involves an application to a court for a superannuation order. An application can only be made by the CDPP upon authorisation by the Attorney-General or Minister for Justice.
- 28.4 There is provision in the CSB Act under which the CDPP can seek restraining orders from a court to protect the Commonwealth's position while criminal charges are pending.
- 28.5 Whenever a brief of evidence is referred to the CDPP in respect of alleged offences by a Commonwealth officer which involve allegations of corrupt or improper conduct, the brief should include details of the officer's current superannuation entitlements (including the name of the relevant fund) and current employment position. The CDPP should also be told if there is any reason to believe that the officer intends to resign, retire or take other action that could lead to a superannuation payout.
- 28.6 The CDPP should be contacted immediately if a Commonwealth officer who has been charged with a criminal offence, or is under investigation and is likely to be charged, takes any step towards retiring, resigning or other action that might lead to a superannuation payout. The CDPP will consider whether action should be taken to preserve the Commonwealth's position.
- 28.7 An employing agency should provide the CDPP with any information which the CDPP reasonably requires to apply for a superannuation order or a restraining order under the CSB Act. Any other agency which holds relevant information should supply it to the CDPP if it can do so without breaching a secrecy provision. The CSB Act forms part of the criminal law of the Commonwealth. Accordingly, by virtue of Australian Privacy Principle 6, information can be provided to the CDPP in these cases without contravening the *Privacy Act 1988* (Cth).

### 29. Other civil recovery

- 29.1 Some partner agencies will additionally have functions which permit the institution of civil proceedings and debt recovery. When these partner agencies are referring a brief of evidence for prosecution, they should advise the CDPP of any civil action taken or proposed, and if debt recovery action has been commenced, details of any amounts recovered.

### 30. Prosecution appeals

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30.1 The decision whether to appeal against a court ruling or sentence rests with the CDPP and is considered in accordance with the Prosecution Policy. The CDPP will consider the views of the partner agency in relation to whether an appeal is warranted and will advise the agency in writing of its decision following consultation.

### **31. Fines and costs**

31.1 Any payments by the defendant arising out of court orders for the defendant to pay a fine and/or costs, are remitted by the Court to the partner agency. In this regard it is important for the partner agency to ensure that its contact details including its address is kept up to date and provided to the CDPP, as these details are recorded on the charge sheets and provided to the Judge's Associate in the higher courts. Management and recovery of fines and costs are matter for the partner agency. On receiving payments from the Court, it is then the responsibility of the partner agency to remit funds, where appropriate, to Consolidated Revenue.

### **32. Investigation and Prosecution costs**

32.1 Under current financial arrangements, but subject to some specific agreements to the contrary, the CDPP does not charge partner agencies for its services. All prosecution costs, including the payment of counsels' fees, witness expenses (other than witnesses who are investigators) are borne by the CDPP.

32.2 Generally the CDPP is responsible for paying costs awarded by a court against a prosecution. However the partner agency will be responsible for costs awarded by a court where the partner agency has contributed to the awarding of the costs order. The partner agency's liability for those costs will be to the extent that it is responsible for the costs order. For example:

- Where costs are ordered after charges are withdrawn, and the charges were initiated by the partner agency without the CDPP considering a brief of evidence and advising on reasonable prospects of conviction;
- Where costs are ordered because of acts, omissions or delays by the partner agency in complying with disclosure obligations;
- Where costs are ordered due to omissions or delays by the partner agency in complying with court orders, for example orders concerning the preparation and /or service of the brief;
- Where acts, errors, omissions or delays of the partner agency were the main or significant factors contributing to the costs order.

32.3 In some circumstances it may be difficult to say whether a particular costs order should be the responsibility of the prosecution or the partner agency. If there is doubt on the issue, the question should be resolved by discussion between the CDPP and the partner agency, and it may be appropriate to apportion costs across both agencies.

32.4 All investigation costs are borne by the partner agency.

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- 32.5 Additional information regarding responsibility for investigation and prosecution costs is set out in Annexure A.

### **33. Extradition Requests**

- 33.1 The CDPP has no role in relation to incoming extradition requests except requests from New Zealand. The CDPP's role in requests from New Zealand is to assist the partner agency to prepare an application for endorsement of the New Zealand warrant (or for a provisional arrest warrant), to conduct the proceedings before a magistrate to determine whether the fugitive is to be surrendered and to conduct any appeal proceedings.
- 33.2 The partner agency's role is that of obtaining and executing an endorsed New Zealand warrant (or a provisional arrest warrant) at the start of the proceedings, liaising with New Zealand authorities during the course of the proceedings as necessary, and delivering the fugitive to the New Zealand escort officers when a surrender warrant is signed at the end of the proceedings.
- 33.3 The decision whether to make an outgoing extradition request to a foreign country (other than New Zealand) rests with the Attorney-General. The Attorney-General will not make an extradition request in a Commonwealth case unless the CDPP has confirmed that it will prosecute in the event that the person sought is returned to Australia.
- 33.4 Accordingly, there needs to be early discussions between the partner agency and the CDPP in any case where a suspected offender is overseas and the partner agency considers it might be appropriate to seek extradition.
- 33.5 The CDPP is responsible for preparing the document needed to support an extradition request, and for arranging the taking of evidence if required. The partner agency will provide any assistance the CDPP may require in that process. The partner agency will carefully consider the merits and potential value of provisional arrest before requesting the CDPP to seek provisional arrest.

### **34. Criminal Justice Certificates and Visas**

- 34.1 If a criminal justice certificate and visa is needed during the investigation stage, it is the responsibility of the partner agency to apply for a criminal justice certificate and to give a subsistence undertaking. If a person requires subsistence at the investigation stage, it is the responsibility of the partner agency to meet the cost once a criminal justice certificate/visa is issued. It is also the responsibility of the partner agency to seek, through the Department of Home Affairs (DHA), cancellation of a certificate and visa, if it ceases to be necessary.
- 34.2 If a criminal justice certificate and visa are needed at any time after charges have been laid or when a summons is issued, it is generally the responsibility of the CDPP to apply for a criminal justice certificate and give a subsistence undertaking. This also applies to witnesses who are required by the prosecution to attend in relation to the matter. If a person requires subsistence at any time after charges have been laid, it is generally the responsibility of the CDPP to meet the cost. The CDPP is also responsible for seeking cancellation of a certificate

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and visa, issued in response to an application by the CDPP, if it ceases to be necessary to keep a person in Australia any time after charges have been laid.

### 35. Mutual Assistance Requests

- 35.1 The CDPP has no role in incoming mutual assistance requests. If the Attorney-General decides that Australia should accept an incoming request, the Attorney-General's Department (AGD) will decide which agency the request should be referred to.
- 35.2 The decision to make an outgoing request to another country for assistance rests with the Attorney-General or their delegate. However, a request will only be made if the Attorney-General or their delegate is asked to do so by an investigating or prosecuting agency, a court or in some circumstances by a defendant. The CDPP and partner agency will carefully consider the merit and potential value of a request before initiating a request.
- 35.3 If charges have been laid and it is determined by the partner agency and the CDPP that a mutual assistance request is required in the matter, the CDPP will liaise with AGD in relation to making that request and its progress.
- 35.4 For partner agency investigations where no charges have been laid, the partner agency will have the responsibility for liaising with AGD except if the CDPP has specifically advised that it will perform this function.

### 36. Information Sharing

- 36.1 The CDPP and the partner agency are subject to statutory obligations of confidentiality and secrecy, which govern the collection, storage and disclosure of information. Information may be exchanged if the relevant statutory provisions that govern the disclosure of information, permit the disclosure.
- 36.2 Additionally, the CDPP and the partner agency are each responsible for ensuring compliance under the *Privacy Act 1988* (Cth), with regard to the collection, handling, storage and disclosure of personal information.
- 36.3 Once a partner agency provides personal and confidential information to the CDPP, the CDPP will be responsible for ensuring that information is handled in accordance with the *Privacy Act 1988* and the CDPP's [National Legal Direction – Release of Personal Information under the Privacy Act](#).

### 37. Freedom of Information Act

- 37.1 The responsibility for responding to a request under the *Freedom of Information Act 1982* (Cth) (FOI Act), rests with the party to whom the request is directed, unless the request is transferred to the other party or another agency. Many partner agencies have issued guidelines which address the question of what should be done if it receives an FOI request in a case where criminal charges have been laid or are under consideration.

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- 37.2 Where the partner agency or the CDPP receives an FOI request for documents in relation to any case that the agency is investigating/has investigated and that has been referred to the CDPP, the party responsible for processing the request will consult the other party before it releases any documents in its possession, so the other party has an opportunity to make submissions about the application of exemptions under the FOI Act.
- 37.3 Consultation will be conducted between the CDPP's FOI officer and a representative of the partner agency who has responsibility for responding to the FOI request. Where the partner agency or the CDPP releases any relevant documents under FOI in relation to a matter that has been referred to the CDPP and where proceedings have not been concluded, the party responsible for processing the FOI request will provide a copy of the released documents to the other party, unless copies of the documents (in the format that they were released) have already been provided to the other party.
- 37.4 In view of the time limits that apply under the FOI Act, parties will give priority to actioning the request.

### **38. Public interest immunity**

- 38.1 The partner agency should inform the CDPP if there is likely to be questions or issues that are inappropriate to disclose on the basis of Public Interest Immunity (PII), as the disclosure may reveal the identity of an informer or a method of investigation for example, and would be contrary to the public interest. This should occur prior to charges being laid where possible.
- 38.2 The partner agency will advise the CDPP, at least in general terms, of the nature of the material and the reason why disclosure would be contrary to the public interest. The partner agency will not withhold information from the CDPP that is relevant to a prosecution being undertaken by the CDPP. If following discussions between the CDPP and the partner agency, there remains a disagreement as to whether to claim public interest immunity, ultimately the issue may be resolved by a court.
- 38.3 Where the partner agency requires legal advice and/or representation in court in respect of a PII claim it will need to engage its own lawyers.

### **39. Information held by the CDPP**

- 39.1 Subject to any applicable secrecy provision or other restriction, the CDPP will provide an agency with any information in the CDPP's possession which is relevant to an investigation being undertaken by that agency.
- 39.2 In particular, if it comes to the attention of the CDPP that more than one agency is investigating the same course of conduct, it will inform all partner agencies to ensure that their activities can be properly coordinated.

### **40. Public statements and media releases**

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- 40.1 The CDPP engages with the media through its Communications team and in accordance with its internal media policy. However the CDPP and the partner agency should ensure that they do not make any public statement which could adversely affect an investigation, the fair hearing of criminal charges or result in a listed trial not proceeding.
- 40.2 If a partner agency finds it necessary to make a public statement about a criminal case before the proceedings have been completed, the agency should give the CDPP an opportunity to comment on a draft of the proposed statement. In such circumstances, the CDPP will also provide a partner agency with an opportunity to comment on a draft of a proposed public statement.
- 40.3 The CDPP's own policy is to make no public statement in relation to pending criminal proceedings unless it is already public knowledge that charges have been laid or are under consideration. In the event the CDPP is asked and comment is appropriate, it will confirm matters that are on the public record to ensure that the proceedings are reported accurately.

### **41. Contact with defendants or representatives**

- 41.1 Once a matter has been referred to the CDPP, any dealings with the defendant, or with a lawyer or other person representing the defendant, which touches upon the conduct of the criminal proceedings should be handled by the CDPP. If the partner agency is contacted by the defendant or a representative in relation to the prosecution ordinarily it should notify the CDPP before responding.
- 41.2 In some cases it is necessary for the partner agency to have continued dealings with a defendant while charges are pending. The partner agency may, for example, be pursuing civil recovery, or assessing income tax liability, or it may have an ongoing obligation to pay benefits to the person. In such cases, the partner agency should ensure that it does nothing in the course of those dealings that could prejudice the criminal proceedings. In particular, the partner agency should make no comment on the merits of the prosecution.

### **42. Provision of information to external disciplinary bodies**

- 42.1 In some cases the defendant in criminal proceedings will be a member of a profession or other body whose conduct is subject to supervision by a disciplinary regime. Examples include lawyers, accountants and medical practitioners.
- 42.2 If the alleged offences are serious there may be a question whether details of the criminal proceedings should be conveyed to the relevant disciplinary body and, if so, at what stage of the process that should occur.
- 42.3 The CDPP does not provide personal information to disciplinary and/or regulatory bodies of its own volition and where such requests are made by the disciplinary and/or regulatory body, the CDPP will consider the request in accordance with its internal guidelines for dealing with personal information under the *Privacy Act 1988*. It may be appropriate for the CDPP to direct the request to the partner agency. In those circumstances the partner agency will need to consider its internal guidelines for dealing with information requests of this nature. The CDPP is available to discuss those issues if required.

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### **43. Training and Resources**

- 43.1 The CDPP provides partner agencies access to information and resources through the Partner Agency Portal. Additionally the CDPP can provide training and information sessions to partner agencies on specific topics upon request to the relevant Assistant Director or Practice Group Leader or other liaison contact.

### **44. Liaison**

- 44.1 It is recognised that those who conduct investigations need ready access to the advice and other services the CDPP can provide. Those who conduct prosecutions need access to the investigators if they require clarification or additional information. Consequently, it is important that there be an appropriate level of contact at an operational level between the CDPP and the partner agency. This will occur at a case officer level and where appropriate, through respective operational supervisory structures.
- 44.2 In addition, regular liaison contact at a regional and national level between the CDPP and partner agencies can be used to ensure that any issues that arise at a strategic level are addressed and that there is a measure of consistency across the national practice. The regularity of regional and national liaison is a matter to be settled by the relevant partner agency and the CDPP.

### **45. Amendments**

- 45.1 These guidelines will be updated from time to time as the need arises.
- 45.2 Any comments or enquiries regarding the contents of these guidelines should be directed to the CDPP Legal Business Improvement (LBI) branch via email at [LBI@cdpp.gov.au](mailto:LBI@cdpp.gov.au).

## Annexure A

### Schedule of Investigation and Prosecution Costs

The following table sets out common witness expenses and other expenses incurred by partner agencies in investigations or by the CDPP in prosecutions that the CDPP conducts. The table sets out which agency would normally be responsible for payment of these costs, in the absence of some express agreement to the contrary.

The basic principles of the arrangement are:

- Partner agencies and the CDPP continue to meet their own costs;
- Partner agencies pay the investigation costs; and
- the CDPP pays the prosecution expenses.

Table of categories and responsibilities for costs

<b>PARTNER AGENCY IS RESPONSIBLE FOR:</b>	<b>IN CASES PROSECUTED BY THE CDPP, THE CDPP IS RESPONSIBLE FOR:</b>
<b>Investigation costs</b>	
Costs associated with the partner agency investigating potential offences. This includes investigative activities that take place before and after charges have been laid.	
<b>Costs of attending court to give evidence</b>	
Costs associated with partner agency personnel attending to give evidence during a prosecution or to meet with counsel and/or the CDPP.	Costs associated with witnesses (other than partner agency personnel) attending court to give evidence, and/or to meet with counsel and/or the CDPP, including the costs associated with serving subpoenas and summonses on witnesses, except for those of law enforcement officers involved in the investigation or Departmental staff directly involved in the matter
<b>Interpreters</b>	
Costs associated with the use of interpreters used during a partner agency investigation.	Costs associated with interpreters used during pre-trial conferences and at court hearings.
<b>Transcripts / Recordings</b>	
Costs of preparing transcripts, copying recordings and photographs for a standard brief of evidence; and where necessary, additional copies for the Judge, jury, Defence Counsel and CDPP counsel.	Costs of additional copying/editing of recordings, transcripts and supplying photographs in addition to the numbers normally required by the CDPP for a standard brief of evidence.
<b>Counsel's fees</b>	
	All fees for counsel briefed in the prosecution by the CDPP
<b>Filing fees</b>	
	Costs associated with filing of documents in court to commence criminal proceedings
<b>Costs awarded by a court</b>	
To the extent of the partner agency's responsibility, costs awarded by a court against the prosecution where the partner agency has contributed to the awarding of the costs order. For example:	Generally the CDPP is responsible for paying costs awarded against a prosecution.

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<ul style="list-style-type: none"> <li>• where costs are ordered after charges are withdrawn, when were charges were initiated by the partner agency without CDPP considering a brief of evidence and advising on reasonable prospects of conviction</li> <li>• where costs are ordered because of acts, omissions or delays by the partner agency in complying with disclosure obligations</li> <li>• where costs are ordered due to omissions or delays by the partner agency in complying with court orders (e.g. orders concerning the preparation and/or service of the brief</li> <li>• where acts, omissions or delays of the partner agency were the main or significant factors contributing to the order for costs.</li> </ul>	
<b>Ancillary costs concerning prosecutions</b>	
	The CDPP will pay for any materials or equipment necessary to present evidence at trial, including the costs of preparing graphs or charts as evidence and the costs of any computer or other device to be used in the course of the prosecution.
<b>Extradition costs</b>	
Individual costs of officers of either the CDPP or the partner agency should be borne by those organisations respectively. These costs include air fares, travel allowance and incidentals. The direct costs associated with returning the fugitive should be paid by the CDPP. The AFP will be responsible for the costs of travel of its officers to return the fugitive.	

**Subject Matter Experts**

Consistent with the position in relation to other witnesses, the CDPP will pay the fees and disbursements of expert witnesses incurred during pre-trial conferences and at court hearings. The partner agency will pay the fees and disbursements of expert witnesses incurred during the course of investigations.

Where an expert is engaged prior to a prosecution commencing, and it is anticipated that the expert will be used as a witness in a prosecution (so that after the prosecution commences the CDPP will be potentially responsible for expenses of the expert witness), there should be general agreement between the partner agency and the CDPP prior to the initial engagement of the expert as to the rate of fees at which the expert is to be engaged and the period of the engagement.

**Situations not covered by these arrangements**

If expenses are to be incurred in a situation which is not strictly covered by the arrangements set out in this document, the payment of the expenses should be negotiated between the partner agency and the CDPP at the regional level. If agreement is unable to be reached at the regional level, the matter should be resolved at the national level.